

## SECOND DIVISION

[ **A.M. No. MTJ-17-1900 [Formerly OCA IPI No. 13-2585-MTJ], August 09, 2017** ]

**ARNEL MENDOZA, COMPLAINANT, VS. HON. MARCOS C. DIASEN, JR., ACTING PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BR. 62, MAKATI CITY, RESPONDENT.**

### RESOLUTION

**LEONEN, J.:**

This is an administrative case charging Acting Presiding Judge Marcos C. Diasen, Jr. (Judge Diasen), Metropolitan Trial Court, Branch 62, Makati City with violation of the Code of Judicial Conduct.

Arnel G. Mendoza (Mendoza) was a driver of a public utility vehicle, whose services were engaged several times by Cristy Flores (Flores). Mendoza alleged that he met Judge Diasen through Flores and that Judge Diasen hired his services to go to San Pedro and Sta. Rosa, Laguna.<sup>[1]</sup>

Mendoza alleged that on November 5, 2012, Judge Diasen called and asked him to assist Flores in looking for a rice retailer where he could purchase 50 sacks of rice.<sup>[2]</sup>

On November 6, 2012, he accompanied Flores and introduced her to the owner of Carolina Marketing. In order for Carolina Marketing to accept a post-dated check as payment, Mendoza agreed to guarantee the transaction. After, they proceeded to Makati City Hall to see Judge Diasen, who gave them a check for P70,000.00 to pay for the 50 sacks of rice. He also asked to increase his order to 70 sacks, replacing his first check with a post-dated check for P112,000.00 dated November 16, 2012. Mendoza averred that the check was signed in his presence and was dated November 16, 2012.<sup>[3]</sup>

Mendoza alleged that when the check was presented for payment to Carolina Marketing, it was dishonored due to insufficiency of funds. Carolina Marketing then sought payment for the sacks of rice from Mendoza. Mendoza tried to inform Flores and Judge Diasen about the matter but Judge Diasen was never in his office and Flores was never at her residence. Thus, he was constrained to file this Complaint.<sup>[4]</sup>

In his Comment,<sup>[5]</sup> Judge Diasen denies that he personally knew Mendoza. As for Flores, he alleged that she was introduced to him sometime in 2010 by a common friend and she would often visit him at his office after work hours, sometimes accompanied by her relatives. He admitted knowing that Flores was single and unemployed.<sup>[6]</sup>

Judge Diasen alleged that sometime in 2012, Flores told him that she needed extra income and wanted to sell rice to employees of the Makati City Hall. Since she lacked the required capital, he agreed to lend her money out of pity. He claimed that the loan was on the condition that she would show him the rice she was planning to buy and she would pay the loan from the proceeds of the sale.<sup>[7]</sup>

On November 6, 2012, he issued and delivered a post-dated check to Flores in the amount of P112,000.00. Flores assured him that she would present the sacks of rice at the Makati City Hall on November 16, 2012.<sup>[8]</sup>

He alleged that a few days after he issued the check, he came across an envelope given by Flores sometime in 2010. Inside the envelope were documents showing that Flores had been previously convicted of numerous charges of estafa.<sup>[9]</sup>

On November 16, 2012, he waited for Flores at the back of Makati City Hall but she did not show up with the sacks of rice. He surmised that Flores connived with Mendoza to encash the check at a discounted amount but he was able to prevent being defrauded by notifying the bank to stop payment on the check.<sup>[10]</sup>

In a Report<sup>[11]</sup> dated December 22, 2016, Makati City Executive Judge Elmo M. Alameda (Judge Alameda) recommended the dismissal of the Complaint. In the investigation conducted, Judge Alameda found that the submission of the photocopies of the sales invoice, check, and check return advice was insufficient to prove that Judge Diasen ordered 70 sacks of rice and refused to pay for them.<sup>[12]</sup> Judge Alameda noted that Carolina Anaya, the proprietor of Carolina Marketing, failed to appear in the investigation despite notice; thus, due execution of the sales invoice and the check was not proven.<sup>[13]</sup> He also noted that Mendoza did not file the appropriate civil or criminal case despite being allegedly issued a bouncing check.<sup>[14]</sup>

However, in a Memorandum<sup>[15]</sup> dated April 10, 2017, the Office of the Court Administrator recommended that Judge Diasen be found guilty of conduct unbecoming a judge.<sup>[16]</sup> The Office of the Court Administrator disagreed with the findings of Judge Alameda and noted that he arrived at his conclusion based only on the records since the parties failed to attend the scheduled hearing on November 28, 2016.<sup>[17]</sup>

The Office of the Court Administrator found that despite the unsubstantiated allegation that Judge Diasen issued a bouncing check, Judge Diasen had admitted that he would have profited from the sales of rice had it been delivered. Judge Diasen also admitted that he "took an active role in the prospective sale by notifying employees of the Makati City Hall, and he even had 'to advise would be buyers to come back the following day, which [was] Saturday,' when Flores failed to arrive with the rice on the agreed date."<sup>[18]</sup>

The Office of the Court Administrator found that Judge Diasen's actions "disclose a deficiency in prudence and discretion that a member of the Judiciary must exercise in the performance of his official functions and of his activities as a private individual."<sup>[19]</sup> Thus, the Office of the Court Administrator recommended that:

1. Hon. Marcos C. Diasen, Jr., former Acting Presiding Judge, Metropolitan Trial Court, Branch 62, Makati City, be found GUILTY of conduct unbecoming a judge; and
2. Respondent Judge Diasen be REPRIMANDED to refrain from further acts of impropriety with a STERN WARNING that a repetition of the same or any similar act will be dealt with severely.<sup>[20]</sup>

This Court adopts the findings of fact and conclusions of law of the Office of the Court Administrator. The Code of Judicial Conduct instructs that judges "should avoid impropriety and the appearance of impropriety in all activities."<sup>[21]</sup> Judges must at all times conduct themselves in a manner beyond reproach to ensure the public's continued confidence in the judiciary.<sup>[22]</sup>

Under Canon 5, Rule 5.02:

Rule 5.02. - A judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

As this Court explained in *Dionisio v. Hon. Escano*:<sup>[23]</sup>

The restriction enshrined under Rules 5.02 and 5.03 of the Code of Judicial Ethics on judges with regard to their own business interests is based on the possible interference which may be created by these business involvements in the exercise of their judicial duties which may tend to corrode the respect and dignity of the courts as the bastion of justice. Judges must not allow themselves to be distracted from the performance of their judicial tasks by other lawful enterprises. It has been a time-honored rule that judges and all court employees should endeavor to maintain at all times the confidence and high respect accorded to those who wield the gavel of justice.<sup>[24]</sup>

Judge Diasen's act of attempting to sell rice to his employees and to employees of other branches was highly improper. As a judge, he exercised moral ascendancy and supervision over these employees. If the sale had pushed through, he would have profited from his position. As the Office of the Court Administrator observed:

[Judge Diasen] cannot also deny that his position did not influence the "would-be buyers" to actually partake in the sale of rice. If employees of the other court branches and offices of the Makati City Hall could be persuaded to buy the subject rice because a judge asked them to, what more with the employees of his own branch[?]<sup>[25]</sup>

For his improper acts, Judge Diasen is found guilty of conduct unbecoming a judge.

This Court, however, finds that a modification of the recommended penalty of reprimand is in order. Under Rule 140 of the Rules of Court, conduct unbecoming a judge is considered a light charge,<sup>[26]</sup> punishable by the following sanctions: