



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 15, 2023 which reads as follows:

“A.C. No. 13718 [formerly CBD Case No. 20-6320] (Tommy R. Cruz, Jr. v. Atty. Elba S. Cruz). — Before the Court is a Verified Complaint for Disbarment¹ filed by complainant Tommy R. Cruz, Jr. (complainant) against respondent Atty. Elba S. Cruz (Atty. Cruz) for allegedly harassing and destroying the reputation of complainant’s company in the travel and tours industry, which is a violation of the Lawyer’s Oath and the Code of Professional Responsibility (CPR).

Antecedents

Complainant is a businessman and the Managing Director of Trajet International Travel and Leisure Corp. (Trajet), which is engaged in the business of travel and tours. The administrative complaint filed was based on several incidents.²

First, at around 11:20 a.m. on 11 October 2019, complainant was representing Trajet in the three-day Travel Sale Fair held at the World Trade Center in Pasay City, when he was served by a woman with summons in the middle of said event. Said summons was for a small claims case docketed as M-PSG-19-02941-SMC and entitled, “*Elba S. Cruz v. Tommy R. Cruz, Jr.*” before Branch 69 of the Metropolitan Trial Court (MeTC) of Pasig City. Complainant followed said woman to the lobby where he saw that she acted upon the instructions of Atty. Cruz, who is a former client of Trajet.³

¹ Rollo, pp. 4-7; Report and Recommendation of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), p. 2; rollo (not numbered).

² Id. at 4.

³ Id. at 4-5, 8.

24

Complainant confronted Atty. Cruz and asked her why: (1) the summons was served at said event and not in his place of business; and (2) it was served by a private person and not by court personnel. Atty. Cruz allegedly replied, "*kahit saan puwede,*" then told the woman, "*sige Elisa Del Rosario padampot mo hindi niya kasi binayaran si Fr. Egai De Jesus.*" Fr. De Jesus was a former client of complainant's company who cancelled his reservation to Boracay after complainant advanced the payment for his accommodation for said trip.⁴

Second, on 02 August 2019, Atty. Cruz circulated an open letter to Mr. Lax Junnel Mendoza (Mendoza), President of Association of Travel and Tours Agencies - Calamba, Laguna, Batangas, Rizal, Quezon (CALABARZON). The letter was sent thru email by Atty. Cruz to all travel and tour companies nationwide with the sole purpose of harassing complainant and destroying his and his company's reputation in that industry.⁵

Third, due to the open letter sent by Atty. Cruz to Mendoza, the Philippine Tour Operators Association, Inc. (PHILTOA) reacted through a Circular issued to its members, which included defamatory claims and statements against complainant's company, effectively denouncing the latter in the entire Philippines and neighboring countries.⁶

Considering that complainant's company was not a member of PHILTOA, complainant's counsel sent a letter to the association to refute said statements. PHILTOA thus recanted its earlier statements by issuing another Circular to its members to correct its mistakes and publicly apologize.⁷

Fourth, on 30 January 2020, complainant received a report from the Security Officer of the subdivision where he and his family reside that at around 7:40 a.m. of that day, two men on board a dark gray Toyota Vios were at the subdivision main gate looking for him, but when asked to produce identification cards, they refused and so were denied entry. Then at around 9:14 a.m., a woman approached the security guards of the subdivision looking for complainant. She claimed that she needed to speak to him about a transaction involving a land. Complainant was not expecting any visitor on that day and he had no such transaction involving a land. He thus attributed these acts to Atty. Cruz who was allegedly harassing him for unknown reasons.⁸

According to complainant, the above incidents make Atty. Cruz unfit to remain as a member of the Bar.⁹

⁴ Id. at 4, 52.

⁵ Id. at 5; Report and Recommendation of the IBP-CBD, pp. 2-3; *rollo* (not numbered).

⁶ Id. at 5; Report and Recommendation of the IBP-CBD, p. 3; *rollo* (not numbered).

⁷ Id.

⁸ Id.

⁹ Id.

In her defense, Atty. Cruz claims that complainant failed to present any factual and legal basis for her disbarment because said allegations do not establish that her conduct is unbecoming of a lawyer.¹⁰

She claims that, on 07 April 2019, she and her friends contracted with Trajet, through complainant, for the purchase of several tour packages and accordingly paid for it. However, these tour packages were unjustifiably and greatly modified for several reasons, and complainant took a “take-it or leave-it” attitude, prompting Atty. Cruz to forego said tour packages. Further, Atty. Cruz contracted Trajet, also through complainant, to process her visa for Australia in April 2019 for a 14 July 2019 trip, but the application was only processed on 04 July 2019 after nerve-wracking follow-up calls and demands.¹¹

Atty. Cruz averred that she and her friends encountered difficulties in communicating and meeting with complainant to settle the issue regarding their tour packages and/or refund of their payments. After exhausting all possible avenues to settle the matter, Atty. Cruz was constrained to write letters regarding their complaint on the unfair business practices of complainant to the Presidents of the Quezon City Travel Agencies Association (QCTAA) thru Cosmopolitan Travels, Tours, and Services, PHILTOA, and the Association of Travel Tours Agencies - CALABARZON. Atty. Cruz insists that they are letter-complaints and not open letters as claimed by complainant.¹²

Only QCTAA replied to Atty. Cruz’s letter, which led to the removal of Trajet from its roster of accredited travel agencies.¹³

When Atty. Cruz and her friends still failed to secure their reimbursement from Trajet, she instituted a small claims case against Trajet/complainant. In addition, complainant failed to pay Atty. Cruz for the diamond ring he purchased from her and for which he paid by check, which was dishonored when presented for payment. Thus, Atty. Cruz instituted another small claims case against complainant for the dishonored check.¹⁴

In said small claims cases, the court directed the service of summons through their process servers, but for some reason these were never duly served on complainant. After several failed attempts, Atty. Cruz was directed to personally serve said summons to complainant.¹⁵

¹⁰ Report and Recommendation of the IBP-CBD, p. 3; *rollo* (not numbered).

¹¹ *Id.* at 26-27, 57.

¹² *Id.* at 27, 34-36, 57, 61.

¹³ *Id.* at 27-28.

¹⁴ *Id.* at 28, 58.

¹⁵ *Id.* at 25, 31, 59.

Atty. Cruz further explains that the personal service of the summons to complainant at the World Trade Center during an event attended by complainant was done because none from the latter's office was willing to receive the summons. Thus, upon the directive of the court, Atty. Cruz, with the assistance of her staff, personally served the summons to complainant.¹⁶

Further, Atty. Cruz maintains that complainant did not come before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD) with clean hands because he had been evading court processes and hiding from complainant and her friends. Complainant likewise never disclosed that Atty. Cruz was specifically directed by the court to personally serve the summons on complainant.¹⁷

During the pendency of the instant case, Atty. Cruz manifested that the court had already decided, with finality, the small claims cases she instituted against Trajet/complainant in her favor.¹⁸

Report and Recommendation of the Commission on Bar Discipline

In its Report¹⁹ dated 22 June 2022, CBD ruled for Atty. Cruz and recommended the dismissal of the administrative complaint, to wit:

In view of the foregoing premises, it is respectfully recommended that this administrative case against respondent be dismissed.²⁰

The CBD found that: (1) the service of summons by Atty. Cruz was made with the express directive from the MeTC in its Order dated 01 October 2019; (2) the letter sent to Mendoza was privately sent and the content of the letter and manner it was sent was proper; (3) the issuance of the allegedly defamatory Circular by the PHILTOA cannot be attributed to Atty. Cruz since this is beyond her control – complainant proffered no evidence to establish the participation of Atty. Cruz in issuing said Circular; and (4) complainant failed to present any substantial evidence that Atty. Cruz indeed perpetrated the alleged acts of harassment in the village of complainant.²¹

In its Resolution²² dated 09 July 2022, the IBP Board of Governors (Board) adopted and approved said recommendation, viz.:

¹⁶ Id. at 25-26, 59-60.

¹⁷ Id.

¹⁸ *Rollo*, pp. 62, 64-68, 72-79; Report and Recommendation of the IBP-CBD, p. 4; *rollo* (not numbered).

¹⁹ Report and Recommendation of the IBP-CBD, pp. 1-6; *rollo* (not numbered); signed by Investigating Commissioner Cesare Napolione S. Sta. Romana.

²⁰ Report and Recommendation of the IBP-CBD, p. 6; *rollo* (not numbered).

²¹ Report and Recommendation of the IBP-CBD, pp. 5-6; *rollo* (not numbered).

²² *Rollo* (not numbered).

*RESOLVED, to ADOPT and APPROVE, as it is hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner to DISMISS the complaint against the Respondent for lack of merit.*²³

Issue

The sole issue in this case is whether Atty. Cruz may be held administratively liable for violating the CPR.

Ruling of the Court

We resolve to adopt the findings of the IBP Board. The Court holds that complainant failed to prove by substantial evidence the allegations in his complaint.

An attorney enjoys the legal presumption that he or she is innocent of the charges against him or her until the contrary is proved. As an officer of the Court, he or she is presumed to have performed his or her duties in accordance with the lawyer's oath. In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his or her complaint.²⁴

Substantial evidence is defined under Section 6, Rule 133 of the 2019 Amendments to the Revised Rules on Evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Meanwhile, "burden of proof" is defined under Section 1, Rule 131 as "the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law."²⁵

The basic rule is that reliance on mere allegations, conjectures, and suppositions will leave an administrative complaint with no leg to stand on. Charges based on mere suspicion and speculation cannot be given credence. Thus, failure on the part of complainant to discharge his or her burden of proof by substantial evidence requires no other conclusion than that which stays the hand of the Court from meting out a disbarment order.²⁶

²³ Id. at 123.

²⁴ *Tan v. Alvarico*, A.C. No. 10933, 03 November 2020; *Bataan Shipyard and Engineering Co., Inc. v. Consunji*, A.C. No. 11439, 04 January 2022; *Bihag v. Era*, A.C. No. 12880, 23 November 2021; *Parungao v. Lacuanan*, A.C. No. 12071, 11 March 2020; *Zara v. Joyas*, A.C. No. 10994, 10 June 2019.

²⁵ Id.

²⁶ Id.

With the above in mind, We are constrained to rule for Atty. Cruz. Taking together the plausibility of the defenses put forth by Atty. Cruz coupled with the absence of any substantial evidence to strengthen complainant's averments, We cannot, in good conscience, suspend or disbar Atty. Cruz. For while the Court will not hesitate to mete out the proper disciplinary punishment upon lawyers who have failed to live up to their sworn duties, neither will it hesitate to extend its protective arm to them when the accusation against them is not indubitably proven.²⁷

In this case, complainant failed to present sufficient evidence to substantiate the allegations in his Complaint. Again, the standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that Atty. Cruz is responsible for the misconduct complained of. To repeat, it need not be overwhelming or preponderant, as is required in an ordinary civil case or evidence beyond reasonable doubt as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion. Here, the Court is not satisfied that the evidence presented by complainant has met this threshold as to hold Atty. Cruz administratively liable and for this reason, dismisses the complaint against her.²⁸

Indeed, in the present case, upon meticulously scouring the records, We agree with the IBP that there is no evidence to support complainant's claims against Atty. Cruz.

First, the service of summons served by Atty. Cruz to complainant was made with the express directive from the MeTC. In the Order dated 1 October 2019 in the case docketed as M-PSG-19-03626-SMC entitled, "*Elba S. Cruz v. Tommy R. Cruz*," the MeTC, after determining that the summons was unserved due to absence of complainant and uncertainty on the time of his arrival, expressly directed Atty. Cruz to cause the service of summons. The personal service of summons and other documents by Atty. Cruz to complainant was likewise duly reported to the MeTC in Atty. Cruz's Return Manifestation dated 12 October 2019.²⁹ Subsequently, in a Decision dated 07 November 2019, the MeTC validated the personal summons by Atty. Cruz to complainant.³⁰

We echo the IBP's observation that Atty. Cruz, as an officer of the court, merely complied with the express directive of the MeTC when she caused the personal service of the summons and other documents to complainant. In doing so, she did not violate her Lawyer's Oath and the CPR. Instead, she even upheld her oath to "obey the laws and legal orders of the

²⁷ See *Biliran v. Bantugan*, A.C. No. 8451, 30 September 2020; see also *Gow v. De Leon*, A.C. No. 12713, 23 September 2020.

²⁸ See *Biliran v. Bantugan*, supra.

²⁹ *Rollo*, pp. 31, 33.

³⁰ *Id.* at 75-79.

duly constituted authorities” and acted in accordance with Canon 1 of the CPR.

Second, We do not find anything improper with the letter sent by Atty. Cruz to Mendoza. Upon meticulous study of the records, We note that said letter was privately sent and it merely detailed the experiences of Atty. Cruz and her friends in their professional dealings with Trajet/complainant.³¹

Third, the issuance of the allegedly defamatory Circular by the PHILTOA cannot be attributed to Atty. Cruz. As the IBP explained, PHILTOA’s action on the subject complaint was beyond the control of Atty. Cruz. No evidence was adduced by complainant to establish that respondent participated in any capacity in issuing the Circular.

Fourth, anent the alleged acts of harassment in the village of complainant which he attributed to Atty. Cruz, We note that complainant failed to present any evidence that it was indeed Atty. Cruz who committed the same. No proof was submitted to bolster complainant’s allegation that it was Atty. Cruz who perpetrated or ordered the acts complained of. In fact, the Incident Report, which is the only evidence presented on this point, merely mentioned two unidentified men asking about complainant. Nothing was mentioned about Atty. Cruz’s presence or involvement in the same.

Given the foregoing, We are constrained to dismiss the Complaint against Atty. Cruz. Indeed, complainant miserably failed to discharge his burden of proving his claims against Atty. Cruz by substantial evidence. We therefore agree with the IBP recommendation and thus adopt the same.

At this juncture, We stress that lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove his or her allegations by substantial evidence.³² This Court will only wield the power to disbar when substantial evidence would prove the lack of fitness to engage in the practice of law.³³

As a final note, We underscore that while administrative cases call for the lowest standard of proof, mere allegation is not evidence, nor is it equivalent to proof.³⁴ We recall our pronouncement in *Munar, et al. v. Atty. Bautista, et al.*:

Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of

³¹ Id. at 34-37.

³² *Salazar v. Duran*, A.C. No. 7035, 13 July 2020.

³³ *Tan v. Alvarico*, supra note 24.

³⁴ *Biliran v. Bantugan*, supra note 27.

misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.³⁵

In fine, complainant's failure to discharge his burden of showing that the acts of Atty. Cruz truly violated the CPR warrants the dismissal of the instant administrative complaint.³⁶

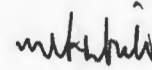
WHEREFORE, the instant Complaint for disbarment of Tommy R. Cruz, Jr. against Atty. Elba S. Cruz is hereby **DISMISSED** for lack of merit.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:



MARIA TERESA B. SIBULO
Deputy Division Clerk of Court ⁴¹²⁷

198

APR 27 2023

Mr. Tommy R. Cruz, Jr.
Complainant
UG18-A, Globe Telecom Plaza Tower I
Pioneer Street, 1550 Mandaluyong City

LACEBAL DE RAMOS & BONGHANOY
LAW OFFICES
Counsel for Complainant
Unit 107-E, BMRC, Banahaw Street
Highway Hills, 1550 Mandaluyong City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

UR

Atty. Elba S. Cruz
Respondent
12th Floor, Strata 100
F. Ortigas, Jr. Road (formerly Emerald Avenue)
Ortigas Center, 1605 Pasig City

SABERON PEREZ-QUILILAN & ASSOCIATES
LAW OFFICES
Counsel for Respondent
Unit 903, 9th Floor, Summit One Tower
530 Shaw Boulevard, 1550 Mandaluyong City

Integrated Bar of the Philippines
15 Doña Julia Vargas Avenue
Ortigas Center, 1605 Pasig City

Office of the Bar Confidant (x)
Supreme Court

WRF

³⁵*Tan v. Alvarico*, supra note 24, citing *Munar v. Bautista*, 805 Phil. 384, 398-399 (2017).

³⁶*Gow v. De Leon*, supra note 27.