

## FIRST DIVISION

[ A.C. No. 3921, June 11, 2018 ]

**DELFINA HERNANDEZ SANTIAGO, COMPLAINANT, V. ATTY.  
ZOSIMO SANTIAGO AND ATTY. NICOMEDES TOLENTINO,  
RESPONDENTS.**

### R E S O L U T I O N

**LEONARDO-DE CASTRO,[\*] J.:**

We resolve the administrative case for disbarment<sup>[1]</sup> filed by complainant Judge Delfina Hernandez Santiago against respondents Atty. Zosimo Santiago and Atty. Nicomedes Tolentino, charging them with deceit, gross misconduct and violating their oaths as members of the Bar.

During the time when the material events transpired in this case, complainant was the City Personnel Officer of Caloocan City while respondents Santiago and Tolentino respectively held the positions of City Legal Officer and Legal Officer II in the City Government of Caloocan.

In 1988, complainant applied for, and was granted, a sick leave of absence with commuted pay covering 240 days from January 25 to December 31, 1988.<sup>[2]</sup> Sometime in February 1988, complainant received a Memorandum<sup>[3]</sup> from then Mayor Macario A. Asistio, Jr., which cancelled all leaves of absence of city officials and employees. She also received a memorandum,<sup>[4]</sup> detailing her to the Office of the Secretary to the Mayor. Complainant apparently paid no heed to said memoranda. She was later directed to return to work in a letter<sup>[5]</sup> dated April 21, 1988 signed by respondent Tolentino, which pertinently state:

On February 5, 1988 you were served with a [Memorandum] from the Office of the Mayor that all [leaves] of absence of city officials and employees were cancelled in the interest of public service. [In spite] of the aforesaid memo you did not return to work thereby, ignoring the memo of the Hon. Mayor Macario A. Asistio, Jr.

In this [regard], we are giving you another five (5) days from receipt hereof to report for work, otherwise, the undersigned may be constrained to take drastic action against you.

Complainant replied with a handwritten note,<sup>[6]</sup> asking for ten days within which to answer and/or act on the letter. She, however, did not return to work. At the end of her leave, she tendered her resignation.<sup>[7]</sup> She subsequently received a memorandum<sup>[8]</sup> dated May 18, 1989 from Mayor Asistio terminating her employment. Enclosed therewith was a **Resolution<sup>[9]</sup> dated December 19, 1988** signed by respondents Santiago and Tolentino, which recommended her dismissal from service.

Complainant then filed the present case, accusing the respondents of making deceitful statements in said Resolution, committing gross misconduct and violating their Attorney's Oath for recommending her dismissal without just cause or due process. Quoted hereunder is the aforesaid resolution with emphasis on the allegedly false statements:

#### RESOLUTION

This is a case involving Atty. Delfina H. Santiago, Asst. City Administrator, indorsed to this office by the Hon. Mayor, Macario A. Asistio, Jr. for appropriate action.

The facts of the case are as follows:

1. In 1972, Atty. Delfina H. Santiago was, per court decision, dismissed illegally as Asst. City Administrator on Personal Matters.

2. In 1976, Atty. Santiago, was appointed Chief, Administrative Office, a position of lower rank.

3. **In 1983, Atty. Santiago was charged administratively for UNAUTHORIZED ABSENCES, in violation of Civil Service laws.** Upon recommendation of the Office of the City Legal Office, Atty. Santiago was validly and lawfully ordered to be dropped from the rolls which was subsequently approved and affirmed by the Civil Service Commission in the latter's order dated October 1983 x x x.

x x x x

4. In 1985, the Supreme Court, in affirming an RTC decision, ordered the reinstatement of Santiago as Asst. City Administrator on Personal Matters and declaring the 1972 dismissal as illegal.

5. In 1986, Atty. Santiago was appointed by Mayor Martinez as Asst. City Administrator, her former position, pursuant to the Supreme Court decision.

6. ***In January 1988 Atty. Santiago filed a leave of absence (Sick Leave & Vacation Leave)*** on advice of her Doctor, a Med. Cert. was attached thereto and the duration of the leave was 240 days starting January 25 up to December 31, 1988.

The said leave of absence was initially approved but later disapproved by the Hon. Macario A. Asistio, Jr. when the latter issued a Memorandum dated February 5, 1988 cancelling all leave of absence of which Memo Atty. Santiago was duly served with. However despite service of the said Memo to Atty. Delfina H. Santiago she failed and refused to report for work [continuously] up to the present. There was not even a semblance of showing that she would comply with the memorandum.

At this juncture the office of the City Mayor indorsed this case against Atty. Delfina H. Santiago for appropriate action. **This office conducted an investigation and summoned Atty. Delfina H. Santiago for several times to appear before the undersigned; present her evidence and explain her side in consonance with the due process mandated by the constitution. Despite several notice sent to Delfina Santiago the latter did not heed the said notices,** thereby, leaving the undersigned without any alternative but to decide the case on the basis of the evidence available and the records pertaining to Atty. Delfina Santiago.

#### FINDINGS

The records disclosed that the memorandum dated February 5, 1988 issued by the Hon. City Mayor, Macario A. Asistio, Jr. to all employees of the City Government cancelled all leave of absences in the interest of service effective 5 February 1988. There is no doubt as to that Atty. Santiago was duly served with the said memo as appearing on the said memo is her signature, an evidence of receipt thereof. Having received the said memo Atty. Santiago was fully aware of the cancellation of her leave of absence and therefore as a prudent employee she should have obeyed the memorandum of the City Mayor by way of reporting for work as called for. What happened instead was that Atty. Santiago never showed-up, thereby, neglecting her duty as Asst. City Administrator and committed, in effect, insubordination.

**What is nagging and aggravates the predicament of Atty. Santiago is that the instant case is already her second violation which places her in the category of incorrigible employees. The first is when she was charged of UNAUTHORIZED ABSENCES, punished for said act and made to suffer the corresponding penalty thereof.**

Under the Civil Service Law, Art. 9, Section 36 Par. 3, "No office or employee in the Civil Service shall be suspended except for the cause as provided by law and after due process".

The following shall be grounds for disciplinary action:

x x x x 3. Neglect of Duty x x x

#### 27. Insubordination

The actuations of the respondent Atty. Santiago squarely falls on the aforementioned grounds for dismissal as her failure to report for work amounts to [willful] disobedience to her superior officer. Nothing can be more important to the upholding and maintenance of the public service in its integrity and good name than the enforcement of the reasonable discipline of laws. In the discharge of an official duty and obligation Atty. Santiago as a government employee is expected to obey the order and instruction of the duly constituted authorities and she should not ignore or disregard a legitimate official order. Her act is inimical to the public service. To tolerate Santiago to get away with it would be tantamount to allowing her to act as she suits and satisfies her personal convenience in

violation of her superior's order. An act which would be certainly demoralizing to the public service. **As may be gleaned from the foregoing discussions Atty. Santiago had [willfully] ignored her superior's order without any attempt to comply with it and therefore insubordination is clearly present aside from neglect of duty.**

#### RECOMMENDATION

WHEREFORE, the instant case being the second [infraction] of the Civil Service law by Atty. Santiago, it is respectfully recommended that the latter be dismissed from service.<sup>[10]</sup> (Emphases and underscoring supplied.)

Complainant contended that she was not administratively charged for any offense in 1983 or in 1988. Thus, she was not an incorrigible employee. Instead of being sent a notice or summons, she received respondent Tolentino's letter dated April 21, 1988, but the same neither stated that an administrative case had been filed against her nor did it require her to appear in any investigation. Since she was on a sick leave of absence, not a vacation leave, she could not be guilty of neglect of duty as she had no duties to perform. She was also not in a position to defy any lawful order, which would have amounted to insubordination. Annexed to the complaint were copies of: (a) the Resolution December 19, 1988; (b) Mayor Asistio's dismissal order dated May 18, 1989; (c) complainant's resignation letter; (d) her approved sick leave of absence application; and (e) the commutation voucher showing the payment of her salaries.

In respondent Santiago's comment<sup>[11]</sup> to the complaint, he argued that the allegedly deceitful statements in the above Resolution were not malicious imputations of falsehoods. If the statements were inaccurate, the same may have been caused by a misappreciation of facts or evidence. As to whether complainant was formally charged for unauthorized absences in 1983, the material point considered was that she was dismissed because of unauthorized absences. It also did not matter that she filed a sick leave of absence, not a vacation and sick leave, as the issue of the investigation was whether she was liable for disobeying Mayor Asistio's directives.

Respondent Santiago further alleged that Mayor Asistio indorsed<sup>[12]</sup> to the City Legal Office the matter of complainant's noncompliance with the Mayor's return to work order and this referral was equivalent to an administrative complaint. Complainant was sent a notice regarding her failure to report for work, thereby informing her that she could be subjected to disciplinary action. Her failure to answer indicated her intent to disregard Mayor Asistio's order and her option not to participate in the investigation. Respondents' investigation proceeded *ex parte* and the assailed Resolution was issued on the basis of the evaluation of the evidence at hand. Without proof of bad faith or adverse personal motives, respondents cannot be held administratively liable for issuing the Resolution in the discharge of their official duties even if the same turned out to be erroneous.

In respondent Tolentino's comment,<sup>[13]</sup> he likewise argued that Mayor Asistio's referral of the case to the City Legal Office was treated as a complaint. Complainant was apprised of the nature thereof and she even requested ten days within which to answer the same. After the City Legal Office conducted an investigation wherein

complainant failed to participate, respondents decided the case on the basis of records and evidence available. Anent the charge that she was not administratively charged in 1983, what was considered was that she did incur unauthorized absences that led to her dropping from the rolls. That she filed a sick leave of absence, not sick leave and vacation leave, was immaterial as Mayor Asistio's memorandum did not qualify the nature of the leaves of absence being cancelled.

Among the documents attached to respondent Tolentino's comment were copies of: (a) Mayor Asistio's letter <sup>[14]</sup> to complainant dated August 4, 1982 about her sick leave of absence; (b) Mayor Asistio's letter<sup>[15]</sup> to complainant dated July 5, 1983 about her unauthorized absences; (c) letter<sup>[16]</sup> dated August 4, 1982 of Administrative Officer Soriano to Mayor Asistio, seeking advice on the action to be taken on complainant's situation; (d) Mayor Asistio's indorsement<sup>[17]</sup> dated October 5, 1983 to the City Legal Office of complainant's case; (e) the indorsement<sup>[18]</sup> from the City Legal Office dated October 6, 1983, recommending that complainant be dropped from the roll of employees; (f) the order<sup>[19]</sup> of Mayor Asistio dated October 19, 1983 regarding complainant's separation from service; and (g) the Orders<sup>[20]</sup> dated October 27, 1983 and November 3, 1983 from the office of the Regional Director of the Civil Service Commission (CSC)-National Capital Region (NCR), approving the complainant's dismissal.

Complainant insisted in her Consolidated Reply<sup>[21]</sup> that the indorsement of Mayor Asistio was not at all signed by the Mayor and it was merely an indorsement of documents for study and recommendation. She was also not informed of said document. She asked for a period of ten days within which to answer and/or act on respondent Tolentino's letter dated April 21, 1988 and she did report to Atty. Enrique Cube, the Mayor's secretary to explain why she cannot go back to work yet. As no administrative case was filed against her in 1988, there could not have been a valid investigation under Presidential Decree No. 807.<sup>[22]</sup> Yet, respondents made up fictitious statements of facts and conclusions of law in recommending her dismissal.

The Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.<sup>[23]</sup>

### **The IBP Report and Recommendation**

IBP Investigating Commissioner Mario V. Andres issued a Report and Recommendation<sup>[24]</sup> dated April 4, 2008, which recommended the dismissal of the complaint for lack of merit. Commissioner Andres found that complainant failed to present convincing evidence that respondents acted in bad faith in rendering the Resolution dated December 19, 1988. Thus, they were held to be entitled to the legal presumption of innocence.

According to Commissioner Andres, respondents concluded that complainant was previously charged for unauthorized absences by relying on existing records that showed that she was dropped from the rolls in 1983. Complainant's letter asking for a period of ten days to reply to respondents' April 21, 1988 letter also meant that she understood that an investigation was underway. When she failed to respond, respondents assumed that she waived her right to present evidence. Respondents may have only been careless in their choice of words when they wrongly assumed that complainant was administratively charged in 1983 and they used the term