

EN BANC

[A.C. No. 2797, October 04, 2002]

**ROSAURA P. CORDON, COMPLAINANT, VS. JESUS BALICANTA,
RESPONDENT.**

RESOLUTION

PER CURIAM:

On August 21, 1985, herein complainant Rosaura Cordon filed with this Court a complaint for disbarment, docketed as Administrative Case No. 2797, against Atty. Jesus Balicanta. After respondent's comment to the complaint and complainant's reply thereto, this Court, on March 29, 1995 referred the matter to the Integrated Bar of the Philippines (IBP, for brevity) for investigation, report and recommendation within 90 days from notice. Commissioner George Briones of the IBP Commission on Bar Discipline was initially tasked to investigate the case. Commissioner Briones was later on replaced by Commissioner Renato Cunanan. Complainant filed a supplemental complaint which was duly admitted and, as agreed upon, the parties filed their respective position papers.

Based on her complaint, supplemental complaint, reply and position paper, the complainant alleged the following facts:

When her husband Felixberto C. Jaldon died, herein complainant Rosaura Cordon and her daughter Rosemarie inherited the properties left by the said decedent. All in all, complainant and her daughter inherited 21 parcels of land located in Zamboanga City. The lawyer who helped her settle the estate of her late husband was respondent Jesus Balicanta.

Sometime in the early part of 1981, respondent enticed complainant and her daughter to organize a corporation that would develop the said real properties into a high-scale commercial complex with a beautiful penthouse for complainant. Relying on these apparently sincere proposals, complainant and her daughter assigned 19 parcels of land to Rosaura Enterprises, Incorporated, a newly-formed and duly registered corporation in which they assumed majority ownership. The subject parcels of land were then registered in the name of the corporation.

Thereafter, respondent single-handedly ran the affairs of the corporation in his capacity as Chairman of the Board, President, General Manager and Treasurer. The respondent also made complainant sign a document which turned out to be a voting trust agreement. Respondent likewise succeeded in making complainant sign a special power of attorney to sell and mortgage some of the parcels of land she inherited from her deceased husband. She later discovered that respondent transferred the titles of the properties to a certain Tion Suy Ong who became the new registered owner thereof. Respondent never accounted for the proceeds of said transfers.

In 1981, respondent, using a spurious board resolution, contracted a loan from the Land Bank of the Philippines (LBP, for brevity) in the amount of Two Million Two Hundred Twenty Pesos (P2,220,000) using as collateral 9 of the real properties that the complainant and her daughter contributed to the corporation. The respondent ostensibly intended to use the money to construct the Baliwasan Commercial Center (BCC, for brevity). Complainant later on found out that the structure was made of poor materials such as *sawali*, coco lumber and bamboo which could not have cost the corporation anything close to the amount of the loan secured.

For four years from the time the debt was contracted, respondent failed to pay even a single installment. As a result, the LBP, in a letter dated May 22, 1985, informed respondent that the past due amortizations and interest had already accumulated to Seven Hundred Twenty-nine Thousand Five Hundred Three Pesos and Twenty-five Centavos (P729,503.25). The LBP made a demand on respondent for payment for the tenth time. Meanwhile, when the BCC commenced its operations, respondent started to earn revenues from the rentals of BCC's tenants. On October 28, 1987, the LBP foreclosed on the 9 mortgaged properties due to non-payment of the loan.

Respondent did not exert any effort to redeem the foreclosed properties. Worse, he sold the corporation's right to redeem the mortgaged properties to a certain Hadji Mahmud Jammang through a fake board resolution dated January 14, 1989 which clothed himself with the authority to do so. Complainant and her daughter, the majority stockholders, were never informed of the alleged meeting held on that date. Again, respondent never accounted for the proceeds of the sale of the right to redeem. Respondent also sold to Jammang a parcel of land belonging to complainant and her daughter which was contiguous to the foreclosed properties and evidenced by Transfer Certificate of Title No. 62807. He never accounted for the proceeds of the sale.

Sometime in 1983, complainant's daughter, Rosemarie, discovered that their ancestral home had been demolished and that her mother, herein complainant, was being detained in a small nipa shack in a place called Culianan. Through the help of Atty. Linda Lim, Rosemarie was able to locate her mother. Rosemarie later learned that respondent took complainant away from her house on the pretext that said ancestral home was going to be remodeled and painted. But respondent demolished the ancestral home and sold the lot to Tion Suy Ong, using another spurious board resolution designated as Board Resolution No. 1, series of 1992. The resolution contained the minutes of an alleged organizational meeting of the directors of the corporation and was signed by Alexander Wee, Angel Fernando, Erwin Fernando and Gabriel Solivar. Complainant and her daughter did not know how these persons became stockholders and directors of the corporation. Respondent again did not account for the proceeds of the sale.

Complainant and her daughter made several demands on respondent for the delivery of the real properties they allegedly assigned to the corporation, for an accounting of the proceeds of the LBP loan and as well as the properties sold, and for the rentals earned by BCC. But the demands remained unheeded. Hence, complainant and her daughter, in a letter dated June 4, 1985, terminated the services of respondent as their lawyer and repeated their demands for accounting and turn-over of the corporate funds, and the return of the 19 titles that respondent transferred to the corporation. They also threatened him with legal action in a letter dated August 3, 1985.

Soon after, complainant found out from the Securities and Exchange Commission (SEC, for brevity) that Rosaura Enterprises, Inc., due to respondent's refusal and neglect, failed to submit the corporation's annual financial statements for 1981, 1982 and 1983; SEC General Information Sheets for 1982, 1983 and 1984; Minutes of Annual Meetings for 1982, 1983 and 1984; and Minutes of Annual Meetings of Directors for 1982, 1983 and 1984.

Complainant also discovered that respondent collected rental payments from the tenants of BCC and issued handwritten receipts which he signed, not as an officer of the corporation but as the attorney-at-law of complainant. Respondent also used the tennis court of BCC to dry his palay and did not keep the buildings in a satisfactory state, so much so that the divisions were losing plywood and other materials to thieves.

Complainant likewise accused respondent of circulating rumors among her friends and relatives that she had become insane to prevent them from believing whatever complainant said. According to complainant, respondent proposed that she legally separate from her present husband so that the latter would not inherit from her and that respondent be adopted as her son.

For his defense, respondent, in his comment and position paper, denied employing deceit and machination in convincing complainant and her daughter to assign their real properties to the corporation; that they freely and voluntarily executed the deeds of assignment and the voting trust agreement that they signed; that he did not single-handedly manage the corporation as evidenced by certifications of the officers and directors of the corporation; that he did not use spurious board resolutions authorizing him to contract a loan or sell the properties assigned by the complainant and her daughter; that complainant and her daughter should be the ones who should render an accounting of the records and revenues inasmuch as, since 1984 up to the present, the part-time corporate book-keeper, with the connivance of the complainant and her daughter, had custody of the corporate records; that complainant and her daughter sabotaged the operation of BCC when they illegally took control of it in 1986; that he never pocketed any of the proceeds of the properties contributed by the complainant and her daughter; that the demolition of the ancestral home followed legal procedures; that complainant was never detained in Culianan but she freely and voluntarily lived with the family of P03 Joel Constantino as evidenced by complainant's own letter denying she was kidnapped; and that the instant disbarment case should be dismissed for being premature, considering the pendency of cases before the SEC and the Regional Trial Court of Zamboanga involving him and complainant.

Based on the pleadings and position papers submitted by the parties, Commissioner Renato Cunanan, in his report^[1] dated July 1, 1999, recommended respondent's disbarment based on the following findings:

"A. The complainant, Rosaura Jaldon-Cordon and her daughter, Rosemarie were stockholders of a corporation, together with respondent, named Rosaura Enterprises, Inc.

"Per the Articles of Incorporation marked as Annex 'A' of Complainant's Position Paper, complainant's subscription consists of 55% of the outstanding capital stock while her daughter's consists of 18%, giving them a total of 73%. Respondent's holdings consist of 24% while three

other incorporators, Rosauro L. Alvarez, Vicente T. Mañalac and Darhan S. Graciano each held 1% of the capital stock of the corporation.

"B. On April 5, 1981, complainant and her daughter Rosemarie Jaldon executed two Deeds of Transfer and Assignment conveying and transferring to the corporation 19 parcels of land in exchange for shares of stock in the corporation.

"xxx xxx xxx

"C. Both Deeds of Assignment particularly page 3 thereof indicate that respondent accepted said assignment of properties and titles in behalf of the corporation as Treasurer. The deeds were signed on April 5, 1981.

"xxx xxx xxx

"Together, therefore, complainant and her daughter owned 1,711 shares of the 1,750 shares comprising the authorized capital stock of the corporation of 97% thereof.

"No increase in capitalization was applied for by the corporation.

"F. Respondent claims in his Comment, his Answer and his Position Paper that on April 4, 1981 he was elected as Chairman and Director and on April 5, 1981 he was elected President of the corporation. Respondent's own Annexes marked as 'G' and 'G-1' of his Comment show that on April 4, 1981 he was not only elected as Chairman and Director as he claims but as 'Director, Board Chairman and President.' The purported minutes was only signed by respondent and an acting Secretary by the name of Vicente Mañalac.

"Said Annex does not show who was elected Treasurer.

"Respondent's Annex 'H' and 'H-1' shows that in the alleged organizational meeting of the directors on April 5, 1981 a certain Farnacio Bucoy was elected Treasurer. Bucoy's name does not appear as an incorporator nor a stockholder anywhere in the documents submitted.

"The purported minutes of the organizational meeting of the directors was signed only by respondent Balicanta and a Secretary named Verisimo Martin.

"G. Since respondent was elected as Director, Chairman and President on April 4, 1981 as respondent's own Annexes 'G' to 'G-1' would show, then complainant's claim that respondent was likewise acting as Treasurer of two corporations bear truth and credence as respondent signed and accepted the titles to 19 parcels of land ceded by the complainant and her daughter, as Treasurer on April 5, 1981 after he was already purportedly elected as Chairman, President and Director.

"H. Respondent misleads the Commission into believing that all the directors signed the minutes marked as Exhibit 'H' to 'H-1' by stating that the same was 'duly signed by all the Board of Directors' when the document itself shows that only he and one Verisimo Martin signed the same.

"He also claims that 'all the stockholders signed' the minutes of organizational meeting marked as Annexes 'G' and 'G-1' of his Comment yet the same shows that only the acting Chairman and acting Secretary signed.

"I. Respondent claims that the Board or its representative was authorized by the stockholders comprising 2/3 of the outstanding capital stock, as required by law, to mortgage the parcels of land belonging to the corporation, which were all assigned to the corporation by complainant and her daughter, by virtue of Annex 'I' and 'I-1': attached to his Comment.

"The subject attachment however reveals that only the following persons signed their conformity to the said resolution: respondent Balicanta who owned 109 shares, Vicente Mañalac (1 share), Daihan Graciano (1 share).

"Complainants who collectively held a total of 1,711 shares out of the 1,750 outstanding capital stock of the corporation were not represented in the purported stockholders' meeting authorizing the mortgage of the subject properties.

"The 2/3 vote required by law was therefore not complied with yet respondent proceeded to mortgage the subject 9 parcels of land by the corporation.

"J. Respondent further relies on Annex 'J' of his Comment, purportedly the minutes of a special meeting of the Board of Directors authorizing him to obtain a loan and mortgage the properties of the corporation dated August 29, 1981. This claim is baseless. The required ratification of 2/3 by the stockholders of records was not met. Again, respondent attempts to mislead the Commission and Court.

"K. Further, the constitution of the Board is dubious. The alleged minutes of the organizational meeting of the stockholders electing the members of the Board, have not been duly signed by the stockholders as shown in respondent's annex 'G' which was purportedly the organizational meeting of the stockholders.

"L. Also, Annex 'J' of respondent's Comment which purportedly authorized him to obtain a loan and to mortgage the 9 parcels of land was only signed by himself and a secretary.

"M. In said Annex 'J' of respondent's Comment he stated that complainant Rosaura Cordon was on leave by virtue of a voting trust agreement allegedly executed by complainant 'in his favor covering all her shares of stock.' The claim is baseless. The voting trust referred to by respondent (annex 'D' of his Comment), even if it were assumed to be valid, covered only 266 shares of complainants yet she owned a total of 1,039 shares after she and her daughter ceded in favor of the corporation 19 parcels of land.

"Being a former lawyer to complainant, respondent should have ensured that her interest was safeguarded. Yet, complainant was apparently and