

## EN BANC

[ A.M. NO. 2004-40-SC, March 01, 2005 ]

**IN RE: COMPLAINT FOR FAILURE TO PAY JUST DEBTS AGAINST  
ESTHER T. ANDRES (MARIA TERESA C. ALIENTO) COMPLAINANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before us is an administrative matter which arose from the letter-complaint<sup>[1]</sup> of Maria Teresa C. Aliento dated 08 September 2004, filed in the Office of Administrative Services (OAS) against Esther T. Andres, Records Officer III, Records Division, Office of the Court Administrator (OCA), for her willful failure to pay a just debt.

The complainant alleged in her letter-complaint that:

. . . Mrs. Andres introduced herself to me as an employee of the Records Section of the Supreme Court.

Mrs. Andres owes me twenty thousand pesos (P20, 000), representing two-months back rent on my apartment. She vacated apartment 827-A on 13 June 2004 with the promise that she will settle her debts with me at the soonest possible time.

From 13 June 2004 up to the present, Mrs. Andres has repeatedly promised me that she will soon settle her account....

It was further claimed in the letter-complaint that as a sign of sincerity to pay her indebtedness, the respondent left her Landbank Automated Teller Machine (ATM) card, as well as her Personal Identification Number (PIN), with complainant with instruction that she (respondent) would let the complainant know when she could withdraw from the ATM the amount of P5, 000 as partial payment of the amount she owed. Thereafter, several incidents transpired which exposed respondent's duplicitous nature and led to the filing of the present letter-complaint, to wit:

On 02 September 2004, **Mrs. Andres assured me over the telephone that I can withdraw the amount of five thousand pesos (P5, 000)....** On the night of 02 September 2004, I tried to withdraw the amount ... at the BPI España-Basilio Branch. All I got from the Bank Machine was an ATM receipt stating that the account has an available balance of only **three pesos and 78 centavos (P3.78).**

On 06 September 2004, I called Mrs. Andres at her Office (tel. no. 536-9081) to inform her that there is not enough funds on her account. Mrs. Andres promised to straighten things out and asked me the account number written on her ATM card.

On 07 September 2004, I called Mrs. Andres once again to verify if she has already deposited sufficient funds in her account. **Mrs. Andres told me that I can withdraw five thousand pesos (P5, 000) in the afternoon of the same day.** At 4:10 p.m. on 07 September 2004, I tried once again to withdraw the amount of five thousand pesos (P5, 000) .... However, instead of getting the expected amount, the machine gave me a receipt stating that there is **no more funds available on the account.** I also noted that the account number on the receipt was missing, giving me the impression that the account may have already been closed. On hindsight, I remember giving Mrs. Andres the account number on 06 September 2004 when she promised to straighten things out.

I have come now to the conclusion that Mrs. Andres has no intention of making good her promise to pay the amount she owes me. I am now left with no option but to ask the assistance of your Office.... [Emphases supplied.]

Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer of the OAS, in a memorandum<sup>[2]</sup> dated 08 September 2004, directed the respondent to submit her comment within 5 days from receipt thereof.

The respondent filed no comment. Atty. Edwin B. Andrada, Court Attorney IV, Complaint and Investigation Division, OAS was, thus, prompted to send a First Tracer<sup>[3]</sup> dated 11 November 2004, to the respondent which *inter alia* read:

This refers to the administrative complaint for willful non-payment of just debt (sic) filed by Ms. Maria Teresa C. Aliento, notice of which you have personally received on September 10, 2004.

In view thereof, you are hereby directed to submit the required **ANSWER** within five (5) days from receipt hereof, otherwise, this Office will evaluate the matter based on the available documents at hand.

On 15 December 2004, the respondent belatedly<sup>[4]</sup> filed her Answer. She avowed that:

. . . I have talked to Ms. Maria Teresa Aliento regarding this matter and we have an agreement to settle my obligation (to her) within this month due to the fact that the amount supposedly be paid to her was used for the funeral expenses of my mother who died last November 2004...

On 05 January 2005, the complainant again wrote<sup>[5]</sup> the OAS to follow-up her complaint. Pertinent portions of the letter read:

As a result of my previous letter, Mrs. Andres **gave me a promissory note** dated 12 November 2004... stating that **she promise to pay P20,000 on or before 19 November 2004.** As of this writing, I have yet to see the fulfillment of that promise.

Sometime last December 2004, I received a telephone call from a certain Atty. Edwin Andrada who introduced himself as an employee of the

Supreme Court assigned to handle my complaint. Atty. Andrada told me that Mrs. Andres is **ready to give me her dividend cheque amounting to P20,000 as payment of her debt.** Mrs. Andres, who was with Atty. Andrada at that time, **confirmed to me over the telephone that she will give me her dividend cheque as payment.** I told Mrs. Andres and Atty. Andrada that I cannot accept the dividend cheque because it is not in my name and I may not be able to encash it. because of this situation we all agreed that Mrs. Andres will encash the dividend cheque herself and pay me the amount in cash.

On 29 December 2004, **Mrs. Andres gave me a Bank of Commerce cheque dated 23 December 2004 in the amount of P20,000....** I reminded Mrs. Andres of our agreement with Atty. Andrada that the payment was to be in cash. **Mrs. Andres insisted that I accept the cheque and told me to just ignore our agreement with Atty. Andrada....**

On 03 January 2005, **I received a telephone call from Mrs. Andres, requesting me not to deposit the cheque. She promised to see me the next day (04 January 2005) when she will make the payment in cash. Mrs. Andres, however, did not come as promised and I am still waiting for the payment.** [Emphases supplied.]

In a Memorandum<sup>[6]</sup> dated 01 February 2005, addressed to Hon. Hilario G. Davide, Jr.,<sup>[7]</sup> the OAS, through Atty. Eden T. Candelaria, found respondent guilty of willful failure to pay just debts, a ground for disciplinary action. The findings of the OAS are quoted in part, thus:

It is clear from the foregoing that respondent Ms. Andres' conduct clearly shows her lack of fairness and straightforwardness in dealing with Ms. Aliento. Her disposition to defraud or to betray was obvious in the following acts of:

1. giving her ATM card to complaint to show good faith only in the end proved futile since no funds are available on said account;
2. making a promissory note dated 12 November 2004 wherein she promised to pay on or before the 19th of the same month her obligation, but never did;
3. verbally promising to tender payment to complainant in cash before Atty. Andrada but later advised complainant to ignore the same;
4. issuing a Bank of Commerce check dated 23 December 2004 in favor of complainant in the afternoon of 29 December 2004, the last working day of year 2004, which, before complainant could deposit on 3 January 2005, the first working day for 2005, was immediately advised by respondent not to deposit it anymore as she again promised to tender payment in cash instead but, again, to no avail; and

5. to date, Ms. Andres never settled her obligation.

Taken together, all these acts demonstrate Ms. Andres' penchant of committing deceitful acts to avoid her contractual obligations.

. . .

. . . If indeed as she earlier pointed out, she used the money allotted for the purpose to defray the funeral expenses of her mother, respondent should have been honest enough to borrow money from legitimate sources rather than resorting to fraudulent acts, if only to settle her obligations. It is not even illogical for this Office to conclude that respondent might have used her service in the Supreme Court as a badge to evade a rightful obligation. With her attitude, this is possible.

. . .

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, the imposable penalty for Willful failure to pay just debts for its first offense is Reprimand ... to strictly adhere to Sec. 23, respondent Andres may only be penalized with reprimand, however, in view of her deliberate refusal to settle her obligation and the vicious means she employed to evade the same a SEVERE REPRIMAND may be justified.

PREMISES CONSIDERED, it is most respectfully recommended that respondent Ms. Esther Tumbaga Andres be **SEVERELY REPRIMANDED** for her willful failure to pay just debts with a warning that a repetition of the same or similar ac in the future will be dealt with more severely and that complainant Ms. Aliento be informed with regrets that the Court is not a collection agency....

We agree with the OAS that respondent should be held administratively liable for willful failure to pay her debt. The recommendation as to the penalty to be imposed on the respondent is, however, inadequate considering that her actuations in dealing with the complainant also constitute conduct prejudicial to the best interest of the service.

Book V, Title I, Chapter 7, Subtitle A, §46 (b) (22) E.O. No. 292,<sup>[8]</sup> provides as one of the grounds for disciplinary action against civil service employees the "[w]illful failure to pay just debts."

The term *just debts* is defined in Section 22, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19, series 1999, as –

1. claims adjudicated by a court of law; or
2. claims the existence and justness of which are admitted by the debtor.

In the case at bar, from the respondent's Answer<sup>[9]</sup> dated 14 December 2004, there is no question that the latter acknowledged her debt to the complainant when she