

SECOND DIVISION

[A.M. No. RTJ-09-2200 (formerly OCA I.P.I. No. 08-2834-RTJ), April 02, 2014]

ANTONIO M. LORENZANA, COMPLAINANT, VS. JUDGE MA. CECILIA I. AUSTRIA, REGIONAL TRIAL COURT, BRANCH 2, BATANGAS CITY, RESPONDENT.

DECISION

BRION, J.:

We resolve in this Decision the administrative complaints^[1] filed by Antonio M. Lorenzana (*complainant*) against Judge Ma. Cecilia I. Austria (respondent), Regional Trial Court (RTC), Branch 2, Batangas City.

The records show that the administrative complaints arose from the case "*In the Matter of the Petition to have Steel Corporation of the Philippines Placed under Corporate Rehabilitation with Prayer for the Approval of the Proposed Rehabilitation Plan*," docketed as SP. Proc. No. 06-7993, where the respondent was the presiding judge. The complainant was the Executive Vice President and Chief Operating Officer of Steel Corporation of the Philippines (SCP), a company then under rehabilitation proceedings.

i. Complaint

In his verified complaint dated January 21, 2008, the complainant alleged that in the course of SP. Proc. No. 06-7993, the respondent committed Gross Ignorance of the Law, Grave Abuse of Authority, Gross Misconduct, Grave Incompetence, Irregularity in the Performance of Duty, Grave Bias and Partiality, Lack of Circumspection, Conduct Unbecoming of a Judge, Failure to Observe the Reglementary Period and Violation of the Code of Professional Responsibility, as shown by the following instances:

1. The respondent appointed Atty. Santiago T. Gabionza, Jr. as rehabilitation receiver over SCP's objections and despite serious conflict of interest in being the duly appointed rehabilitation receiver for SCP and, at the same time, the external legal counsel of most of SCP's creditors; he is also a partner of the law firm that he engaged as legal adviser.
2. The respondent conducted informal meetings (which she termed as "*consultative meetings*" in her Order^[2] dated May 11, 2007) in places outside her official jurisdiction (i.e., a first class golf club, a hotel and sports club facilities in Metro Manila) and where she arbitrarily dictated the terms, parameters and features of the rehabilitation plan she wanted to approve for

SCP. She also announced in the meetings that she would prepare the rehabilitation plan for SCP.

3. The modified rehabilitation plan submitted by Atty. Gabionza is a replica of what the respondent dictated to him. Thus, the respondent exceeded the limits of her authority and effectively usurped and pre-empted the rehabilitation receiver's exercise of functions.
4. The respondent ordered that the proceedings of the informal meetings be off-record so that there would be no record that she had favored Equitable-PCI Bank (EPCIB).
5. The respondent had secret meetings and communications with EPCIB to discuss the case without the knowledge and presence of SCP and its creditors.
6. The respondent appointed Gerardo Anonas (*Anonas*) as Atty. Gabionza's financial adviser and, at the same time, as her financial adviser to guide her in the formulation and development of the rehabilitation plan, for a fee of P3.5M at SCP's expense. Anonas is also the cousin-in-law of the managing partner of Atty. Gabionza's law firm.
7. The respondent encouraged EPCIB to raise complaints or accusations against SCP, leading to EPCIB's filing of a motion to create a management committee.
8. When requested to conduct an evidentiary meeting and to issue a subpoena (so that SCP could confront EPCIB's witnesses to prove the allegation that there was a need for the creation of a management committee), the respondent denied SCP's requests and delayed the issuance of the order until the last minute.
9. At the hearing of September 14, 2007, the respondent intimidated SCP's counsel, Atty. Ferdinand Topacio; blocked his every attempt to speak; refused to recognize his appearances in court; and made condescending and snide remarks.
10. The respondent failed to observe the reglementary period prescribed by the Interim Rules of Procedure on Corporate Rehabilitation (*Rules*). She approved the rehabilitation plan beyond the 180 days given to her in the Rules, without asking for permission to extend the period from the Supreme Court (SC).
11. The respondent erroneously interpreted and applied Section 23, Rule 4 of the Rules (the court's power to approve the rehabilitation plan) to include the power to amend, modify and alter it.
12. The respondent took a personal interest and commitment to decide the matter in EPCIB's favor and made comments and rulings in the proceedings that raised concerns regarding her impartiality.
13. The respondent adamantly refused to inhibit herself and showed special interest and personal involvement in the case.

ii. Supplemental Complaint

The complainant likewise filed a supplemental complaint^[3] dated April 14, 2008 where he alleged that the respondent committed an act of impropriety when she displayed her photographs in a social networking website called "*Friendster*" and posted her personal details as an RTC Judge, allegedly for the purpose of finding a compatible partner. She also posed with her upper body barely covered by a shawl, allegedly suggesting that nothing was worn underneath except probably a brassiere.

The Office of the Court Administrator (OCA) in its 1st Indorsement^[4] dated March 18, 2008, referred the complaints to the respondent for comment.

a. Comment to January 21, 2008 Complaint

The respondent vehemently denied the allegations against her. While she admitted that she crafted a workable, feasible rehabilitation plan best suited for SCP, she maintained that she did so only to render fairness and equity to all the parties to the rehabilitation proceedings. She also submitted that if indeed she erred in modifying the rehabilitation plan, hers was a mere error of judgment that does not call for an administrative disciplinary action. Accordingly, she claimed that the administrative complaints were premature because judicial remedies were still available.^[5]

The respondent also argued that the rules do not prohibit informal meetings and conferences. On the contrary, she argued that informal meetings are even encouraged in view of the summary and non-adversarial nature of rehabilitation proceedings. Since Section 21, Rule 4 of the Rules^[6] gives the rehabilitation receiver the power to meet with the creditors, then there is all the more reason for the rehabilitation judge, who has the authority to approve the plan, to call and hold meetings with the parties. She also pointed out that it was SCP which suggested that informal meetings be called and that she only agreed to hold these meetings on the condition that all the parties would attend.

As to her alleged failure to observe the reglementary period, she contended that she approved the rehabilitation plan within the period prescribed by law. She argued that the matter of granting extension of time under Section 11, Rule 4 of the Rules^[7] pertains not to the SC, but to the rehabilitation court.

The respondent likewise refuted the allegations of bias and partiality. *First*, she claimed that her denial of the complainant's motion for inhibition was not due to any bias or prejudice on her part but due to lack of basis. *Second*, she argued that her decision was not orchestrated to favor EPCIB, as evidenced by the fact that EPCIP itself (as some other creditors did) promptly appealed her decision to the Court of Appeals (CA). *Third*, she did not remove Atty. Gabionza as SCP's rehabilitation receiver because she disagreed that the grounds the complainant raised warranted his removal. She also found no merit to the allegation of conflict of interest. *Lastly*, she maintained that the rest of the complainant's allegations were not substantiated and corroborated by evidence.

The respondent further alleged that she did not gravely abuse her authority in not issuing a subpoena as Section 1, Rule 3 of the Interim Rules on Corporate

Rehabilitation of the Rules specifically states that the court may decide matters on the basis of affidavits and other documentary evidence.

On the allegation of conflict of interest, she maintained that the allegations were not proven and substantiated by evidence. Finally, the respondent also believed that there was nothing improper in expressing her ideas during the informal meetings.

b. Comment to April 14, 2008 Supplemental Complaint

In her comment^[8] on the supplemental complaint, the respondent submitted that the photos she posted in the social networking website "*Friendster*" could hardly be considered vulgar or lewd. She added that an "off-shouldered" attire is an acceptable social outfit under contemporary standards and is not forbidden. She further stated that there is no prohibition against attractive ladies being judges; she is proud of her photo for having been aesthetically made. Lastly, she submitted that the ruling of the Court in the case of *Impao v. Judge Makilala*^[9] should not be applied to her case since the facts are different.

On July 4, 2008, the complainant filed a reply,^[10] insisting that the respondent's acts of posting "seductive" pictures and maintaining a "*Friendster*" account constituted acts of impropriety, in violation of Rules 2.01,^[11] 2.02^[12] and 2.03,^[13] Canon 2 of the Code of Judicial Conduct.

In a Resolution^[14] dated September 9, 2009, the Court re-docketed the complaints as regular administrative matters, and referred them to the CA for investigation, report and recommendation.

The CA's Report and Recommendation

On November 13, 2009, Justice Marlene Gonzales-Sison, the Investigating Justice, conducted a hearing, followed by the submission of memoranda by both parties.

In her January 4, 2010 Report and Recommendation,^[15] Justice Gonzales-Sison ruled that the complaints were partly meritorious. She found that the issues raised were judicial in nature since these involved the respondent's appreciation of evidence.

She also added that while the CA resolved to set aside the respondent's decision in the rehabilitation proceedings, it was not by reason of her ignorance of the law or abuse of authority, but because the rehabilitation plan could no longer be implemented in view of SCP's financial predicament.

On the allegation of grave bias and partiality in handling the rehabilitation proceedings, Justice Gonzales-Sison ruled that the complainant failed to present any clear and convincing proof that the respondent intentionally and deliberately acted against SCP's interests; the complaint merely relied on his opinions and surmises.

On the matter of the respondent's inhibition, she noted that in cases not covered by the rule on mandatory inhibition, the decision to inhibit lies within the discretion of

the sitting judge and is primarily a matter of conscience.

With respect to the respondent's informal meetings, Justice Gonzales-Sison found nothing irregular despite the out-of-court meetings as these were agreed upon by all the parties, including SCP's creditors. She also found satisfactory the respondent's explanation in approving the rehabilitation plan beyond the 180-day period prescribed by the Rules.

The foregoing notwithstanding, Justice Gonzales-Sison noted the respondent's unnecessary bickering with SCP's legal counsel and ruled that her exchanges and utterances were reflective of arrogance and superiority. In the words of the Justice Gonzales-Sison:

Rather than rule on the manifestations of counsels, she instead brushed off the matter with what would appear to be a conceited show of a prerogative of her office, a conduct that falls below the standard of decorum expected of a judge. Her statements appear to be done recklessly and were uncalled for. xxx. Section 6[,] Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that: judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others whom the judge deals in an official capacity. **Judicial decorum requires judges to be temperate in their language at all times. Failure on this regard amounts to a conduct unbecoming of a judge, for which Judge Austria should be held liable.**^[16]

On the respondent's Friendster account, she believes that her act of maintaining a personal social networking account (displaying photos of herself and disclosing personal details as a magistrate in the account) – even during these changing times when social networking websites seem to be the trend – constitutes an act of impropriety which cannot be legally justified by the public's acceptance of this type of conduct. She explained that propriety and the appearance of propriety are essential to the performance of all the activities of a judge and that judges shall conduct themselves in a manner consistent with the dignity of the judicial office.

Finally, Justice Gonzales-Sison noted the CA's May 16, 2006 decision^[17] in CA-G.R. SP No. 100941 finding that the respondent committed grave abuse of discretion in ordering the creation of a management committee without first conducting an evidentiary hearing in accordance with the procedures prescribed under the Rules. She ruled that such professional incompetence was tantamount to gross ignorance of the law and procedure, and recommended a fine of P20,000.00. She also recommended that the respondent be admonished for failing to observe strict propriety and judicial decorum required by her office.

The Action and Recommendation of the OCA

In its Memorandum^[18] dated September 4, 2013, the OCA recommended the following: