

SECOND DIVISION

[A.M. No. P-03-1738, July 12, 2004]

ZENY LUMINATE PRAK, COMPLAINANT, VS. EMILADIE T. ANACAN COURT STENOGRAPHER III , REGIONAL TRIAL COURT, BRANCH 45, SAN JOSE, OCCIDENTAL MINDORO, RESPONDENT.

R E S O L U T I O N

CALLEJO, SR., J.:

This is a complaint for Conduct Prejudicial to the Best Interest of the Service and Violation of Republic Act No. 6713, otherwise known as the Code of Ethics of Public Officials and Employees in the Government filed by Zeny Luminate-Prak, in behalf of his brother Silvestre Luminate, Jr., against herein respondent Emiladie Anacan, Court Stenographer III of the Regional Trial Court, San Jose, Occidental Mindoro, Branch 45.

Silvestre Luminate, Jr. owned a parcel of land situated in Bubog, San Jose, Occidental Mindoro, with an area of 23,063 square meters. The adjoining property containing an area of 6,826 square meters belonged to another of the complainant's brothers, Dominador Luminate. It was Dominador's property which was initially expropriated by the government for the Rural Road Improvement Project (RRIP), through the Department of Public Works and Highways (DPWH). As Dominador's property was small, a portion of Silvestre's property, constituting about 3,470 square meters was also taken to complete the 10,296 square-meter area needed for the road project. Consent to the inclusion of the subject portion was made pursuant to an Affidavit of Conformity, purportedly signed by Silvestre, Jr. The total amount for this consolidated area was ₱2,895,058.88, to be paid by the government in two (2) installments.

In her Complaint dated November 11, 2002,^[1] the complainant alleged that the respondent facilitated the transaction of the RRIP with the government involving the property of her brother, Silvestre Luminate, Jr., without the latter's knowledge and consent. She averred that the Affidavit of Conformity could not have been executed by her brother since the latter was abroad at that time. It was the respondent who followed up the claim for payment in the amount of ₱2,800,000.00 out of which Silvestre, Jr. should have received ₱1,079,000.00 as compensation for his property. However, Silvestre, Jr. received only ₱220,000.00 because, according to the respondent, he was entitled to only ₱360,000.00 less 40%, as the latter amount represented attorney's fees, engineer's fees and taxes.

In answer, the respondent submitted a Sworn Statement to the Executive Judge on December 16, 2002,^[2] where she denied any participation in the transaction with the Luminates, particularly, Silvestre, Jr. She admitted that she facilitated the payment for her uncle's claim, whose property was also affected by the road-widening project in Mindoro West Coast, Package 1, San Jose-Rizal Section. When

the Spouses Dominador and Ammie Luminate learned that she was going to make some follow-ups in Manila, Ammie decided to come along.

On March 11, 2002, the payment of the claims in the road- widening project was funded by the Department of Budget and Management, through Sub Allotment Advice (SAA) 1446. However, she did not see the name of Silvestre, Jr. among the claimants/payees. The respondent further averred that it was Dominador and Ammie Luminate who received the payments for their property.

In a Resolution dated August 25, 2003,^[3] the Court referred the matter to Executive Judge Ernesto P. Pagayatan, Regional Trial Court, San Jose, Occidental Mindoro, Branch 46, for investigation, report and recommendation.

The Executive Judge received the testimonies of both parties.

There were two (2) pertinent documents which were submitted to the appropriate agencies to facilitate the expropriation of and payment for the portion of land covering 3,470 square meters belonging to Silvestre Luminate, Jr. The complainant stressed that these documents could not have been executed by his brother, since the latter was in Japan for ten (10) years, from 1992 to February 2002. The complainant accused the respondent of forging her brother's signatures on the following documents:

- 1) AFFIDAVIT OF CONFORMITY shown to have been executed on November 19, 1998 by the brothers Dominador and Silvestre, where they purportedly agreed to consolidate their property into one title "to conform with the legal requirements of the Department of Public Works and Highways (Occ. Mindoro)," with the further request that the title to the combined areas be "facilitated" and thereafter "issued in the name of Dominador Luminate as the road right of way" (Exhibit "D-16").
- 2) SPECIAL POWER OF ATTORNEY purportedly executed on March 12, 2002 by Silvestre Luminate, Jr. in favor of his brother Dominador, vesting the latter, among others, with the authority to work for his claims for payment of his road lot corresponding to a portion of his property covered by TCT No. T-15818, to receive the proceeds therefrom and to sign all documents pertinent thereto (Exhibit "D-21").^[4]

Dominador, who testified in favor of the complainant, denied having prepared the Affidavit of Conformity, but admitted that the signature on it was his. He testified that the respondent caused him to sign the said document, among others, with the hurried explanation that his signatures were needed to expedite his claims. Dominador confessed that he only finished Grade 5 and could not understand English. He, likewise, denied knowledge of the Special Power of Attorney (SPA) allegedly executed by Silvestre, Jr. in his favor. He, however, admitted having received a check in the amount of ₱1,085,000.00 from the DPWH.