

VERONICA S. SANTIAGO, BENJAMIN Q. HONTIVEROS, MR. SOCORRO F. MANAS, AND TRINIDAD NORDISTA, COMPLAINANTS, VS. ATTY. AMADO R. FOJAS, RESPONDENT.

Adm. Case No. 4103. September 07, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In their letter of 8 September 1993, the complainants, former clients of the respondent, pray that the latter be disbarred for "malpractice, neglect and other offenses which may be discovered during the actual investigation of this complaint." They attached thereto an Affidavit of Merit wherein they specifically allege:

- That we are Defendants-Appellates [sic] in the Court of Appeals Case No. CA-G.N. CV No. 38153 of which to our surprise lost unnecessarily the aforesaid Petition [sic]. A close perusal of the case reveals the serious misconduct of our attorney on record, Atty. Amado Fojas tantamount to malpractice and negligence in the performance of his duty obligation to us, to defend us in the aforesaid case. That the said attorney without informing us the reason why and riding high on the trust and confidence we repose on him either abandoned, failed to act accordingly, or seriously neglected to answer the civil complaint against us in the sala of Judge Teresita Capulong Case No. 3526-V-91 Val. Metro Manila so that we were deduced [sic] in default.

- That under false pretenses Atty. Fojas assured us that everything was in order. That he had already answered the complaint so that in spite of the incessant demand for him to give us a copy he continued to deny same to us. Only to disclose later that he never answered it after all because according to him he was a very busy man. Please refer to Court of Appeals decision dated August 17, 1993.

- That because of Atty. Amado Foja's neglect and malpractice of law we lost the Judge Capulong case and our appeal to the Court of Appeals. So that it is only proper that Atty. Fojas be disciplined and disbarred in the practice of his profession.

In his Comment, the respondent admits his "mistake" in failing to file the complainants' answer in Civil Case No. 3526-V-91, but he alleges that it was cured by his filing of a motion for reconsideration, which was unfortunately denied by the court. He asserts that Civil Case No. 3526-V-91 was a "losing cause" for the complainants because it was based on the expulsion of the plaintiff therein from the Far Eastern University Faculty Association (FEUFA) which was declared unlawful in the final decision in NCR-OD-M-90-10-050. Thus, "[t]he unfavorable judgment in the Regional Trial Court is not imputable to [his] mistake but rather imputable to the merits of the case, i.e., the decision in the Expulsion case wherein defendants (complainants herein) illegally removed from the union (FEUFA) membership Mr. Paulino Salvador...." He further claims that the complainants filed this case to harass him because he refused to share his attorney's fees in the main labor case he had handled for them. The respondent then prays for the dismissal of this complaint for utter lack of merit, since his failure to file the answer was cured and, even granting for the sake of argument that such failure amounted to negligence, it cannot warrant his disbarment or suspension from the practice of the law profession.

The complainants filed a Reply to the respondent's Comment.

Issues having been joined, we required the parties to inform us whether they were willing to submit this case for decision on the basis of the pleadings they have filed. In their separate compliance, both manifested in the affirmative.

The facts in this case are not disputed.

Complainants Veronica Santiago, Benjamin Hontiveros, Ma. Socorro Manas, and Trinidad Nordista were the President, Vice-President, Treasurer, and Auditor, respectively, of the FEUFA. They allegedly expelled from the union Paulino Salvador. The latter then commenced with the Department of Labor and Employment (DOLE) a complaint (NCR-OD-M-90-10-050) to declare illegal his expulsion from the union.

In his resolution of 22 November 1990, Med-Arbiter Tomas Falconitin declared illegal Salvador's expulsion and directed the union and all its officers to reinstate Salvador's name in the roll of union members with all the rights and privileges appurtenant thereto. This resolution was affirmed in toto by the Secretary of Labor and Employment.

Subsequently, Paulino Salvador filed with the Regional Trial Court (RTC) of Valenzuela, Metro Manila, Branch 172, a complaint against the complainants herein for actual, moral, and exemplary damages and attorney's fees, under Articles 19, 20, and 21 of the Civil Code. The case was docketed as Civil Case No. 3526-V-91.

As the complainants' counsel, the respondent filed a motion to dismiss the said case on grounds of (1) *res judicata* by virtue of the final decision of the Med-Arbiter in NCR-OD-M-90-10-050 and (2) lack of jurisdiction, since what was involved was an intra-union issue cognizable by the DOLE. Later, he filed a supplemental motion to dismiss.

The trial court, per Judge Teresita Dizon-Capulong, granted the motion and ordered the dismissal of the case. Upon Salvador's motion for reconsideration, however, it reconsidered the order of dismissal, reinstated the case, and required the complainants herein to file their answer within a nonextendible period of fifteen days from notice.

Instead of filing an answer, the respondent filed a motion for reconsideration and dismissal of the case. This motion having been denied, the respondent filed with this Court a petition for certiorari, which was later referred to the Court of Appeals and docketed therein as CA-G.R. SP No. 25834.

Although that petition and his subsequent motion for reconsideration were both denied, the respondent still did not file the complainants' answer in Civil Case No. 3526-V-91. Hence, upon plaintiff Salvador's motion, the complainants were declared in default, and Salvador was authorized to present his evidence *ex-parte*.

The respondent then filed a motion to set aside the order of default and to stop the *ex-parte* reception of evidence before the Clerk of Court, but to no avail.

Thereafter, the trial court rendered a decision ordering the complainants herein to pay, jointly and severally, plaintiff Salvador the amounts of P200,000.00 as moral damages; P50,000.00 as exemplary damages or corrective damages; and P65,000.00 as attorney's fees; plus cost of suit.

The complainants, still assisted by the respondent, elevated the case to the Court of Appeals, which, however, affirmed in toto the decision of the trial court.

The respondent asserts that he was about to appeal the said decision to this Court, but his services as counsel for the complainants and for the union were illegally and unilaterally terminated by complainant Veronica Santiago.

The core issue that presents itself is whether the respondent committed culpable negligence, as would warrant disciplinary action, in failing to file for the complainants an answer in Civil Case No. 3526-V-91 for which reason the latter were declared in default and judgment was rendered against them on the basis of the plaintiff's evidence, which was received ex-parte.

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment,[1] subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him.[2] He must serve the client with competence and diligence,[3] and champion the latter's cause with wholehearted fidelity, care, and devotion.[4] Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied.[5] This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense.[6] If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[7]

The respondent admits that it was his duty to file an answer in Civil Case No. 3526-V-91. He justifies his failure to do so in this wise:

[I]n his overzealousness to question the Denial Order of the trial court,[8] [he] instead, thru honest mistake and excusable neglect, filed a PETITION FOR CERTIORARI with the Honorable Court, docketed as G.R. No. 100983....

And, when the Court of Appeals, to which G.R. No. 100983 was referred, dismissed the petition, he again "inadvertently" failed to file an answer "[d]ue to honest mistake and because of his overzealousness as stated earlier...."

In their Reply, the complainants allege that his failure to file an answer was not an honest mistake but was "deliberate, malicious and calculated to place them on the legal disadvantage, to their damage and prejudice" for, as admitted by him in his motion to set aside the order of default, his failure to do so was "due to volume and pressure of legal work." [9] In short, the complainants want to impress upon this Court that the respondent has given inconsistent reasons to justify his failure to file an answer.

We agree with the complainants. In his motion for reconsideration of the default order, the respondent explained his non-filing of the required answer by impliedly invoking forgetfulness occasioned by a large volume and pressure of legal work, while in his Comment in this case he attributes it to honest mistake and excusable neglect due to his overzealousness to question the denial order of the trial court.

Certainly, "overzealousness" on the one hand and "volume and pressure of legal work" on the other are two distinct and separate causes or grounds. The first presupposes the respondent's full and continuing awareness of his duty to file an answer which, nevertheless, he subordinated to his conviction that the trial court had committed a reversible error or grave abuse of discretion in issuing an order reconsidering its previous order of dismissal of Salvador's complaint and in denying the motion to reconsider the said order. The second ground is purely based on forgetfulness because of his other commitments.

Whether it be the first or the second ground, the fact remains that the respondent did not comply with his duty to file an answer in Civil Case No. 3526-V-91. His lack of diligence was compounded by his erroneous belief that the trial court committed such error or grave abuse of discretion and by his continued refusal to file an answer even after he received the Court of Appeals' decision in the certiorari case. There is no showing whatsoever that he further assailed the said decision before this Court in a petition for review under Rule 45 of the Rules of Court to prove his claim of overzealousness to challenge the trial court's order. Neither was it shown that he alleged in his motion to lift the order of default that the complainants had a meritorious defense.[10] And, in his appeal from the judgment by default, he did not even raise as one of the errors of the trial court either the impropriety of the order of default or the court's grave abuse of discretion in denying his motion to lift that order.

Pressure and large volume of legal work provide no excuse for the respondent's inability to exercise due diligence in the performance of his duty to file an answer. Every case a lawyer accepts deserves his full attention, diligence, skill, and competence, regardless of its importance and whether he accepts it for a fee or for free.

All told, the respondent committed a breach of Canon 18 of the Code of Professional Responsibility which requires him to serve his clients, the complainants herein, with diligence and, more specifically, Rule 18.03 thereof which provides: "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

The respondent's negligence is not excused by his claim that Civil Case No. 3526-V-91 was in fact a "losing cause" for the complainants since the claims therein for damages were based on the final decision of the Med-Arbiter declaring the complainants' act of expelling Salvador from the union to be illegal. This claim is a mere afterthought which hardly persuades us. If indeed the respondent was so convinced of the futility of any defense therein, he should have seasonably informed the complainants thereof. Rule 15.05, Canon 15 of the Code of Professional Responsibility expressly provides:

A lawyer, when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

Then too, if he were unconvinced of any defense, we are unable to understand why he took all the trouble of filing a motion to dismiss on the grounds of res judicata and lack of jurisdiction and of questioning the adverse ruling thereon initially with this Court and then with the Court of Appeals, unless, of course, he meant all of these to simply delay the disposition of the civil case. Finally, the complainants were not entirely without any valid or justifiable defense. They could prove that the plaintiff was not entitled to all the damages sought by him or that if he were so, they could ask for a reduction of the amounts thereof.

We do not therefore hesitate to rule that the respondent is not free from any blame for the sad fate of the complainants. He is liable for inexcusable negligence.

WHEREFORE, ATTY. AMADO R. FOJAS is hereby REPRIMANDED and ADMONISHED to be, henceforth, more careful in the performance of his duty to his clients.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Canon 31, Canons of Professional Ethics.

[2] Canon 17, Code of Professional Responsibility.

[3] Canon 18, Code of Professional Responsibility.

[4] Vda. de Alisbo vs. Jalandoon, 199 SCRA 321 [1991].

[5] Canon 15, Canons of Professional Ethics.

[6] Id.

[7] Francisco vs. Bosa, 205 SCRA 722 [1992].

[8] Order denying the motion to reconsider the order which set aside the previous order dismissing the case, reinstated the complaint, and required the complainants to answer the complaint.

[9] Appellant's Brief (CA-G.R. No. CV-38153), 3; Annex "12" of the Respondent's Comment.

[10] Section 3, Rule 18, Rules of Court. See Circle Financial Corp. vs. Court of Appeals, 196 SCRA 166 [1991]; Golden Country Farms, Inc. vs. Sanwar Development Corp. 214 SCRA 295 [1992].

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