

## SECOND DIVISION

**[ A.M. No. CA-08-23-P (Formerly A.M. OCA IPI No. 05-79-CA-P), December 16, 2008 ]**

**JANETTE P. GABATIN, COMPLAINANT, VS. MARILOU M. QUIRINO, COURT STENOGRAPHER IV, COURT OF APPEALS, RESPONDENT.**

### DECISION

**BRION, J.:**

For our Decision is the administrative complaint<sup>[1]</sup> dated February 28, 2005 filed by Janette P. Gabatin (*complainant*) against Marilou M. Quirino (*respondent*)<sup>[2]</sup> for conduct unbecoming a court employee. We referred the case to the Court of Appeals (CA) for investigation and report<sup>[3]</sup> upon recommendation of the Office of the Court Administrator (OCA).<sup>[4]</sup> The case was raffled to CA Justice Sesinando E. Villon (*Justice Villon*).

#### THE ANTECEDENT FACTS

In 2004, the complainant acquired a passenger-type jeepney which she wanted to use as a public utility jeepney (*PUJ*). To do this, she needed to license and register the vehicle as a public utility vehicle (*PUV*).

Sometime in August 2004, the complainant was introduced by one "Josie" to the respondent who was then employed at the Regional Trial Court (*RTC*), Branch 210, Mandaluyong City. The respondent informed the complainant that she was engaged in securing PUV franchises for a fee and offered complainant her services. The complainant accepted the offer.

On September 13, 2004, during office hours, the complainant met the respondent in a restaurant in Mandaluyong City where she handed to the respondent P50,000.00 in cash as initial payment for securing a PUV franchise, P500.00 for notarization, and the papers required for the processing of the franchise application. The respondent issued to the complainant an acknowledgment receipt dated September 13, 2004,<sup>[5]</sup> as well as a Deed of Absolute Sale.<sup>[6]</sup> The respondent promised to secure for the complainant her PUV franchise in one month's time after which the complainant was to pay the balance of P20,000.00 for the completed transaction.

On October 5, and 13, 2004, the complainant followed up on the progress of the transaction, but the respondent told her on both occasions that the Land Transportation Franchising and Regulatory Board (*LTFRB*) had not scheduled a hearing on the matter and that the franchise was not yet available.

On October 15, 2004, the complainant went to see the respondent at her place of

work to get her money back because of respondent's failure to secure a franchise as agreed. Instead of returning the money, the respondent requested the complainant to enter into another agreement, i.e., to "re-contract," with her. Under the "re-contract," the respondent would have another month or until November 17, 2004 to secure the franchise. The complainant acceded to the respondent's request. Accordingly, respondent issued another acknowledgment receipt dated October 15, 2004.<sup>[7]</sup>

On November 17, 2004, the complainant asked the respondent if she had secured the franchise; the latter replied in the negative. Again, the respondent requested a "re-contract," this time up to the end of November. She also informed the complainant that there was already an "update" on the franchise. The complainant again acceded to the request.

Thereafter, the complainant consistently prodded the respondent to comply with her commitment to secure the promised franchise, but all for naught. Despite repeated demands, the respondent failed to secure the franchise; neither did she return the money the complainant gave her. This prompted the complainant to hire the services of a lawyer who sent the respondent a letter dated December 29, 2004<sup>[8]</sup> demanding the delivery of the PUJ franchise or the return the amount of P50,000.00 plus interest and damages, within three (3) days from receipt of the letter.

In reply,<sup>[9]</sup> respondent told the lawyer that the complainant's money was still intact but asked for time to return it. Notwithstanding the extension given, the respondent failed to return the money.

The complainant alleged that the respondent took advantage of her ignorance (as she was a mere high school graduate) in convincing her that she (the respondent) could secure a franchise for her. Until the day she filed the complaint (or about seven <sup>[7]</sup> months from the time she paid the respondent), the latter had not shown any result even in terms of documents filed to secure the franchise. The complainant even refused, despite repeated demands, to return the complainant's money. The complainant argued that this refusal alone already constituted serious misconduct and conduct unbecoming of a court personnel. She further argued that the misrepresentations, alibis and other evasive tactics the respondent used to avoid returning her money, are actionable wrongs.

The complainant also bewailed the run-around that the respondent gave her by failing to disclose to her that she (the respondent) had transferred to the CA. She claimed that had she not made a search of the respondent's whereabouts, she could not have known that respondent had transferred to the CA.

In her Comment dated March 23, 2005,<sup>[10]</sup> the respondent denied the accusations against her, specifically the charge that she took advantage of the complainant's ignorance. She countered that she did not represent to the complainant that she had the capacity to secure a PUV franchise and that she had not dealt with the complainant or with any other persons during office hours to pursue a "sideline."

The respondent admitted that "Josie," a common friend introduced her to the complainant sometime in 2004. At this meeting, she told the complainant that: she was securing a franchise with the LTFRB for her three (3) units of passenger

jeepneys; she and her husband applied for an extension of the validity of the certificate of public convenience for one of their units with Plate No. NSF-173; and that this franchise was the subject of the respondent's transaction with the complainant.

The respondent also admitted receipt of P50,000.00 from the complainant to be used in securing a franchise for the latter's passenger jeepney. The amount was to cover the processing fee, attorney's fee, surveys and LTFRB hearings. She claimed that: the complainant agreed to the condition that if no franchise was issued in her favor after one month, she had the option to get her money back; the sale of the franchise would be considered null and void, revoked or cancelled; and that she did not assure complainant that she could secure the franchise. She admitted that she accepted the complainant's request to buy her existing franchise.

The respondent denied that she had refused to return complainant's money, but admitted that she had asked for time to do this as she had used part of the money for the franchise application, publication, service, filing fees and related expenses. On the allegation that the complainant had difficulty looking for her, the respondent explained that she had instructed her former officemates at the Mandaluyong RTC to give her telephone number to whoever would look for her.

The complainant disputed the respondent's allegations in a Reply dated April 11, 2005.<sup>[11]</sup> She insisted that the respondent had no intention of returning her money, stressing that no return had been made up to that time. She suspected that respondent had used the money for a purpose other than what they agreed upon. The complainant drew particular attention to the respondent's evasiveness; the respondent even told her at one time that she would be transferring to Baguio and not to the CA.

The complainant (assisted by counsel) and the respondent (by herself) appeared before the investigating officer, Justice Villon at the hearing on June 26, 2006. The complainant's counsel manifested that she was submitting the case for resolution on the basis of the pleading already filed together with the documents or annexes attached to the complaint.<sup>[12]</sup> The respondent likewise manifested her willingness to submit the case for resolution without further presentation of evidence and her intent to submit a memorandum.<sup>[13]</sup> Significantly, the respondent again admitted that she received the amount of P50,000.00 from the complainant.

When it appeared at the hearing of June 27, 2006 that the parties would not present additional evidence, Justice Villon required them to submit their respective memoranda within five (5) days, with the case thereafter deemed submitted for resolution.

The complainant filed her memorandum<sup>[14]</sup> on July 3, 2006 and at the same time informed the Investigating Justice that the respondent had not returned the P50,000.00 nor delivered the franchise to her. The respondent failed to submit any memorandum.

#### REPORT OF THE INVESTIGATING JUSTICE

Justice Villon submitted a Report and Recommendation dated July 11, 2006.