



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROLANDO E. CAWALING, A.C. No. 9698
PEDRO L. LABAYO,
WENCESLAO Q. ARROYO, JR.,
CLEMENTE B. BUEN, RAMON
D. DERIT, DWIGHT B. DURAN,
FELIZARDO R. FRANCISCO,
JR., SUSANA G. HABOC,
ARNOLD C. PEREZ, VERLAND
E. VERGARA, AMELIA L.
ESPINOSA, NOEL P. BOLA,
VENERANDO A. PADUA, JR.,
LAURENCE ALBERT D. AYO,
WILLY B. AQUINO, EDUARDO
A. REMPIS, JIMMY A. BUTAC,
EDUARDO D. DOCTAMA, and
ANTONIO T. REODIQUE,
Complainants,

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

- versus -

NAPOLEON M. MENESE (Retired
Commissioner, NLRC-Second
Division), RAUL T. AQUINO
(Presiding Commissioner, NLRC-
Second Division) and TERESITA
D. CASTILLON-LORA
(Commissioner, NLRC-Second
Division),

Respondents.

Promulgated:

November 13, 2013

M. S. Reyes

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DECISION

PERALTA, J.:

Before us is a Petition for Disbarment/Disciplinary Action dated November 26, 2012¹ filed against respondents Napoleon M. Menese,² Raul T. Aquino and Teresita D. Castillon-Lora, Commissioners of the Second Division of the NLRC, for gross misconduct, gross ignorance of the law and procedure, and violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

Complainants were employees of Bacman Geothermal, Inc. (*Bacman*), who were dismissed from their employment. They filed a complaint for illegal dismissal against Bacman Geothermal, Inc., Danilo G. Catigtig, Ernesto Espinosa and Oscar M. Lopez.

On January 23, 2011, the Labor Arbiter rendered a decision³ in favor of the complainants and declared them to be illegally dismissed. Bacman appealed and filed an Appeal Memorandum⁴ on February 22, 2012. The appeal was raffled to the Second Division of the NLRC where respondents were sitting as Commissioners. There being a monetary award in the decision, Bacman posted a *supersedeas* bond issued by Intra Strata Assurance Corporation (*Intra Strata*) on February 23, 2012.

Meanwhile, Intra Strata filed a Manifestation⁵ dated February 23, 2012 before the Regional Arbitration Branch No. V of the NLRC. It stated therein that their certification of accreditation and authority from the Supreme Court had expired on January 31, 2012, but their application for renewal is pending before the Supreme Court.

Complainants, in their Reply/Opposition to Respondent's Appeal, assailed the regularity of the surety bond. They argued that considering that the certification of accreditation and authority given to Intra Strata had already expired on January 31, 2012 as admitted in their Manifestation, it no longer has the authority to issue the surety bond.

¹ *Rollo*, pp. 1-14.

² Retired Commissioner of the National Labor Relations Commission.

³ *Rollo*, pp. 16-33.

⁴ *Id.* at 34-66.

⁵ *Id.* at 95-96.

Complainants further asserted that under Section 6, paragraph 6 of Rule VI of the 2011 NLRC Rules of Procedure, respondents were under obligation to verify if the bond is regular and genuine, and shall cause the dismissal of the appeal should the bond be irregular, to wit:

Section 6. BOND. – x x x

x x x x

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

However, complainants lamented that instead of dismissing the appeal pursuant to the above-mentioned provision, respondents entertained the appeal of Bacman and even reversed the decision of the Labor Arbiter in their Decision dated April 2, 2012. Complainants moved for reconsideration where they pointed out the irregularity in the bond and claimed that the NLRC did not acquire jurisdiction over the appeal. The NLRC, in its Resolution dated August 30, 2012, denied the same.

Before the promulgation of the decision, respondent Menese had retired from service.

Complainants averred that the acts of respondents in allowing the filing of appeal bond of Bacman despite the expired accreditation of Intra Strata constitute gross misconduct and gross ignorance of the law and procedure. Complainants maintained that the dismissal of the appeal where the bond is irregular is so elementary, thus, respondents should be familiar with it.

Finally, complainants claimed that respondents, by disregarding the rules of procedure of the NLRC, not only violated Canon 1 and Rule 1.01 of the Code of Professional Responsibility, but also caused injustice to them. Thus, complainants pray that respondents be disbarred or be imposed with the appropriate disciplinary sanctions.

On January 21, 2013, the Court resolved to require respondents to comment on the complaint against them for gross misconduct, gross ignorance of the law and procedure, and violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility.

In their Comment⁶ dated April 12, 2013, respondents denied the charges and accusations against them. Respondents explained that contrary to the claims of the complainants, the appeal bond is existing and valid. They assert that while at the time of the filing of the appeal, the surety company's authority to issue judicial bonds had already expired, such fact was never concealed by the surety company. They added that Intra Strata's filing of Manifestation informing the Commission of its undertaking to submit the certification as soon as the certification is issued was a sign of good faith.

Respondents stressed that it is a normal occurrence that accreditation of bonding companies takes weeks to process, thus, the Commission allowed appeals secured by bonds issued by surety companies with pending application for renewal of their authority to issue judicial bonds. They maintained that what is more important is that they were informed of such fact and that the surety company committed to submit the certificate as soon as issued.

Respondents further argued that as per Memorandum dated May 16, 2012 issued by the Legal and Enforcement Division of the NLRC, Intra Strata was listed as accredited by the Supreme Court for the period covering February 1, 2012 to July 31, 2012.

Respondents surmised that complainants merely filed the instant complaint against them as they failed to get a favorable judgment from the Commission. Respondents, thus, pray that the instant complaint be dismissed for lack of merit.

