



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

RAUL C. LANUZA and  
REYNALDO C. RASING,  
Complainants,

A.C. No. 7687

- versus -

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

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RAUL C. LANUZA and  
REYNALDO C. RASING,  
Complainants,

A.C. No. 7688

Present:

- versus -

CARPIO, J., Chairperson,  
DEL CASTILLO,  
VILLARAMA, JR.,\*  
MENDOZA, and  
LEONEN, JJ.

ATTYS. FRANKIE O. MAGSALIN  
III, PETER ANDREW S. GO and  
PABLO R. CRUZ,  
Respondents.

Promulgated:

DEC 03 2014

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DECISION

**MENDOZA, J.:**

Before the Court are two (2) separate administrative cases for disbarment filed by complainants Raul C. Lanuza (*Lanuza*) and Reynaldo C. Rasing (*Rasing*), docketed as A.C. No. 7687, against lawyers Frankie O. Magsalin III (*Atty. Magsalin*) and Pablo R. Cruz (*Atty. Cruz*) and A.C. No. 7688 against Atty. Magsalin, Atty. Cruz and Atty. Peter Andrew Z. Go (*Atty. Go*) for alleged fraud, deceit, malpractice, and gross misconduct in violation

\* Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1888, dated November 28, 2014.

of Section 27, Rule 138 of the Rules of Court and the Code of Professional Responsibility (*CPR*).

The Court eventually consolidated the two cases as they both involve the same parties, revolve around the same set of facts, and raise exactly the same issues.

### **The Facts**

These disbarment cases stemmed from a labor case filed by complainant Lanuza against Philippine Hoteliers, Inc. (*PHI*), which operated the Dusit Hotel Nikko (*Dusit Hotel*), a client of respondents Atty. Magsalin, Atty. Cruz and Atty. Go, all from the law firm, P.R. Cruz Law Offices (*PRC Law Office*). Both the Labor Arbiter and the National Labor Relations Commission (*NLRC*) decided in favor of PHI. Lanuza appealed the NLRC decision before the Court of Appeals (*CA*).

#### **A.C. No. 7688**

On March 23, 2007, the CA rendered a decision in CA-G.R. SP No. 92642, favoring Lanuza and directing PHI to reinstate him with full backwages.

According to Lanuza, his legal counsel, Atty. Solon R. Garcia (*Atty. Garcia*), received the Notice of Judgment and their copy of the CA Decision on March 28, 2007 at his law office located in Quezon City. Subsequently, Atty. Garcia received by registered mail the Compliance<sup>1</sup> and Motion for Reconsideration,<sup>2</sup> both dated April 12, 2007, filed by PHI and signed by Atty. Magsalin. In the said pleadings, PHI stated that it received Notice of Judgment with a copy of the CA decision on April 10, 2007. This information caused Atty. Garcia to wonder why the postman would belatedly deliver the said Notice of Judgment and the CA decision to the PRC Law Office, which was also located in Quezon City, thirteen (13) days after he received his own copies.

Afterwards, Atty. Garcia requested the Quezon City Central Post Office (*QCCPO*) for a certification as to the date of the actual receipt of the Notice of Judgment with the CA decision by the PRC Law Office. In the October 31, 2007 Certification,<sup>3</sup> issued by Llewelyn F. Fallarme (*Fallarme*), Chief of the Records Section, QCCPO, it was stated that the Registered Letter No. S-1582 addressed to Atty. Magsalin was delivered by Postman

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<sup>1</sup> *Rollo* (A.C. No. 7688), p. 51.

<sup>2</sup> *Id.* at 157-159.

<sup>3</sup> *Id.* at 55.

Rosendo Pecante (*Postman Pecante*) and duly received by Teresita Calucag on March 29, 2007, supposedly based on the logbook of Postman Pecante.

With the October 31, 2007 Certification as basis, the complainants lodged the disbarment complaint against Attys. Magsalin, Go and Cruz, which was docketed as A.C. No. 7688.

