



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 26, 2020 which reads as follows:*

**“A.C. No. 8298 – FRANCIS B. DY v. ATTY. RICARDO MARTINEZ, SR.**

**The Case and the Proceedings Below**

Respondent Atty. Ricardo Martinez, Sr. is charged<sup>1</sup> with violation of the Lawyer’s Oath,<sup>2</sup> Section 27,<sup>3</sup> Rule 138 of the Rules of Court, and the Code of Professional Responsibility.<sup>4</sup> The charge hinged on respondent’s alleged continued and persistent persecution of complainant Francis Dy, his wife and his corporation for personal vendetta and in abuse of his authority as a public officer.

**Complainant essentially alleged:** He is one of the directors of L.C. Big Mak Burger, Inc. and an incorporator in Southern Processing Corporation. Respondent Atty. Ricardo Martinez, Sr. was the Regional Director of the Department of Labor and Employment (DOLE) Region IV-A CALABARZON. The DOLE charged and found his corporation liable for alleged violation of labor laws.

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<sup>1</sup> *Rollo* (vol. 1), pp. 1-33.

<sup>2</sup> “x x x I will do no falsehood, not consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same x x x.”

<sup>3</sup> **Section 27. Attorneys removed or suspended by Supreme Court on what grounds.** — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any **deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct**, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

<sup>4</sup> Canons 1, 6, 7, 10, and 11.

Respondent then issued unwarranted and unlawful writs of execution and garnishment over the properties of the corporation. Respondent demanded money as settlement of the labor cases and to stay the execution, but he refused. Respondent then proceeded with the implementation of the writs. He was able to repossess some of the attached properties through a court order.<sup>5</sup>

Due to respondent's foiled effort to extract money from him, respondent, in his personal capacity, maliciously filed before the prosecutor's office a criminal complaint against him and his wife for alleged violation of Articles 128 (d),<sup>6</sup> (e)<sup>7</sup> and 288<sup>8</sup> of the Labor Code for obstructing the implementation of labor laws by issuing Memorandum<sup>9</sup> dated February 8, 1994 reminding the employees of L.C. Big Mak, Inc. and Tiger, Inc., which he both owned, not to disclose any information. The case was dismissed.<sup>10</sup> He, thus, sued for damages. The trial court held respondent liable for damages amounting to P1,457,530.00, for malicious prosecution.<sup>11</sup> Respondent's appeal is currently pending before the Court of Appeals.<sup>12</sup>

Respondent, thereafter, invoked his visitorial and enforcement power based on complaints allegedly filed by twenty-one (21)

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<sup>5</sup> *Rollo* (vol. 1), p. 2.

<sup>6</sup> (d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or his duly authorized representatives issued pursuant to the authority granted under this Article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

<sup>7</sup> (e) Any government employee found guilty of violation of, or abuse of authority, under this Article shall, after appropriate administrative investigation, be subject to summary dismissal from the service.

<sup>8</sup> ART. 288. *Penalties.* - Except as otherwise provided in this Code, or unless the acts complained of hinge on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement, any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.  
In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.

Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code, shall be under the concurrent jurisdiction of the Municipal or City Courts and the Courts of First Instance. (As amended by Section 3, Batas Pambansa Bilang 70).

<sup>9</sup> The Memorandum states: "Ang lahat ay pinaalalahanan na hindi dapat magbigay ng anumang impormasyon sa sinumang tao na walang kaugnayan o hindi konektado sa kumpanya." *See rollo*, p. 35.

<sup>10</sup> *Id.* at 63-64, 65-67, 2-3.

<sup>11</sup> Penned by Presiding Judge Bienvenido A. Mapaye, Decision dated May 27, 2008, *id.* at 68-87.

<sup>12</sup> *Id.* at 37.

employees of the corporation. Respondent ordered the inspection of his office and, thereafter, issued Order<sup>13</sup> dated February 3, 2009 holding him and the corporation liable for the amount of P6,265,256.91 representing alleged underpayment of wages, regular holiday pay, overtime pay, non-payment of salary, 13th month pay, night shift differential pay, service incentive leave and illegal wage deduction. Respondent further ordered him to pay double backwages in case he fails to pay the total amount within ten (10) calendar days.<sup>14</sup>

On February 23, 2009, he moved<sup>15</sup> to declare the Order dated February 3, 2009 void for respondent's bias, malice, and interest in rendering the same. Respondent maliciously issued the same in mere retaliation because he was made liable for malicious prosecution and damages. Respondent fabricated the charges against him as eleven (11) of the alleged complaining employees cited by respondent issued their respective *Sinumpaang Salaysay* attesting that they neither filed a complaint before the DOLE, nor were they interviewed by DOLE employees regarding the corporation's alleged violation of labor laws.<sup>16</sup>

By Resolution<sup>17</sup> dated March 24, 2009, respondent denied his Motion to Declare the Order dated February 3, 2009 Void.<sup>18</sup> Respondent ignored his allegation of bias and malice and treated the 11 employee's *Sinumpaang Salaysay* as invalid quitclaims.

He cannot be held personally liable for the alleged labor violations of the corporation as president thereof for a corporation has a personality separate and distinct from its stockholders. Too, he was no longer the president of the corporation when respondent issued the assailed Order dated February 3, 2009, as shown in the corporation's General Information Sheet filed with the Securities and Exchange Commission (SEC) in April 2008.

Respondent committed unlawful, dishonest, immoral or deceitful conduct, and gross misconduct when he tried to solicit bribe money from him in exchange for a favorable resolution of the corporation's alleged labor violations and the staying of the execution of the attachment and garnishment of the corporation's properties.<sup>19</sup>

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<sup>13</sup> "In Re: Complaint Inspection at: L.C. Bigmak, Inc., Mr. Francis Dy, President" docketed as LSED Case No. RO400-0807-CI-001-064

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Rollo* (vol. 3), pp. 52-53.

<sup>16</sup> *Id.* (vol. 1) at 5-6.

<sup>17</sup> *Id.* at 112-117.

<sup>18</sup> *Id.* (vol. 3) at 52-53.

<sup>19</sup> *Id.* (vol. 1) at 9.

Respondent also gravely abused his authority by filing malicious and unfounded criminal and labor cases against him, his wife, and the Corporation in retaliation to the civil case filed against him.

**In his defense, respondent countered, in the main:** Complainant issued the memorandum in 1994, when the previous DOLE Regional Directors commenced the labor standard cases against him. Apart from telling the workers to keep the company's "trade secrets," the memorandum also prohibits them from discussing issues about salaries and receiving letters, particularly from the DOLE, which constitutes a violation of Article 128 (d) of the Labor Code for obstructing, impeding, or rendering ineffective the orders of the Secretary of Labor.

When the workers filed a complaint for violations of labor standards law against complainant/L.C. Bigmak, Inc. in 2000, he was prompted to issue an inspection authority under Article 128 of the Labor Code. Complainant failed to appear and present evidence in the ensuing summary hearings to refute the labor inspectors' findings against him. Instead, to intimidate the DOLE regional officials from proceeding with the lawful orders against him, complainant filed various criminal, administrative and civil cases against the involved DOLE regional officials, including the civil case for damages/malicious prosecution against him which is still pending appeal before the Court of Appeals.<sup>20</sup>

Complainant's allegation of bribery is suspect for complainant himself contradicts the testimony of his witness who testified that he (respondent) demanded P120,000.00 supposedly in exchange for dropping the case against complainant. Complainant, on the other hand, claimed that respondent demanded P500,000.00 for the same purpose, without stating when, where and how the bribe was supposedly made. Assuming it was true. Why did complainant not file any case against him or report him to the police at the time it allegedly happened?

When he filed the criminal case against complainant for violation of Article 128 (d),<sup>21</sup> he was merely performing his duty based on what he believed was right. He was not harassing the

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<sup>20</sup> *Id.* at 137-138.

<sup>21</sup> (d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or his duly authorized representatives issued pursuant to the authority granted under this Article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

complainant as he did not single out complainant but also filed similar cases against other employers for refusing to give access to company records and premises and to question employees on matters which may aid in the enforcement of the labor laws, wage order or rules and regulations.

Besides, whether the criminal and labor cases he filed against complainant constitute malicious prosecution has not yet been determined with finality as the civil case against him for damages/malicious prosecution is still pending appeal before the Court of Appeals.

### **The Investigating Commissioners' Report and Recommendation**

In his Report and Recommendation, the Investigating Commissioner<sup>22</sup> recommended the dismissal of the case against respondent for complainant's failure to substantiate his claim.

### **IBP Board of Governors' Resolution**

By Resolution dated September 27, 2014, the IBP Board of Governors reversed. It found respondent guilty of abuse of power and blackmailing complainant.

In its Resolution dated June 17, 2017, however, the Board granted respondent's motion for reconsideration. It reversed its earlier Resolution and adopted the report and recommendation of the Investigating Commissioner, dismissing the case.<sup>23</sup>

### **Ruling**

We affirm the dismissal of the disbarment complaint.

Jurisdiction over administrative cases against government lawyers relating to acts committed in the performance of their official functions, lies with the Ombudsman which exercises administrative supervision over them.<sup>24</sup>

The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such

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<sup>22</sup> Penned by (Commissioner) Atty. Eldrid C. Antiquiera, *rollo* (vol. 3).

<sup>23</sup> See Notice dated July 1, 2019, *rollo* (vol. 3).

<sup>24</sup> *Segura v. Garachico-Fabila*, A.C. No. 9837, September 2, 2019.

act or omission appears to be illegal, unjust, improper, or inefficient.<sup>25</sup> The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials “in every case where the evidence warrants in order to promote efficient service by the Government to the people.”<sup>26</sup>

Republic Act No. 6770 (RA 6770), otherwise known as “The Ombudsman Act of 1989,” prescribes the jurisdiction of the Office of the Ombudsman, thus:

Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

In *Alicias v. Atty. Macatangay, et al.*,<sup>27</sup> where respondents were charged with violation of the Lawyer's Oath or Code of Professional Responsibility, gross neglect of duty, and gross ignorance of the law, the Court ruled that the IBP has no jurisdiction over the complaint as the acts or omissions complained of are connected with their duties as government lawyers exercising official functions in the Civil Service Commission (CSC) and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman.

Here, the allegations in the complaint all relate to respondent's alleged misconduct in the discharge of his official duties as a government lawyer working in the DOLE. Hence, the IBP has no jurisdiction over the disbarment complaint.

Even on the merits, the complaint must still fail.

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<sup>25</sup> Constitution, Art. XI, Sec. 13, par. (1).

<sup>26</sup> Section 13, RA 6770.

<sup>27</sup> 803 Phil. 85, 90-92 (2017).

Under Article 128<sup>28</sup> of the Labor Code, the Secretary of Labor and Employment or his duly authorized representatives, including the regional directors, exercise quasi-judicial power to the extent necessary to determine violations of labor standards provisions of the Code and other labor legislation. He can issue compliance orders and writs of execution for the enforcement of his orders.

Complainant has been repeatedly found to have violated labor standards legislation and occupational health and safety standards as early as 1994 by the previous DOLE Regional Directors. In fact, six labor cases were filed against him, for which five writs of execution were already issued, but to no avail. Respondent only came into the picture when he was assigned as the next regional director.

Prodded by the complaining worker's constant follow-ups and pursuant to his mandate to expedite labor complaints, specially employee's money claims, respondent issued the alias writ of execution in the case which is already final and executory. The labor inspectors, however, were denied access to the company's records and could not properly interview the employees in view of the Memorandum issued by complainant in 1994 when the previous DOLE regional directors commenced the labor cases against complainant. This served as respondent's legal ground for charging complainant with violation of Article 128 paragraph (d) the Labor Code, *viz.*:

x x x (d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article.

Complainant did not submit any evidence to prove his compliance with the labor standard legislations. Complainant simply claims that the labor complaints against him are mere harassment, without explaining and refuting the alleged irregularity in the wages

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<sup>28</sup> ART. 128. Visitorial and enforcement power. —

x x x                      x x x                      x x x

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article.

of his employees. Complainant also failed to substantiate his claim of bribery. He himself contradicts the statement of his own witness. Notably, the case for malicious prosecution has not yet been resolved with finality as it is still pending appeal before the Court of Appeals. Respondent is, therefore, still entitled to a presumption of innocence.

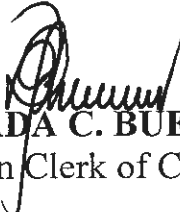
In disbarment proceedings, complainant bears the burden of proof by substantial evidence.<sup>29</sup> This means complainant must satisfactorily establish the facts upon which the charges against respondent are based.<sup>30</sup> To repeat, complainant failed to discharge this burden. Consequently, respondent's right to be presumed innocent and to have regularly performed his duty as officer of the court must remain in place

As the Court has invariably pronounced, it will not hesitate to mete out proper disciplinary punishment upon a lawyer who is shown to have failed to live up to his or her sworn duties. But the Court will not hesitate either to extend its protective arm to a lawyer unjustly accused by a dissatisfied litigant relative to a case lost without any fault on the part of the lawyer.

**ACCORDINGLY**, the Complaint against Atty. Ricardo Martinez, Sr. is **DISMISSED** for lack of jurisdiction on the part of the Integrated Bar of the Philippines.

**SO ORDERED.** *Reyes, J., Jr., J., on official leave.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
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by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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<sup>29</sup> *Morales v. Borres, Jr.*, A.C. No. 12476, June 10, 2019.

<sup>30</sup> *Alag v. Atty. Sanupe, Jr.*, A.C. No. 12115, October 15, 2018.





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