SECOND DIVISION

[A.C. No. 12666, March 04, 2020]

SANTIAGO B. BURGOS, COMPLAINANT, V. ATTY. JOVENCIO JAMES G. BEREBER, RESPONDENT.

D E C I S I O N

HERNANDO, J.:

This resolves the Complaint[1] filed by Santiago B. Burgos (Burgos) against Atty. Jovencio James G. Bereber (Bereber) for conduct unbecoming of a member of the Bar.

The antecedent facts are as follows:

In his complaint, Burgos claimed that Bereber committed acts constituting conflict of interest, and lacking in "*delicadeza*."

Burgos alleged that he is a member-consumer of District III[2] of Capiz Electric Cooperative, Inc. (CAPELCO), a non-stock, non-profit electric cooperative supervised by the National Electrification Administration (NEA), which currently provides electric services to the Province of Capiz. On July 1, 2015, Burgos and two other member-consumers of District III of CAPELCO, on the basis of a NEA Comprehensive Operations Audit,[3] filed an administrative complaint[4] with the NEA against several management staff of CAPELCO and certain members of its Board of Directors for committing acts constituting Grave Misconduct, Neglect of Duty, and Falsification. Having been elected as director by member-consumers of District III, Burgos insisted that Bereber failed to advance their interests, and as such, had no regard for professionalism, ethics, integrity, and "*delicadeza*" when he represented the accused members of the Board of Directors and management staff in the proceedings before the NEA.

On his part, Bereber admitted in his Verified Answer,[5] Position Paper,[6] and other allied pleadings that the accused members of the Board of Directors consulted with him and sought his legal services in connection with the administrative complaint filed by Burgos with the NEA. Bereber then drafted, prepared, and signed their answer to the NEA complaint, and appeared as counsel/collaborating counsel for them in the same case during the preliminary conferences before the NEA.[7] This notwithstanding, Bereber insisted that he did not represent conflicting interests and, perforce, cannot be held administratively liable therefor.

In particular, Bereber argued that there existed no lawyer-client relationship between him and Burgos, considering that Burgos, at no instance in the past, obtained his legal advice or sought consultation on any legal matter arising from the pending NEA complaint and/or the NEA Comprehensive Operations Audit.[8] On the contrary, Bereber emphasized that he even acted as counsel for the adverse parties in Civil Case No. 477 for forcible entry and damages, and in Criminal Case No. 2564

for light coercion filed against Burgos pending before the Municipal Circuit Trial Court in President Roxas, Capiz.[9]

Bereber further argued that he has the discretion to represent the causes of his fellow member-consumers of CAPELCO, such as the accused members of its Board of Directors, in the NEA administrative case. On this point, Bereber clarified that the district election of CAPELCO is only for the purpose of determining the number of directors that will sit on its Board of Directors. Thus, while he was elected as director of CAPELCO by the member-consumers of District III, he does not, by virtue thereof, exclusively represent them in the board, nor does he become the counsel of the member-consumers of the district where he was elected. Bereber explained that, as CAPELCO director, he is mandated to represent not only the member-consumers of District III, but also the entire membership of CAPELCO.[10]

Bereber also maintained that current state of laws does not prohibit him from practicing his profession as a lawyer upon his election as CAPELCO director,[11] and that "*delicadeza*" is "not a ground to prohibit a lawyer from acting as counsel to a party."[12]

In a Report and Recommendation dated January 2, 2018,[13] Investigating Commissioner Jeric J. Jucaban of the Commission on Integrity and Bar Discipline of the Integrated Bar of the Philippines (IBP) recommended the dismissal of the complaint for hick of merit. The Investigating Commissioner opined that Burgos failed to show that a lawyer-client relationship existed between him and Bereber. Moreover, he noted that there is no basis under the laws governing electric cooperatives, particularly, Presidential Decree (PD) No. 269,[14] as amended by Republic Act (RA) No. 10531,[15] which would support the conclusion that Bereber's election as director gave rise to a lawyer-client relationship between him and Burgos, or the general membership of CAPELCO for that matter. Moreover, the Investigating Commissioner found that Bereber, in representing the cause of his fellow members of the Board of Directors, merely exercised "independent judgment" as director of CAPELCO, *viz*.:

> The need for a director to exercise independent judgment is further recognized by the Securities and Exchange Commission when it issued SEC Memorandum Circular No. 19 Series of 2016 prescribing the Code of Corporate Governance for Publicly-Listed Companies. Under Principle 5 of the said Code, the SEC requires that the "Board should endeavor to exercise objective and independent judgment on all corporate affairs."
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> Such issuances of the SEC underscores the responsibility of a director to safeguard and advance the interest of the corporation, as his primordial concern rather than just the interest of a particular set of members or stockholders thereof. x x x A director, therefore, is not bound by the wishes of a stockholder or member, and could take a position contrary to that taken by them.[16]

The Investigating Commissioner agreed with Bereber that there is no law which bars him from practicing his legal profession upon his election as director of CAPELCO, *viz*.:

> What is prohibited by our jurisprudence is a lawyer engaged as counsel for a corporation representing members of the same corporation's board of directors in a derivative suit brought against them by the members or stockholders. For a suit to be considered derivative, however, "the corporation should be included in the suit," which is not present in this case.[17] (Citations omitted)

The Investigating Commissioner also held that lack of "*delicadeza*" is not one of the grounds for disbarment or suspension of a member of the bar.

In a Resolution dated December 6, 2018,[18] the IBP Board of Governors adopted the Investigating Commissioner's Report and Recommendation to dismiss the complaint against Bereber.

The Court's Ruling

The Court adopts the findings of the IBP and accepts its recommendation to dismiss the complaint against Bereber for lack of merit.

We take note at this point that Bereber rendered his legal services to CAPELCO further to his duties and responsibilities as director. This is evident from the December 18, 2015 Affidavit[19] of Mr. Salvador A. Asis, former President of CAPELCO (as attached to Bereber's Answer), which states, in part:

> 4.) Atty. James is the only lawyer in CAPELCO's Board of Directors; the entire members of the board appreciate so much his presence as director because he shared with us his legal opinion on matters requiring it for the betterment of CAPELCO, its members-consumers and employees, he drafted our rules of procedure to be observed every board meeting; he argued and give inputs on legal points, passed several resolutions and policies, drafted the revision of our by-laws and did many other works; he chaired the newly created Committee on Employees' Welfare and did his assigned tasks well; he worked in the CAPELCO very satisfactorily as a director and a lawyer; the running of the general management of CAPELCO is smooth and well with the help of Atty. James[.]

Considering that an administrative complaint was filed with the NEA against certain members of the board and management staff in their capacities as directors and officers, respectively, of CAPELCO, Bereber, as its counsel, took on the responsibility of representing them during the proceedings before the NEA. From the foregoing recitals, it appears, therefore, that Bereber assumed the dual role of a director and lawyer of CAPELCO.

Bearing in mind his roles as director and lawyer of CAPELCO, the issue for consideration of this Court is whether Bereber is guilty of representing conflicting interests in violation of the pertinent provisions of the Code of Professional Responsibility (CPR) when he appeared as counsel for the accused members and management staff of CAPELCO in a case filed against them by CAPELCO member-consumers of District III.

Rules on conflict of interest are embodied in Rule 15.03, Canon 15 of the CPR: which states, to wit: