

EN BANC

[A.C. No. 4515, July 14, 2008]

CECILIA A. AGNO, COMPLAINANT, VS. ATTY. MARCIANO J. CAGATAN. RESPONDENT.

DECISION

LEONARDO-DE CASTRO, J.:

This is a complaint for disbarment filed by Cecilia A. Agno against respondent Atty. Marciano J. Cagatan for violation of the Code of Professional Responsibility.

The record shows that respondent was the President of International Services Recruitment Corporation (ISRC), a corporation engaged in the recruitment of Filipino workers for overseas employment. On July 12, 1988, ISRC's recruitment license was cancelled by the Department of Labor and Employment (DOLE) for violation of labor law provisions and subsequently, on August 9, 1988, ISRC was forever banned from participating in overseas recruitment. [1]

On September 19, 1988, the respondent appealed the DOLE's cancellation of ISRC's license with the Office of the President. The appeal was resolved by the said office in respondent's favor in the Resolution dated March 30, 1993 [2] which set aside the order of cancellation and directed both the DOLE and the Philippine Overseas Employment Agency (POEA) to renew the recruitment license of ISRC subject to the payment of a guarantee bond which was double the amount required by law.

Since ISRC's recruitment license had already expired on September 17, 1989, ISRC filed on April 12, 1994, an application for renewal of its recruitment license with the POEA. [3]

However, during the pendency of the aforementioned appeal with the Office of the President, particularly on August 9, 1992, the respondent entered into a Memorandum of Agreement [4] with a United Arab Emirates (U.A.E.) national, Mr. Khalifa H. Juma, [5] the husband of herein complainant, Cecilia A. Agno. The Memorandum of Agreement is quoted *in toto* hereunder:

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Mr. JOMA HUMED KHALIFA, U.A.E. national, and Mr. MARCIANO J. CAGATAN, Filipino citizen, have entered into this Memorandum of Agreement this 9th day of August 1992, at Manila, Philippines, concerning the joint ownership and operation of

INTERNATIONAL SERVICING AND RECRUITMENT CORPORATION (ISRC) and have mutually agreed, in connection therewith, as follows:

1. That ISRC shall be jointly owned by the herein parties on a 50-50 basis and accordingly, immediate steps shall be taken to submit the necessary documents to the Securities and Exchange Commission to legalize the arrangement and to cause the issuance of the corresponding certificate of stocks to Mr. Khalifa and his group;
2. That likewise, the sharing of the profits shall be on an equal basis (50-50) after deducting all the pertinent expenses that the officers of the corporation shall be: Chairman of the Board of Directors - Mr. JOMA HUMED KHALIFA, President and General Manager, Mr. MARCIANO J. CAGATAN or his designated representative, Treasurer, Ms. Cecilia Agno all of whom shall be members of the Board of Trustees together with two others;
3. That for and in consideration of the above joint ownership of the corporation, Mr. KHALIFA undertakes as his contribution to the stock ownership thereof, the following:
 - (a) To pay the amount of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00) initially on or before AUGUST 25, 1992, said amount to be used to have the license of ISRC reinstated;
 - (b) Upon the release of the license, to pay the additional amount of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00) to start the business operations of the corporation and to liquidate pending government and other obligations, if any;
4. The management of the corporation shall be handled by Mr. KHALIFA and his group while the legal and government liaisonship shall be the responsibility of Mr. CAGATAN; mutual consideration with each other in the course of the business operations shall be maintained in order to avoid problem with the government, the workers and the employers;
5. There shall be a regular accounting of the business every month, with the assistance of a qualified accountant and each of the herein parties shall be furnished copy thereof; the share of the parties may be released to each of them as often as the parties agree, however, advances against the share of each may be agreed upon by the parties;
6. Any claim of workers or other parties against the ISRC before the signing of this agreement shall be the sole responsibility of Mr. CAGATAN and Mr. KHALIFA or his 50% ownership shall be free from such claims.

Manila, August 9, 1992.

CECILIA AGNO

WITNESSES:

123On December 26, 1995, which was more than three (3) years after the execution of the aforesaid agreement, a Complaint-Affidavit^[6] for disbarment was filed with this Court by the complainant against the respondent claiming that the latter used fraud, deceit and misrepresentation, in enticing her husband, Khalifa, to join ISRC and invest therein the amount of P500,000.00 and that although the respondent received the aforesaid amount, the complainant learned from her inquiries with the Securities and Exchange Commission (SEC) and the POEA that the respondent failed to comply with the terms of the Memorandum of Agreement. The complainant found out that the said Memorandum of Agreement could not be validated without the approval of the Board of Directors of ISRC. While respondent even had the complainant sign an affidavit stating that she was then the acting Treasurer of ISRC, her appointment as Treasurer was not submitted to the SEC. The records of the SEC showed that the Board of Directors, officers and stockholders of ISRC remained unchanged and her name and that of her husband did not appear as officers and/or stockholders thereof. From the POEA, on the other hand, the complainant learned that ISRC's recruitment license was yet to be reinstated.

The complainant claimed that respondent used for his own personal benefit the P500,000.00 that she and her husband invested in ISRC. When she demanded that respondent return the said sum of money, respondent issued a bank check dated March 30, 1994^[7] in favor of the complainant in the amount of P500,000.00 which was dishonored for being drawn against a closed account. Despite repeated demands by complainant, the respondent failed to settle his obligation or redeem his dishonored check, prompting the complainant to file a case for violation of *Batas Pambansa Blg. 22* against the respondent. An information was filed before the Municipal Trial Court of Cainta, Rizal, charging the respondent with the said offense and a warrant of arrest was issued against respondent after the latter failed several times to attend his arraignment. The complainant prayed for the disbarment of the respondent for issuing a bouncing check and for his act of dishonesty in assuring her and her husband that the Memorandum of Agreement would suffice to install them as stockholders and officers of ISRC which induced them to invest in said corporation the amount of P500,000.00.

In his Comment,^[8] respondent denied the charges against him and averred that while ISRC's recruitment license was cancelled by the DOLE in 1988, such cancellation was lifted by the Office of the President on March 30, 1993, on appeal. During the pendency of the said appeal, he and complainant's husband Khalifa entered into a Memorandum of Agreement because the latter offered to buy shares of stock of ISRC in order to finance the then pending appeal for the reinstatement of the ISRC license and for Khalifa and the complainant to undertake the full management and operation of the corporation. The respondent further alleged that Khalifa H. Juma, through the complainant, paid on various dates the total amount of P500,000.00, which respondent claimed he used to reimburse borrowed sums of money to pursue the appeal with the Office of the President. According to the

respondent, while there were still legal procedures to be observed before the sale of shares of ISRC to non-stockholders, Khalifa and complainant were in a hurry to start the business operation of ISRC. Consequently, respondent sold and assigned his own shareholdings in ISRC for P500,000.00 to Khalifa as evidenced by a Deed of Assignment^[9] dated April 26, 1993. The respondent, in turn, issued a check in the amount of P500,000.00, which was not intended to be encashed but only to guarantee the reimbursement of the money to Khalifa and the complainant in case the appeal would be decided adversely against ISRC. Conversely, the check would be returned to respondent if the appeal is resolved in favor of ISRC. The respondent denied employing fraud or misrepresentation since allegedly, Khalifa and the complainant decided to buy his shares after being told, upon inquiry in Malacanang, that ISRC had a good case. The respondent averred that complainant was motivated by bad faith and malice in allegedly fabricating criminal charges against him instead of seeking rescission of the Deed of Assignment and refund of the consideration for the sale of the shares of stock. The respondent surmised that they decided not to proceed with the Memorandum of Agreement when complainant had secured her own license after she had received the Deed of Assignment and assumed the position of acting treasurer of the ISRC. The respondent justified the non-submission of copies of the Memorandum of Agreement, Deed of Assignment and complainant's appointment as Acting Treasurer with the SEC because of the cancellation of ISRC's license to recruit and the pendency of the appeal for reinstatement since 1989. Aside from a copy of the Deed of Assignment in favor of the complainant and her husband Khalifa regarding the five hundred shares of stock, respondent also presented in support of his allegations copies of 1) his Letter^[10] dated April 12, 1994 to the POEA requesting the renewal of ISRC's license, and 2) a Letter^[11] dated May 24, 1994 from the Licensing and Regulation Office of the POEA requiring him: (1) to submit an escrow agreement with a reputable commercial banking corporation in the amount of P400,000.00 to answer for any valid and legal claim of recruited workers; cash bond deposit of P200,000.00; and surety bond of P100,000.00; and (2) to clear ISRC's pending cases with said agency before respondent's request for reinstatement of ISRC's license as a land based agency.

