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Wilfredo V. Lapitan
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Division Clerk of Court
Third Division
JUN 07 2017



Republic of the Philippines
SUPREME COURT
Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

FRANCIS C. ARSENIO,
Complainant,

A.C. No. 8658

Present:

- versus -

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, *JJ.*

ATTY. JOHAN A. TABUZO,
Respondent.

Promulgated:

April 24, 2017

Wilfredo V. Lapitan

X-----X

DECISION

TIJAM, J.:

Before this Court is a Complaint-Affidavit¹ dated June 18, 2010 filed by Francis C. Arsenio (Arsenio), seeking the disbarment of Atty. Johan A. Tabuzo (Atty. Tabuzo) for conduct unbecoming of a member of the Bar.

The Facts

This case stemmed from an administrative complaint filed by Arsenio before the Philippine Overseas Employment Administration (POEA) against JS Contractor, a recruitment agency.² During a scheduled hearing on May 10, 2000, Atty. Tabuzo, the Overseas Employment Adjudicator who was assigned to hear the case, asked him to sign three blank sheets of paper to which Arsenio complied.

¹ *Rollo*, pp. 1-2.

² *Id.*

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A week after the scheduled hearing, Arsenio asked Atty. Tabuzo the reason why he was made to sign blank sheets of paper. Atty. Tabuzo angrily said, "*Bwiset! Napakakulit mo, doon mo malaman mamaya pagdating ng kalaban mo!*" Thereafter, Arsenio called up the office of Senator Rene Cayetano who advised him to make a clarification regarding the signed sheets of blank paper. Arsenio then approached Atty. Tabuzo but the latter again shouted at him saying, "*Bwiset! Goddamit! Alam mo ba na maraming abogado dito sa POEA na nagbebenta ng kaso?*" Atty. Tabuzo further said, "*Sabihin mo sa Cayetano mo at abogado mo na baka masampal ko sa mga mukha nila ang pinirmahan mong blanko! Sabihin mo na ang pangalan ko ay Atty. Romeo Tabuzo at kung hindi ka bumalik bukas ay mawawala ang kaso mo!*"³

Arsenio later on discovered that his case against JS Contractor was dismissed. Hence, he filed a complaint against Atty. Romeo Tabuzo before the Office of the Ombudsman for violation of Republic Act (RA) No. 3019 or the "*Anti-Graft and Corrupt Practices Act.*"

In a Resolution⁴ dated February 1, 2002, Graft Investigation Officer II Wilfred Pascasio ordered that an Information be filed against Atty. Romeo Tabuzo upon finding of probable cause against him.

Atty. Tabuzo filed a Motion for Reconsideration alleging, among others, that there is no Atty. Romeo Tabuzo in the POEA and that he was never handed any copy of summons. He claimed that he was merely taking the initiative in filing the said motion to clear his name as he believed he was the person referred to in the earlier Order of the Office of the Ombudsman. Nonetheless, such motion was subsequently denied in an Order dated July 16, 2002.

Meanwhile, in a Decision dated December 6, 2011, the Regional Trial Court, Branch 213 of Mandaluyong City acquitted Atty. Tabuzo for violation of RA No. 3019.

Subsequently, Arsenio filed the present Complaint-Affidavit before this Court. In a Resolution⁵ dated November 24, 2010, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. The IBP Commission on Bar Discipline (IBP-CBD) docketed the case as CBD Case No. 11-2912, entitled "*Francis C. Arsenio v. Atty. Johan Tabuzo*".

³ *Rollo*, at pp. 1-2.

⁴ *Rollo*, at pp. 57-60.

⁵ *Rollo*, at p. 287.



In his Omnibus Comment with Motion to Dismiss,⁶ Atty. Tabuzo denied the accusations against him, claiming that the alleged unethical acts are baseless. He averred that he had never acted in any conduct unbecoming of a public officer or uttered invectives and other alleged acts. To support his claim, he attached the Affidavits⁷ of two (2) Overseas Employment Adjudicators (OEA) who occupied the tables immediately adjacent to him in the Recruitment Regulations Branch. In said Affidavits, the OEAs attested to the effect that no such incident or any untoward event that called for attention transpired. Atty. Tabuzo also said that his constitutional right to due process was violated since he was not notified of the case against him before the Office of the Ombudsman as he was never served nor had personally received Orders from such Office.

The Resolutions of the IBP Commissioner and Board of Governors

In his Report and Recommendation,⁸ Investigating Commissioner Atty. Eldrid Antiquerra recommended that reprimand be imposed upon Atty. Tabuzo. The Investigating Commissioner ruled in such wise on the basis of the sworn affidavit of Arsenio and the Resolution of the Office of the Ombudsman.

In a Resolution dated March 20, 2013, the IBP Board of Governors resolved to adopt and approve with modification the said Report and Recommendation of the Investigating Commissioner upon finding that Atty. Tabuzo violated the Lawyer's Oath and Rule 8.01⁹ of the Code of Professional Responsibility. Hence, the IBP Board of Governors suspended Atty. Tabuzo from the practice of law for three months.

Atty. Tabuzo filed a Motion for Reconsideration but it was denied.¹⁰

The Issue

Whether or not the instant disbarment complaint constitutes a sufficient basis to disbar Atty. Tabuzo.

The Court's Ruling

After examining the records of this case, the Court resolves to dismiss the instant disbarment complaint.

⁶ *Rollo*, at pp. 30-47.

⁷ *Rollo*, at pp. 86-87.

⁸ *Rollo*, at pp. 247-249.

⁹ Rule 8.01. A lawyer shall not, in his professional dealings, use language which are abusive, offensive or otherwise improper.

¹⁰ *Rollo*, at p. 294. ✓

A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.¹¹

Jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.¹² In the recent case of *Reyes v. Nieva*,¹³ this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

In this case, noteworthy is the fact that the reason advanced by the IBP-CBD in recommending reprimand against Atty. Tabuzo is its consideration of the: (1) Resolution issued by the Office of the Ombudsman, which states that there was probable cause against Atty. Tabuzo for violating RA 3019; and (2) Complaint-Affidavit of Arsenio, which alleges that Atty. Tabuzo made offensive statements.

However, a careful scrutiny of the evidence presented reveals that the degree of proof indispensable in a disbarment case was not met.

Firstly, the Resolution issued by the Office of the Ombudsman is predicated on the fact that the allegations of Arsenio were uncontroverted; hence, the Office of the Ombudsman concluded that such allegations were true. However, there was a seeming discrepancy as to the name of Atty. Tabuzo when a case against him was filed before the Office of the Ombudsman. Undisputedly, the case before said Office was filed against a certain Atty. Romeo Tabuso, when the name of herein respondent is Atty. Johan Tabuzo. As such, the respondent claimed that he failed to controvert Arsenio's claims because he never received any notice or order from the Office of the Ombudsman. In fact, the said Resolution of the Office of the Ombudsman was made on the basis of the complaint of Arsenio alone since Atty. Tabuzo failed to file his answer.¹⁴ However, a reading of the RTC Decision reveals that Arsenio was able to verify the identity of Atty. Johan Tabuzo, not as Atty. Romeo Tabuso, even before he filed his complaint before the Office of the Ombudsman. It is confusing, therefore, why there was discrepancy as to the name of herein respondent when a clarification was already made. Nevertheless, Atty. Tabuzo was acquitted¹⁵ in a criminal case filed against him on the basis of the Resolution of the Office of the Ombudsman.

¹¹ *Cristobal v. Renta*, A.C. No. 9925, September 17, 2014.

¹² *Concepcion v. Fandino, Jr.*, A.C. No. 3677, June 21, 2000.

¹³ A.C. No. 8560, September 6, 2016.

¹⁴ *Rollo*, at p. 59.

¹⁵ *Rollo*, at pp. 233-243. ✓

Despite such acquittal, a well-settled finding of guilt in a criminal case will not necessarily result in a finding of liability in the administrative case. Conversely, the acquittal does not necessarily exculpate one administratively.¹⁶ Thus, it is proper to deal with the other evidence presented by Arsenio.

The Court, thus, finds that the Complaint-Affidavit of Arsenio failed to discharge the necessary burden of proof. In his Sworn Affidavit, Arsenio merely narrated that Atty. Tabuzo uttered offensive statements and no other evidence was presented to substantiate his claim. Emphatically, such Complaint-Affidavit is self-serving.

Summarily, the Resolution issued by the Office of the Ombudsman together with the Affidavit of Arsenio cannot be considered as substantial evidence. For one, the Resolution of the Office of the Ombudsman was decided on the basis of the failure of Atty. Tabuzo to controvert the allegations of Arsenio. Also, the Complaint-Affidavit was not sufficient as no evidence was further offered to prove the allegations contained therein.

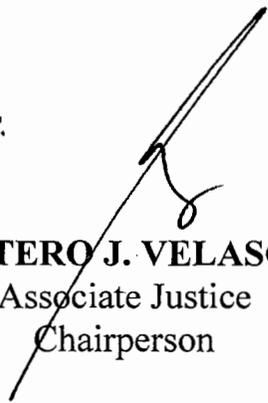
While the quantum of evidence required in disbarment cases is substantial evidence, this Court is not persuaded to exercise its disciplinary authority over Atty. Tabuzo.

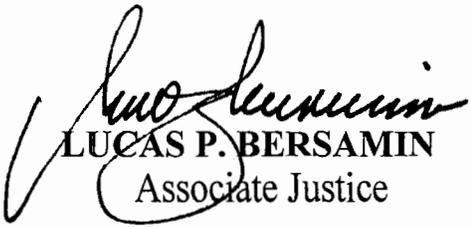
WHEREFORE, premises considered, the Court resolved to **DISMISS** the disbarment complaint against Atty. Johan A. Tabuzo.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

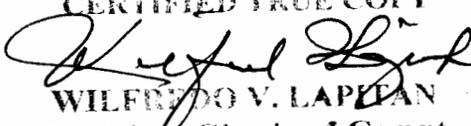

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

¹⁶ *Spouses Saunders v. Pagano-Calde*, A.C. No. 8708, August 12, 2015.


FRANCIS H. JARDELEZA
Associate Justice

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