A.C. No. 7688

In A.C. No. 7688, the complainants alleged that Teresita “Tess” Calucag (*Calucag*), secretary of PRC Law Office, altered the true date of receipt of the Notice of Judgment with the CA decision when she signed and stamped on the registry return receipt the date, April 10, 2007, to mislead the CA and the opposing party that they received their copy of the CA decision on a later date and not March 29, 2007. The complainants added that the alteration was very evident on the registry return receipt which bore two (2) stamped dates of receipt, with one stamped date “snowpaked” or covered with a liquid correction fluid to conceal the true date written on the registry return receipt. They inferred that Calucag concealed what could probably be the true date of receipt, and that the respondents must have induced Calucag to alter the true date of receipt because they stood to benefit from the additional thirteen (13) days to prepare their motion for reconsideration.

In their defense, the respondents denied the complainants’ allegations and countered that they actually received the Notice of Judgment and their copy of the CA Decision on April 10, 2007 based on the Registry Return Receipt<sup>4</sup> (*1<sup>st</sup> return receipt*) that was sent back to CA. Stamped on the 1<sup>st</sup> return receipt was “RECEIVED APRIL 10 2007” and signed by Calucag in front and within the full view of Postman Pecante. The respondents claimed that examining and finding that the return receipt had been faithfully accomplished and the date indicated therein to be true and accurate, Postman Pecante accepted the said return receipt. As borne out by the records, the 1<sup>st</sup> return receipt pertaining to the CA decision was duly returned to the CA as the sender. Eventually, Atty. Magsalin filed the required Compliance. Considering that Atty. Cruz was out of the country from April 5, 2007, to May 6, 2007, based on a Bureau of Immigration certification,<sup>5</sup> Atty. Magsalin requested Atty. Go, a senior associate in their law office, to review PHI’s motion for reconsideration of the decision. Afterwards, Atty. Go signed the said motion for reconsideration and had it filed with the CA.

Relying on the date indicated in the return receipt, respondents stated the date, April 10, 2007, in the filed compliance and motion for reconsideration .

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<sup>4</sup> Id. at 48 and 215.

<sup>5</sup> Id. at 216. Issued by Elias S. Olasiman, Authorized Signing Officer of the Bureau of Immigration.

To oppose complainants' assertion of Calucag's application of "snowpake" in the 1<sup>st</sup> return receipt allegedly to conceal the true date of receipt of the CA decision, the respondents secured a Certification<sup>6</sup> from the CA, which stated the following:

This is to certify that the Registry Return Receipt dated March 23, 2007, attached to the dorsal portion of page 209 of the rollo of the above-captioned case, as per careful observation, reveals no "snowpaked" portion and that the white mark that appears on the upper, center portion of the subject Registry Return Receipt bearing the stamp mark of receipt of P.R. Cruz Law Offices is a part of the white envelope that contained the decision of this Court which stuck to the said Return Receipt.

A.C. No. 7687

As the records would show, PHI moved for reconsideration of the said CA decision, but the CA denied the motion in its July 4, 2007 Resolution.

On July 10, 2007, Atty. Garcia received by registered mail the Notice of Resolution from the CA. Thereafter, Atty. Garcia received by registered mail the Compliance,<sup>7</sup> dated July 26, 2007, filed by PHI, through the PRC Law Office. In the said Compliance, it was stated that the Notice of Resolution was received on July 23, 2007 based on the Registry Return Receipt<sup>8</sup> (2<sup>nd</sup> return receipt) sent back to the CA.

Again wondering about the delay in the delivery of the registered mail to the respondents, Atty. Garcia requested the QCCPO to issue a certification as to the date of the actual receipt of the said Notice of Resolution by the PRC Law Office. In the October 25, 2007 Certification<sup>9</sup> issued by the QCCPO, Chief of the Records Section Fallarme, stated that the Registered Letter No. S-114 addressed to Atty. Magsalin was delivered by Postman Pecante and duly received by Calucag on July 16, 2007, based on the logbook of Postman Pecante.

The October 25, 2007 Certification became the basis of the other disbarment complaint against Attys. Magsalin and Cruz docketed as A.C. No. 7687.

