

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL SECOND DIVISION

ALEXANDER C. CRISOSTOMO,
as sole proprietor of BIOCARE
HEALTH RESOURCES,

Petitioner,

CTA CASE NO. 8672

Members:

- versus -

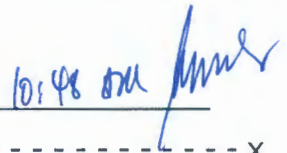
CASTAÑEDA, JR., *Chairperson, and*
CASANOVA, JJ.

COMMISSIONER OF INTERNAL
REVENUE through OIC
REGIONAL DIRECTOR JONAS
AMORA,

Respondent.

Promulgated:

AUG 10 2018



x-----x

RESOLUTION

CASTAÑEDA, JR., J.

For resolution is respondent's **Omnibus Motion** filed on April 12, 2018, with petitioner's **Vehement Opposition/Comment (To Respondent's Omnibus Motion dated April 10, 2018)** filed by registered mail on May 10, 2018 and received by the Court on May 21, 2018.

To recall, respondent avers in the omnibus motion that Atty. Roel A. Zafra has yet to report to work as of the date of the filing of the motion for unknown reasons. This allegedly caused respondent's failure to furnish petitioner's counsel with a copy of respondent's Motion for Reconsideration.

According to respondent, Atty. Zafra was issued a Return to Work Order by the Office of the Regional Director on January 2018. Atty. Zafra allegedly replied in a letter, conveying that he has already completed treatment for an alleged illness and is only securing clearances before returning to work.

However, respondent claims that Atty. Zafra has not reported to work and has not presented any explanation to justify his continued and prolonged absence.

As a remedial measure, this case was allegedly assigned to Atty. Jesse S. Alcaraz.

Also, attached to the instant motion is the original Motion for Reconsideration furnished to petitioner's counsel, filed on July 23, 2017 with registry receipt number 778-660-597.

As to the show cause order issued against Atty. Roel A. Zafra, respondent requests that the same be set aside in the *interim* and be rescheduled until Atty. Roel A. Zafra reports for work.

In view of the foregoing, respondent prays for the Court to admit the service of respondent's Motion for Reconsideration, filed on July 25, 2017, to petitioner's counsel, to reconsider the Resolution dated March 7, 2018 and declare respondent's Motion for Reconsideration as duly filed.

Petitioner opposes the motion, alleging, among others, that respondent's allegations are bare and unsubstantiated, and thus, deserve scant consideration, and that respondent's negligence caused unreasonable delay which is prejudicial to herein petitioner, who is entitled to his constitutional right to speedy disposition of cases.

Thus, on June 19, 2018, the Court ordered Atty. Roel A. Zafra, respondent's counsel, to again show cause why he should not be cited in contempt for failure to comply with the lawful order of this Court. The Court likewise set the case for another hearing on July 25, 2018 to give Atty. Zafra and respondent the opportunity to clarify the matters alleged in respondent's Omnibus Motion and to present their respective arguments in open court as well as the documents supporting thereto, if there's any.

However, despite being duly notified of the said order¹, Atty. Zafra and Atty. Jesse Alcaraz still failed to appear during the July 25, 2018 hearing.

¹ Notice of Resolution dated June 19, 2018 with stamp received of the Bureau of Internal Revenue, Legal Division on June 22, 2018.

In view thereof, the Court has no other recourse but to proceed with the resolution of the instant Omnibus Motion.

After a careful review of the arguments presented by the parties, as well as the records of this case, the Court finds respondent's Omnibus Motion bereft of merit.

To reiterate, the Court correctly considered respondent's Motion for Reconsideration as not filed and a mere scrap of paper because of its failure to comply with the three-day notice requirement under Sections 4 and 5 of Rule of 15 of the Rules of Court.

As previously observed by the Court, the copy of the Motion for Reconsideration attached to the Omnibus Motion which was allegedly furnished to petitioner's counsel still does not bear a notice of hearing; and that the said original copy was served to the petitioner's address and not to petitioner's counsel. In this regard, it must be further noted that while respondent assigned this case to Atty. Jesse S. Alcaraz as a remedial measure, Atty. Alcaraz also failed to comply with the Court's order to furnish petitioner with a copy of respondent's Motion for Reconsideration and to appear on the July 25, 2018 hearing.

Likewise, the Court cannot consider respondent's explanations and justifications for his failure to comply with the three-day notice requirement and failure to furnish petitioner's counsel of the copy of the Motion for Reconsideration because he failed to submit the documents supporting the said allegations despite being given the opportunity to present the same.

Significantly, the Court's ruling also finds support in Sections 3 and 6 of the Revised Rules of the Court of Tax Appeals, to wit:

SEC. 3. *Hearing of the Motion.* - **The motion for reconsideration** or new trial, as well as the opposition thereto, shall embody all supporting arguments and **the movant shall set the same for hearing on the next available motion day**. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it

necessary to hear the parties on oral argument, in which the case the Court shall issue the proper order.

SEC. 6. *Contents of motion for reconsideration or new trial and notice.* - The motion shall be in writing stating its grounds, **a written notice of which shall be served by the movant on the adverse party.**

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal. (*Emphasis supplied*)

Clearly, without a notice of hearing, respondent's motion for reconsideration was properly deemed *pro forma* and a mere scrap of paper. Hence, for failure to raise any plausible reason to justify a reversal of the assailed Resolution, respondent's Omnibus Motion should be denied for lack of merit.

As to the order incorporated in the Resolution dated June 19, 2018 requiring Atty. Zafra to show cause as to why he should not be cited in contempt, records show that Atty. Zafra, as counsel for respondent, was already given several opportunities² to comply with the Court's Resolution dated September 20, 2017³ and/or to explain his non-compliance. However, Atty. Zafra failed to comply with the said Resolution⁴, and until the last opportunity given to be heard, Atty. Zafra still failed to appear during the hearing held on July 25, 2018.

² Resolutions dated November 22, 2017, February 1, 2018, March 27, 2017, June 19, 2018 and the Hearing set on July 25, 2018.

³ Docket, vol. II, pp. 744-745.

⁴ Records Verification dated October 20, 2017, December 20, 2017, February 20, 2018 and July 23, 2018.

Thus, on this matter, the Court finds instructive Sections 4 and 7 of Rule 71 of the Rules of Court which provide for the procedure and penalty for indirect contempt, as follows:

SEC. 4. *How proceedings commenced.* - Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed **by an order** or any other formal charge **requiring the respondent to show cause why he should not be punished for contempt.**

SEC. 7. *Punishment for indirect contempt.* - If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. x x x (*Emphasis supplied.*)

Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.⁵

In *Donato C. Cruz Trading Corporation vs. Court of Appeals, et al.*⁶, the Supreme Court ruled that:

"This Court cannot countenance the contumacious conduct of private respondent in trifling with the mandatory processes of the courts. She repeatedly failed to comply with the order of this Court to file her comment and was prevailed upon to do so only after her liberty was threatened. There is no question that **for continuously disobeying the lawful orders of the Court private respondent committed indirect contempt which this Court strongly condemns for it degrades our**

⁵ *Roxas, et al. vs. Tipon, et al.*, G.R. Nos. 160641 and 160642, June 20, 2012.

⁶ G.R. No. 129189, December 5, 2000.

dignity, wastes our time and abuses the administration of justice." (*Emphasis supplied.*)

In this case, it is clear that Atty. Zafra, as counsel for respondent, continuously ignored the Court's directives to furnish petitioner's counsel with the copy of respondent's Motion for Reconsideration, and to explain his non-compliance with the September 20, 2018 Resolution.

WHEREFORE, premises considered, respondent's **Omnibus Motion** is **DENIED** for lack of merit, while **Atty. Roel A. Zafra**, as respondent's counsel, is **ADJUDGED** guilty of **INDIRECT CONTEMPT**. Consequently, Atty. Zafra is **ORDERED TO PAY A FINE** of ₱5,000.00.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:


CAESAR A. CASANOVA
Associate Justice