In a Resolution^[12] dated May 22, 1996, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP's Commission on Bar Discipline (CBD), through Commissioner Milagros V. San Juan, held several hearings, the last of which was on November 13, 2003. During those hearings, the complainant presented her evidence. For his part, the respondent, instead of presenting his defense before the CBD in open court, opted to present a position paper which was allowed by the Order dated April 20, 2004^[13] of Commissioner San Juan. However, in lieu of said position paper, the respondent submitted a Memorandum^[14] after the complainant had filed her formal offer of evidence. Eventually, on October 12, 2004, Commissioner San Juan submitted her Report and Recommendation.^[15] Said the Commissioner in her report:

There is no question that the Memorandum of Agreement between the parties was executed on 9 [August] 1992. In said Memorandum, no mention was made of the assignment of shares of stock in favor of the complainant and her husband. The conditions stated therein was that the

amount to be contributed by the complainant shall be used for the reinstatement of the license of the ISRC. No mention was made regarding the assignment of shares in favor of the complainant and her husband. Respondent presented a Deed of Assignment of shares of stock in favor of the complainant and her husband worth P500,000.00 dated 26 April 1993, however, it is noted that there is a super imposed date of 24 November 1994 in a notarial series of 1993 of Mario S. Ramos, Notary Public, which raises doubt as to the date it was executed. Apparently, the Deed of Assignment was executed when the complainant started her investigation regarding the true condition of the corporation. Anent the reinstatement of the license of the company there is no showing that the respondent used the amount he received from the complainant in compliance with the respondent's undertakings in the Memorandum of Agreement. The accusation of enticement employed by respondent is supported by the fact that complainant was made to appear that she will be appointed as treasurer of the corporation, however there was no action on the part of the respondent to change the composition of the Board of Directors and the treasurer in the records of the corporation on file with the Securities and Exchange Commission. The respondent did not fully reveal the true condition of the corporation regarding the reinstatement of the corporation's license to operate. Likewise the issuance of a check in favor of the complainant on 30 March 1994 against a closed account shows the respondent had no desire to return the money entrusted to him for the reinstatement of the license of the corporation. The letter of the POEA dated 24 May 1994 xxx clearly show that the payment of surety bond will not suffice to reinstate the license of the corporation in view of several cases of violations of recruitment pending before the POEA against said corporation. This fact was not disclosed to complainant when the Memorandum of Agreement was entered into by the parties.

Thus, the Commissioner's recommendation:

Given all the foregoing, it is submitted that respondent manifested lack of candor, when he knowingly failed to provide the complainant with accurate and complete information due her under the circumstances. It is respectfully recommended that respondent be **SUSPENDED** from the practice of law in the maximum period prescribed by law and to return the money received from the complainant.

On October 22, 2005, the Board of Governors of the IBP passed Resolution No. XVII-2005-102^[16] adopting and approving, with modification, the afore-quoted report and recommendation of the investigating commissioner, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A", and finding, the Recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's lack of candor when he knowingly failed to provide complainant with the accurate and complete information due her, Atty. Marciano J. Cagatan is hereby **SUSPENDED** from the practice of