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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
DIVISION OF THE PHILIPPINES
MANILA, PHILIPPINES
Date: 08/02/2017
Time: 10:00 AM

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NATIVIDAD R. MUNAR, BENNY
O. TAGUBA, REYNALD S.
LAMPITOC, ADELINA A.
FARNACIO, ANITA R.
DOMINGO, LUZ T. DOMINGO,
EVANGELINE G. VINARAO,
MOISES J. BARTOLOME, JR.,
ROSARIO R. RAMONES,
MERCEDITA G. PIMENTEL,
MYRNA A. CAMANTE,
LEONIDA A. RUMBAOA,
NORMA U. VILLANUEVA,
ANTONIA M. TANGONAN,
ASUNCION C. MARQUEZ,
JULIETA B. MADRID,
ESTRELLA C. ARELLANO,
LUDIVINA B. SALES, JEANY M.
FLORENTINO, and SHRI B.
VISAYA,

Petitioners,

A.C. No. 7424

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
CAGUIOA, * JJ.

- versus -

ATTY. ELMER T. BAUTISTA and
ATTY. WINSTON F. GARCIA,
Respondents.

Promulgated:

February 8, 2017

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DECISION

REYES, J.:

This is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court from the Resolution² of the Integrated Bar of the Philippines (IBP) passed by its Board of Governors on June 5, 2008 adopting the Report and Recommendation³ dated March 27, 2008 of the Commission on Bar Discipline (CBD) Investigating Commissioner Atty. Salvador B. Hababag (Commissioner Hababag) and dismissing the undated administrative Complaint for Disbarment⁴ filed on February 1, 2007 by Benny O. Taguba, Natividad R. Munar, Reynald S. Lampitoc, Adelina A. Farnacio, Anita R. Domingo, Luz T. Domingo, Evangeline G. Vinarao, Moises J. Bartolome, Jr., Rosario R. Ramones, Mercedita G. Pimentel, Myrna A. Camante, Leonida A. Rumbaoa, Norma U. Villanueva, Antonia M. Tangonan, Asuncion C. Marquez, Julieta B. Madrid, Estrella C. Arellano, Ludivina B. Sales, Jeany M. Florentino, and Shri B. Visaya (collectively, the petitioners) against Atty. Elmer T. Bautista (Atty. Bautista), Chief Legal Counsel and Atty. Winston F. Garcia (Atty. Garcia), General Manager (respondents), both of the Government Service Insurance System (GSIS), for violations of Rules 1.01 and 1.02,⁵ Canons 1⁶ and 5⁷ of the Code of Professional Responsibility (CPR) and the Attorney's Oath.

Factual Background

The petitioners are public school teachers and members of the GSIS residing in the provinces of Isabela and Ifugao.⁸ They alleged that sometime in November 1998, marketing representatives of the GSIS and the San Lorenzo Ruiz Realty and Development Corporation (SLRRDC), namely Ferdinand Patajo, Levy Gonzales and Martina Guerrero (Representatives), visited a number of public schools in the provinces of Isabela and Ifugao, and enticed the teachers to avail of SLRRDC's low-cost housing units in San Lorenzo Ruiz Subdivision (the Subdivision) located at Marabulig I, Cauayan, Isabela based on the following representations, to wit: (1) the Subdivision is financed by the GSIS; (2) the housing units are available to

¹ *Rollo*, pp. 270-297.

² *Id.* at 252.

³ *Id.* at 253-258.

⁴ *Id.* at 1-14.

⁵ Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

⁶ A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

⁷ A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

⁸ *Rollo*, p. 1.

the teachers at the least cost, not exceeding ₱1,000.00 or ₱2,000.00 monthly, depending on the teacher's capacity to pay; (3) the monthly amortizations are payable on any convenient time of the year for the teachers, or after five or 10 years; (4) there are no processing fees or downpayment; (5) no salary deduction but only direct payments to the nearest GSIS Branch Office; (6) when the housing units are ready for occupancy, the teachers will receive a cash gift of ₱3,000.00 for the installation of water and electricity facilities; (7) that the units are payable until the teacher-buyer reaches 70 years old; (8) the units may not be foreclosed until the 10th year for its payment; (9) in case a teacher-buyer is unable to continue payment, he/she may sell his right to the unit before it is foreclosed; and (10) that the Subdivision is fully developed with first class amenities that blends with nature's finest, such as: a) guarded entrance; b) concrete paved roads; c) perimeter fence; d) street lights and street names; e) shady trees every three meters; f) centralized water system; g) underground drainage; h) clubhouse; i) tennis court; j) basketball court; k) children's playground; and l) one perante orange tree per unit. The Representatives boasted that the Subdivision will "set the standard of fine living" where the teachers' "dreams are now a reality."⁹

The petitioners claimed that they were induced to sign blank forms to supposedly reserve housing units in the Subdivision and were not given the opportunity to review its contents due to the Representatives' excuse of being in a hurry. The Representatives, however, assured them that they will return with the filled-up forms for the petitioners' inspection and final decision, and that more GSIS personnel would meet them regarding the housing project and loan. The petitioners highly relied on the said assurances by signing the blank forms in contemplation of a good future investment.¹⁰

Apparently, none of the Representatives or any person from SLRRDC or GSIS returned as promised for the supposed further orientation and explanation on the housing project and loan. Sometime in August 1999, the petitioners were aghast at their respective salary deductions in the amount of ₱5,000.00 monthly for an alleged housing loan from the GSIS. They complained that the deduction left them with a measly ₱1,000.00 as "take home" pay. The petitioners claimed that their signatures in the Authority to Deduct were forged.¹¹

In October 1999, Elvira Agcaoili of the GSIS Main Office visited GSIS Cauayan, Isabela to invite the petitioners to a forum and convinced them to go on with the housing loan on the premise that the GSIS was after their welfare but to no avail. She agreed to stop the salary deductions against the monthly pay of the petitioners by cancelling the Deeds of

⁹ Id. at 40-41.

¹⁰ Id. at 41.

¹¹ Id. at 41-42.

Conditional Sale (DCS). She, however, told them that it would take six months to do so. It was only in or about August 2003 that the Notices of Cancellation¹² were mostly sent to them by the GSIS.¹³

In 2004, the petitioners received notices from the GSIS that they still remain liable to pay for the accrued interests of the principal amount of the housing loan. To their dismay, the value of the housing loans reflected in their GSIS records ranged from ₱800,000.00 to more than ₱1,000,000.00 for a house and lot they allegedly never bought or even saw, much less occupied. They were also directed to pay the alleged arrears in order to stop the loans from further escalating in interest and their retirement pay may not be even enough to settle them.¹⁴

On January 19, 2004, Atty. Bautista issued a Memorandum¹⁵ regarding the right of GSIS to retain ownership of the subject housing units and to collect the purchase price thereof through monthly salary deduction against the petitioners. In support of the collection enhancement of the GSIS on the matter, the GSIS Board of Trustees (BOT) passed Board Resolution No. 48.¹⁶ Accordingly, Atty. Garcia, as GSIS General Manager, enforced and implemented the same by effecting salary deductions on the monthly pay of the petitioners as public school teachers.¹⁷

The petitioners claimed that the allowance and implementation of the collection on arrears on cancelled housing loans are tantamount to double recovery for the GSIS.¹⁸ The respondents ought to know that double recovery is not only prohibited by law, but it is also against public policy and morals. The respondents, therefore, committed serious infractions of the profession's ethical rules and put in question their moral and continued fitness to remain as members of the legal profession.¹⁹

In the Resolution²⁰ dated March 7, 2007, the Court required the respondents to comment on the complaint.

¹² Id. at 16-33.

¹³ Id. at 42-43.

¹⁴ Id. at 43.

¹⁵ Id. at 34-39.

¹⁶ Id. at 256.

¹⁷ Id. at 168.

¹⁸ Id. at 166.

¹⁹ Id. at 6.

²⁰ Id. at 50.

In compliance, Atty. Bautista commented²¹ that he rendered a legal opinion on July 25, 2003, as former Chief Legal Counsel of the GSIS Legal Services Group, upon the request of Arnaldo Cuasay, the Senior Vice President of the Housing and Real Property Development Group, regarding the issue on whether the GSIS can collect arrearages on a housing loan with a DCS that was cancelled *vis-à-vis* Republic Act (R.A.) No. 6552 or the Maceda Law.²²

The legal opinion of Atty. Bautista, in part, reads:

It is clear then that the law expressly recognizes the vendor's right of cancellation of sale on installments with full retention of previous payments only in commercial and industrial properties. The law does not provide recovery of arrearages from the defaulting buyer in case of cancellation of conditional sale of residential properties. On the contrary, the refund of the cash surrender value of the payments on the residential property to the buyer is mandated.

The application of said law in the case of Valarao vs. Court of Appeals, x x x, is also clear when the Supreme Court held that "the rescission of the contract and the forfeiture of the payments already made could not be effected, because the case falls under [R.A.] No. 6552 x x x."²³

He explained that he needed to re-study the matter because the GSIS was unable to implement the cancellation of the DCS between SLRRDC and the borrower/member (herein petitioners) to take possession of the subject property through ejectment proceedings, or to even recover its investment in the housing unit. Worse, the awardees of the cancelled housing loans continually occupied the housing units without paying their amortizations or any reasonable rental fees.²⁴ Hence, Atty. Bautista issued a new legal opinion which provided for the collection of arrearages by the GSIS because of its acquisition of all of SLRRDC's rights in the DCS and the Deed of Absolute Sale and Assignment (DASA) by legal subrogation under Article 1303²⁵ of the Civil Code. It was also provided therein that allowing the borrower/member to go scot-free after the cancellation of the DCS would be contrary to the principle of unjust enrichment and *solutio indebiti* and at the same time repugnant to the mandate of the GSIS to ensure collection or recovery of all indebtedness payable in its favor.²⁶

²¹ Id. at 94-109.

²² Id. at 96-97.

²³ Id. at 97.

²⁴ Id. at 97-98.

²⁵ Art. 1303. Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

²⁶ Rollo, pp. 98-100.

On March 10, 2004, the GSIS-BOT passed and approved Board Resolution No. 48, as recommended by the Housing and Real Property Development Group based on Atty. Bautista's memorandum pursuant to Section 41(a)²⁷ of R.A. No. 8291,²⁸ which supported the collection of arrearages on the cancelled housing loans through salary deduction against the petitioners.²⁹

In his Comment,³⁰ Atty. Garcia averred that the disbarment complaint against him constitutes a collateral attack on the validity of Board Resolution No. 48. He discussed that a real property developer obtains a loan from the GSIS then assigns its rights under a DASA in favor of the latter. GSIS would then collect on the housing loan through monthly amortizations from the member's salary through monthly deduction. Title to the property would only transfer upon full payment of the loan.³¹

To amplify his defense, he explained that the petitioners' non-payment of the monthly amortizations resulted in the cancellation of the DCS and that such rampant practice of non-payment prompted the GSIS to devise a policy that would enhance its collection efforts such as the assailed Board Resolution No. 48, which sought to collect rental fees and not the purchase price of the housing units that were occupied by the petitioners.³²

As General Manager, he averred that it was his ministerial duty to implement an official act of the GSIS-BOT which, under the law, enjoys a presumption of validity. He further updated the petitioners that Board Resolution No. 48 is no longer effective because it has already been superseded by Board Resolution No. 125 which was adopted by the GSIS-BOT on October 4, 2006 which significantly reduced the amount of the rentals that had to be paid by the petitioners due to non-accumulation of interests and surcharges in the rentals due.³³ Thus, the complaint for his disbarment is baseless and futile.

²⁷ Sec. 4I. *Powers and Functions of the GSIS*. - The GSIS shall exercise the following powers and functions:

(a) to formulate, adopt, amend and/or rescind such rules and regulations as may be necessary to carry out the provisions and purposes of this Act, as well as the effective exercise of the powers and functions, and the discharge of duties and responsibilities of the GSIS, its officers and employees[.]

x x x x

²⁸ AN ACT AMENDING PRESIDENTIAL DECREE NO. 1146, AS AMENDED, EXPANDING AND INCREASING THE COVERAGE AND BENEFITS OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, INSTITUTING REFORMS THEREIN AND FOR OTHER PURPOSES. Approved on May 30, 1997.

²⁹ *Rollo*, pp. 100-101.

³⁰ Id. at 70-82.

³¹ Id. at 72.

³² Id. at 73.

³³ Id. at 77-78.

In conclusion, the comments of the respondents criticized the petitioners for resorting to a disbarment complaint as a wrong remedy. Since the issue circulates on the issuance of Board Resolution No. 48, they opined that the petitioners should have filed a petition before the GSIS-BOT to question its validity pursuant to Sections 30 and 31 of R.A. No. 8291 which read:

SEC. 30. *Settlement of Disputes.* — The GSIS shall have original and exclusive jurisdiction to settle any disputes arising under this Act and any other laws administered by the GSIS.

x x x x

SEC. 31. *Appeals.* — Appeals from any decision or award of the Board shall be governed by Rules 43 and 45 of the 1997 Rules of Civil Procedure adopted by the Supreme Court on April 8, 1997 which will take effect on July 1, 1997: *Provided*, That pending cases and those filed prior to July 1, 1997 shall be governed by the applicable rules of procedure: *Provided, further*, That the appeal shall take precedence over all other cases except criminal cases when the penalty of life imprisonment or death or *reclusion perpetua* is imposable.

The appeal shall not stay the execution of the order or award unless ordered by the Board, by the Court of Appeals or by the Supreme Court and the appeal shall be without prejudice to the special civil action of *certiorari* when proper.

In the Resolution³⁴ dated July 9, 2007, the Court referred the case to the IBP for investigation, report and recommendation.

Ruling of the IBP

In the Report and Recommendation³⁵ dated March 27, 2008, the IBP-CBD, through Commissioner Hababag, found no merit in the complaint because the disbarment suit constitutes an unwarranted and improper collateral attack against the validity of Board Resolution No. 48 which the GSIS-BOT adopted pursuant to its mandate; that such collateral attack against an official act of the GSIS-BOT infringes public interest and militates against the legal presumption on the regularity of performance of an official duty; and, that the petitioners failed to avail of the remedy of a petition in assailing the resolution's validity before the GSIS-BOT as set forth in Sections 30 and 31 of R.A. No. 8921. Thus, the dismissal of the complaint was recommended.

³⁴ Id. at 127-128.

³⁵ Id. at 253-258.

On June 5, 2008, the IBP Board of Governors adopted and approved the Report of Commissioner Hababag through Resolution No. XVIII-2008-267,³⁶ as follows:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint lacks merit, the same is hereby DISMISSED.³⁷

The petitioners' motion for reconsideration³⁸ reiterated the same arguments raised in their complaint.

On June 26, 2011, the IBP Board of Governors denied the motion for reconsideration through Board Resolution No. XIX-2011-499,³⁹ as follows:

RESOLVED to unanimously DENY [the petitioners'] Motion for Reconsideration, there being no cogent reason to reverse the findings of the Board and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, for lack of substantial ground or reason to disturb it, the Board of Governors' *Resolution No. XVIII-2008-267 dated June 5, 2008* is hereby AFFIRMED.⁴⁰

Undaunted by the adverse decision of the IBP, the petitioners filed the instant petition for review before the Court.

Ruling of the Court

The findings and recommendation of the IBP are well-taken.

The petitioners clarify that the instant administrative case is directed against the fitness of the respondents as members of the legal profession and not against the validity of Board Resolution No. 48. They asseverate that the issuance of the memorandum by Atty. Bautista which paved the way for the passage of Board Resolution No. 48 and its implementation through the management of Atty. Garcia were in blatant disregard and flagrant violation of Canon 1, Rules 1.01 and 1.02, Canon 5 of the CPR and the Attorney's Oath. They further argue that the collection of arrears on the supposed

³⁶ Id. at 252.

³⁷ Id.

³⁸ Id. at 193-200.

³⁹ Id. at 251.

⁴⁰ Id.

housing loans was a disguised payment of the purchase price of the realties involved and, that the policy authorizing its collection was a scheme to window-dress the huge financial losses suffered by GSIS due to mismanagement.

Citing Article 1385⁴¹ of the New Civil Code, the petitioners put to fore the restoration of their prior position before the execution of the housing contracts upon the cancellation of the DCS. This being so, the GSIS cannot legally collect anything from them anymore as it has retained possession and ownership of the subject properties.

The contention is untenable.

A careful perusal of the allegations in the complaint would show that the issue hinges on the validity of Board Resolution No. 48 which allowed GSIS to collect arrears for the cancelled housing loans. As aptly found by the IBP Board of Governors, the controversy should have been resolved in accordance with the GSIS Law as set forth in Sections 30 and 31 of R.A. No. 8291 which confers original and exclusive jurisdiction on the GSIS on matters arising therefrom such as in the instant case. The Court quotes the IBP-CBD Report and Recommendation, to wit:

The disbarment suit is a[n] unwarranted and improper collateral attack against the validity of a Board Resolution duly adopted by the GSIS[-BOT] in accordance with its mandate. The complaint assails the validity of Board Resolution No. 48.

A collateral attack against the official act of a duly mandated body such as the GSIS[-BOT], will undermine public interest and will militate against the legal presumption that an official duty has been regularly performed x x x[.]

[R.A. No.] 8291 or the GSIS Act of 1997 provides a remedy for [the petitioners]. Herein [petitioners]/borrowers should have filed a petition before the GSIS[-BOT] to question the validity of Board Resolution No. 48. x x x.⁴²

It should also be noted that Board Resolution No. 48 was passed to enhance the collection efforts of the GSIS in view of its fiduciary duty to its members regarding the GSIS funds. The assailed memorandum issued by Atty. Bautista was an enhancement of the collection efforts of the GSIS on delinquent accounts of members who availed of housing loans. The cancellation of the DCS and the cession of SLRRDC's rights in favor of

⁴¹ Art. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

x x x x

⁴² *Rollo*, pp. 257-258.

GSIS warranted such collection upon the monthly salaries of the petitioners. There being no administrative declaration of the resolution's invalidity, it was incumbent upon Atty. Garcia to implement the same, as GSIS President and General Manager, in accordance with his mandate under Section 45⁴³ of R.A. No. 8291. Any disobedience would hold him liable under R.A. No. 3019⁴⁴ and the GSIS Charter.

As held in *Arma v. Atty. Montevilla*:⁴⁵

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.

As a rule, an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that as an officer of the court, he has performed his duties in accordance with his oath. In disbarment proceedings, the burden of proof is upon the complainant and the Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence. Considering the serious consequence of disbarment, 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.⁴⁶ (Citations omitted)

It is well-settled that protection is afforded to members of the Bar who are at times maliciously charged, not just by their clients. Regrettably, the failure of the petitioners to discharge the burden that the acts of the respondents-lawyers violated Canons 1 and 5, Rules 1.01 and 1.02 of the CPR and the Attorney's Oath warrants the dismissal of the instant petition.

It should be noted that the focal point of the complaint for disbarment against the respondents was the collection of arrears against the monthly salaries of the petitioners to pay off housing loans. The rampant collection problems which plagued the GSIS from housing loans that were prevalently unpaid by its members resulted in the influx of receivables and bad debts to

⁴³ Sec. 45. *Powers and Duties of the President and General Manager*. — The President and General Manager of the GSIS shall, among others, execute and administer the policies and resolutions approved by the Board and direct and supervise the administration and operations of the GSIS. The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise discipline them for cause, in accordance with existing Civil Service rules and regulations, and prescribe their duties and qualifications to the end that only competent persons may be employed.

⁴⁴ ANTI-GRAFT AND CORRUPT PRACTICES ACT. Approved on August 17, 1960.

⁴⁵ 581 Phil. 1 (2008).

⁴⁶ Id. at 7.

the detriment of the GSIS fund. The scenario geared the GSIS-BOT and the Management to enhance its collection efforts as a result of which Atty. Bautista issued the second memorandum regarding the legal right of the GSIS to demand payment of the arrearages⁴⁷ from the cancelled housing loans due to delinquency, the issuance of Board Resolution No. 48, and the implementation of the same through the management of Atty. Garcia. Clearly, nothing from the acts of the respondents is deemed a violation of Canon 1, Rules 1.01 and 1.02 of the CPR, its Canon 5, and the Attorney's Oath.

Lastly, the Court commiserates with the sad plight of the petitioners who are among minimum-income earners highly depending on their wages for their daily needs. Nonetheless, they still remain liable to pay the arrears indicated in their GSIS records not only for failing to discharge the burden of proving their allegations in the complaint but also for resorting to a wrong remedy. Despite thereof, the new GSIS Board Resolution No. 125 which replaced the assailed Board Resolution No. 48 is deemed to have given them sufficient leeway from payment because interests and surcharges will no longer accumulate and put to a halt, as explained by Atty. Garcia. Therefore, their chances of paying the balance of the housing loans would become lighter and no longer that burdensome.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice

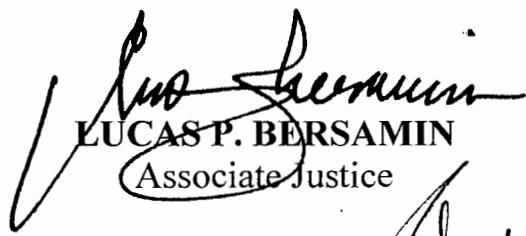
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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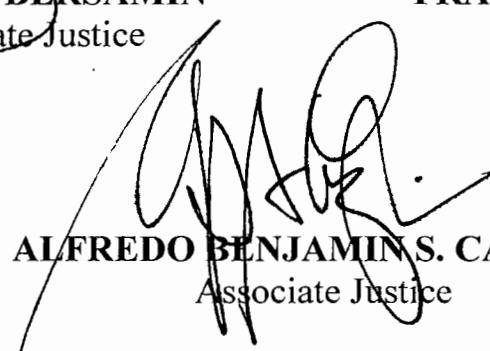
Rollo, pp. 433-434.



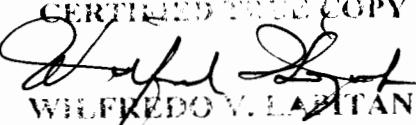
LUCAS P. BERSAMIN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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WILFREDO V. LANTANG
Division Clerk of Court
Third Division
FEB 27 2017

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