



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PASTOR
MACAVENTA,

ABARACOSO

A.C. No. 11087

[Formerly CBD Case No. 16-5112]

Complainant,

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO, JJ.

ATTORNEY
NUYDA,

ANTHONY C.

Promulgated:

Respondent.

OCT 12 2020

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DECISION

PERALTA, C.J.:

Before us is an Administrative Complaint¹ filed by Pastor Abaracoso Macaventa (*Macaventa*) before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) against the respondent Atty. Anthony Nuyda (*Atty. Nuyda*), the Regional Director (*RD*) of the Department of the Interior and Local Government (*DILG*) Regional Office VI, for gross neglect of duty for delaying or refusing to comply with a referral or directive of the Ombudsman, allegedly violating Canon 1, Rules 1.02 and 1.03 of the Code of Professional Responsibility (*CPR*).

The facts are as follows.

On December 14, 2015, Macaventa filed the present Administrative Complaint² against Atty. Nuyda. The complainant alleged that, the respondent committed gross neglect of duty as the latter delayed or refused to comply

¹ Rollo, pp. 2-6.

² *Id.*

with a referral directed by the Ombudsman or any of its deputies against the office or employee to whom it was addressed. On October 19, 2015, a Dismissal Order against Capiz Governor Victor Tanco, Sr. (*Governor Tanco*) and his son Vladimir Tanco (*Vladimir*) was received by the DILG Central Office. According to the complainant, the Dismissal Order³ was served against Mr. Vladimir Tanco on October 28, 2015, but not to his father and co-accused Governor Tanco.

In its official website, the DILG justified the delay of the implementation of the said order against Governor Tanco. It reasoned that it will seek first a clarification from the Office of the Ombudsman (*OMB*) regarding the application of the *Aguinaldo Doctrine*. Due to this, the complainant claims that it is the duty of the DILG, as an implementing agency of the order of the Office of the Ombudsman, to implement the order and not to question it.

For the above reasons, the complainant concluded that it is very clear that Atty. Nuyda as the RD of the DILG Regional Office VI, committed a Gross Neglect of Duty as he vehemently delayed and refused to comply with the directive of the OMB.

On the other hand, the respondent filed his Comment⁴ on June 2, 2016. According to the respondent, he was just following the orders of his superior, Undersecretary Austere A. Panadero (*Usec. Panadero*) of the DILG to await further advice on the implementation of the dismissal of Governor Tanco of Capiz. On October 22, 2015, Usec. Panadero wrote a Letter⁵ dated October 22, 2015 to Assistant Ombudsman Jennifer J. Manalili seeking clarification as to the applicability of the *Aguinaldo doctrine* in relation to the decision of the OMB dismissing Governor Tanco from service. The move by Usec. Panadero was in accordance with the standing arrangement between the DILG and the OMB where officials of the DILG were advised to seek prior clarification with the OMB should there be issues that arise on the implementation of the latter's decisions.

In addition, Usec. Panadero issued a Memorandum⁶ dated October 22, 2015 directing the respondent to cause immediate implementation of the OMB Decision⁷ only against Vladimir. The said Memorandum was received by the respondent on October 23, 2015 and, on the same day, he immediately issued a Memorandum addressed to Clyne B. Deocampo, Provincial Director of the DILG in Capiz, directing her, in turn, to immediately implement the dismissal of Vladimir from the service.

³ *Id.* at 38-39.

⁴ *Id.* at 9-47.

⁵ *Id.* at 41-42.

⁶ *Id.* at 22-23.

⁷ *Id.* at 25-35.

Likewise, the respondent issued two (2) other Memoranda,⁸ both dated October 23, 2015, one issued to Vladimir directing him to cease and desist from performing the functions of the Office of the Security Officer III immediately upon receipt of the Memorandum, and the other issued to Governor Tanco to abide by the decision of the OMB in the dismissal of his son Vladimir from office.

Further, the OMB subsequently confirmed that the action taken by the DILG was correct through a Letter⁹ dated November 16, 2015 by Atty. M.A. Christian O. Uy of the OMB, advising the DILG that the re-election of Governor Tanco operated “as a condonation of his misconduct to the extent of cutting off the right to remove him from office,” pursuant to *Aguinaldo v. Hon. Santos*.¹⁰ Afterwards, Usec. Panadero issued a Memorandum¹¹ dated December 11, 2015 directed to the respondent stating that because of the Aguinaldo doctrine and the advice from the OMB, the decision of dismissal meted on Governor Tanco can no longer be implemented. Accordingly the respondent filed his Compliance Report¹² on the Implementation of the Decision of the OMB dated June 1, 2015.

Verily, for Atty. Nuyda, he was just following orders from his superior and the subsequent confirmation by the OMB that the action taken by the DILG was correct only show that he did not violate any law or rule more so the CPR.

On December 6, 2016, the case was set for mandatory conference wherein only the counsel of Atty. Nuyda was present. The mandatory conference was reset on January 9, 2016 to give an opportunity for the complainant to appear. However, at the said mandatory conference, the complainant once again failed to appear. Meanwhile, Atty. Nuyda, together his counsel, was present. This prompted the Investigating Commissioner to terminate the mandatory conference and order the parties to submit their respective position papers, attaching thereto their supporting documents and the affidavits of their witnesses.

Atty. Nuyda filed his Position Paper¹³ on February 6, 2017, while the complainant did not. After reviewing the records of the case, the IBP-CBD decided not to conduct any further clarificatory hearing and considered the matter submitted for report and recommendation.

⁸ *Id.* at 38-40.

⁹ *Id.* at 45.

¹⁰ 287 Phil. 851, 858 (1992).

¹¹ *Rollo*, pp. 43-44.

¹² *Id.* at 47.

¹³ *Id.* at 82-94.



Upon a thorough evaluation of the evidence presented by the parties in their respective pleadings, the IBP-CBD submitted its Report and Recommendation¹⁴ dated July 28, 2017, dismissing the complaint of Macaventa for lack of merit. Thus, the IBP Investigating Commissioner found that there was no gross neglect of duty on the part of Atty. Nuyda. This ruling is based on the fact that Atty. Nuyda simply followed the directive to given to him by his superior at the DILG and there was never any intentional or willful disobedience to the Decision of the OMB, as the latter eventually confirmed that its order dismissing Governor Tanco from the service can no longer be implemented.

In a Resolution¹⁵ dated October 4, 2018, the IBP Board of Governors (*IBP-BOG*) resolved to adopt the aforesaid Report and Recommendation dismissing the complaint.

On December 17, 2019, the IBP-CBD transmitted to the Court the Notices of Resolution and records of the case for appropriate action.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the Code of Professional Responsibility.

Our Ruling

The Court resolves to adopt the findings of fact of the IBP.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.¹⁶ In the present case, there is no sufficient, clear and convincing evidence to hold Atty. Nuyda administratively liable for Gross Neglect of Duty.

¹⁴ *Id.* at 162-165.

¹⁵ *Id.* at 160.

¹⁶ *Cabas v. Atty. Sususco, et al.*, 787 Phil. 167, 174 (2016).

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.¹⁷

As noted by the IBP, Atty. Nuyda simply followed the directive given to him by his superior at the DILG to await further advice on the dismissal of Governor Tanco. In addition, there was never any intentional or willful disobedience to the decision of the OMB, as the latter, in fact, eventually confirmed that its order dismissing Governor Tanco from service can no longer be implemented. Thus, there is no gross neglect of duty on the part of Atty. Nuyda.

In order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty.¹⁸ However, in the instant case, there is no evidence to show that respondent did not exercise the slightest care or indifference to the consequences or any flagrant and palpable breach of duty. In fact, Atty. Nuyda followed to the letter directives given to him by higher authorities.

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 clear 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.¹⁹

In the present case, the herein complainant was clearly misguided and did not even present a valid argument. Even without the presumption that an attorney as an officer of the Court have performed his duties in accordance with his oath, it is plain and logical that the respondent only followed the protocol in implementing the subject Decision of the OMB. The said protocol is pursuant to the standing arrangement between the DILG and the OMB where officials of the DILG were advised to seek prior clarification with the OMB should there be issues that arise on the implementation of the latter's

¹⁷ *Id.* at 173-174.

¹⁸ *Id.* at 174.

¹⁹ *Lanusa v. Atty. Magsalin III, et al.*, 749 Phil. 104, 112 (2014).



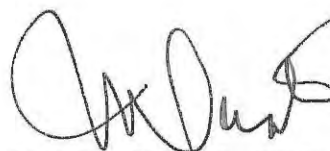
decisions. Thus, his actions were done within the authority granted to him and the laws.

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.²⁰ Much less, in this case where the accusations are obviously baseless.

In view of the foregoing, the Court finds no cogent reason to depart from the resolution of the IBP-BOG to dismiss the complaint against Atty. Nuyda.

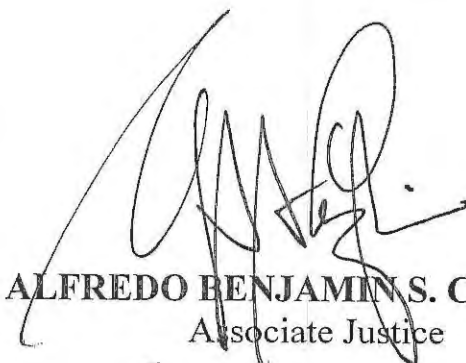
WHEREFORE, the Court **AFFIRMS** the Resolution of the Board of Governors of the Integrated Bar of the Philippines, adopting the Report and Recommendation of the Investigating Commissioner, and **DISMISSES** the charge against Atty. Anthony Nuyda for lack of merit.

SO ORDERED.

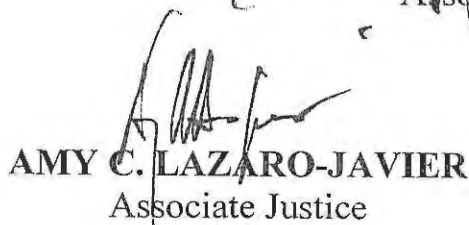


DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:



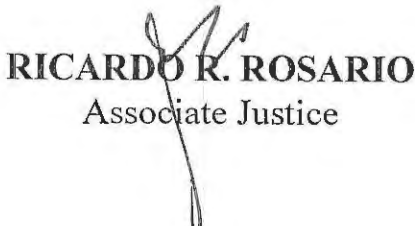
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice



RICARDO R. ROSARIO
Associate Justice

²⁰ *Id.* at 113.