RULING

The pertinent portions of Sections 4 and 6, Rule VI of the Revised Rules of Procedure of the NLRC read:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL – a)
The appeal shall be: (1) filed within the reglementary period provided in Section 1 of this Rule; (2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; (3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; (4) in three (3) legibly typewritten or printed copies; and (5) accompanied by i) proof of payment of the required appeal fee and

⁶ In his Manifestation dated April 14, 2013, respondent Menese resolved to adopt the same Comment filed by his co-respondents.

legal research fee; **ii) posting of a cash or surety bond as provided in Section 6 of this Rule**; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, **an appeal by the employer may be perfected only upon the posting of a cash or surety bond**. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by:

- (a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.
- (b) a copy of the indemnity agreement between the employer-appellant and bonding company; and
- (c) a copy of security deposit or collateral securing the bond.

A certified true copy of the bond shall be furnished by the appellant to the appellee who shall verify the regularity and genuineness thereof and immediately report to the Commission any irregularity.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal.

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.⁷

In a nutshell, the rules are explicit that the filing of a bond for the perfection of an appeal is mandatory and jurisdictional. The requirement that employers post a cash or surety bond to perfect their appeal is apparently intended to assure workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the former's appeal. It was intended to discourage employers from using an appeal to delay, or even evade, their obligations to satisfy their employees' just and lawful claims. However, the whole essence of requiring the filing of bond is

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Emphasis supplied.

defeated if the bond issued turned out to be invalid due to the surety company's expired accreditation.

In the instant case, at the time of the filing of the *supersedeas* bond no. JCL (15)-HO-001522/50934⁸ on behalf of Bacman in the amount of Php5,790,543.06,⁹ Intra Strata was no longer an accredited surety company as it admitted in their Manifestation dated February 23, 2012. A perusal of Intra Strata's certificate of accreditation and authority would show that its accreditation was valid only until January 31, 2012. Thus, beyond January 31, 2012, Intra Strata was no longer a reputable surety company possessing the authority to transact business relative to issuing judicial bonds.

Respondents argued that Intra Strata exhibited good faith in informing them of their expired accreditation. We are, however, unconvinced. The defense of good faith does not, in any way, render the issued bond valid. The fact remains that due to the expired accreditation of Intra Strata, it has no authority to issue the subject bond. It was improper to honor the appeal bond issued by a surety company which was no longer accredited by this Court. Having no authority to issue judicial bonds not only does Intra Strata cease to be a reputable surety company – the bond it likewise issued was null and void.

Necessarily, after being informed of the expired accreditation of Intra Strata, respondents should have refrained from allowing Intra Strata to transact business or to post a bond in favor of Bacman. It is not within respondents' discretion to allow the filing of the appeal bond issued by a bonding company with expired accreditation regardless of its pending application for renewal of accreditation. Respondents cannot extend Intra Strata's authority or accreditation. Neither can it validate an invalid bond issued by a bonding company with expired accreditation, or give a semblance of validity to it pending this Court's approval of the application for renewal of accreditation.

It must be emphasized that it is only the Supreme Court, through the Office of the Court Administrator,¹⁰ which can give authority and accreditation to surety companies to be able to transact business involving judicial bonds, to wit:

⁸ *Rollo*, p. 71.

⁹ *Id.* at 95.

¹⁰ Under Presidential Decree 828, as amended by P.D. 842, and Supreme Court Resolution dated October 24, 1996, the Office of the Court Administrator (OCA) assists the Supreme Court in exercising administrative supervision over all lower courts, specifically on administrative matters, court management problems, fiscal operations and legal concerns involving the lower courts. Corollary to its functions, the OCA is designated as the implementing arm of the Court in the enforcement of the policies and procedure on surety bonds. (A.M. No. 04-7-02-SC)

II. ACCREDITATION OF SURETY COMPANIES: In order to preclude spurious and delinquent surety companies from transacting business with the courts, no surety company or its authorized agents shall be allowed to transact business involving surety bonds with the Supreme Court, Court of Appeals, the Court of Tax Appeals, the Sandiganbayan, Regional Trial Courts, Shari'a District Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a Circuit Courts and other courts which may thereafter be created, **unless accredited and authorized by the Office of the Court Administrator.**¹¹

Thus, without the approval of this Court, the bond issued by bonding companies produces no legal effect. Respondents, by allowing the bonding company with expired accreditation to post bonds, as a consequence, put the litigants at risk, in the event the Court denies the application for accreditation. It betrays the purpose of the required certification issued by this Court which seeks to protect the litigants from spurious surety companies.

Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.¹² This Court has consistently held that only a clear preponderant evidence would warrant the imposition of such a harsh penalty. It means that the record must disclose as free from doubt a case that compels the exercise by the court of its disciplinary powers. The dubious character of the act done, as well as the motivation thereof, must be clearly demonstrated.¹³ In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the complainant establishes his case by clear, convincing and satisfactory evidence.¹⁴ This complainants failed to do.

WHEREFORE, premises considered, the complaint against Napoleon M. Menese, Raul T. Aquino and Teresita D. Castillon-Lora is **DISMISSED.**

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

¹¹ A.M. No. 04-7-02-SC. (Emphasis ours.)

¹² *Arma v. Montevilla*, A.C. No. 4829, July 21, 2008, 559 SCRA 1, 8.

¹³ *Id.* at 8-9.

¹⁴ *Aquino v. Villamar-Mangaoang*, 469 Phil. 613, 618 (2004).

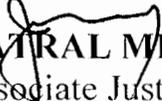
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice