

## SECOND DIVISION

[ A.C. No. 9268, September 30, 2020 ]

**DELTAVENTURE RESOURCES, INC., COMPLAINANT, VS. ATTY.  
CAGLIOSTRO MIGUEL MARTINEZ, RESPONDENT.**

### DECISION

**DELOS SANTOS, J.:**

This administrative case pertains to a disbarment complaint filed by Deltaventure Resources, Inc. (Deltaventure) against Atty. Cagliostro Miguel Martinez (Atty. Martinez) for allegedly issuing an untruthful secretary's certificate, thereby violating the Code of Professional Responsibility (CPR), Canons of Professional Ethics, and the Lawyer's Oath.

#### The Facts

On August 5, 2011, the Development Bank of the Philippines (DBP) filed with the Office of the Ombudsman (OMB) a Complaint<sup>[1]</sup> against its former directors and officers, as well as the officers of Deltaventure, namely Josephine A. Manalo, Ma. Lourdes A. Torres, and Roberto V. Ongpin (Mr. Ongpin) for violation of Section 3(e), (g), and (j) of Republic Act No. (RA) 3019<sup>[2]</sup> in relation to RA 8791,<sup>[3]</sup> Bangko Sentral ng Pilipinas (BSP) Rules and Regulations, and DBP Rules and Regulations. The case was docketed as OMB Case No. CC11-492, entitled "*Development Bank of the Philippines, et al. v. Reynaldo G. David, et al.*"

On August 10, 2011, Atty. Zenaida Ongkiko-Acorda (Atty. Ongkiko-Acorda) held a press conference relative to OMB Case No. CC11-492, wherein she represented herself as the spokesperson of DBP. She declared that an investigation was conducted by the DBP Board of Directors (DBP Board) on the alleged anomalous transactions (hereinafter, Deltaventure transactions) between certain officers of DBP and Deltaventure. The transactions pertain to the loans extended by DBP to Mr. Ongpin's company, Deltaventure, and the sale of DBP's Philex Mining Corporation (Philex) shares to Deltaventure and Two Rivers Pacific Holding Corporation.<sup>[4]</sup>

On August 11, 2011, Mr. Ongpin, claiming to be the beneficial owner of Deltaventure, caused a publication of an article refuting Atty. Ongkiko-Acorda's public statement. Therein, he also questioned her authority or legal personality to act as the spokesperson or counsel for DBP, *i.e.*, that Atty. Ongkiko-Acorda was neither an officer nor employee of DBP. He averred that DBP violated its Charter when it allegedly failed to obtain the consent of its Chief Legal Counsel, as well as that of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA), in engaging the services of Atty. Ongkiko-Acorda.<sup>[5]</sup>

On August 18, 2011, some senior DBP officers, namely Edgardo F. Garcia, Benedicto Ernesto R. Bitonio, Jesus S. Guevara II, and Benilda A. Tejada (Garcia, *et al.*), caused a publication of a Notice to the Public<sup>[6]</sup> disavowing Atty. Ongkiko-Acorda's

claim that she was DBP's spokesperson or counsel. Garcia, *et al.* were among those sought by the DBP Board to be held administratively/criminally liable in relation to the Deltaventure transactions.<sup>[7]</sup> They declared that Atty. Ongkiko-Acorda was not in DBP's plantilla as a bank lawyer, spokesperson or consultant.

On August 23, 2011, Atty. Ongkiko-Acorda held another press conference maintaining that the DBP Board authorized her to act as the bank's spokesperson.<sup>[8]</sup>

On September 24, 2011, DBP caused a publication of a Secretary's Certificate<sup>[9]</sup> dated 22 September 2011 in the Philippine Daily Inquirer and Philippine Star. The said certificate was signed by the then Officer-In-Charge (OIC) of the Office of the Corporate Secretary of DBP, herein respondent Atty. Martinez, who certified that the DBP Board, in its regular meeting held on August 3, 2011, adopted Board Resolution No. 0230 (BR 0230) designating Atty. Ongkiko-Acorda as DBP's official spokesperson on the case pertaining to Deltaventure transactions. The pertinent portions of the certificate read:

I, CAGLIOSTRO MIGUEL MARTINEZ, Officer-in-Charge, Office of the Corporate Secretary of the Development Bank of the Philippines (DBP) x x x do hereby certify that the Board of Directors of the Development Bank of the Philippines in its regular meeting held on August 3, 2011, adopted Resolution No. 0230, the dispositive portion of which reads as follows:

RESOLUTION NO. 0230. Deltaventure Resources, Inc. and Philex Mining Corporation.

x x x x

Thus, the Board, upon motion made and duly seconded, **APPROVED AND CONFIRMED** the following:

x x x x

c. Designation of Atty. Zenaida Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of [Deltaventure] and Philex Mining.<sup>[10]</sup> (Underscoring supplied)

Doubting the veracity of the foregoing Secretary's Certificate, Deltaventure referred to a copy of DBP Board Resolution No. 0229 (BR 0229),<sup>[11]</sup> likewise dated August 3, 2011, attached to DBP's complaint-affidavit in OMB Case No. CC11-492. Deltaventure pointed out that BR 0229, which was signed by Atty. Martinez, mentioned nothing about the designation of Atty. Ongkiko-Acorda as DBP's spokesperson, *viz.*:

BR 0229 - DELTAVENTURE RESOURCES, INC. AND PHILEX MINING CORPORATION

**APPROVED AND CONFIRMED the following:**

***a. Filing of administrative and/or criminal complaints/charges x x x against the following respondents in connection with the four (4) transactions involving Deltaventure Resources,***

**Inc. (DVRI) and Plilex Mining Corporation  
(Philex Mining) x x x:**

- (1) Mr. Reynaldo G. David**  
**(2) Mr. Roberto V. Ongpin**

x x x x

**b. Authority for Chairman Jose A. Nuñez, Jr. and Pres./CEO Francisco F. Del Rosario, Jr. to sign the administrative, criminal and such other complaints/charges before the Office of the Ombudsman, Securities and Exchange Commission and other government agencies, where necessary.**<sup>[12]</sup> (Emphasis in the original)

Underscoring that the questioned Secretary's Certificate certified the issuance of BR 0230 on August 3, 2011, or the same day as that of BR 0229, Deltaventure theorized that it was illogical, far-fetched, and impractical for the IBP Board to have separately convened twice on August 3, 2011 with regard to the filing of administrative and/or criminal charges pertaining to the Deltaventure transactions and the authority of Atty. Ongkiko-Acorda to act as DBP's spokesperson in relation thereto, under BR 0229 and BR 0230, respectively.<sup>[13]</sup>

Further, Deltaventure suspected the belated publication of the questioned Secretary's Certificate on September 24, 2011, or more than a month after August 10, 2011 when Atty. Ongkiko-Acorda publicly represented herself as DBP's spokesperson pertaining to OMB Case No. CC11-492. To Deltaventure, if Atty. Ongkiko-Acorda was indeed designated as DBP's spokesperson, she could have easily dispelled doubts on her representation during her second press conference on August 23, 2011 by simply producing a copy of BR 0230 dated August 3, 2011 adverted to in the Secretary's Certificate.<sup>[14]</sup> Deltaventure, thus, claimed that the Secretary's Certificate dated 22 September 2011 was a contrived afterthought, or one manufactured and executed *post facto* by Atty. Martinez, deliberately asserting falsehood under oath in order to make it appear that Atty. Ongkiko-Acorda had the authority to act as DBP's spokesperson as early as August 3, 2011.<sup>[15]</sup>

In the subject disbarment complaint,<sup>[16]</sup> Deltaventure charged Atty. Martinez with violation of the CPR and betrayal of his avowed Lawyer's Oath to "*do no falsehood, nor consent to the doing of any in court,*" in relation to the assailed Secretary's Certificate.

In his Comment,<sup>[17]</sup> Atty. Martinez denied having falsified the subject Secretary's Certificate. He invoked the "final and approved" BR 0230 designating Atty. Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of Deltaventure and Philex, as indicated in Board Minutes No. 17<sup>[18]</sup> dated August 3, 2011, which pertinently reads:

RESOLUTION NO. 0230. Deltaventure Resources, Inc. and Philex Mining Corporation.

X X X X

***Thus, the Board, upon motion made and duly seconded, APPROVED AND CONFIRMED the following:***

***a. Filing of administrative and/or criminal complaints/charges as soon as possible against the following respondents in connection with the four (4) transactions involving Deltaventure Resources, Inc. (DVRI) and Philex Mining Corporation (Philex Mining), namely: P150.0 Million loan to DVRI, P510.00 Million loan to DVRI, sale of the 50,000,000 Philex Mining shares to DVRI and sale of the 59,399,000 Philex Mining shares to Two Rivers Pacific Holding Corporation:***

- (1) Mr. Reynaldo G. David***
- (2) Mr. Roberto V. Ongpin***

X X X X

***(13) Mr. Edgardo F. Garcia***

X X X X

- (16) Mr. Benedicto Ernesto R. Bitonio, Jr.***
- (17) Mr. Jesus S. Guevara II***
- (18) Atty. Benilda A. Tejada***

X X X X

***c. Designation of Atty. Zenaida Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of DVRI and Philex Mining.***<sup>[19]</sup> (Emphasis in the original, underscoring supplied)

Atty. Martinez clarified that both the filing of OMB Case No. CC11-492 and the related designation of Atty. Ongkiko-Acorda were included in the agenda of the August 3, 2011 board meeting.<sup>[20]</sup> Owing to the urgent nature of the matter pertaining to the Deltaventure transactions, the Office of the Corporate Secretary directed the immediate preparation of the resolution necessary for the filing of the administrative/criminal cases after the board meeting. In the preparation of the resolution, however, only the draft bullet summary of the discussion pertaining to the filing of the complaint was reflected in the resolution erroneously numbered as "0229," which Atty. Martinez initialed and dated.<sup>[21]</sup>

Atty. Martinez explained that the BR 0229 attached in the complaint in OMB Case No. CC11-492 complaint and the BR 0230 mentioned in the Secretary's Certificate were both part of one resolution officially numbered as BR 0230, as approved by the DBP Board during the August 24, 2011 board meeting.<sup>[22]</sup> He claimed that the adjustment was done in accordance with the rules and procedure followed by the

Office of the Corporate Secretary.<sup>[23]</sup> To Atty. Martinez, the failure of BR 0229 to mention the authority of Atty. Ongkiko-Acorda to act as DBP's spokesperson was understandable, as the same was not relevant to the filing of the case with the OMB. He claimed that the "final and approved" BR 0230 was the basis of the Secretary's Certificate he issued.<sup>[24]</sup>

### **Report and Recommendation, IBP Commission on Bar Discipline**

Submitted for resolution before the Integrated Bar of the Philippines -Commission on Bar Discipline (IBP Commission) was the core issue: whether Atty. Martinez violated the provisions of the CPR and the Lawyer's Oath.<sup>[25]</sup>

In a Report and Recommendation<sup>[26]</sup> dated March 30, 2016, Investigating Commissioner Roland B. Beltran (Commissioner Beltran) resolved the issue in the affirmative and reprimanded Atty. Martinez, viz.:

WHEREFORE, it is hereby recommended that Atty. Cagliostro Miguel Martinez be meted the penalty of reprimand for violating the procedure of his office in releasing a draft resolution BR 0229, for violation of the Code of Professional Responsibility and the Lawyer's oath, with stern warning that a repetition of the same shall be dealt with more seriously.

RESPECTFULLY SUBMITTED.<sup>[27]</sup> (Underscoring supplied)

Commissioner Beltran refrained from passing upon the veracity or genuineness of the subject Secretary's Certificate owing to the pendency of a related criminal case for perjury against Atty. Martinez before the Metropolitan Trial Court of Makati.<sup>[28]</sup> Nevertheless, Commissioner Beltran held that Atty. Martinez violated DBP's internal procedure in the preparation of board minutes and resolutions, finding that he signed and released BR 0229 on August 4, 2011, or a day after the 03 August 2011 meeting, sans the pre-requisite review by the DBP Board. Under the said internal procedure, the draft resolution had to be reviewed or corrected by the members of the IBP Board prior to its release. Commissioner Beltran doubted and questioned Atty. Martinez's intentions, when he affixed his signature on a mere draft, BR 0229. Commissioner Beltran concluded that Atty. Martinez made BR 0229 appear as the complete and official document of authority for the filing of OMB Case No. CC11-492.<sup>[29]</sup>

Commissioner Beltran characterized Atty. Martinez's supposed deviation from DBP's internal procedure as one traversing his sworn obligation "[*not to*] *engage in conduct that adversely reflects on his fitness to practice law*" under Section 7.03, Canon 7 of the CPR.<sup>[30]</sup> Further, underscoring Atty. Martinez's oath as a lawyer "to do no falsehood," Commissioner Beltran opined:

The action taken by Atty. Martinez in releasing a draft resolution and affixing his signature thereon, in violation of his office's internal procedure, manifested serious concerns about his fitness as an attorney who has sworn to uphold the law under his lawyer's oath.

x x x x