

THIRD DIVISION

[A.C. NO. 6377, March 12, 2007]

RUFA C. SUAN, COMPLAINANT, VS. ATTY. RICARDO D. GONZALEZ, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

The instant administrative complaint filed by Rufa C. Suan charges respondent Atty. Ricardo D. Gonzalez with violation of the Code of Professional Responsibility, perjury and forum shopping, and prays for his suspension or disbarment. Complainant is a Director and Vice President of Rural Green Bank of Caraga, Inc., a rural banking corporation with principal place of business at Montilla Blvd., Butuan City, while respondent is one of its stockholders.

The antecedent facts are as follows:

On February 11, 2004, respondent filed a case for *Mandamus, Computation of Interests, Enforcement of Inspection, Dividend and Appraisal Rights, Damages and Attorney's Fees* against the Rural Green Bank of Caraga, Inc. and the members of its Board of Directors before the Regional Trial Court (RTC) of Butuan City, Branch 33, praying, *inter alia*, that a temporary restraining order be issued enjoining the conduct of the annual stockholders' meeting and the holding of the election of the Board of Directors.

On February 14, 2004, the trial court issued a temporary restraining order (TRO) conditioned upon respondent's posting of a bond. Thereafter, respondent submitted JCL Bond No. 01626 issued by Stronghold Insurance Company, Incorporated (SICI) together with a Certification issued by then Court Administrator, now Associate Justice, Presbitero J. Velasco, Jr. that, according to the Clerk of Court of the Municipal Trial Court in Cities (MTCC) of Butuan City, SICI has no pending obligation and/or liability to the government insofar as confiscated bonds in civil and criminal cases are concerned.

Based on the foregoing, Suan filed this complaint alleging that respondent engaged in unlawful, dishonest, immoral or deceitful conduct when he submitted the certification to the RTC despite knowing that the same is applicable only for transactions before the MTCC; and that the bond was defective because it was released by SICI despite respondent's failure to put up the required P100,000.00 collateral.

Suan also claimed that in the complaint filed by respondent, together with Eduardo, Purisima, Ruben, and Manuel, all surnamed Tan, before the *Bangko Sentral ng Pilipinas* (BSP) against Ismael E. Andaya and the members of the Board of Directors of the Rural Green Bank of Caraga, Inc. for alleged gross violation of the principles

of good corporate governance, they represented themselves as the bank's minority stockholders with a total holdings amounting to more or less **P5 million** while the controlling stockholders own approximately **80%** of the authorized capital stock.

Suan averred that respondent committed perjury because the above allegations were allegedly inconsistent with respondent's averments in the complaint pending before the RTC where he claimed that the majority stockholders own **70%** (and not 80%) of the outstanding capital stock of the Rural Green Bank of Caraga, Inc. while the minority stockholders' stake amounted to **P6 million** (and not P5 million).

Complainant finally claimed that respondent is guilty of forum shopping because the causes of action of the cases he filed before the RTC and the *Bangko Sentral ng Pilipinas* are the same.

Respondent denied the allegations against him. He alleged that it was the bonding company which inadvertently attached the certification pertaining to the MTCC; that when he discovered the inadvertence, he immediately filed with the RTC an *ex-parte* motion to replace the certification with the one pertaining to the RTC; that he had satisfactorily complied with the requirements of SICI as shown in the letter of Ms. Evelyn R. Ramirez, SICI's Officer-in-Charge, dated March 19, 2004; that there is no inconsistency in the allegations contained in the complaints pending before the RTC and the *Bangko Sentral ng Pilipinas* thus he could not be held liable for perjury; that there is no forum shopping because the causes of action and the reliefs prayed for in the cases pending before the trial court and the *Bangko Sentral ng Pilipinas* are different; and that it is complainant who is guilty of forum shopping since this is the second disbarment suit that she filed against him.

In her Reply, complainant insisted that she is not guilty of forum shopping; that she only filed one disbarment suit against respondent while the other two suits were filed by Joseph Omar Andaya and Dr. Arturo Cruz based on different acts committed by the respondent.

On December 1, 2004, the instant administrative complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. After the mandatory conference, the parties were directed to submit their respective position papers. In a *Report and Recommendation* dated September 20, 2005, the Investigating Commissioner recommended that the administrative complaint be dismissed because complainant failed to prove by strong and substantial evidence the imputations of dishonesty against the respondent.

In its Resolution dated December 17, 2005, the Board of Governors of the IBP approved the dismissal of the complaint.

Complainant is now before us on appeal praying for the reversal and setting aside of the assailed Resolution arguing that it failed to state clearly the facts and the reasons on which it is based and that the evidence she presented were ignored and not considered.

Complainant maintains that contrary to the findings of the IBP, respondent's act of submitting a wrong certification to the RTC, relative to SICI's capacity to issue bonds, was deliberate and with intent to mislead, thereby constituting a violation of

the Code of Professional Responsibility. She claims that respondent who is interested in the issuance of a temporary restraining order is expected to examine all the documents as well as the attachments, hence there is no reason why he would "inadvertently" attach the certification intended for the MTCC.

We are not persuaded.

Complainant's insistence that respondent deliberately attached the MTCC certification instead of the RTC certification lacks merit. We are inclined to believe the findings of the IBP that the MTCC certification was inadvertently attached and that it was not deliberate. Indeed, respondent as well as every litigant is expected to examine all the documents he files in court. However, not every mistake or oversight he commits should be deemed dishonest, deceitful or deliberate so as to mislead the court. Respondent has nothing to gain by submitting the wrong certification. On the contrary, he runs the risk that his complaint be dismissed or denied outright.

There is no reason for respondent, or even the bonding company, to attach the wrong certification as the latter was equally qualified to issue bonds in civil or criminal cases pending before the RTC. Further, what militates against complainant's insistence that the filing of the wrong certification was deliberate and with intent to deceive was the fact that after respondent knew of the inadvertence he immediately filed a manifestation with motion that the same be replaced with the certification applicable to the RTC.

It is well-settled that in disbarment proceedings, the burden of proof rests upon the complainant and the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.^[1] In the instant case, complainant Suan failed to show that respondent willfully and deliberately resorted to falsehood and unlawful and dishonest conduct. She failed to show not only the dubious character of the act done but the motivation as well.^[2]

Complainant next claims that the injunction bond was wrongfully released to respondent by SICI as the latter failed to put up the required collateral, as shown in the February 28, 2004 letter of Evelyn R. Ramirez which the IBP allegedly ignored. She also insists that protesting the propriety of the bond before the trial court is not a pre-requisite to the filing of the instant administrative complaint. Besides, she argues that it would have been futile to file a protest before the trial court considering that she knew of the defects in the issuance of the injunction bond long after the bond has expired.

The argument is without merit.

The IBP correctly disregarded the February 28, 2004 letter of Ramirez considering that on March 19, 2004, Ramirez wrote another letter to the trial court informing the latter of respondent's compliance with the required collateral.

Anent the allegation of perjury, the same is likewise bereft of merit. In the case of