



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DELTAVENTURE RESOURCES,
INC.,

Complainant,

- versus -

ATTY. CAGLIOSTRO MIGUEL
MARTINEZ,

Respondent.

A.C. No. 9268

Present:

PERLAS-BERNABE, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA,* JJ.

Promulgated:

SEP 30 2020

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DECISION

DELOS SANTOS, J.:

This administrative case pertains to a disbarment complaint filed by Deltaventure Resources, Inc. (Deltaventure) against Atty. Cagliostro Miguel Martinez (Atty. Martinez) for allegedly issuing an untruthful secretary's certificate, thereby violating the Code of Professional Responsibility (CPR), Canons of Professional Ethics, and the Lawyer's Oath.

The Facts

On August 5, 2011, the Development Bank of the Philippines (DBP) filed with the Office of the Ombudsman (OMB) a Complaint¹ against its former directors and officers, as well as the officers of Deltaventure, namely Josephine A. Manalo, Ma. Lourdes A. Torres, and Roberto V. Ongpin (Mr.

* On leave.

¹ Rollo, pp. 28-121.

Ongpin) for violation of Section 3(e), (g), and (j) of Republic Act No. (RA) 3019² in relation to RA 8791,³ Bangko Sentral ng Pilipinas (BSP) Rules and Regulations, and DBP Rules and Regulations. The case was docketed as OMB Case No. CC11-492, entitled “*Development Bank of the Philippines, et al. v. Reynaldo G. David, et al.*”

On August 10, 2011, Atty. Zenaida Ongkiko-Acorda (Atty. Ongkiko-Acorda) held a press conference relative to OMB Case No. CC11-492, wherein she represented herself as the spokesperson of DBP. She declared that an investigation was conducted by the DBP Board of Directors (DBP Board) on the alleged anomalous transactions (hereinafter, Deltaventure transactions) between certain officers of DBP and Deltaventure. The transactions pertain to the loans extended by DBP to Mr. Ongpin’s company, Deltaventure, and the sale of DBP’s Philex Mining Corporation (Philex) shares to Deltaventure and Two Rivers Pacific Holding Corporation.⁴

On August 11, 2011, Mr. Ongpin, claiming to be the beneficial owner of Deltaventure, caused a publication of an article refuting Atty. Ongkiko-Acorda’s public statement. Therein, he also questioned her authority or legal personality to act as the spokesperson or counsel for DBP, *i.e.*, that Atty. Ongkiko-Acorda was neither an officer nor employee of DBP. He averred that DBP violated its Charter when it allegedly failed to obtain the consent of its Chief Legal Counsel, as well as that of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA), in engaging the services of Atty. Ongkiko-Acorda.⁵

On August 18, 2011, some senior DBP officers, namely Edgardo F. Garcia, Benedicto Ernesto R. Bitonio, Jesus S. Guevara II, and Benilda A. Tejada (Garcia, *et al.*), caused a publication of a Notice to the Public⁶ disavowing Atty. Ongkiko-Acorda’s claim that she was DBP’s spokesperson or counsel. Garcia, *et al.* were among those sought by the DBP Board to be held administratively/criminally liable in relation to the Deltaventure transactions.⁷ They declared that Atty. Ongkiko-Acorda was not in DBP’s plantilla as a bank lawyer, spokesperson or consultant.

On August 23, 2011, Atty. Ongkiko-Acorda held another press conference maintaining that the DBP Board authorized her to act as the bank’s spokesperson.⁸

² Anti-Graft and Corrupt Practices Act.

³ The General Banking Law of 2000.

⁴ *Rollo*, pp. 124-128.

⁵ *Id.* at 129.

⁶ *Id.* at 135-136.

⁷ *Id.* at 122.

⁸ *Id.* at 137.

On September 24, 2011, DBP caused a publication of a Secretary's Certificate⁹ dated 22 September 2011 in the Philippine Daily Inquirer and Philippine Star. The said certificate was signed by the then Officer-In-Charge (OIC) of the Office of the Corporate Secretary of DBP, herein respondent Atty. Martinez, who certified that the DBP Board, in its regular meeting held on August 3, 2011, adopted Board Resolution No. 0230 (BR 0230) designating Atty. Ongkiko-Acorda as DBP's official spokesperson on the case pertaining to Deltaventure transactions. The pertinent portions of the certificate read:

I, CAGLIOSTRO MIGUEL MARTINEZ, Officer-in-Charge, Office of the Corporate Secretary of the Development Bank of the Philippines (DBP) x x x do hereby certify that the Board of Directors of the Development Bank of the Philippines in its regular meeting held on August 3, 2011, adopted Resolution No. 0230, the dispositive portion of which reads as follows:

RESOLUTION NO. 0230. Deltaventure Resources, Inc. and Philex Mining Corporation.

x x x x

Thus, the Board, upon motion made and duly seconded, ***APPROVED AND CONFIRMED*** the following:

x x x x

c. Designation of Atty. Zenaida Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of [Deltaventure] and Philex Mining.¹⁰ (Underscoring supplied)

Doubting the veracity of the foregoing Secretary's Certificate, Deltaventure referred to a copy of DBP Board Resolution No. 0229 (BR 0229),¹¹ likewise dated August 3, 2011, attached to DBP's complaint-affidavit in OMB Case No. CC11-492. Deltaventure pointed out that BR 0229, which was signed by Atty. Martinez, mentioned nothing about the designation of Atty. Ongkiko-Acorda as DBP's spokesperson, *viz.*:

BR 0229 – DELTAVENTURE RESOURCES, INC. AND PHILEX MINING CORPORATION

APPROVED AND CONFIRMED the following:

a. ***Filing of administrative and/or criminal complaints/charges x x x against the following respondents in connection with the four (4) transactions***

⁹ Id. at 140-141.

¹⁰ Id. at 140.

¹¹ Id. at 122-123.

*involving Deltaventure Resources, Inc. (DVRI) and
Philex Mining Corporation (Philex Mining) x x x:*

- (1) *Mr. Reynaldo G. David*
- (2) *Mr. Roberto V. Ongpin*

x x x x

- b. *Authority for Chairman Jose A. Nuñez, Jr. and Pres./CEO Francisco F. Del Rosario, Jr. to sign the administrative, criminal and such other complaints/charges before the Office of the Ombudsman, Securities and Exchange Commission and other government agencies, where necessary.*¹² (Emphasis in the original)

Underscoring that the questioned Secretary's Certificate certified the issuance of BR 0230 on August 3, 2011, or the same day as that of BR 0229, Deltaventure theorized that it was illogical, far-fetched, and impractical for the IBP Board to have separately convened twice on August 3, 2011 with regard to the filing of administrative and/or criminal charges pertaining to the Deltaventure transactions and the authority of Atty. Ongkiko-Acorda to act as DBP's spokesperson in relation thereto, under BR 0229 and BR 0230, respectively.¹³

Further, Deltaventure suspected the belated publication of the questioned Secretary's Certificate on September 24, 2011, or more than a month after August 10, 2011 when Atty. Ongkiko-Acorda publicly represented herself as DBP's spokesperson pertaining to OMB Case No. CC11-492. To Deltaventure, if Atty. Ongkiko-Acorda was indeed designated as DBP's spokesperson, she could have easily dispelled doubts on her representation during her second press conference on August 23, 2011 by simply producing a copy of BR 0230 dated August 3, 2011 adverted to in the Secretary's Certificate.¹⁴ Deltaventure, thus, claimed that the Secretary's Certificate dated 22 September 2011 was a contrived afterthought, or one manufactured and executed *post facto* by Atty. Martinez, deliberately asserting falsehood under oath in order to make it appear that Atty. Ongkiko-Acorda had the authority to act as DBP's spokesperson as early as August 3, 2011.¹⁵

In the subject disbarment complaint,¹⁶ Deltaventure charged Atty. Martinez with violation of the CPR and betrayal of his avowed Lawyer's

¹² Id.

¹³ Id. at 5-8.

¹⁴ Id. at 6-7.

¹⁵ Id. at 6-8.

¹⁶ Id. at 1-15.

Oath to “do no falsehood, nor consent to the doing of any in court,” in relation to the assailed Secretary’s Certificate.

In his Comment,¹⁷ Atty. Martinez denied having falsified the subject Secretary’s Certificate. He invoked the “final and approved” BR 0230 designating Atty. Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of Deltaventure and Philex, as indicated in Board Minutes No. 17¹⁸ dated August 3, 2011, which pertinently reads:

RESOLUTION NO. 0230. Deltaventure Resources, Inc. and Philex Mining Corporation.

x x x x

Thus, the Board, upon motion made and duly seconded, APPROVED AND CONFIRMED the following:

- a. *Filing of administrative and/or criminal complaints/charges as soon as possible against the following respondents in connection with the four (4) transactions involving Deltaventure Resources, Inc. (DVRI) and Philex Mining Corporation (Philex Mining), namely: ₱150.0 Million loan to DVRI, ₱510.00 Million loan to DVRI, sale of the 50,000,000 Philex Mining shares to DVRI and sale of the 59,399,000 Philex Mining shares to Two Rivers Pacific Holding Corporation:*

- (1) *Mr. Reynaldo G. David*
 (2) *Mr. Roberto V. Ongpin*

x x x x

- (13) *Mr. Edgardo F. Garcia*

x x x x

- (16) *Mr. Benedicto Ernesto R. Bitonio, Jr.*
 (17) *Mr. Jesus S. Guevara II*
 (18) *Atty. Benilda A. Tejada*

x x x x

- c. *Designation of Atty. Zenaida Ongkiko-Acorda as the official spokesperson of DBP on the case involving the accounts of DVRI and Philex Mining.*¹⁹ (Emphasis in the original, underscoring supplied)

Atty. Martinez clarified that both the filing of OMB Case No. CC11-492 and the related designation of Atty. Ongkiko-Acorda were

¹⁷ Id. at 156-174.

¹⁸ Id. at 182.

¹⁹ Id.

included in the agenda of the August 3, 2011 board meeting.²⁰ Owing to the urgent nature of the matter pertaining to the Deltaventure transactions, the Office of the Corporate Secretary directed the immediate preparation of the resolution necessary for the filing of the administrative/criminal cases after the board meeting. In the preparation of the resolution, however, only the draft bullet summary of the discussion pertaining to the filing of the complaint was reflected in the resolution erroneously numbered as “0229,” which Atty. Martinez initialed and dated.²¹

Atty. Martinez explained that the BR 0229 attached in the complaint in OMB Case No. CC11-492 complaint and the BR 0230 mentioned in the Secretary’s Certificate were both part of one resolution officially numbered as BR 0230, as approved by the DBP Board during the August 24, 2011 board meeting.²² He claimed that the adjustment was done in accordance with the rules and procedure followed by the Office of the Corporate Secretary.²³ To Atty. Martinez, the failure of BR 0229 to mention the authority of Atty. Ongkiko-Acorda to act as DBP’s spokesperson was understandable, as the same was not relevant to the filing of the case with the OMB. He claimed that the “final and approved” BR 0230 was the basis of the Secretary’s Certificate he issued.²⁴

Report and Recommendation, IBP Commission on Bar Discipline

Submitted for resolution before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP Commission) was the core issue: whether Atty. Martinez violated the provisions of the CPR and the Lawyer’s Oath.²⁵

In a Report and Recommendation²⁶ dated March 30, 2016, Investigating Commissioner Roland B. Beltran (Commissioner Beltran) resolved the issue in the affirmative and reprimanded Atty. Martinez, viz.:

WHEREFORE, it is hereby recommended that Atty. Cagliostro Miguel Martinez be meted the penalty of reprimand for violating the procedure of his office in releasing a draft resolution BR 0229, for violation of the Code of Professional Responsibility and the Lawyer’s oath, with stern warning that a repetition of the same shall be dealt with more seriously.

²⁰ Id. at 161.

²¹ Id. at 159.

²² Id. at 161.

²³ Id. at 160-165.

²⁴ Id. at 165.

²⁵ Id. at 413.

²⁶ Id. at 408-419.

RESPECTFULLY SUBMITTED.²⁷ (Underscoring supplied)

Commissioner Beltran refrained from passing upon the veracity or genuineness of the subject Secretary's Certificate owing to the pendency of a related criminal case for perjury against Atty. Martinez before the Metropolitan Trial Court of Makati.²⁸ Nevertheless, Commissioner Beltran held that Atty. Martinez violated DBP's internal procedure in the preparation of board minutes and resolutions, finding that he signed and released BR 0229 on August 4, 2011, or a day after the 03 August 2011 meeting, sans the pre-requisite review by the DBP Board. Under the said internal procedure, the draft resolution had to be reviewed or corrected by the members of the IBP Board prior to its release. Commissioner Beltran doubted and questioned Atty. Martinez's intentions, when he affixed his signature on a mere draft, BR 0229. Commissioner Beltran concluded that Atty. Martinez made BR 0229 appear as the complete and official document of authority for the filing of OMB Case No. CC11-492.²⁹

Commissioner Beltran characterized Atty. Martinez's supposed deviation from DBP's internal procedure as one traversing his sworn obligation "[not to] engage in conduct that adversely reflects on his fitness to practice law" under Section 7.03, Canon 7 of the CPR.³⁰ Further, underscoring Atty. Martinez's oath as a lawyer "to do no falsehood," Commissioner Beltran opined:

The action taken by Atty. Martinez in releasing a draft resolution and affixing his signature thereon, in violation of his office's internal procedure, manifested serious concerns about his fitness as an attorney who has sworn to uphold the law under his lawyer's oath.

x x x x

The office of an attorney is so impressed with public interest, and respondent Atty. Martinez failed to uphold his lawyer's oath when he allowed himself to be a tool so the cases against Mr. Roberto D. Ongpin et al., could be filed with haste x x x. Respondent Atty. Martinez should have stood his ground or at the very least uphold the dignity of his office by following the procedure in the preparation of the minutes and resolutions passed by the members of the Board of DBP.³¹ (Underscoring supplied)

Taking into consideration that Atty. Martinez had never been previously charged with any disciplinary measure, Commissioner Beltran recommended reprimand as penalty.³²

²⁷ Id. at 419.

²⁸ Id. at 417-418.

²⁹ Id. at 414-415.

³⁰ Id. at 416.

³¹ Id. at 416-417.

³² Id. at 418.

Recommendation, IBP Board of Governors

In an Extended Resolution³³ dated June 29, 2018, the IBP Board of Governors (IBP Board) reversed the findings and recommendation of the IBP Commission, and dismissed the complaint against Atty. Martinez, *viz.*:

To conclude, the Board is not convinced that the actions of Respondent constituted a violation of the Code of Professional Responsibility and the Lawyer's Oath.

The Recommendation of the Board of Governors to the Honorable Supreme Court

WHEREFORE, premises considered, the Board resolved to **REVERSE** the recommendations of the Investigating Commissioner and to **DISMISS** the complaint.³⁴ (Emphases in the original)

The IBP Board found convincing Atty. Martinez's explanation as regards the errors which he claimed to have occurred in the drafting, as well as the numbering of the minutes of the meeting, BR 0229, and BR 0230.

The IBP Board held that the designation of Atty. Ongkiko-Acorda as spokesperson for DBP pertaining to OMB Case No. CC11-492 does not constitute an exercise of DBP's corporate power or function, as would require a board resolution or a secretary's certificate.³⁵ It ruled that whatever irregularities that may have attended to such representation had been ratified by DBP's inaction after her press conference, and the subsequent publication of the subject Secretary's Certificate dated 22 September 2011.³⁶ To the IBP Board, the belated or the non-filing of the Secretary's Certificate pertaining to Atty. Ongkiko-Acorda's representation as spokesperson for DBP was not critical as it did not have the effect of prejudicing or causing damage to the public or to Deltaventure.³⁷

The issue for the Court's resolution is whether or not Atty. Martinez should be held administratively liable for violation of the CPR and the Lawyer's Oath.

The Court's Ruling

After a thorough review of this case, the Court resolves to adopt the findings of facts and recommendation of the IBP Board.

³³ Id. at 420-430.

³⁴ Id. at 430.

³⁵ Id. at 427.

³⁶ Id. at 424-425.

³⁷ Id. at 428.

The disbarment complaint must be dismissed for utter lack of merit.

In administrative cases for disbarment or suspension against a member of the Bar, the complainant bears the burden of proof to satisfactorily prove the allegations in his complaint through substantial evidence.³⁸ Failure to discharge this burden by the complainant, the presumption of innocence stands in favor of the respondent lawyer.³⁹

In the instant case, the Court agrees with the IBP Board that Deltaventure failed to discharge the burden of proving the administrative violations of Atty. Martinez in relation to the execution of the questioned Secretary's Certificate.

In accusing Atty. Martinez of falsely certifying the existence of BR 0230 in the subject Secretary's Certificate, all Deltaventure could offer was its personal opinion that it was "illogical, far-fetched, and impractical" for the DBP Board to have convened twice in one day to come up with BR 0229 (*i.e.*, for the filing of administrative and/or criminal charges against Deltaventure) and BR 0230 (*i.e.*, for the designation Atty. Ongkiko-Acorda to act as DBP's spokesperson). Clearly, this charge is nothing but a mere suspicion and speculation undeserving of credence.⁴⁰ Other than this bare allegation, no serious proof was presented by Deltaventure to show that the Secretary's Certificate and BR 0230, as well as the minutes thereof, were fabricated. Faced, thus, with the documents extant in the records (*i.e.*, Board Minutes No. 17 dated August 3, 2011, BR 0230, and Secretary's Certificate dated 22 September 2011), Atty. Martinez's explanation as regards the erroneous numbering of the draft resolutions, and most importantly, the subsequent publication by DBP of the assailed Secretary's Certificate confirming Atty. Ongkiko-Acorda's representation as DBP's spokesperson, Atty. Martinez could not be held liable for deliberately asserting falsehood in executing the said Certificate. Deltaventure's disbarment complaint against Atty. Martinez is simply baseless.

Equally lacking in basis is the opinion of Commissioner Beltran that Atty. Martinez allowed himself to be used by DBP as a tool for the alleged "hasty filing" of the administrative/criminal case against Mr. Ongpin, *i.e.*, that Atty. Martinez deviated from DBP's internal procedure pertaining to the preparation of the board minutes and drafting of resolutions.

It must be underscored that DBP was a complainant against Mr. Ongpin and other Deltaventure officers in OMB Case No. CC11-492

³⁸ See *Reyes v. Nieva*, 794 Phil. 360, 377-380 (2016).

³⁹ *Id.*

⁴⁰ See *Torres v. Dalangin*, A.C. No. 10758, December 5, 2017, 847 SCRA 472, 497, citing *Cabas v. Atty. Sususco*, 787 Phil. 167 (2016).

pertaining to the alleged anomalous Deltaventure transactions. As borne by the records, the DBP Board discussed the filing of the said case in its regular meeting on August 3, 2011, from which BR 0229 was drafted and subsequently attached in the complaint. Following the absence of evidence that DBP maliciously filed the case or that Atty. Martinez personally took it upon himself to file the same, the supposed deviation from DBP's internal procedure in the preparation of the minutes and drafting of BR 0229 was not critical, as would support Commissioner Beltran's conclusion that Atty. Martinez consented to a wrongdoing by DBP in relation to the filing of the case.

This Court shares the same observation with the IBP Board doubting the real intention of Deltaventure in filing the subject disbarment complaint against Atty. Martinez. The Court consistently reminds that administrative proceedings brought against lawyers for acts in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices.⁴¹ The Court's exercise of its disciplinary power over members of the Bar is not only aimed at preserving the integrity and reputation of the Law Profession, but also at shielding lawyers, in general, they being officers themselves of the Court.⁴² Any complaint for disbarment or other disciplinary sanction predicated on frivolous matters, as here, should be dismissed, more so, where its plain objective is clearly to harass or get even with respondent lawyer.⁴³

WHEREFORE, the Court **DISMISSES** the complaint against Atty. Cagliostro Miguel Martinez for utter lack of merit and substance.

SO ORDERED.




EDGARDO L. DELOS SANTOS
Associate Justice

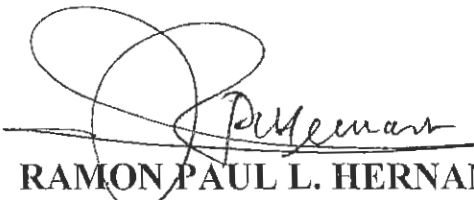
⁴¹ *Domingo v. Rubio*, 797 Phil. 581, 590 (2016).

⁴² *Id.*

⁴³ *Id.*

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

(On Leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice