

## THIRD DIVISION

**[ G.R. No. 179702, February 16, 2010 ]**

**ROLANDO P. ANCHETA, PETITIONER, VS. DESTINY FINANCIAL PLANS, INC. AND ARSENIO BARTOLOME, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision<sup>[1]</sup> dated April 19, 2007 and the Resolution<sup>[2]</sup> dated September 17, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 96059.

The undisputed facts of the case are as follows:

On December 1, 2002, respondent Destiny Financial Plans, Inc., a pre-need insurance company, hired petitioner as Head of its Marketing Group, with a compensation package of Ninety Thousand Pesos (P90,000.00) a month.<sup>[3]</sup>

On February 2, 2004, a Marketing Committee meeting was called by respondent Arsenio Bartolome (Bartolome) at the conference room of respondent company. Present at the meeting were petitioner, respondent Bartolome, various leaders of the marketing team, and the operations director of the company. During the meeting, respondent Bartolome made several announcements. However, to the surprise of petitioner, respondent Bartolome announced that petitioner was to resign from the respondent company.<sup>[4]</sup>

On February 11, 2004, petitioner received a letter<sup>[5]</sup> from respondent company, asking him to explain within forty-eight (48) hours why his services should not be terminated for loss of confidence in his ability to perform the functions of Marketing Director of the company.<sup>[6]</sup> The pertinent portions of the letter read:

You will recall that when you were hired in November of 2002[,], when the new stockholders took over management of the Company, you were tasked to reorganize and set up the Marketing Group, the core group of which was finally set up after much delay, mid year of 2003. Upon your recommendation and representation on the projected output of these new groups, management agreed to the compensation scheme proposed, onerous as they may have been, trusting in your assurance that you have worked with these people and that they will deliver as they have undertaken.

As early as September[,], however, your attention was already called by Mr. A. M. Bartolome regarding the dismal performance of these groups, turning in only 20%-30% of their targeted sales. Despite your assurances

that the figures will turn in as projected, they did not. While figures improved in October (albeit still not reaching even 50% of projections), a severe down trend of the already dismal figures occurred in the following months. This [led] to subsequent talks with you that extreme measure should be undertaken considering the monthly deficit of about P1 Million which the Company has been suffering.

When the new marketing and operation plans were discussed with you, you appeared to have agreed with the measures and cooperate in the implementation of the same as stated above. Your behavior in the last few days, however, has become very alarming and confirmed that had the Marketing group and therefore the lifeblood of the Company, been left to your management and direction, the Company would have no way to end but fold up. You appear to either refuse to accept the realities of the sales and financial figures or simply do not understand their implications in respect [to] the Company's future. This is not to mention your failure to liquidate company funds for which you are accountable as well as certain conduct which are in conflict of interest with the Company such as including your son in a binary slot. Worse, you instructed the plan administration staff to keep this matter under wraps.

The management had initially been willing to accede to your graceful exit and in fact work with you as an independent agent if only to soften the financial implications on you and to maintain the cordial relationship. Furthermore, management was initially willing and had in the past turned a blind eye on your past conduct in dealing with some of the marketing staff including, among others, your marketing trip to Baguio and use of company property and assets. However, you seem to have the propensity to repeat this unacceptable behavior.

This letter is intentionally sent today as one of our Directors was tasked to talk to you over the weekend and explore less drastic measures to give due courtesy to you in light of the position you hold. During your meeting last Monday, you once again undertook to send our Mr. A.B.K. Tan a proposal on the terms of your engagement as Management Consultant/Independent Agent. You failed to see Mr. Tan on the appointed time and when asked, you gave an excuse and advised that you will text him a message the following day. You did not send in any proposal as you have undertaken to do, instead you sent a letter yesterday afternoon, "urging" management to dismiss you instead. Today, you did not report for work and instead instructed a staff member to pack up your belongings in your room.

Kindly therefore respond to this letter to air your side. Meanwhile, also kindly turn in the Executive elevator key assigned to you to Ms. Twinkle Hipolito as well as the duplicate keys to the Company car and surrender possession of the same so the marketing group which is in dire need [of] transportation to carry out their duties may use the same, instead of your devoting the same to your and your family's personal use. Your failure to respond within the allotted 48 hours will constitute as a waiver of your right to air your side in this matter.<sup>[7]</sup>

On February 13, 2004, petitioner submitted his letter of explanation<sup>[8]</sup> to respondent company. In response to the allegations of the latter, petitioner argued that:

First of all, permit me to correct your reference to me as "Marketing Director" which is just for external purposes. My correct title is "Head, Marketing Group." This clarification is necessary as I have never been a Director of the Company nor a Vice President.

Thank you for giving me a chance to explain why I should not be "terminated for loss of confidence" in my "ability to perform the functions" of Head, Marketing Group. There are several reasons why the Board should not terminate me.

1. Your "loss of confidence" ground has no basis. The Board is practically saying it has lost its confidence as well on the Management Committee headed by Mr. Arsenio Bartolome (AMB) because no significant decision in Marketing and Operations is made without AMB's go signal. Many a time, [sic] my recommendations which were based on my industry experience and which were in the best interest of the company long-term, were turned down.
2. You are right. I was hired only in November 2002. I was hired because of my exposure and experience in the pre-need industry. The Company when it took over USPI started with no "Marketing" organization. I recruited the Marketing group. There were no marketing documents to start with- no Agents' contract forms, no rate sheets, no product manual, no other marketing materials. I created and organized all these. The only materials available were the binary materials, which were more focused on the income potential rather than product orientation. I organized the Traditional Sales Team, The Network Sales Team, the Military Sales and the Institutional Sales Team.
3. You mentioned the P1 Million monthly deficit. Assuming that to be true, I know, and I mentioned this repeatedly, that in this industry, particularly at these economic hard times, it is very, very difficult to make money in the first year, even in the second year, the obvious reason being the high commission to be paid for the first year contracts plus the overhead and marketing expenses. True, management and Marketing people can set targets, but targets are not realistic most of the time. Be that as it may, it must have been reported in the last Friday's board meeting that the total Sales from July 2003 to Jan. 2004 (GCP) was at P42,067.356 against only P4.0M in allowance released. This shows that the cost-to-sales ratio is only less than 10% which means if our collection efforts are efficient then this cost may be recovered in less than a year.

4. In your fifth paragraph how can you say that my behavior is alarming when I even represented the company in the Pre-Need Forum mostly with my sales team heads at the Shangri-La Hotel in Makati last February 5? How would you feel if your boss requests for a resignation letter effective retroactively? I spent two nights of anxiety, which caused me severe headaches and wounded feelings. I even called Lito Quimel to notify him of my sick leaves. The sales figures are clear to me that is why I kept on requesting for an honest to goodness financial planning session but what we had last December was like a revalida session. I still believe that if we follow the marketing Group's recommendation, things would turn out well.
5. I did not propose an agency agreement. What I simply mentioned during my dinner with Nonoy Tan was that things could probably be better if people who would be asked to leave could be offered some sort of an agency arrangement instead of them representing competitor companies. I asked Mr. Tan if he had an offer for me. He said the company cannot make such [an] offer. I left it at that.
6. I am advised that as an employee I have security of tenure under the Labor Code and that I cannot be dismissed without lawful cause. You know very well that your reason of "loss of confidence" has no factual or legal basis. If indeed the Board wants to dismiss me in any event, then it should do so in a decent manner and with a decent separation package.
7. On the petty matter of my son's joining the binary, I sent a memo via email to ABKT and AMB sometime first week of August 2003 informing them of this. It was a memo wherein I was strongly recommending full support to networking Sales strategy, as it will enhance our cash flow in tandem with the Traditional sales. I even mentioned and I quote[,]"As a personal contribution I will ask my adult sons to join..." This was further discussed with AMB personally and I mentioned to him that instead of making my children join First Quadrant, which was beginning to be popular in schools[,]" I urged them to go on a savings plan instead. I should have been congratulated by that gesture but now it turns out to be conflict of interest. Please ask for a genealogy [sic] if my sons gained from their slots. I even remitted gross without commissions on these plans. I remember AMB openly mentioning the pension plan of Mr. AP Bartolome, to be paid net of commissions. I saw nothing wrong therefore in buying a plan for my adult sons. I did not instruct a staff to keep matters under wraps. I simply asked if it was a "big deal" with AMB because knowing him he would look into small details often with suspicion.
8. It may be worth mentioning that last Jan. 11, 2004 I returned from a successful sales rally in Davao attended by at least 100 sales managers now operating in Herway-Davao and in one occasion I was given two pairs of Levi's pants by the spouse of one of the applicants. Instead of keeping the two pairs of pants, I raffled them off to the staff employees and Twinkle and Grace won the raffle.

Looking back this could have been an issue of conflict of interest. I also don't remember reading a memo on conflict of interest, which AMB has been openly mentioning.

9. On the matter of unliquidated items please give me a copy of any, and if my memory serves me right any item I can not justify I simply sign my name and request it to be charged against my account. At the very least I should have been given a notice about these petty matters. To me all these are forms of harassment.
10. There are other instances in the past that will prove to the board that I did my level best (in spite of my limitations) to show that there is no cause for loss of confidence. On the other hand, I have shown loyalty to the company and to AMB when I defended issues about Urban Bank and AMB, I pacified angry USPI planholders exercising their rights for a cash surrender. I even went to a point of talking to a radio announcer to ease the tension and negative impact to the company. That was the time a guard was hired at the 5<sup>th</sup> floor. I also remember Lito Quimel requesting me to face the angry planholders from the Mayor's office headed by Lina Hilario. I pacified them since Lina's husband is a co-Rotarian in my club. The group of Lina then agreed to continue their plans under the new scheme but had some reservations about the Urban Bank issue (which I mentioned to AMB). I just reassured them that they should not be comparing Destiny and Urban Bank.
11. I deny allegations in your paragraph seven about unacceptable behavior. I went on a trip to Baguio on a Holy Tuesday last year to call on the several group accounts. Since I know that Mr. Bartolome might use his suspicious mind on this trip I texted him my whereabouts and even asked Ms. Tere Rocales (then my co-proponent for the Network sales) and her husband to join me. We went to BGH but managed to talk to Dra. Cruz on the phone as we missed her for a meeting. We had two other meetings with USPI clients to regain the accounts. I thought I should be commended for working during Holy Week and regaining clients for Destiny. Instead, Lito Quimel was asked to go to Baguio to investigate if I really went there. Of course embarrassing to note they were wrong in their suspicion. It might interest you to know that in at least several occasions I arranged for our Baguio townhouse to be used for company business just to save money for the company. Instead of charging the company[,] I just kept quiet about my simple contribution. I also confronted AKT about alleged conduct in dealing with marketing staff at his office. Even the raisin bread issue become a big deal when in fact the next day I brought and distributed it to the staff. What was worse was Mr. Bartolome had to use my cousin to bring these poor taste "Chismis" out to my family. I remember my sister discussing these in one Sunday dinner at my father's house. My elder sister could have gathered this information only from my female cousin who is a close confidant of Mr. Bartolome.