



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**JAIME JOVEN and REYNALDO C.
RASING,**

Complainants,

A.C. No. 7686

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

**ATTYS. PABLO R. CRUZ and
FRANKIE O. MAGSALIN III,**
Respondents.

Promulgated:

JUL 31 2013

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RESOLUTION

VILLARAMA, JR, J.:

Before this Court is an administrative complaint¹ for disbarment filed by Jaime Joven and Reynaldo C. Rasing against Attys. Pablo R. Cruz and Frankie O. Magsalin III for deceit, malpractice, gross misconduct and falsification of public documents.

The disbarment complaint stemmed from NLRC NCR CA No. 039270-04, a labor case filed by complainant Jaime Joven against Phil. Hoteliers, Inc. and/or Dusit Hotel Nikko, a client of respondents' law firm, P.R. Cruz Law Offices.

On July 16, 2007, the National Labor Relations Commission (NLRC) rendered a decision in NLRC NCR CA No. 039270-04. Joven's counsel, Atty. Solon R. Garcia, received their copy of the decision on August 14, 2007. As to respondents, they received a copy of the decision on August 24, 2007 based on the Registry Return Receipt² that was sent back to the NLRC. Stamped thereon was "RECEIVED AUG 24 2007" and signed by "tess."

¹ Rollo, pp. 2-7.

² Id. at 14.

On September 5, 2007, Atty. Garcia received by registered mail at his law office located in Quezon City the Partial Motion for Reconsideration³ of Phil. Hoteliers, Inc. and/or Dusit Hotel Nikko. The motion was dated August 29, 2007 and signed by respondents in behalf of their client. The opening statement on page 1 of the Motion reads:

Respondents-Appellants, through counsel, unto this Honorable Commission, by way of their Partial Motion for Reconsideration assailing the Decision dated 18 (sic) July 2007 in the above-entitled case, **copy of which was received on August 24, 2007**, most respectfully submit:⁴

x x x x (Emphasis in the original; underscoring supplied.)

As Atty. Garcia found it unusual for the postman to belatedly deliver a copy of the NLRC decision to respondents (whose law office is also located in Quezon City) on August 24, 2007 or 10 days after he received his copy on August 14, 2007, he requested Larry Javier, Vice-President of National Union of Workers in Hotel Restaurant and Allied Industries (NUWHRAIN)-Dusit Hotel Nikko Chapter, to secure a post office certification of the actual date respondents received a copy of said decision. Through a letter-request of Angelito V. Vives, NLRC Board Secretary IV, Javier was able to secure the following Quezon City Central Post Office (QCCPO) Certification dated September 17, 2007:

CERTIFICATION

Reference

To Whom It May Concern:

This is to certify that per records of this Office, **Registered Letter No. 6452 as per record 6463** address[ed] to Atty. Frankie O. Magsalin III Unit 2A & RD, [Genesis] Condo., #26 E. Rodriguez Sr. Avenue, Q.C. and which was posted at NLRC PO on Aug. 6, 2007

{ / } was delivered by Postman/Window Delivery Clerk/Lock Box In-Charge Rosendo Pecante and **duly received** by Henry Agillon on **Aug. 14, 2007.**

{ } was return to sender on _____ for reason _____ despite due notices issued 1st on _____ 2nd on _____ last notice on _____.

This certification is issued this 17th day of Sept. 2007 upon request of Mr. Angelito V. Vives for whatever legal purpose it may serve.

x x x
Mr. LLEWELYN F. FALLARME (Sgd.)
Chief, Records Section⁵ (Emphasis supplied.)

³ Id. at 9-12.

⁴ Id. at 9.

⁵ Id. at 13.

The above certification was supposedly based on the logbook of Postman Rosendo Pecante.

Based on the certification of the QCCPO, complainants lodged the instant disbarment complaint against respondents. They allege that Teresita “Tess” Calucag, secretary of respondents’ law firm, altered the true date of receipt of the NLRC decision when she signed and stamped on the Registry Return Receipt the date August 24, 2007 to make it appear and to mislead the NLRC and the opposing party that the decision was received on such later date and not on August 14, 2007. They conclude that respondents caused the alteration of the true date of their actual receipt with the intention of extending by ten days the period within which to file a motion for reconsideration. Complainants submit that the alteration of the true date of receipt done on the registry return card (a public document), the use of the altered date and the making of untruthful statements in a narration of facts in the Partial Motion for Reconsideration (also a public document) constitute falsification of public document on several counts, deception and gross professional misconduct.

On February 6, 2008, this Court issued a Resolution⁶ requiring respondents to comment on the disbarment complaint.

In their Comment with Motion to Dismiss,⁷ respondents denied complainants’ allegations and alleged that the subject NLRC decision was received under the following circumstances:

On August 14, 2007, P.R. Cruz Law Offices received four registered mails through one of its office staff, Henry A. Agellon. Agellon received Registered Mail Nos. 938, 005, 061 and 13497. As evidence of receipt of the four registered mails, Agellon signed the Postman’s Logbook. On a page on the Postman’s Logbook corresponding to August 14, 2007, a bracket enclosed the lines corresponding to the four registered mails. As evidence of receipt of said mails, Agellon signed after the bracket and stamped thereon “AUG 14 2007.” The next line after Registered Mail No. 13497 corresponds to Registered Mail No. 6463, which is addressed to “F. Magsalin” and supposedly pertains to the subject NLRC decision.

According to respondents, Agellon receives the mails when the firm secretary, Tess Calucag, is busy or is out of the office. According to Agellon, he makes sure that he writes the correct date of receipt on the Registry Return Cards attached to the registered mails he receives. He then stamps “Received” and the actual date of receipt on the mails and turns them over to Calucag so she can record them in her logbook before she distributes them to the lawyers.

⁶ Id. at 17.

⁷ Id. at 20-56.

On August 24, 2007, P.R. Cruz Law Offices received another batch of registered mails. Based on the Postman's Logbook, nine registered mails were for delivery to the firm. On said date, it was Calucag who received the registered mails based on the signature beside the bracket enclosing the lines corresponding to the nine registered mails. She then stamped "RECEIVED AUG 24 2007" and signed all the Registry Return Cards in front of the postman who in turn checked the same. It appears, however, that the subject NLRC decision was among the registered mails delivered on August 24, 2007 and its Registry Return Card was among those stamped and signed by Calucag, even if it was not among the nine registered mails listed in the postman's logbook. After receiving all the registered mails, Calucag recorded them in her logbook. A copy of the page pertaining to August 24, 2007 of Calucag's logbook shows that the subject NLRC decision was among those received on even date.

On the other hand, records would show that the Registry Return Card pertaining to the subject NLRC decision signed and stamped with the date August 24, 2007 was duly returned to the NLRC as sender.

Respondents, relying on the date August 24, 2007 as the actual date of receipt of the subject NLRC decision as indicated by their secretary, stated said date in their Partial Motion for Reconsideration of said decision.

Respondents submit that complainants did not present any clear, convincing or satisfactory proof that they induced or ordered their secretary to alter the true date of receipt and such allegation was merely based on pure assumption and self-serving conjectures. They further argue that their reliance on their secretary's actual receipt of the subject NLRC decision as corroborated by the entries of the law office's logbook and stamped date on the upper right side of the law firm's copy of the decision does not constitute malpractice, deceit, gross misconduct and falsification of public documents. They also presented the two Certifications⁸ from the NLRC Post Office (NLRC PO) which they claim destroys any evidentiary weight that the QCCPO certification may have. The first certifies that there is no Registered Letter No. 6452 dispatched by NLRC PO to QCCPO addressed to Atty. Frankie O. Magsalin III in connection with NLRC CA No. 039270-04/NCR-00-05-05406-03 entitled *Jaime Joven v. Philippine Hoteliers, Inc.* The second one certifies that Registered Letter No. 6463 addressed to Atty. Frankie O. Magsalin III was mailed at NLRC PO and was dispatched and sent to QCCPO on August 10, 2007.

By Resolution⁹ dated June 2, 2008, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

⁸ Id. at 85-86.

⁹ Id. at 128-129.

In his Report and Recommendation¹⁰ dated February 18, 2009, IBP Commissioner Salvador B. Hababag recommended that the administrative complaint be dismissed for lack of merit. He ruled that complainants have not only failed to show sufficient proof in support of their claim, but respondents also rebutted their accusation. Commissioner Hababag held that vis-à-vis certifications issued by the NLRC PO and the certification issued by the QCCPO, the former is controlling as it was the post office where the copies of the subject decision were actually mailed.

On March 25, 2009, the IBP Board of Governors adopted and approved Commissioner Hababag's report and recommendation. In its Resolution No. XVIII-2009-112 the IBP Board of Governors stated:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED[,] 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 that the complaint lacks merit, the same is hereby DISMISSED.¹¹

On July 29, 2009, complainants filed a Motion for Reconsideration¹² of the Resolution of the IBP Board of Governors. They argued that the IBP erred in holding that they failed to show sufficient proof in support of the complaint. They contended that the QCCPO certification clearly and convincingly established that the actual and true date of receipt of respondents of the NLRC decision is August 14, 2007 and not August 24, 2007 as they stated in their Partial Motion for Reconsideration. Complainants further argued it is only the QCCPO which can certify when the registered letter was delivered to and received by respondents and not the NLRC PO as the issue in this case is not where the decision was mailed but when the decision was received by respondents. They likewise submit that the IBP failed to explain how the certifications from the NLRC PO could have rebutted the QCCPO certification, postman's affidavit and delivery book.

Following the denial of their motion by the IBP, complainants filed the present petition for review before this Court.

The appeal should be dismissed for lack of merit. The IBP Board of Governors correctly resolved to dismiss the complaint.

The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. The Court exercises its disciplinary power only if the complainant establishes the complaint by *clearly preponderant evidence* that warrants the imposition of the harsh

¹⁰ Id. at 282-286.

¹¹ Id. at 281.

¹² Id. at 287-297.

penalty. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges made against him until the contrary is proved. An attorney is further presumed as an officer of the Court to have performed his duties in accordance with his oath.¹³

In this case, complainants failed to discharge their burden of proving respondents' administrative liability. Granting that the certification of the QCCPO of the actual date of receipt of the subject NLRC decision has *prima facie* credence, this Court finds it is not sufficient to hold respondents administratively liable as contended by complainants.

While there is incongruity between said certification and the records of respondents' law firm as to when the subject NLRC decision was actually received by the latter, there is no clear and convincing evidence presented by complainants that respondents maliciously made it appear that they received the decision on a date ten days later than what is reflected on the records of the QCCPO. Complainants would like to convince this Court that the only logical explanation as to the discrepancy is that Calucag, a secretary under the employ of respondents, was ordered by respondents to stamp a much later date instead of the actual date of receipt for the purpose of extending by ten-day period within which to file a Motion for Reconsideration under the NLRC Rules of Procedure. Clearly, such claim is merely anchored on speculation and conjecture and not backed by any clear preponderant evidence necessary to justify the imposition of administrative penalty on a member of the Bar.

It is likewise worthy to note that the registry return card which the QCCPO itself returned to the NLRC corroborates respondents' claim that to their knowledge, their law firm actually received the subject NLRC decision on August 24, 2007, after relying on the date of receipt relayed to them by their secretary and as stamped by the latter on their copy of the subject NLRC decision. We find merit in respondents' argument that had Calucag stamped the wrong date on the Registry Return Card, the postman who had full view of the receiving and stamping, would have called Calucag's attention to correct the same or he would just have refused to receive the same altogether considering that it was erroneous. Having accepted the Registry Return Card with the date August 24, 2007 stamped on it as the date of receipt can only mean that the postman considered it as correct.


Also, the registered mails delivered on August 14, 2007 were received by Agellon which explains his signature appearing on the postman's logbook for said date. The fact that the Registry Return Card was signed by Calucag, and not by Agellon, buttresses respondents' contention that the subject NLRC decision may not have been among the registered mails

¹³ *Arma v. Montevilla*, A.C.No. 4829, July 21, 2008, 559 SCRA 1, 8; see also *Acosta v. Serrano*, Adm. Case No. 1246, February 28, 1977, 75 SCRA 253, 257 and *Maderazo v. Del Rosario*, Adm. Case No. 1267, October 29, 1976, 73 SCRA 540, 542-543.

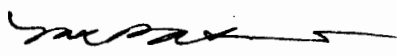
received on August 14, 2007 by Agellon. Otherwise, it should be Agellon's signature that would appear on the Registry Return Card and not Calucag's.

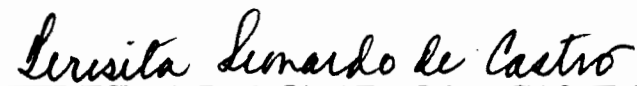
WHEREFORE, the instant administrative complaint against respondents Attys. Pablo R. Cruz and Frankie O. Magsalin III is **DISMISSED** for lack of merit.

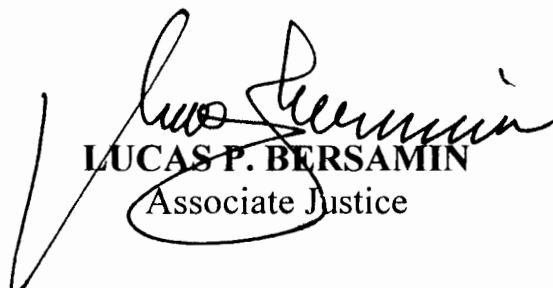
SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice