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FIRST DIVISION

[ADM. CASE NO. 7252 (CBD 05-1434), November 22, 2006]

JOHNNY NG, COMPLAINANT, VS. ATTY. BENJAMIN C. ALAR, RESPONDENT.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.

Before the Court is Resolution No. XVII-2006-223 dated April 27, 2006 of the IBP Board of Governors, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's propensity to resort to undeserved language and disrespectful stance, Atty. Benjamin C. Alar is hereby **REPRIMANDED with a stern Warning** that severe penalties will be imposed in case similar misconduct is again committed. Likewise, the counter complaint against Atty. Jose Raulito E. Paras and Atty. Elvin Michael Cruz is hereby **DISMISSED** for lack of merit.

A verified complaint[1] dated February 15, 2005 was filed by Johnny Ng (complainant) against Atty. Benjamin C. Alar (respondent) before the Integrated Bar of the Philippines (IBP), Commission on Bar Discipline (CBD), for Disbarment.

Complainant alleges that he is one of the respondents in a labor case with the National Labor Relations Commission (NLRC) docketed as NLRC NCR CA No. 040273-04, while respondent is the counsel for complainants. The Labor Arbiter (LA) dismissed the complaint. On appeal, the NLRC rendered a Decision[2] affirming the decision of the LA. Respondent filed a Motion for Reconsideration with Motion to Inhibit (MRMI),[3] pertinent portions of which read:

> x x x **We cannot help suspecting that the decision under consideration was merely copied from the pleadings of respondents-appellees with very slight modifications.** But we cannot accept the suggestion, made by some knowledgeable individuals, **that the actual writer of the said decision is not at all connected with the NLRC First Division.**
>
> x x x **Why did the NLRC, First Division, uphold the Labor Arbiter in maintaining that the separation pay should be only one half month per year of service? Is jurisprudence on this not clear enough, or is there another reason known only to them?**

x x x **If this is not grave abuse of discretion on the part of the NLRC, First Division, it is ignominious ignorance of the law on the part of the commissioners concerned.**

The NLRC wants proof from the complainants that the fire actually resulted in prosperity and not losses. xxx ***Respondents failed to prove their claim of losses.*** **And the Honorable Commissioners of the First Division lost their ability to see these glaring facts.**

x x x How much is the separation pay they should pay? **One month per year of service – and all of it to the affected workers – not to some people in the NLRC in part.**

x x x They should have taken judicial notice of this prevalent practices of employers xxx. **If the Honorable Commissioners, of the First Division do not know this, they are indeed irrelevant to real life.**

x x x **we invite the Honorable Commissioners of the First Division to see for themselves the evidence before them and not merely rely on their reviewers and on the word of their ponente. If they do this honestly they cannot help seeing the truth. Yes, honesty on the part of the Commissioners concerned is what is lacking, not the evidence. Unfair labor practice stares them in the face.**

If labor arbiter Santos was cross-eyed in his findings of fact, the Honorable Commissioners of the First Division are doubly so – and with malice thrown in. If the workers indeed committed an illegal strike, how come their only "penalty" is removing their tent? **It is obvious that the Labor Arbiter and the Honorable Commissioners know deep in their small hearts that there was no strike.** This is the only reason for the finding of "illegal strike". Without this finding, they have no basis to remove the tent; ***they have to invent that basis.***

x x x The union in its "Union Reply To The Position Paper Of Management" and its Annexes has shown very clearly that the so called strike is a myth. **But Commissioner Dinopol opted to believe the myth instead of the facts. He fixed his sights on the tent in front of the wall and closed his eyes to the open wide passage way and gate beside it. His eyes, not the ingress and egress of the premises, are blocked by something so thick he cannot see through it. His impaired vision cannot be trusted, no doubt about it.**

Commissioner Dinopol has enshrined a novel rule on money claims. Whereas, before, the established rule was, in cases of money claims the employer had the burden of proof of payment. Now it is the other way around. x x x **For lack of a better name we should call this new rule the "Special Dinopol Rule". But only *retirable commissioners* are authorized to apply this rule and only when the money claims involved are substantial. When they are meager the ordinary rules apply.**

> x x x how Commissioner Dinopol is able to say that the pay slips proved that the sixteen (16) claimants were already paid their service incentive leave pay. **This finding is copied verbatim from the cross-eyed decision of Labor Arbiter Santos** x x x .
>
> The evidence already on record proving that **the alleged blocking of the ingress and egress is a myth seem invisible to the impaired sight of Commissioner Dinopol. He needs more of it.** x x x
>
> **Commissioner Dinopol by his decision under consideration (as ponente [of] the decision that he signed and caused his co-commissioners in the First Division to sign) has shown great and irreparable impartiality, grave abuse of discretion and ignorance of the law. He is a shame to the NLRC and should not be allowed to have anything to do with the instant case any more. Commissioner Go and Chairman Señeres, by negligence, are just as guilty as Dinopol** but, since the NLRC rules prohibit the inhibition of the entire division, Chairman Señeres should remain in the instant case and appoint two (2) other commissioners from another division to sit with him and pass final judgment in the instant case.[4] (Emphasis supplied)

In his Answer with Counter-Complaint dated April 6, 2005, respondent Alar contends that the instant complaint only intends to harass him and to influence the result of the cases between complainant and the workers in the different *fora* where they are pending; that the Rules of Court/Code of Professional Responsibility applies only suppletorily at the NLRC when the NLRC Rules of Procedure has no provision on disciplinary matters for litigants and lawyers appearing before it; that Rule X of the NLRC Rules of Procedure provides for adequate sanctions against misbehaving lawyers and litigants appearing in cases before it; that the Rules of Court/Code of Professional Responsibility does not apply to lawyers practicing at the NLRC, the latter not being a court; that LAs and NLRC Commissioners are not judges nor justices and the Code of Judicial Conduct similarly do not apply to them, not being part of the judiciary; and that the labor lawyers who are honestly and conscientiously practicing before the NLRC and get paid on a contingent basis are entitled to some latitude of righteous anger when they get cheated in their cases by reason of corruption and collusion by the cheats from the other sectors who make their lives and the lives of their constituents miserable, with impunity, unlike lawyers for the employers who get paid, win or lose, and therefore have no reason to feel aggrieved.[5]

Attached to the Counter-Complaint is the affidavit of union president Marilyn Batan wherein it is alleged that Attys. Paras and Cruz violated the Code of Professional Responsibility of lawyers in several instances, such that while the labor case is pending before the NLRC, respondents Paras and Cruz filed a new case against the laborers in the Office of the City Engineer of Quezon City (QC) to demolish the tent of the workers, thus splitting the jurisdiction between the NLRC and the City Engineer's Office (CEO) of QC which violates Canon 12, Rules 12.02 and 13.03; that although Ng signed the disbarment complaint against Alar, respondents Paras's and Cruz's office instigated the said complaint which violates Canon 8; that Ng's company did not pay income tax for the year 2000 allegedly for non-operation due to fire and respondents consented to this act of the employer which violates Canon

19, Rule 19.02; and that when the case started, there were more or less 100 complainants, but due to the acts of the employer and the respondents, the number of complainants were reduced to almost half which violates Canon 19, Rule 19-01, 19-02 and 19-03.[6]

In Answer to the Counter-Complaint dated April 14, 2005,[7] respondents Paras and Cruz alleged: At no time did they file multiple actions arising from the same cause of action or brook interference in the normal course of judicial proceedings; the reliefs sought before the CEO has nothing to do with the case pending before the NLRC; the demolition of the nuisance and illegal structures is a cause of action completely irrelevant and unrelated to the labor cases of complainant; the CEO was requested to investigate certain nuisance structures located outside the employer's property, which consist of shanties, tents, banners and other paraphernalia which hampered the free ingress to and egress out of the employer's property and present clear and present hazards; the Office of the City Engineer found the structures violative of pertinent DPWH and MMDA ordinances; the pendency of a labor case with the NLRC is completely irrelevant since the holding of a strike, legal or not, did not validate or justify the construction of illegal nuisance structures; the CEO proceeded to abate the nuisance structures pursuant to its power to protect life, property and legal order; it was not their idea to file the disbarment complaint against respondent Alar; they merely instructed their client on how to go about filing the case, after having been served a copy of the derogatory MRMI; Canon 8 should not be perceived as an excuse for lawyers to turn their backs on malicious acts done by their brother lawyers; the complaint failed to mention that the only reason the number of complainants were reduced is because of the amicable settlement they were able to reach with most of them; their engagement for legal services is only for labor and litigation cases; at no time were they consulted regarding the tax concerns of their client and therefore were never privy to the financial records of the latter; at no time did they give advice regarding their client's tax concerns; respondent Alar's attempt at a disbarment case against them is unwarranted, unjustified and obviously a mere retaliatory action on his part.

The case, docketed as CBD Case No. 05-1434, was assigned by the IBP to Commissioner Patrick M. Velez for investigation, report and recommendation. In his Report and Recommendation, the Investigating Commissioner found respondent guilty of using improper and abusive language and recommended that respondent be suspended for a period of not less than three months with a stern warning that more severe penalty will be imposed in case similar misconduct is again committed.

On the other hand, the Investigating Commissioner did not find any actionable misconduct against Attys. Paras and Cruz and therefore recommended that the Counter-Complaint against them be dismissed for lack of merit.

Acting on the Report and Recommendation, the IBP Board of Governors issued the Resolution hereinbefore quoted. While the Court agrees with the findings of the IBP, it does not agree that respondent Alar deserves only a reprimand.

The Code of Professional Responsibility mandates:

> CANON 8 – A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.