

THIRD DIVISION

[AM RTJ-05-1896, April 29, 2005]

ATTY. JULIUS NERI, COMPLAINANT, VS. JUDGE JESUS S. DE LA PEÑA, RESPONDENT.

R E S O L U T I O N

CORONA, J.:

This is a case for grave misconduct, gross ignorance of the law and/or incompetence filed by Atty. Julius Z. Neri against Judge Jesus S. de la Peña. It originated from a civil case for damages filed by Emmanuel Aznar against Citibank (which was represented by complainant as counsel), docketed as Civil Case No. CEB-16474 and raffled to the Regional Trial Court of Cebu, Branch XX, presided over by Judge Ferdinand J. Marcos.^[1]

Plaintiff Aznar had filed suit due to the alleged blacklisting of his Citibank Preferred Mastercard which, according to him, was dishonored in several establishments in Singapore and Malaysia while he was on holiday, causing him great inconvenience and embarrassment. He presented, as evidence, several receipts, plane tickets, a computer print-out allegedly showing that his card had been declined for being "over limit", a statement of account and his lone testimony.^[2] Defendant Citibank presented several documentary exhibits to the effect that Aznar's card had not been placed on any "hot list" and could not possibly have been blacklisted.^[3] After trial, Judge Marcos dismissed the case for lack of merit.^[4]

Dissatisfied with the decision, Aznar filed through counsel a motion for reconsideration, with motion to re-raffle the case. In an order dated September 11, 1998, Acting Presiding Judge Ramon Codilla (who succeeded Marcos), citing the fact that he was "occupied with two (2) salas" and the fact that "the Presiding Judge who originally penned the decision is a credit card holder of CITIBANK...whose membership could naturally influence the outcome of this case in favor of the defendant bank," directed the re-raffling of the case to RTC Cebu Branch X, presided over by respondent Judge Jesus de la Peña.^[5] Respondent then ordered Citibank to file its comment on Aznar's motion for reconsideration.^[6] Citibank filed its opposition instead. In an order dated November 25, 1998, respondent granted Aznar's motion for reconsideration:

WHEREFORE, the Motion for Reconsideration is hereby GRANTED. The DECISION dated May 29, 1998 is hereby reconsidered, and consequently, the defendant is hereby condemned liable to pay the following sums of money:

- a. P10,000,000.00 as moral damages;
- b. P 5,000,000.00 as exemplary damages;

c. P 1,000,000.00 as attorney's fees; and

d. P200,000.00 as litigation expenses.

SO ORDERED.^[7]

As a result of the Order, complainant filed this administrative case on July 16, 1999, which was docketed as Control No. 41-99-P. Charging respondent with dishonesty, he alleged that respondent, contrary to his pronouncement in his order, had rendered his decision without ever having read the transcripts of the case.^[8] To support this contention, complainant presented certifications from the Clerk of Court of Branch XX^[9] and the Clerk of Court of the RTC of Cebu City^[10] that the transcripts of the case had remained in their custody and that the respondent never borrowed them all throughout.

Complainant also charged respondent with gross ignorance of the law and/or incompetence. He alleged that respondent had improperly considered as a business record Aznar's computer print-out which in reality did not meet the requisites to be rightly considered as such. Aznar never testified as to the date and time the subject print-out was encoded, or who encoded and printed the same, nor did he establish personal knowledge of who prepared the print-out, or whether it was prepared by one responsible for it in his professional capacity or in the performance of his official duty or in the regular course of his business. Finally, the person who prepared it did not testify in court or on deposition.

Complainant went on to say that respondent's incompetence and dishonesty showed in his failure to appreciate and evaluate Citibank's extensive documentary evidence which clearly established that it did not blacklist Aznar's Mastercard.

Finally, complainant pointed out that the damages respondent awarded to plaintiff Aznar were scandalously exorbitant. He prayed for respondent's dismissal from the service.

On September 3, 1999, respondent filed his comment.^[11] He principally contended that, having appealed from his decision to the Court of Appeals, the complainant should not have filed this administrative case. Respondent decried complainant's case as forum-shopping. In his defense, respondent asserted that he had in fact read the transcripts, having received copies thereof attached to an *ex parte* manifestation filed by plaintiff Aznar.^[12] He also defended the amount of damages he awarded by comparing them to those awarded in a 1973 case, with inflation taken into account.

Complainant then filed his reply to the comment,^[13] assailing the *ex parte* manifestation which respondent had supposedly relied upon in deciding the case. He pointed out that respondent should not have even considered the said manifestation because Citibank had not been served a copy and it was filed after office hours. He likewise refuted respondent's allegations of forum-shopping and impropriety in filing an administrative case while an appeal was pending.

In his rejoinder, respondent defended his appreciation of the *ex parte*

manifestation. He likewise reiterated his claim that the administrative complaint should not have been filed with the appeal.^[14]

On February 28, 2001, the Second Division of this Court resolved to hold the administrative case in abeyance until the final resolution of the Court of Appeals of CA-GR CV No. 62554, *Aznar v. Citibank*. By this time, the case had been re-docketed as AM No. 01-1131-RTJ.^[15]

On January 8, 2004, the Court of Appeals decided in favor of Citibank, vacating respondent's decision and reinstating the dismissal of the case by Judge Marcos.^[16] On June 8, 2004, complainant filed a manifestation, with the Court of Appeals' decision attached, pointing out that this administrative complaint was now ready for resolution.

In a manifestation dated June 14, 2004, respondent prayed for the resolution of the case and once more asked for its dismissal. He cited the fact that the Court of Appeals decision made no mention of his administrative lapses and that his decision was an exercise of purely judicial discretion. He also listed the various posts he had held as a Regional Trial Court judge as well as the commendations he had received from the Honorable Chief Justice. He also pointed out that this administrative complaint was the only one ever filed against him in all his years of service.^[17]

In a memorandum dated August 27, 2004, the Office of the Court Administrator reported its findings.

Because respondent based his assailed order mostly on the *ex parte* manifestation submitted by the counsel for plaintiff Aznar, the OCA found him liable for violating Section 4, Rule 13, in relation to Section 5, Rule 15 of the Revised Rules of Civil Procedure:

(Rule 13)

SEC. 4. Papers required to be filed and served. — Every judgment, resolution, order, pleading subsequent to the complaint, written motion, notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected.

(Rule 15)

SEC. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

According to the OCA, the fact that plaintiff Aznar had failed to serve a copy of his *ex parte* manifestation upon Citibank should have been reason enough for respondent to disregard the same.

Likewise noting the fact that the *ex parte* manifestation was filed beyond office hours, the OCA found that this "created an idea that there was a covert attempt to favor Aznar." However, citing the absence of substantial evidence, it pointed out that "it should not be presumed that the procedural lapse committed by respondent (was) attended by corrupt motive of flagrant disregard of the rules." The OCA also