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[A.M. No. P-17-3756 (Formerly OCA I.P.I. No.16-4634-P), October 10, 2017]

JUDGE LITA S. TOLENTINO-GENILO, COMPLAINANT, VS. ROLANDO S. PINEDA, RESPONDENT.

DECISION

PER CURIAM:

This refers to the sworn Complaint-Affidavit,[1] dated October 18, 2016, filed by complainant Judge Lita S. Tolentino-Genilo (complainant), Presiding Judge, Branch 91, Regional Trial Court of Quezon City (*RTC*), against Rolando S. Pineda (*respondent*), Court Aide of the same branch, filed before the Office of the Court Administrator (*OCA*), an administrative case for grave misconduct and dishonesty.

Complainant alleged that she owns a payroll account with the Landbank of the Philippines (*LBP*) Quezon City Hall branch with account number 1727-1197-24, and along with the said account was an Automated Teller Machine (*ATM*) card issued to her. Despite the issuance of the said ATM card, complainant prefers to make her withdrawals over the counter, every five (5) months, and usually by hundreds of thousands per withdrawal. She likewise alleged that she can no longer recall the Personal Identification Number (*PIN*) for her ATM card.

On September 28, 2016, complainant received an SMS or text message alert from LBP informing her that an amount of Fifty Thousand Pesos (*P50,000.00*) has been withdrawn from her account on September 27, 2016. By reason thereof, complainant went to LBP Quezon City Hall branch on the same day to inquire on the matter. The LBP's staff confirmed the said withdrawal. Thus, complainant requested for the records and surveillance footage to determine how the unauthorized withdrawal was made.

On September 29, 2016, respondent did not report for work. On the same day, another SMS or text message alert from LBP was received by complainant that an amount of P50,000.00 was again withdrawn from her account on September 28, 2016. This was also confirmed by the staff of LBP Quezon City Hall branch.

Thereafter, LBP issued a Transaction Journal,[2] indicating the withdrawals made on September 27, 2016. A copy of the Closed Circuit Television (*CCTV*) footage[3] was also secured by complainant, showing respondent wearing a yellow shirt, coming from Quezon City Hall's LBP ATM machine and counting the money he withdrew. The LBP also issued a Transaction Journal[4] exhibiting the withdrawals made on September 28, 2016, and the CCTV footage[5] of the LBP ATM, again showing respondent in a red shirt, making multiple withdrawals.

On October 1, 2016, complainant received a text message from respondent, admitting the unauthorized withdrawal. It was sent through respondent's mobile number at 0928-5656484. His exact text message reads:

> Maam di ko aim paano hihingi ng kapatawaran sa i[n]yo wala po akong balak kumuha o mgnakaw nalukso po ako at nalulong sa sugal. Sana po maam magbabayad 3thou kada buwan. ngsis[i] po ako sinira ko ang trabaho at kinabukasan ko at ng mga anak ko.[6]

Further investigation revealed that respondent was able to make about forty-nine (*49*) other withdrawals from complainant's account, amounting to more than Eight Hundred Ninety-Five Thousand Pesos (*P895,000.00*) from August 2015 to September 2016, as shown in the Transaction Report[7] issued by LBP.

Complainant averred that proper criminal and administrative penalties should be imposed against respondent for unlawfully taking money through abuse of confidence, and for illegally using an access device (i.e. cloning the ATM card).

For his part, respondent denied the allegations against him. He however, admitted that he withdrew the amount of P50,000.00 on September 27, 2016.[8] He assured complainant that he will return the said amount when his loan application is approved by the Supreme Court Savings and Loan Association.

Respondent claimed that complainant was the one who instructed him to make the alleged withdrawals. He disclosed that the first time he was directed to withdraw was on August 20, 2015 when complainant called him to her chamber and gave her the PIN of her ATM card. Since then, respondent made several withdrawals with the instruction of complainant.

On December 28, 2015, respondent made another withdrawal in the amount of P10,000.00, when they had a brief stopover at Shell station, South Luzon Expressway, while serving as complainant's driver. He insisted that such withdrawal was made upon complainant's directive.

Respondent also claimed that he was the one who collected most of the checks or cash due from complainant's tenants whenever the payments were made at their office, and he then deposits the same to the bank.

Respondent stated that he has been working with complainant since 1998 and has always followed her directives. He asserted that there was a time when complainant vented her ire on him, apparently for the purpose of removing him from his post after he refused to be her full-time driver. It was also alleged that complainant was planning to give respondent's post to her regular driver. In 1998 to 1999, respondent was temporarily detailed at Branch 39 of Metropolitan Trial Court, Quezon City, but decided to return to Branch 91, RTC, when he felt that complainant had no plans to return him to the latter court.

Further, respondent averred that he accompanied complainant when the latter made an inquiry at LBP Quezon City Hall branch on September 29, 2016 regarding the alleged unauthorized withdrawal. On their way to LBP, respondent wanted to admit that he made the unauthorized withdrawals but he failed to gather the courage to do so. Thereafter, when respondent heard the conversation between a bank teller and

the complainant, wherein the latter claimed that she never made any withdrawal thru an ATM, he felt scared and left the bank premises without informing complainant.

With respect to the text message that was received by complainant on October 1, 2016, the same was admitted by respondent. He confessed that he made the withdrawals because he has acquired an addiction for gambling.

In her Reply-Affidavit,[9] dated April 3, 2017, complainant emphasized that respondent already admitted withdrawing the amount of P50,000.00 on September 27, 2016 in his Counter-Affidavit,[10] and respondent's admission is sufficient proof that he cloned the card and he has made unlawful withdrawals therein since 2015.

Complainant denied giving her ATM card PIN to respondent and allowed him to make the withdrawals in her behalf. She dismissed respondent's claim that the withdrawal made on December 28, 2015 at Shell SLEX was with her consent.

Further, she pointed out that respondent failed to offer an explanation as to the other withdrawals made, particularly on September 28, 2016, where he was caught on CCTV footage.

Moreover, complainant denied respondent's allegation that she started picking on him when he refused to be her full-time driver, stressing that she has a regular driver. She also highlighted that it is difficult to imagine respondent giving up his permanent job in the RTC to become her driver. Complainant also dismissed the claim that she asked respondent to collect cash or checks and deposit the same in her behalf.

In a Letter[11] dated January 6, 2017, complainant informed the OCA that respondent has not been reporting for work since September 28, 2016.

The OCA Recommendation

In its Report and Recommendation,[12] dated May 24, 2017, the OCA recommended that the administrative case be re-docketed as a regular administrative matter and that respondent be found guilty of Gross Misconduct and Dishonesty and be accordingly dismissed from the service, with forfeiture of all benefits, except accrued leave credits, if any, and perpetual disqualification from re-employment in any government instrumentality, including government-owned and controlled corporations. It found that respondent clearly admitted to the unauthorized withdrawal and owning up to the text message he sent to complainant asking for forgiveness. The OCA concluded that the unauthorized and deceitful withdrawals by respondent amounted to gross misconduct and dishonesty.

Issue

WHETHER OR NOT RESPONDENT SHOULD BE HELD ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT AND DISHONESTY.

The Court's Ruling