

MALACAÑANG
MANILA

ADMINISTRATIVE ORDER NO. 106

IMPOSING ON DIMATIMPOS MINDALANO, FORMER REGISTER OF DEEDS OF LANA DEL SUR, A FINE EQUIVALENT TO HIS SEVEN (7) MONTHS SALARY TO BE DEDUCTED FROM WHATEVER RETIREMENT AND OTHER BENEFITS HE MAY RECEIVE FROM THE GOVERNMENT

This is an administrative case against Atty. Dimatimos Mindalano, former Register of Deeds of Lanao del Sur, for gross neglect of duty.

In the evening of August 16, 1985, burglars entered the Registry of Deeds, Marawi City, resulting in the loss of the registry's collection in the amount of P31,844.50, which the collecting clerk, Subosubo Malawi, failed to remit to the local branch of the Philippine National Bank.

As an offshoot of the above incident, the Administrator of the National Land Titles and Deeds Registration Administration (NLTDRA) charged Mindanao with gross neglect of duty. The charge sheet reads as follows:

"On 1 August 1984, upon your assumption as Acting Register of Deeds of Marawi City, the Office of City Auditor conducted an audit examination of the cash and account of the Registry and the unremitted amount of P21,065.25 was discovered in the possession of Subosubo Malawi, the designated collecting clerk. In addition to this amount, Malawi had also in his possession the amount of P15,366.25 representing registry collection for the period of 1 August 1984 to 16 August 1985.

"Malawi did not remit or deposit all his registry collections, as required by Joint Circular No. 1-81 dated 1 January 1981 of COA and Department of Finance, except on 17 October 1984, in the amount of P1,486.50; and on 20 January 1985, in the amount of P3,100.50, resulting in their loss.

"Section 104 of P.D. 1445, otherwise known as the Government Auditing Code of the Philippines, provides:

'Section 104. Records and reports required by primarily responsible officers. The head of any agency or instrumentality of the National Government.... shall exercise the

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diligence of a good father of a family in supervising accountable officer under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be accountable therefor.'

"In view thereof, you are hereby charged with, and directed to show cause in writing and under oath within seventy-two (72) hours from receipt hereof why no administrative disciplinary action should be taken against you for Gross Neglect of Duty for your failure to exercise supervision in safeguarding registry collections as mandated by the existing regulations, particularly Section 104 of P.D. 1445."

Forthwith, respondent filed his answer. During the investigation of the case, respondent opted to submit a memorandum and, thereafter, submitted the case for resolution based on the records.

In his report of May 2, 1991, the Investigator designate recommended, with the concurrence of the NLTDRA Administrator, that respondent be adjudged guilty of the charge, observing that:

- a. the unremitted collection of Malawi was brought to respondent's attention upon his assumption of duties as Acting Register of Deeds of Marawi City, but the latter did not exercise the required diligence necessary to ensure the timely and regular remittance of registry collections as required under Section 104, Presidential Decree (PD) No. 1445; and
- b. the loss of the unremitted amount when the registry office was burglarized on August 16, 1985, could have been averted had respondent been vigilant as supervisor of the collecting clerk.

Then Acting Justice Secretary Eduardo Q. Montenegro, in his letter-report of May 6, 1992, stated:

"Respondent Mindalano denied the charge in his Answer dated 15 September 1988 wherein he alleged, among others, that on the same day (1 August 1984) he came to know of the unremitted amount he immediately issued a memorandum order to the collecting clear to remit immediately without delay the amount of P21,065.25. One week thereafter he issued another memorandum again requiring Mr. Malawi to remit the said amount."

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Allegedly, thereafter, a series of memoranda were issued by him directing Mr. Malawi to remit collections in his possession.

x x x

x x x

x x x

We find the allegations of respondent not credible.

He could have issued, as he claims, a memorandum on the very same day he assumed his duties as Acting Register of Deeds of Marawi City since (1) his first memo appears to have been issued on 3 September 1984. Said memo begins with '[h]aving assumed office as City Register of Deeds x x x', and (2) the memorandum dated 1 August 1985 could not have been 1 August 1984 as claimed by respondent - since the said memo states '[i]n the interest of the public service, you are again reminded of your duties as Cash Clerk.' If this were his first memo, then he would not remind Mr. Malawi again of his duties. The words of the memoranda apparently do not jibe with the allegations in his Answer dated 15 September 1988 that:

x x x

x x x

x x x

It appears that respondent issued his first memorandum dated 3 September 1984 to Mr. Malawi more than one month after he assumed his duties as Register of Deeds of Marawi City; followed by another memo on 7 November 1984; a third memo on 2 January 1985; a fourth memo on 3 January 1985; and the last memo on 1 August 1985.

"Aside from the issuance of these memoranda, however, there is no showing that respondent even bothered to check whether the designated collecting clerk had been remitting his collections as instructed. Respondent is not even sure whether the amount allegedly lost in the burglary was indeed in the registry steel safe.

It is noteworthy that prior to the burglary on 16 August 1985 two remittances, P1,486.50 on October 17, 1984 and P3,100.50 on January 29, 1985 - were made by Mr. Malawi. If the collections allegedly taken were indeed kept in the safe at the time these remittances were made, Mr. Malawi should have remitted all the collections as mandated by Joint Circular No. 1-81 dated 1 January 1981 of the COA and the Department of Finance thereby relieving himself of worrying about the said collections. Instead he opted to remit the measly amount of P1,486.50

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and P3,100.50 and left the substantial sum 'in the safe'. It is only logical to conclude that in all probability, the collections could not have been there as early as when the first remittance was made. Had respondent closely supervised Mr. Malawi - which he could have easily done considering that there were only the two of them in the office - then he should have known what actually happened with the collections. As it is, he seems to be groping in the dark for an explanation. It would appear that the most convenient way out was to include the collections in the items taken during the burglary. He miserably failed to exercise the diligence of a good father of a family in supervising Mr. Malawi to the loss of government funds.

In view of the foregoing, it is recommended that Atty. Dimatimpos Mindalano be held liable for gross neglect of duty for which he should be fined in an amount equivalent to his seven (7) months salary in accordance with CSC Memorandum Circular No. 8, s. of 1970 then prevailing at the time of the commission of the offense. The penalty of suspension could not be imposed considering that he had ceased to be in office when he filed his certificate of candidacy in the election for membership in the Regional Assembly, 3rd District, Lanao del Sur."

The conclusions of then Secretary Montenegro and the premises on which he based the same are well taken. Respondent knew, or at least is expected to know, that Malawi had the habit of not regularly remitting the registry's collection. Given this situation, respondent, as head of office, should have closely supervised his collection clerk. In hindsight, the loss of government funds could have been avoided with the exercise by respondent of sound management.

As represented by the NLTDRA and the Department of Justice, respondent already left the service. Separation from the service, however, does not preclude the disciplining authority from resolving an administrative case. The Supreme Court in *Hermosa vs. Paraiso* (62 SCRA 361, 362 [1975]) provided the rationale for the above conclusion:

"The Court nevertheless resolves the instant case (notwithstanding that death has separated him from the service) to the end that respondent's heirs may not be deprived of any retirement gratuity and other accrued benefits that they may be entitled to receive as a result of respondent's death in office (as against a possible forfeiture thereof should his guilt have been duly established at the investigation)."

WHEREFORE. Atty. Dimatimpos Mindalano is adjudged GUILTY for gross neglect of duty. Accordingly, and as recommended by the

Department of Justice, Mindalano is FINED in an amount equivalent to his seven (7) months salary, to be deducted from any benefits he may be entitled to from the Government on account of his service.

DONE in the City of Manila, this 18th day of January in the year of Our Lord, Nineteen Hundred and Ninety-Four.



By the President:



TROFISTO T. GUINGONA, JR.
Executive Secretary



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