

## SECOND DIVISION

[ A.C. No. 11043, March 08, 2017 ]

**LIANG FUJI, COMPLAINANT, VS. ATTY. GEMMA ARMI M. DELA CRUZ, RESPONDENT.**

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

**LEONEN, J.:**

Failure to exercise utmost prudence in reviewing the immigration records of an alien, which resulted in the alien's wrongful detention, opens the special prosecutor in the Bureau of Immigration to administrative liability.

Before this Court is an administrative complaint<sup>[1]</sup> dated November 23, 2015 filed by Liang Fuji (Fuji) and his family, against Bureau of Immigration Special Prosecutor Gemma Armi M. Dela Cruz (Special Prosecutor Dela Cruz) for gross misconduct and gross ignorance of the law in relation to her issuance of a Charge Sheet against Fuji for overstaying.

Through a letter<sup>[2]</sup> dated December 8, 2015, Deputy Clerk of Court and Bar Confidant Atty. Ma. Cristina B. Layusa directed the complainants to file a verified complaint "with supporting documents duly authenticated and/or affidavits of persons having personal knowledge of the facts alleged"<sup>[3]</sup> in the complaint.

Complainants replied<sup>[4]</sup> by furnishing this Court with copies of the Verified Petition to Reopen S.D. O. No. BOC-2015-357 (B.L.O. No. SBM-15-420) and for Relief of Judgment with Urgent Prayer for Immediate Consideration, and Administrative Complaint (Verified Petition and Administrative Complaint),<sup>[5]</sup> which Fuji filed with the Board of Commissioners of the Bureau of Immigration, and prayed that the same be treated as their verified complaint. Complainants further informed this Court that they had difficulty obtaining certified true copies of the November 21, 2013 Order of the Board of Commissioners, which granted Fuji's Section 9(g) visa, Summary Deportation Order dated June 17, 2015, and Warrant of Deportation from the Bureau of Immigration personnel who just gave them the "run[-]around."<sup>[6]</sup> They alleged that the Bureau of Immigration personnel were not particularly helpful, and did not treat Fuji's case with urgency.<sup>[7]</sup>

The facts of this case show that in a Summary Deportation Order<sup>[8]</sup> dated June 17, 2015, Fuji, a Chinese national, was ordered deported for overstaying. From the Order, it appears that Special Prosecutor Dela Cruz was the special prosecutor who brought the formal charge against Fuji and another person upon her finding that Fuji's work visa had expired on May 8, 2013, with extension expired on December 6, 2013.<sup>[9]</sup> Special Prosecutor Dela Cruz found that Fuji had overstayed for one (1) year and six (6) months in violation of Commonwealth Act No. 613, Section 37(a)(7).<sup>[10]</sup> Her investigation was triggered by a complaint-affidavit dated April 30, 2015 of a certain

Virgilio Manalo alleging that Fuji and another person had defrauded him.<sup>[11]</sup>

On June 29, 2015, Fuji filed his Motion for Reconsideration.<sup>[12]</sup>

On July 28, 2015, the Bureau of Immigration Intelligence Division served Fuji's Warrant of Deportation, and thereafter arrested him at Brgy. Maloma, San Felipe, Zambales with the assistance from local police.<sup>[13]</sup> Fuji was brought to and detained at the Bureau of Immigration Detention Facility, National Capital Region Police Office, Taguig City.<sup>[14]</sup>

On October 9, 2015, the Board of Commissioners denied Fuji's Motion for Reconsideration.<sup>[15]</sup>

On November 23, 2015, Fuji filed his Verified Petition and Administrative Complaint.<sup>[16]</sup> Subsequently, on March 10, 2016, Fuji filed an Omnibus Motion to Reopen and Lift S.D.O. BOC-2015-357, and Release on Bail through counsel.<sup>[17]</sup>

On March 22, 2016, the Board of Commissioners issued a Resolution dismissing the deportation charge against Fuji on the ground that "[t]he records show that Liang has a working visa valid until 30 April 2016 under Jiang Tuo Mining Philippines, Inc. as Marketing Liason."<sup>[18]</sup> Fuji was directed to be released from Bureau of Immigration-Warden's Facility on March 23, 2016.<sup>[19]</sup>

In his administrative complaint, Fuji alleged that his rights to due process were violated since he was not afforded any hearing or summary deportation proceedings before the deportation order was issued against him.<sup>[20]</sup> Fuji further alleged that Special Prosecutor Dela Cruz failed miserably in discharging her duties because a simple initial review of the Bureau of Immigration records would have revealed that he was not overstaying because his Section 9(g) work visa was valid until April 30, 2016.<sup>[21]</sup>

In her August 25, 2016 Comment,<sup>[22]</sup> respondent Special Prosecutor Dela Cruz denied that she committed any grave misconduct.<sup>[23]</sup> She claimed that Fuji was accorded due process during the summary deportation proceedings.<sup>[24]</sup> He was directed, through an Order dated May 14, 2015 of the Legal Division, to submit his Counter-Affidavit/Memorandum, which he failed to do.<sup>[25]</sup> Fuji was also able to file his motion for reconsideration and verified petition to reopen the case.<sup>[26]</sup>

Respondent further claimed that the Memorandum dated June 4, 2015 of the Bureau of Immigration - Management Information System (BI-MIS) constituted a substantial evidence of Fuji's overstay in the country, hence, her formal charge had legal basis.<sup>[27]</sup>

Respondent added that as a civil servant, she enjoyed the presumption of regularity in the performance of her duties.<sup>[28]</sup> She had no intention to violate any law and did not commit any flagrant disregard of the rules, or unlawfully used her station to procure some benefit for herself or for other persons.<sup>[29]</sup> Respondent pointed out that the Ombudsman had in fact dismissed the complainant's charges against her.<sup>[30]</sup> She added that Fuji stated in his March 29, 2016 Affidavit of Desistance that he had

mistakenly signed some documents including the administrative complaint.<sup>[31]</sup>

**We find respondent administratively liable for her negligence in her failure to ascertain the facts before levying the formal charge against Fuji for overstaying.**

## I

Generally, this Court defers from taking cognizance of disbarment complaints against lawyers in government service arising from their administrative duties, and refers the complaint first either to the proper administrative body that has disciplinary authority over the erring public official or employee or the Ombudsman.<sup>[32]</sup>

For instance, in *Spouses Buffe v. Gonzales*,<sup>[33]</sup> this Court dismissed the disbarment complaint against former Secretary of Justice Raul M. Gonzalez, former Undersecretary of Justice Fidel J. Exconde, Jr., and former Congressman Eleandro Jesus F. Madrona, holding that the respondents were public officials being charged for actions involving their official functions during their tenure, which should be resolved by the Office of the Ombudsman.<sup>[34]</sup> In that case, one (1) of the respondents sought to dismiss the complaint on the ground of forum-shopping because he allegedly received an order from the Office of the Ombudsman directing him to file a counter-affidavit based on the same administrative complaint filed before the Office of the Bar Confidant.<sup>[35]</sup>

Again, in the fairly recent case of *Alicias, Jr. v. Macatangay*,<sup>[36]</sup> the Court dismissed the complaint against respondents - government lawyers in the Civil Service Commission. The Court held that the acts or omissions alleged in the complaint were "connected with their . . . official functions in the [Civil Service Commission] and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman."<sup>[37]</sup> It would seem that the complainant directly instituted a disbarment complaint with this Court instead of filing an administrative complaint before the proper administrative body.

This case is an exception. Unlike the circumstances in *Spouses Buffe* and *Alicias, Jr.*, the records here show that the Office of the Ombudsman had previously dismissed Fuji's administrative complaint due to the pendency of his Verified Petition and Administrative Complaint before the Bureau of Immigration, and considered the case closed.<sup>[38]</sup>

The Bureau of Immigration subsequently granted Fuji's petition to reopen his case and ordered his release. However, it was silent as to the culpability of respondent on the charges levelled by Fuji.