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<sup>6</sup> Id. at 214. Issued by Atty. Teresita R. Marigomen, Clerk of Court, Court of Appeals, Manila.

<sup>7</sup> *Rollo* (A.C. No. 7687), p. 50.

<sup>8</sup> Id. at 51.

<sup>9</sup> *Rollo* (A.C. No. 7688), p. 55.

In A.C. No. 7687, the complainants claimed that Attys. Magsalin and Cruz must have induced Calucag to alter the true date of receipt of the Notice of Resolution or at least had the knowledge thereof when she signed and stamped on the 2<sup>nd</sup> return receipt the date - July 23, 2007. They contended that Attys. Magsalin and Cruz stood to benefit from the additional seven (7) days derived from the alleged altered date as they, in fact, used the altered date in their subsequent pleading. Attys. Magsalin and Cruz falsely alleged such in the compliance filed before the CA; the motion for extension of time to file a petition for review on *certiorari*;<sup>10</sup> and the petition for review on *certiorari*<sup>11</sup> filed before this Court. The complainants insinuated that Atty. Magsalin and Atty. Cruz deliberately misled the CA and this Court by filing the above-mentioned pleadings with the full knowledge that they were already time barred.

In their defense, Attys. Magsalin and Cruz denied the allegations in the complaint and retorted that they actually received the subject Notice of Resolution on the date - July 23, 2007 as indicated in the 2<sup>nd</sup> return receipt which was also duly accepted by Postman Pecante and appropriately returned to the CA as sender. Relying on the date, July 23, 2007, as indicated in 2<sup>nd</sup> return receipt, Atty. Magsalin, on behalf of PHI, filed the compliance and the other pleadings before the CA and this Court concerning CA-G.R. SP No. 92642. The respondents asserted that the date in the 2<sup>nd</sup> return receipt deserved full faith and credence as it was clearly indicated by Calucag, witnessed by Postman Pecante and ultimately processed by the QCCPO to be duly returned to the CA.

### Referral to the IBP

In its April 2, 2008<sup>12</sup> and June 16, 2008<sup>13</sup> Resolutions, the Court referred the said administrative cases to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The complainants and the respondents all appeared at the scheduled mandatory conference held before the Commission on Bar Discipline (CBD). Thereafter, the parties filed their respective position papers.

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<sup>10</sup> *Rollo* (A.C. No. 7687), pp. 24-28.

<sup>11</sup> *Id.* at 13-19.

<sup>12</sup> *Id.* at 103.

<sup>13</sup> *Rollo* (A.C. No. 7688), p. 263.

*IBP's Report and Recommendation**A.C. No. 7687*

In its March 9, 2009 Report and Recommendation,<sup>14</sup> Commissioner Salvador B. Hababag (*Commissioner Hababag*) recommended that the administrative complaint be dismissed for lack of merit. It gave more credence to the date indicated in the 2<sup>nd</sup> return receipt which bore no alteration and was duly accepted by Postman Pecante than the October 25, 2007 Certification issued by the QCCPO. He stated that the 2<sup>nd</sup> return receipt did not contain any alteration as to the stamping of the date - July 23, 2007, and that Postman Pecante would not have allowed and accepted the 2<sup>nd</sup> return receipt from Calucag if it contained an inaccurate date other than the true date of receipt. Finally, the CBD ruled that the complainants failed to demonstrate the specific acts constituting deceit, malpractice and gross misconduct by evidence that was clear and free from doubt as to the act charged and as to the respondents' motive.

On April 17, 2009, the IBP Board of Governors (*IBP-BOG*) resolved to adopt and approve the CBD report and recommendation through its Resolution No. XVIII-2009-176.<sup>15</sup> The complainants moved for reconsideration, but the motion was denied.

*A.C. No. 7688*

In its Report and Recommendation,<sup>16</sup> dated March 10, 2009, the CBD recommended that the complaint be dismissed for lack of merit. It gave credence to the date indicated in the 1<sup>st</sup> return receipt as the actual and true date of receipt of the Notice of Judgment with the attached CA decision by the respondents. It did not subscribe to the complainants' theory that Calucag was induced by the respondents to conceal the true date of receipt by applying a liquid correction fluid in the 1<sup>st</sup> return receipt. It found the the Certification issued by Atty. Teresita R. Marigomen sufficient to explain the presence of the white substance appearing on the 1<sup>st</sup> return receipt.

On April 17, 2009, the IBP-BOG resolved to adopt and approve the CBD report and recommendation through its Resolution No. XVIII-2009-178.<sup>17</sup> The complainants moved for reconsideration, but the motion was denied.

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<sup>14</sup> *Rollo* (A.C. No. 7687), IBP-CBD Volume III.

<sup>15</sup> *Id.*

<sup>16</sup> *Rollo* (A.C. No. 7688), IBP-CBD Volume IV.

<sup>17</sup> *Id.*

With their motions for reconsideration in the two cases denied, the complainants filed their respective petitions for review before this Court.

### **ISSUE**

The vital issue for the Court's resolution is whether Attys. Magsalin, Cruz and Go should be held administratively liable based on the allegations in the complaints.

### **The Court's Ruling**

The petitions lack merit.

The Court deems it appropriate to discuss A.C. Nos. 7687 and 7688 jointly as they essentially revolve around the same circumstances and parties.

The burden of proof in disbarment and suspension proceedings always rests on 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 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.<sup>18</sup>

In the cases at bench, the Court finds the evidentiary records to be inconclusive, thus, insufficient to hold the respondents liable for the acts alleged in the complaint.

Though there is a variance between the QCCPO Certifications and the Registry Return Receipts as to the dates of the CA receipt of the notices, decision and resolution by the respondents, there is no clear and convincing evidence to prove that the respondents intentionally and maliciously made it appear that they received the CA notices, decision and resolution later than the dates stated in the QCCPO Certifications. The complainants would like to impress upon the Court that the only logical explanation as to the discrepancy on the dates between the QCCPO Certifications and the Registry Return Receipts was that the respondents must have induced Calucag to alter the true date of receipt by the CA for the purpose of extending the period to file, the otherwise time-barred, motion for reconsideration. Verily, this leap of inference proffered

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<sup>18</sup> *Rafols, Jr. v. Atty. Barrios, Jr.*, A.C. No. 4973, March 15, 2010, 615 SCRA 206, 217.

by the complainants is merely anchored on speculation and conjecture and not in any way supported by clear substantial evidence required to justify the imposition of an administrative penalty on a member of the Bar.

Even if the postmaster's certifications were to merit serious consideration, the Court cannot avoid the legal reality that the registry return card is considered as the official CA record evidencing service by mail. This card carries the presumption that it was prepared in the course of official duties which have been regularly performed. In this sense, it is presumed to be accurate, unless clearly proven otherwise.

The Court finds merit in the respondents' argument that had Calucag stamped an inaccurate date on the registry return receipts, Postman Pecante, who witnessed and had full view of the receiving and stamping of the said registry return receipts, would have called her attention to correct the same or would have refused to receive them altogether for being erroneous. Here, Postman Pecante having accepted two registry return receipts with the dates, April 10, 2007<sup>19</sup> and July 23, 2007,<sup>20</sup> respectively, can only mean that the said postman considered the dates indicated therein to be correct and accurate.

While the Court will not avoid its responsibility in meting out the proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, the Court will not wield its axe against those the accusations against whom are not indubitably proven.

Accordingly, in the absence of a clear and convincing evidence, the complaint for disbarment should be dismissed.

**WHEREFORE**, the administrative complaints against Attys. Frankie O. Magsalin III and Pablo R. Cruz, in **A.C. No. 7687**; and the administrative complaint against Attys. Frankie O. Magsalin III, Peter Andrew S. Go and Pablo R. Cruz, in **A.C. No. 7688**, are hereby **DISMISSED**.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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<sup>19</sup> Subject matter of A.C. No. 7688.

<sup>20</sup> Subject matter of A.C. No. 7687.



WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**MARIANO C. DEL CASTILLO**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice