

## SECOND DIVISION

[ A.C. No. 7158, March 09, 2015 ]

**YOLANDA A. ANDRES, MINETTE A. MERCADO, AND ELITO P. ANDRES , COMPLAINANTS, VS. ATTY. SALIMATHAR V. NAMBI, RESPONDENT.**

### RESOLUTION

**DEL CASTILLO, J.:**

This is a Complaint for Disbarment<sup>[1]</sup> filed against then Labor Arbiter Salimathar V. Nambi (respondent) on the ground of gross ignorance of the law in issuing an Amended Alias Writ of Execution against M.A. Blocks Work, Inc. and its incorporators, the herein complainants, who are not parties to the case.

#### ***Factual Antecedents***

On December 10, 2003, respondent rendered a Decision<sup>[2]</sup> in a consolidated labor case<sup>[3]</sup> against M.A. Mercado Construction and spouses Maximo and Aida Mercado (spouses Mercado), the *fallo* of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents, M.A. Mercado Construction and Maximo and Aida Mercado to reinstate the complainants to their former position[s] without loss of seniority rights and to pay jointly and severally, their full backwages from October 28, 2000 up to the date of this decision plus ten (10%) percent attorney's fees of the total monetary award.

The Research and Information Unit of this Office is hereby directed to compute complainants['] monetary award which shall form part of this decision.

The complaint for damages is dismissed. The complaint against Shoemart, Inc., is likewise DISMISSED for lack of merit.

SO ORDERED.<sup>[4]</sup>

The respondents in the labor case, namely the Spouses Mercado, doing business under the name and style of M.A. Mercado Construction, interposed an appeal which was dismissed for failure to post an appeal bond. Thus, an Alias Writ of Execution was issued to implement the Decision.

Thereafter, the complainants in the labor case filed an Ex Parte Motion for Amendment of an Alias Writ of Execution.<sup>[5]</sup> They claimed that they could hardly collect the judgment award from M.A. Mercado Construction because it allegedly transferred its assets to M.A. Blocks Work, Inc. They thus prayed that the Alias Writ

of Execution be amended to include M.A. Blocks Work, Inc. and all its incorporators/stockholders<sup>[6]</sup> as additional entity/personalities against which the writ of execution shall be enforced.

In an Order<sup>[7]</sup> dated February 10, 2006, respondent granted the motion to amend the alias writ of execution. Accordingly, on February 17, 2006 an Amended Alias Writ of Execution was issued to enforce the monetary judgment amounting to P19,527,623.55 against M.A. Blocks Work, Inc. and all its incorporators.

By way of special appearance, M.A. Blocks Work, Inc., together with three of its stockholders who are the complainants in this administrative case, namely Yolanda A. Andres, Minette A. Mercado and Elito P. Andres, filed an Urgent Motion to Quash<sup>[8]</sup> the Amended Alias Writ of Execution, contending that they are not bound by the judgment as they were not parties to the labor case. In an Order<sup>[9]</sup> dated March 13, 2006, however, respondent denied the Urgent Motion to Quash.

Aggrieved, herein complainants filed the instant Complaint for Disbarment, which we referred to the IBP on March 4, 2007 for investigation, report and recommendation.<sup>[10]</sup>

### ***IBP's Report and Recommendation***

In his Report and Recommendation<sup>[11]</sup> dated September 6, 2010, the Investigating Commissioner found respondent guilty of gross ignorance of the law and recommended that he be suspended from the practice of law for a period of six months. This was adopted and approved with modification by the IBP Board of Governors in an April 12, 2011 Resolution, to wit:

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RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification** the Report and Recommendation of the Investigating Commissioner in the above-entitled case herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, considering respondent<sup>[s]</sup> contumacious disregard of the lawful Order of Supreme Court and the Commission on Bar Discipline of the IBP, and for his failure to appear despite due notices, Atty. Salimathar V. Nambi is hereby **SUSPENDED** from the practice of law for six (6) months.<sup>[12]</sup> (Emphasis in the original).

#### **Issue**

Whether respondent is guilty of gross ignorance of the law and of violating the Code of Professional Responsibility.

#### **Our Ruling**

At the outset, it must be emphasized that in this administrative proceeding, our

discussion should be limited only on the issue of whether respondent acted in gross ignorance of the law when he granted the motion to amend the alias writ of execution; when he issued an Amended Alias Writ of Execution to enforce the monetary judgment against M.A. Blocks Work, Inc. and all its incorporators; and when he denied complainants' Urgent Motion to Quash.

As a rule, for one to be held administratively accountable for gross ignorance of the law, there must be a showing that the error was gross and patent as to support a conclusion that the actor was so moved with malice, bad faith, corruption, fraud, and dishonesty. As such, our discussion should be focused primarily on whether respondent grossly erred in issuing the above orders as to amount to malice, bad faith, corruption, fraud and dishonesty.

On the other hand, we need not delve into the issue of whether there is an apparent misapplication of the doctrine of piercing the veil of corporate fiction when respondent issued the Amended Alias Writ of Execution. For one, it is outside the ambit of this administrative proceeding. Moreover, the issue of whether the doctrine of piercing the veil of corporate fiction applies is the subject of an appeal brought by complainants before the National Labor Relations Commission and eventually to the Court of Appeals.<sup>[13]</sup>

We perused the records of the case particularly respondent's Order<sup>[14]</sup> dated March 13, 2006 denying complainants' Urgent Motion to Quash. Therein, we note that respondent's ruling was not arrived at arbitrarily; on the contrary, he cited grounds based on his personal assessment of the facts at hand, *viz*:

As culled from the case record, there is substantial evidence that respondents Maximo A. Mercado and Aida A. Mercado, who are doing business under the name and style of M.A. Mercado Construction put up a corporation in the name of M.A. Block Works, Inc. where individual movants are one of the incorporators. We give credence to the argument of the complainants that the incorporators therein are relatives of Maximo A. Mercado and Aida Mercado as shown by the Articles of Incorporation adduced by the former. The incorporators listed have similar family names of the Mercados and the Andreses and common address at Gen. Hizon, Quezon City and 50 Daisy St., Quezon City, and Maximo A. Mercado is the biggest stockholder. Aside from the Articles of Incorporation, complainants also submitted a Letter of Intent/Notice To Proceed where respondents, despite their representation that they have already ceased their business operation, are still continuing their business operation. The documents submitted by the complainants were corroborated by certification issued by Maggie T. Jao, AVP-Assistant Controller of SM Prime Holdings, Inc. that based on their records, an amount of P3,291,300.00 representing a sum total of all goods, effects, money and credit that was garnished belong to M.A. Mercado Construction and/or Maximo Mercado and/or Aida Mercado and/or M.A. Block Works, Inc. and/or Gertrudes Casilda A. Mercado, Yolanda A. Andres, Minette A. Mercado and/or Elito P. Andres.

This Office has therefore, enough reason to conclude that respondents Maximo A. Mercado and Aida Mercado and the movants herein are one and the same. Movants are alter egos or business conduits to defraud the