

**IRENE SANTOS-TAN, REPRESENTED BY HER ATTORNEY-IN-FACT
MIRIAM S. ELGINCOLIN, COMPLAINANT, VS. ATTY. ROMEO R.
ROBISO, RESPONDENT.**

ADM. CASE No. 6383, March 31, 2009

Ponente: TINGA, J.

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TINGA, J.:

This is an administrative complaint filed by complainant Irene Santos-Tan against respondent Atty. Romeo Robiso.[1] Complainant charged respondent with malpractice for grossly neglecting his duties and responsibilities as counsel for complainant and for issuing a bouncing check. Complainant seeks that respondent be disbarred and ordered to return the sum of P85,000.00, plus interest.

Complainant asserts the following: Sometime in December 2000, complainant engaged the professional services of respondent as her counsel to represent her in Special Proceeding No. 01-101339, entitled In the Matter of the Intestate Estate of Eusebio G. Tan, a.k.a. Tan Chin Bio G., pending before the Regional Trial Court of Manila, Branch 45. She paid respondent P100,000.00 as acceptance fee. Subsequently, respondent entered his appearance as new counsel on 12 December 2002.

After several months had passed, complainant asked respondent about the status of her case. She found out that her case had not progressed and that the only pleading that respondent had filed was his notice of appearance.[2] Not satisfied with the way respondent was handling her case, complainant and her sister, Miriam Elgincolin (Miriam), went to his office on 3 November 2003. She demanded that he return the professional fees earlier paid as there was allegedly no professional service rendered by him. And for the purpose of returning a portion of the professional fee, respondent issued to complainant Asia United Bank Check No. 0048229 dated 29 November 2003 in the amount of P85,000.00.[3]

However, respondent's check was dishonored by the drawee bank for insufficiency of funds.[4] Despite several demands, respondent failed to make good or replace the check. In reply to complainant's final demand, made through her counsel, respondent wrote a letter dated 25 January 2004 asserting that the check was without consideration and it was issued to stop complainant's "acerbic verbal abuse." [5]

In compliance with the Court's 21 June 2004 Resolution,[6] respondent filed his Comment dated 16 August 2004[7] and a Supplement Comment dated 17 September 2004.[8] Below are his allegations:

Before respondent entered his appearance as counsel, a motion for reconsideration of the order appointing Jude Chua Tan as administrator of complainant's husband and a motion for early resolution of said motion for reconsideration had already been filed by complainant's former counsel. Still, respondent "went back and forth to the court to personally follow-up the resolution of the motion for reconsideration." [9] However, the branch clerk of court would only advise him to wait "for the replacement of the presiding judge who retired." [10] Further still, he would, once or twice a month, still drop by the office of the branch clerk of court to inquire about the status of the case. But without fail, the answer he would get was "no new judge yet." [11] It was only later that he learned

that the regular judge did not actually retire but was suspended by the Court. Respondent recorded the dates of his court visits in his notes and these were part of the case file which was turned over to complainant when she terminated his services. Whatever delay in the resolution of the motions before the RTC was due to the suspension of the regular presiding judge of the court and the reluctance of the acting judge to resolve said motions during such period. In effect, he even contacted the opposing counsel to explore the possibility of an amicable settlement. Thus, he was never remiss in his duties as counsel for complainant.[12]

Complainant was proud and nasty. His secretary would receive her calls berating him on the slow progress of the case. Complainant also badmouthed her former lawyers while expressing her disappointment over their failure to have the RTC appoint her as an administrator of her husband's estate.

As to the acceptance fee, it was understood to be non-refundable. But on 3 November 2003, so respondent asserts, complainant "bullied respondent with harsh words right inside his office." [13] Complainant shouted invectives at him. So, to make her leave his office, he wrote the P85,000.00 check and gave it to her.[14]

In her Reply to respondent's Comment and Supplemental Comment dated 6 October 2004,[15] complainant avers: if respondent had really made numerous follow-ups regarding her case, he would have known that the regular presiding judge did not retire but was merely suspended.[16] Respondent learned of such fact only when he reviewed the case record. Instead of apologizing to her for issuing the rubber check, respondent concocted an incredible tale to make it appear that she was the one bullying him inside his office and forcing him to issue her a check. It is unthinkable for an ordinary person like herself to raise her voice against a lawyer especially inside the latter's office. It is unbelievable for any person to issue a check for P85,000.00 just to appease another person. Respondent could have called security to stop her if indeed she was bullying him in his office. Moreover, respondent himself deducted P15,000.00 from the acceptance fee as payment for the alleged professional service he had rendered.[17]

Attached to complainant's reply is the affidavit[18] of her sister Miriam who was with her when she went to respondent's office and witnessed everything that had transpired therein. According to Miriam, respondent explained to complainant that he had been following-up the case and that he could not return the full amount of the acceptance fee. Complainant was told by respondent that he had no money so instead he wrote her a check before her departure to the U.S. They then left the office of respondent. Miriam stated that she saw the case folder was given by respondent and there were no notes which would allegedly indicate the dates when he made follow-ups in the intestate case.[19]

In a Resolution dated 26 January 2005,[20] the Court referred the case to the Integrated Bar of the Philippines (IBP) for evaluation, report and recommendation.

The issues are: (1) whether respondent was negligent in handling complainant's case; and (2) whether respondent should be disciplined for issuing a bouncing check. To thresh out the issues, the IBP conducted the mandatory conference/hearing and thereafter required both parties to submit their respective verified position papers.

Both parties submitted their respective verified position papers both substantially reiterating their arguments in previous submission.

Complainant notes that respondent had admitted in effect his negligent handling of her case when he returned P85,000.00 of the acceptance fee she paid him. The commission of a criminal act, such as the issuance of a bouncing check, a violation of Batas Pambansa (B.P.) 22, clearly constitute gross misconduct. Respondent's claim that there was no consideration for the check is not true since it was issued to return the complainant's P100,000.00 attorney's fees for services that were not rendered. There was in effect a rescission and cancellation

of the retainer agreement.[21]

For respondent's part, he alleges that his secretary, Amarie Malana, saw the notes in which he recorded the dates when he went to court to follow up the status of complainant's case. Respondent's secretary also witnessed how he was berated in his office on November 2003. Since he was also in a hurry to catch up with his law class, he quickly issued the check to complainant.[22] As for complainant's case, neglect should not be attributed to him then since the motions filed by her previous lawyer were already submitted for resolution and there was nothing further he could do. That at the beginning of his engagement as lawyer, he made it clear to complainant that the P100,000.00 was an acceptance fee and was non-refundable.

The hearing officer, Caesar Dulay, in his Report and Recommendation dated 20 November 2007,[23] recommended that respondent be suspended for one month with strong warning that a commission of a similar offense would be dealt with more severity in the future. He also recommended that respondent be ordered to reimburse complainant the amount of P70,000.00, P30,000.00 of which corresponds to the services rendered by him on a quantum meruit. He did not find respondent to be grossly negligent in the performance of his duties as there was nothing more respondent could do in accelerating the resolution of the motions which were already submitted for resolution. The filing of additional pleadings or papers with the court would not be necessary. During the time the motion for reconsideration was pending the regular presiding judge of the court was under suspension and the acting presiding judge who issued the resolution considering the motion as submitted for resolution was not disposed to act on said motion but instead opted to wait for the regular presiding judge to act on it.

However, the hearing officer recommended that respondent be made liable for issuing the bouncing check. Whatever was respondent's reason for issuing the check, the fact remains that the same was dishonored by the bank for having been drawn against insufficient funds. If respondent's purpose was just to appease complainant to make her leave his office and he firmly believed that he had no obligation to return the P100,000.00, then he could have issued a stop-payment order to the bank before the encashment of the check, the hearing officer added.

The Board of Governors of the IBP, in a Resolution on 14 December 2007, adopted and approved the Report and Recommendation with modification that the recommended penalty of suspension from the practice of law be increased to one year.[24]

Pursuant to Rule 139-B of the Rules of Court, the administrative case is now before the Court for resolution.

The Court affirms the findings of the IBP.

On the issue of negligence on the part of respondent in handling complainant's case, the Court agrees that based on the facts presented there was nothing that he could have done to expedite the resolution of the motion for reconsideration then pending before the RTC. The RTC had already ordered that the motion for reconsideration be submitted for resolution. Respondent could not be faulted if the acting presiding judge did not want to act on the motion until the regular presiding judge return.

Regarding the other issues, as a lawyer, respondent is deemed to know the law, especially Batas Pambansa Blg. 22 (B.P. Blg. 22). By issuing a check in violation of the provisions of this law, respondent is guilty of serious misconduct.

In *People v. Tuanda*,[25] we explained the nature of violation of B.P. Blg. 22 as follows:

The gravamen of the offense punished by B.P. Blg. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment x x x. The thrust of the law is to prohibit under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious

effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property but an offense against public order.

x x x x

The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest.[26]

In issuing a worthless check, respondent showed that he was unmindful of the deleterious effects of his act to the public interest and public order. Respondent violated the Attorney's Oath that he will, among others, obey the laws. The Code of Professional Responsibility specifically provides:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES.

Rule 1.01 - A Lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. [emphasis supplied]

The issuance of bouncing check cannot be countenanced nor condoned under any circumstances. The act of a lawyer in issuing a check which is drawn against insufficient funds constitutes deceitful conduct or conduct unbecoming an officer of the court. The Court has held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him. It shows a lack of personal honesty and good moral character as to render him unworthy of public confidence.[27]

As such, we have held that deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law.[28] The IBP Board of Governors recommended that respondent be suspended from the practice of law for one year. However, the Court notes that, in practice, acceptance fees of lawyers are generally non-refundable and the fact that, in the present case, respondent is willing to make good the amount of the bouncing check. Thus, we deem that one month suspension from the practice of law and the restitution of P85,000.00 to complainant would be sufficient in this case.

The Court reiterates that membership in the legal profession is a privilege and demands a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law.[29] As servant of the law, a lawyer should moreover make himself an exemplar for others to emulate. The responsibilities of a lawyer are greater than those of a private citizen. He is looked up to in the community.

IN VIEW WHEREOF, respondent Atty. Romeo R. Robiso is ORDERED SUSPENDED from the practice of law for a period of ONE (1) month effective upon receipt of this Decision. He is further ORDERED to pay complainant the full amount of P85,000.00, as reflected in the check. He is STERNLY WARNED that a commission of a similar offense will be acted upon with more severity. Let a copy of this Decision be furnished

the Office of the Bar Confidant and the Integrated Bar of the Philippines to be entered into the personal record of Atty. Robiso. The Court Administrator is directed to circulate this order of suspension to all courts in the country.

SO ORDERED.

Qusisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Peralta, JJ.[*], concur.

[*]Additional member as replacement of Justice Arturo D. Brion who is on official leave per Special Order No. 587.

[1] Rollo, pp. 1-6.

[2] Id. at 10.

[3] Id. at 12.

[4] Id. at 13.

[5] Id. at 14.

[6] Id. at 16.

[7] Id. at 21-23.

[8] Id. at 30-33.

[9] Id. at 21.

[10] Id.

[11] Id.

[12] Id. at 22.

[13] Id.

[14] Id.

[15] Id. at 47-52.

[16] Id. at 47.

[17] Id. at 48-49.

[18] Id. at 53-57.

[19] Id. at 54-55.

[20] Id. at 62-63.

[21] IBP record, pp. 9-19.

[22] Id. at 27-35.

[23] Id. at 67-74.

[24] Id. at 65-66.

[25] Adm. Case No. 3360, 30 January 1990, 181 SCRA 692.

[26] Id. at 696, citing *Lozano v. Martinez*, 146 SCRA 323 (1986).

[27] *Cuizon v. Macalino*, Adm Case No. 4334, 7 July 2004, 433 SCRA 479, 486.

[28] *Lao v. Atty. Medel*, 453 Phil. 115, 124 (2003).

[29] *Lao v. Atty. Medel*, 453 Phil. 115, 123 (2003).

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