

EN BANC

[A.M. No. P-14-3270 [formerly OCA IPI No. 11-3579-P], November 18, 2014]

ANGELITO P. MIRANDA, COMPLAINANT, VS. MA. THERESA M. FERNANDEZ, CLERK III, METROPOLITAN TRIAL COURT, QUEZON CITY, RESPONDENT.

DECISION

PER CURIAM:

We resolve the complaint^[1] of Angelito Miranda (*complainant*) dated July 19, 2010 against Ma. Theresa M. Fernandez (*respondent*), Clerk III, Metropolitan Trial Court, Quezon City, for grave misconduct, dishonesty, estafa and other deceits.

The complaint was initially filed with the Office of the Ombudsman, docketed thereat as CPL-C-10-1343. After finding that the respondent is a court employee, the Office of the Ombudsman dismissed^[2] and referred the complaint to this Court, through the Office of the Court Administrator (OCA) for appropriate action, pursuant to the Court's ruling in *Maceda v. Hon. Ombudsman Vasquez, et al.*^[3]

The complainant acts as an agent of money lenders Manuel P. Miranda and Josephine Miranda Cabusao (*creditors*). On January 4, 2010, the respondent obtained a loan of P124,800.00 from the creditors, through the complainant. The transaction was evidenced by an Agreement^[4] between the respondent and her creditors. The Agreement provided that the amount of loan shall be paid in equal installments of P2,600.00 every 15th and 30th day of the month until fully paid; the first payment was to start on January 12, 2010.

As security for the loan, the respondent surrendered her ATM Card No. 1727165289 to her creditors to allow them to withdraw the amount of P2,600.00 every payday from her salaries deposited with the Land Bank of the Philippines (*LBP*). She undertook that "filing false Affidavits of Loss or causing any deliberate blocking of my ATM card in any form by myself, the Borrower, during this Agreement shall be a case for Perjury or Estafa." She also executed a waiver of rights^[5] under the "Bank Secrecy Law of the Philippines addressed to the Manager of the LBP, Quezon City Hall, Quezon City. At the time of the filing of the complaint, the respondent's outstanding loan was P103,700.00.

On July 15, 2010, the respondent's creditors went to the bank to collect the amount due from her bank account. When the respondent's ATM card was inserted into the ATM machine, it was retained by the ATM machine with the advisory receipt stating "Invalid Card."^[6] This happened because the respondent had blocked her ATM card to prevent withdrawals by her creditors. It appeared that the respondent reported to the LBP that she had lost her ATM card. The report enabled her to withdraw her

salary over the counter and led to the issuance of a new ATM card in her favor.

A day after discovery of the fraud, the complainant sent the respondent a demand letter^[7] which she ignored. She continuously failed to comply with her undertaking. The complainant, acting as the representative of the creditors under a Special Power of Attorney dated July 19, 2010,^[8] filed the present administrative complaint against the respondent.

In its 1st Indorsement dated January 12, 2011,^[9] the OCA required the respondent to comment on the complaint. The directive was reiterated in a 1st Tracer dated August 5, 2011.^[10] The Registry Return Receipts for both communications showed that the respondent had received them but failed to comply.

In a resolution dated June 10, 2013,^[11] the Court directed the respondent to show cause why she should not be disciplined or held in contempt for her failure to file the required comment despite her receipt of the two (2) directives from the OCA, and to submit the required comment within five (5) days from receipt thereof. The resolution carried the warning, that upon further failure, the Court shall take the necessary action against her and decide the administrative complaint on the basis of the record at hand. The respondent received a copy of the June 10, 2013 resolution on July 30, 2013, but still failed to comply. Thus she is considered to have waived her right to submit controverting evidence.^[12]

Executive Order No. 292 (E.O. 292), otherwise known as the Administrative Code of 1987, provides that a public employee's failure to pay just debts is a ground for disciplinary action. Section 22, Rule XIV of the Omnibus Rules Implementing Book V of E.O. 292 and Other Pertinent Civil Service Laws, as modified by the Revised Uniform Rules on Administrative Cases in the Civil Service, defines "just debts" as those (1) claims adjudicated by a court of law or (2) claims the existence and justness of which are admitted by the debtor. By the respondent's failure to file her comment on the complaint despite the OCA's two (2) directives and warning, she is deemed to have admitted the existence and justness of the claim against her. The obligation having remained unpaid since the demand was made upon her conclusively speaks of her willful refusal to settle the same.

The respondent's liability does not end there. To guaranty the monthly payments due on her loan, the respondent surrendered her ATM card to her creditors to allow the latter to withdraw her payments from her salary. However, when the payments became due, the complainant could not withdraw from the respondent's account because the ATM machine "swallowed" and retained the ATM card. The ATM machine released an advisory receipt stating "Invalid Card."

The respondent made false representations to the LBP declaring that she lost her ATM card so she could directly withdraw her salary over the bank's counter and cause the issuance of a new ATM card in her favor. She did this in violation of her undertaking that she will not block her ATM card to avoid withdrawal by her creditors of the amounts due on her loan. The blocking of the ATM card she surrendered to her creditors and her act of securing a new ATM card from the LBP to avoid payment of her indebtedness constitute dishonesty and conduct unbecoming of a court employee. Dishonesty refers to the disposition to lie, cheat, deceive or