

## **THIRD DIVISION**

**[ A.C. NO. 5878, March 21, 2005 ]**

**JESUS E. SANTAYANA, COMPLAINANT, VS. ATTY. ELISEO B. ALAMPAY, RESPONDENT.**

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

**SANDOVAL-GUTIERREZ, J.:**

Before us is a verified complaint<sup>[1]</sup> for disbarment filed by Jesus E. Santaya against Atty. Eliseo B. Alampay for malpractice and violation of the Attorney's Oath.

Jesus E. Santayana, complainant herein, alleged in his complaint that respondent lawyer is a member of the Board of Administrators of the National Electrification Administration (NEA), a government-owned and controlled corporation (GOCC). The laws provide that NEA shall be represented in all judicial proceedings by the following legal counsel: (1) the Office of the Government Corporate Counsel (OGCC); (2) the Chief or any lawyer of the NEA Legal Division; and (3) the Office of the Solicitor General (OSG).

Under Memorandum Circular No. 9 issued by the Office of the President on August 27, 1998, the GOCCs are barred from hiring private lawyers or law firms to represent them in law suits and to handle their legal matters, except in exceptional circumstances with the written conformity of the Solicitor General or Government Corporate Counsel. This conformity shall be with the written concurrence of the Commission on Audit.

The petitioner further alleged that NEA is tasked with the implementation of the government's foreign-funded Rural Electrification Program. One of the components of this Program is the IPB 80 Project requiring NEA to purchase, through public bidding, 60,000 pieces of wooden poles and 20,000 pieces of cross arms to be used in the rural electric distribution network.

In 1999, NEA conducted a public bidding for the purchase of poles and cross arms. In December 2000, Nerwin Industries Corporation (Nerwin) was declared the lowest bidder. Hence, the NEA Board of Administrators passed Resolution No. 32 approving the award to Nerwin of fifty percent (50%) of the IPB 80 project requirements.

However, NEA disqualified Nerwin and instead granted the award to a losing bidder. Seeking a legal justification for its action, NEA twice asked the opinion of the OGCC. In both instances, the OGCC pointed out that NEA's action is in violation of the law.

Respondent, despite his knowledge that NEA is represented by legal counsel specifically provided by law, had his law firm – Alampay, Gatchalian, Mawis & Alampay – rendered a legal opinion adverse to that of the OGCC. As a result, NEA nullified the award to Nerwin, prompting the latter to file with the Regional Trial

Court (RTC), Branch 36, Manila a complaint for specific performance, injunction, and damages against NEA, docketed as Civil Case No. 01-102000.

Respondent's law firm entered its appearance as counsel for NEA in Civil Case No. 01-10200. Nerwin filed a motion for the disqualification of respondent's law firm as counsel for NEA. This was opposed by respondent.

On December 10, 2001, the RTC issued an Order disqualifying respondent's law firm from appearing as counsel for NEA, thus:

"WHEREFORE, the Court hereby rules as follows: (1) the motion to dismiss is denied, and (2) the motion to disqualify the Alampay, Gatchalian, Mawis and Alampay Law Office is granted thus this Court's recognition of the appearance and representation for and in behalf of NEA of ALAMPAY, GATCHALIAN, MAWIS and ALAMPAY Law Office is discontinued and terminated.

The Chief of the Legal Division of NEA is directed to enter his appearance and to represent NEA in this case unless NEA chooses to avail of the services of the Office of the Government Corporate Counsel or the Office of the Solicitor General.

Furnish copies of this Order to plaintiff's counsel and the lawyers of the three (3) sets of defendants in this case.

Let copies of this Order be served likewise on NEA, The Chief of the Legal Department/Division of the NEA, the Office of the Government Corporate Counsel and the Office of the Solicitor General.

SO ORDERED."<sup>[2]</sup>

Respondent filed a motion for reconsideration but this was denied by the trial court in its Order dated February 15, 2002.

Respondent then filed a petition for *certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 70355, assailing the Orders of the trial court dated December 10, 2001 and February 15, 2002.

On September 24, 2002, the Court of Appeals dismissed the petition, holding that:

"In the absence of a written conformity from the duly mandated government lawyers appointed by law, and a written concurrence from the Commission on Audit, the Court finds no legal basis for the law office of Alampay, Gatchalian, Mawis, and Alampay to represent the petitioners in this case."<sup>[3]</sup>

Complainant thus charged respondent with: (1) violation of Section 20(a) of Rule 138 of the Revised Rules of Court by usurping for himself and his law firm the authority of the legal counsel of NEA; (2) malpractice and violation of Section 27 of Rule 138, by willfully appearing, without lawful authority, as NEA's counsel on record in Civil Case No. 01-102000; (3) malpractice by rendering a legal opinion for NEA without authority; and (4) violation of the Attorney's Oath by appearing as counsel for NEA just to delay, injure, and damage the rights of Nerwin.

In his answer, respondent prayed for the outright dismissal of the complaint. He claimed that complainant did not state his interest or position in Nerwin nor his authority to file this complaint. Furthermore, all the allegations therein are hearsay and distortions of the truth.

Respondent also averred that Resolution No. 38 dated October 11, 2001 of the NEA Board of Administrators authorized his law firm Alampay, Gatchalian, Mawis, and Alampay to represent NEA in Civil Case No. 01-102000 sans attorney's fees. Since the OGCC took a stance adverse to that of NEA with respect to IBP 80 Project, the latter could engage the services of other counsel. Moreover, the NEA Charter does not prohibit its engagement of other counsel.

On April 21, 2003, we issued a Resolution referring the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

In her Report and Recommendation dated February 24, 2004, IBP Commissioner Milagros V. San Juan found that respondent violated Canon 1 of the Code of Professional Responsibility and Rule 1.02 of the same Canon and recommended that said respondent be reprimanded and warned, thus:

"It is submitted that the above actions of respondent are in violation of Canon 1 of the Code of Professional Responsibility which reads: "A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes" and Rule 1.02 of Canon 1 which reads: "A lawyer shall not counsel or abet activities aimed at defiance of the law or lessening confidence in the legal system." Thus, it is recommended that respondent be meted the administrative penalty of reprimand with a warning that similar actions in the future shall be dealt with more severely.

Respectfully submitted."<sup>[4]</sup>

On April 16, 2004, the IBP Board of Governors passed Resolution No. XVI-2004-223 adopting and approving the Report and Recommendation of Commissioner San Juan.

We sustain the Resolution of the IBP Board of Governors. Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987 provides:

"SEC. 10. *Office of the Government Corporate Counsel.* – **The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offspring and government acquired asset corporations** and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of this Office."