Thus, with the termination of the administrative proceedings before the Office of the Ombudsman and the apparent inaction of the Bureau of Immigration on complainant's administrative complaint, this Court considers it proper to take cognizance of this case, and to determine whether there is sufficient ground to discipline respondent under its "plenary disciplinary authority"<sup>[39]</sup> over members of the legal profession.<sup>[40]</sup>

Contrary to respondent's stance, Fuji's purported Affidavit of Desistance is not sufficient cause to dismiss this administrative complaint. This Court has previously held that proceedings of this nature cannot be "interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same."<sup>[41]</sup> The primary object of disciplinary proceedings is to determine the fitness of a member to remain in the Bar. It is conducted solely for the public welfare,<sup>[42]</sup> and the desistance of the complainant is irrelevant. What will be decisive are the facts borne out by the evidence presented by the parties. In *Rayos-Ombac v. Rayos*:<sup>[43]</sup>

A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.<sup>[44]</sup>

## II

Respondent Dela Cruz claimed that she issued the formal charge against Fuji for overstaying on the basis of the Memorandum dated June 4, 2015 of the BI-MIS.<sup>[45]</sup> A copy of the Memorandum with attachments was attached to respondent's Comment.<sup>[46]</sup>

However, nowhere in the Memorandum was it stated that Fuji "overstayed" or that "Liang's working visa expired on 8 May 2013 and his TVV expired on 6 December 2013"<sup>[47]</sup> as respondent claims. Relevant portions of the Memorandum read:

For : ATTY. GEMMA ARMI M. DELA CRUZ  
From : ACTING CHIEF, MIS DIVISION  
REQUEST FOR IMMIGRATION STATUS; VISA EXTENSION  
Re : PAYMENT, LATEST TRAVEL AND DEROGATORY OF THE  
FOLLOWING:  
1. MR./MS. LIANG FUJI  
2. MR./MS. CHEN XIANG HE  
3. MR./MS. JACKY CHANG HE  
Date : 04 June 2015

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Further to your request for verification of Immigration Status; Visa Extension Payment and TRAVEL RECORD/S, please find the result/s as

follows:

....

Result/s: 1. LIANG FUJI

- Derogatory Record Not Found
- Latest Travel Record Found (Please see the attached files for your ready reference. NOTE: DOB: 18 October 1991)
- Immigration Status Found
- Latest Payment Record Found in BI-Main (Please see the attached files for your ready reference. NOTE: DOB: 18 October 1991)<sup>[48]</sup>

....

The Memorandum merely transmitted copies of immigration records showing details of filing of applications, such as official receipts, - and travel record of Fuji. It was respondent Dela Cruz who made the determination that Fuji overstayed on the basis of the documents transmitted to her by the BI-MIS.

Among the documents transmitted by the BI-MIS were computer print-outs showing details of official receipts dated June 14, 2013, August 7, 2013, and November 19, 2013 for temporary visitor visa extension and official receipt dated July 15, 2013 for an application for change of immigration status. Also, the travel records of Fuji show the following details:

Date & Time : 4 June 2015 3:05 PM  
Verifier : DIMARUCOT J  
Database : **TRAVEL - ARRIVAL**

| TRAVEL DATE       | TRAVEL TIME | FLIGHT NO | IMMIG STATUS | PORT   | OFFICER  | ACTION                  | REMARKS |
|-------------------|-------------|-----------|--------------|--------|----------|-------------------------|---------|
| 10-FEBRUARY-2014  | 11:34PM     | CZ377     | 9G           | NAIA 1 | MIJARES  | ALLOWED                 |         |
| 06-JANUARY-2012   | 11:51PM     | CZ377     | 9A           | NAIA 1 | PARANGUE | ALLOWED                 |         |
| 22-SEPTEMBER-2011 | 11:25PM     | CZ377     | 9A           | NAIA 1 | NUNEZ    | ALLOWED <sup>[49]</sup> |         |

Fuji's travel records as of June 4, 2015, show his arrival in the Philippines on February 10, 2014 under a work visa immigration status.<sup>[50]</sup> Simple prudence dictates that respondent Atty. Dela Cruz should have verified whether or not the July 15, 2013 application for change of status had been approved by the Bureau of Immigration Commissioners, especially since she had complete and easy access to the immigration records.

Respondent failed in the performance of her basic duties. Special prosecutors in the Bureau of Immigration should exercise such degree of vigilance and attention in reviewing the immigration records, whenever the legal status and documentation of