

**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:

MAR 27 2018

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RESOLUTION

CASTAÑEDA, JR., J.

On July 25, 2017, respondent filed a Motion for Reconsideration of the Amended Decision promulgated on July 7, 2017, which granted petitioner's Motion for Reconsideration and Petition for Review, and cancelled the deficiency value added tax and deficiency income tax against petitioner for the taxable year 2004.

Later, on September 4, 2017, petitioner filed his Manifestation and Motion to Be Furnished with a Copy of Respondent's Motion for Reconsideration (Of the Amended Decision dated July 7, 2017).

Thus, in the Resolution dated September 20, 2017, the Court granted the motion and directed respondent to furnish petitioner's counsel with a copy of respondent's Motion for Reconsideration. *ℓ*

However, as per Records Verification dated October 20, 2017, the counsel for respondent failed to comply with the above Resolution.

In view of respondent's non-compliance, the Court issued the Resolution dated November 22, 2017, again directing respondent to furnish petitioner's counsel with a copy of respondent's Motion for Reconsideration within five (5) days from receipt of the Resolution.

Despite receipt of the Resolution on November 24, 2017¹, respondent still failed to comply with the Court's directive², which lead to the issuance of the Resolution dated February 1, 2018, ordering respondent to show cause why he should not be cited in contempt for failure to comply with the lawful order of the Court, and to furnish petitioner's counsel with a copy of respondent's Motion for Reconsideration, both to be complied with within 5 days from receipt of the Resolution, with a stern warning that non-compliance therewith will be dealt with more severely.

Based on the records, respondent received the Resolution dated February 1, 2018 on February 6, 2018. Thus, the last day to comply with the Court's directives was on February 11, 2018. However, respondent still failed to comply with the Court's order, and no written manifestation or explanation was received by this Court on why this directive could not be complied with.

In this regard, Section 4 of Rule 71 of the Rules of Court provides how the proceedings for indirect contempt is commenced, to wit:

"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.**" (*Emphasis supplied*) *je*

¹ Docket, vol. II, p. 747.

² Records Verification dated December 20, 2017.

In contempt proceedings, the prescribed procedure must be followed. Sections 3 and 4, Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. First, there must be an order requiring the respondent to show cause why he should not be cited for contempt. Second, the respondent must be given the opportunity to comment on the charge against him. Third, there must be a hearing and the court must investigate the charge and consider respondent's answer. Finally, only if found guilty will respondent be punished accordingly.³

Thus, for failure to comply with the Resolutions dated September 20, 2017, November 22, 2017 and February 1, 2018, and instead of respondent, Atty. Roel A. Zafra, the respondent's counsel, shall be ordered to show cause why he should not be cited for contempt, and the same shall thereafter be set for hearing to afford him full and real opportunity to be heard.

In addition, a careful perusal of the records also shows that respondent's Motion for Reconsideration has no notice of hearing.

Sections 4 and 5, Rule 15 of the Rules of Court provide that:

"Sec. 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. *Notice of hearing.* – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion." *gr*

³ *In the Matter of the Contempt Orders against Lt. Gen. Jose M. Calimlim and Atty. Domingo A. Doctor, Jr.*, G.R. No. 141668, August 20, 2008.

The general rule is that **the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process.** The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.⁴

A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court **is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon.** Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency.⁵

Considering that respondent failed to furnish petitioner's counsel with the respondent's Motion for Reconsideration, and that the motion filed with this Court has no notice of hearing, the Court may not act on the same and is considered a worthless piece of paper.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration is DEEMED NOT FILED** and is considered a mere scrap of paper. Moreover, instead of respondent, Atty. Roel A. Zafra, respondent's counsel, is **ORDERED to SHOW CAUSE** why he should not be cited in contempt for failure to comply with the lawful order of this Court, within five (5) days from notice. Thereafter, the case shall be set on April 25, 2018 at 8:30 a.m. to give Atty. Roel Zafra the full opportunity to be heard on the matter.

Accordingly, the show cause order directed to the respondent in the Resolution dated February 1, 2018 is **RECALLED** and **SET ASIDE.** *je*

⁴ *Cabrera vs. Ng*, G.R. No. 201601, March 12, 2014.

⁵ *Ibid.*

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:


CAESAR A. CASANOVA
Associate Justice