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FIRST DIVISION

[Administrative Case No. 2437. February 28, 1985]

DAMASO SARMIENTO and ADELAIDA F. SARMIENTO, *complainants, vs.* ATTY. RAMON F. AGRA, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT; BURDEN OF PROOF TO SUBSTANTIATE THE CHARGE RESTS ON COMPLAINANT; CLEAR PREPONDERANT EVIDENCE NOT SHOWN IN CASE AT BAR.—** The respondent, on February 19, 1982, filed a motion for a writ of execution and demolition with the Court of Agrarian Relations. It is most unlikely, therefore, that on February 22, 1982, just three (3) days after, he would initiate and lead the demolition of the complainants' house without waiting for the court's order. In *Noriega v. Sison* (125 SCRA 293), this Court ruled: "In disbarment proceedings, the burden proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing, and satisfactory proof. Considering the serious consequences of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty. (Romulo Santos v. Alberto M. Dichoso, 84 SCRA 622) This Court has also held in In re Atty. Felizarda M. de Guzman (Case No. 828, Jan. 21, 1974) that to be made the basis of suspension or disbarment, the record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers. The dubious character of the act done as well as the motivation thereof must be clearly demonstrated. An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved; and as an officer of the court, that he performed his duty in accordance with his oath." Under these circumstances, we find no clear and convincing proof to substantiate the charge that the respondent was among those who were initially present during the demolition of the complainants' residential house. And as earlier stated, the ejectment and the demolition order would have followed anyway as a matter of course.

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2. ID.; ID.; ID.; COUNSEL REPRIMANDED FOR FAILURE TO STOP DEMOLITION OF RESIDENTIAL HOUSE PENDING ISSUANCE OF DEMOLITION ORDER.— The records lead us to conclude that the respondent arrived at the scene later when the demolition was already going on and almost finished, contrary to his claim that he arrived only after the demolition. This can be gathered from the testimony of Cpl. Leodigario Almanza who was summoned to the scene. The respondent bears a little responsibility. His fault lies in the fact that he did not strongly protest and try to stop the demolition at that point. He did not sufficiently impress on his mother the need to stop the demolition pending the court order. Respondent Ramon F. Agra is reprimanded, and warned that a more severe penalty will be imposed for subsequent misconduct as a lawyer.

RESOLUTION

GUTIERREZ, JR., *J.:*

The complainant spouses ask that disciplinary action be taken against Atty. Ramon F. Agra for alleged "taking the law into his own hands" when he had their residential house demolished without any court order.

Sometime in 1968, complainants Damaso Sarmiento and Adelaida Sarmiento asked permission and were allowed to transfer their residence from San Andres, Alaminos, Laguna to the landholding of Patricia Agra, the respondent's mother, located at Barangay Sta. Monica, San Pablo City. Adelaida is the daughter of Patricia Agra's elder sister. The respondent's mother testified that she took pity at the plight of her niece whose house had been destroyed by typhoon and that she furnished the galvanized roofing, wood for floor and walls, nails, and the services of two carpenters.

Five years later, the Sarmiento spouses claimed tenancy over the landholding where they had built their house and filed an agrarian case against the respondent's parents in the Court of Agrarian Relations. The complaint was dismissed by the court. Not satisfied with the dismissal of the complaint by the trial court, the Sarmiento spouses appealed the decision to the Court of Appeals.

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The appellate court, affirmed the lower court's decision and likewise dismissed the complaint in its decision dated May 31, 1979. A petition for review on certiorari of the appellate court's decision was filed by the Sarmiento spouses with this Court and the same was denied in our resolution dated July 11, 1979. The original decision became final and executory on August 13, 1979.

On February 19, 1982, the Agras through the respondent filed a motion for the issuance of a writ of execution and demolition in the Court of Agrarian Relations. However, on February 22, 1982, before the court could act on the motion, the residential house of the Sarmiento spouses was demolished by a group allegedly led by Patricia and her family including the respondent herein. This incident led to the filing of a grave coercion case against the respondent and other members of his family in the City Court of San Pablo and of the instant administrative case against the respondent.

It should be noted that the Court of Agrarian Relations' decision specifically found that there was no tenancy relationship between the complainant spouses and the Agras and that the former's residential house was erected on the latter's landholding merely to accomodate them. This decision elevated all the way to this Court had become final and executory as early as August 13, 1979. Hence, the assumption that the respondent *took the law into his own hands* in having the complainant spouses' residential house demolished without a court order is not entirely correct. The order of demolition would have followed as a matter of course.

The complainant spouses' claim that the respondent was among those who led the group who went to their place to demolish their residential house appears to be of doubtful veracity. There was animosity existing between the complainants and the respondent's family. The records show that in the succeeding years, after the complainants transferred to the Agras' landholding, the relationship between the two families turned sour. Thus, three (3) criminal cases for light threats were filed by the respondent's parents against the members of the family of the complainants which were, however, dismissed by the city court.

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On the other hand, the complainants filed the tenancy case against the Agras in the Court of Agrarian Relations.

Cpl. Leodigario Almanza of the police force of San Pablo City, who testified for the complainants did not corroborate their principal claim. Almanza was not initially present at the demolition site when the demolition started. He only went there after he received an information through a telephone call about the demolition which was already going on. He, testified that he saw the respondent at the demolition site upon his arrival there. The testimony of the complainants must be taken in the light of the animosity existing between the two families.

Moreover, the respondent, on February 19, 1982, filed a motion for a writ of execution and demolition with the Court of Agrarian Relations. It is most unlikely, therefore, that on February 22, 1982, just three (3) days after, he would initiate and lead the demolition of the complainants' house without waiting for the court's order. In *Noriega v. Sison* (125 SCRA 293), this Court ruled:

"In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing, and satisfactory proof. Considering the serious consequences of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty. (Romulo Santos *v.* Alberto M. Dichoso, 84 SCRA 622)

"This Court has also held in In re Atty. Felizarda M. de Guzman (Case No. 828, Jan. 21, 1974) that to be made the basis of suspension or disbarment, the record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers. The dubious character of the act done as well as the motivation thereof must be clearly demonstrated. An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved; and as an officer of the court, that he performed his duty in accordance with his oath."

Under these circumstances, we find no clear and convincing proof to substantiate the charge that the respondent was among those who were initially present during the demolition of the

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complainants' residential house. And as earlier stated, the ejectment and the demolition order would have followed anyway as a matter of course.

However, the records lead us to conclude that the respondent arrived at the scene later when the demolition was already going on and almost finished, contrary to his claim that he arrived only after the demolition. This can be gathered from the testimony of Cpl. Leodigario Almanza who was summoned to the scene. The respondent bears a little responsibility. His fault lies in the fact that he did not strongly protest and try to stop the demolition at that point. He did not sufficiently impress on his mother the need to stop the demolition pending the court order.

WHEREFORE, IN VIEW OF THE FOREGOING, the respondent RAMON F. AGRA is REPRIMANDED, and WARNED that a more severe penalty will be imposed for subsequent misconduct as a lawyer. A copy of this Resolution shall be attached to his file in the Bar Confidant's Office.

Teehankee (Chairman), Melencio-Herrera, Plana, de la Fuente, and *Alampay, JJ.*, concur.

Relova, J., no part.

FIRST DIVISION

[G.R. No. L-25653. February 28, 1985]

COMMISSIONER OF INTERNAL REVENUE, *petitioner*, *vs.* MANILA MACHINERY & SUPPLY COMPANY and the COURT OF TAX APPEALS, *respondents*.