

IN RE ATTORNEY FELIX P. DAVID*Administrative No. 35. September 30, 1949*

Ponente: REYES, J.

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The respondent, Felix P. David, a member of the Philippine Bar, is charged with malpractice for misappropriating funds entrusted to him by his client, the complainant Briccio S. Henson. Respondent having answered denying the charge, the complaint was referred to the Solicitor General for investigation. After investigation the Solicitor General rendered his report finding the respondent guilty of professional misconduct and recommending disciplinary action. The Solicitor General reports the following facts to have been conclusively established:

"* * * that on February 15, 1947, respondent obtained P840 from his client Briccio Henson to be applied to the payment of inheritance and real estate taxes due from the estate of Esteban Henson for 1945, 1946 and 1947 (p. 3, t. s. n.), for which he signed a receipt (Annex 'A'; p. 3, t. s. n.). On several occasions, complainant asked the respondent to show him the official tax receipt evidencing the payment of said taxes, to which the latter answered that he had already paid them, but the receipts were left with his friend in San Fernando. Respondent promised to give the receipt later. Complainant waited patiently for it but it was never delivered. After the respondent had failed to deliver the receipt, complainant became suspicious and inquired from the provincial treasurer of Pampanga about the matter. Said official gave the information that the taxes were never paid. Consequently, complainant requested the respondent to refund the money given him for the payment of said taxes (p. 7, t. s. n., OSG), but he failed to do so. Respondent made several promises to return the money which he never complied. Neither had he done anything to transfer the titles of the land in the name of the heirs of Esteban Henson up to the present (p. 9, t. s. n.). In view of this failure of the respondent, the complainant was ultimately forced to pay the taxes out of his own pocket (p. 8, t. s. n.)."

Required to answer the complaint formulated by the Solicitor General on the basis of his report, respondent failed to do so. And despite due notice he likewise failed to appear at the hearing before this Court. Indeed, we note from the Solicitor General's report that respondent, instead of welcoming every opportunity for hearing, seems to have wanted to avoid it. On this point the report says:

"At the hearing held on May 26, 1948, both parties appeared and the complainant testified. After the complainant had testified, the hearing was set for continuance the following day. Both parties agreed in the presence of the investigator to postpone said hearing for June 5, 1948. On June 5, 1948, complainant appeared, but respondent did not show up, so to give the respondent a chance, the investigator postponed the continuation of the hearing to June 17. Both parties were duly subpoenaed (attached to the records). On June 15th, respondent sent a letter (attached to the records) to Assistant Solicitor General Ruperto Kapunan, asking that the hearing be postponed to June 25, 1948. Acceding to the request, both parties were again duly subpoenaed for June 25, 1948 (attached to the records). In the subpoena went to respondent, his attention was invited to Rule 127, section 28, of the Rules of Court, which provides that if he fails to appear and answer the charge, the Solicitor in charge will proceed to hear the case ex parte. In spite of this, on the morning of June 25, he again sent another letter (attached to the records) to Assistant Solicitor General Kapunan, asking that the hearing be transferred to July 7 or 8, 1948. In order that respondent may be given all the chances to defend

himself, his request was granted. In the subpoena sent him setting the hearing for July 8, 1948, as requested, the following remark was stated:

'Failure on your part to appear will cause the investigator to proceed with the investigation and to file the corresponding recommendation to the Supreme Court. No further postponement will be entertained.'

"It is worthwhile mentioning that every time the case was set for hearing the complainant made his appearance.

"On the morning of July 8, 1948, both parties appeared; respondent made a formal request in person to the investigator asking that the hearing be postponed to 2 o'clock p.m. of the same day. Out of consideration to him, even to the discomfiture of complainant, respondents request was again granted. But contrary to his assurance, the respondent again failed to appear."

There is no question that respondent received from complainant the sum of P840 for the specific purpose of applying the same to the payment of taxes due from the estate which he was engaged to settle. The receipt which he issued for said amount as well as for the sum of P110 and a sack of rice paid to him for his expenses and fee reads as follows:

"February 15, 1947.

"Received from Mr. Briccio S. Henson the sum of eight hundred and forty (P840) pesos to be paid as follows:

"P210—Inheritance tax of the heirs of late Don Esteban Henson.

"P630—Land taxes for 1945-1947.

"Failure on my part to deliver to him the official receipts corresponding to the above mentioned amount I promise to return to him the whole amount of P840 not later than April 16, 1947 without any obligation on his part.

"A separate amount of one hundred and ten (P110) pesos and a sack of rice was paid to me for my expenses and fee.

(Sgd.) "Atty. FELIX DAVID"

Respondent did not care to testify. But through his unverified answer, he would make it appear that he was entitled to and had been promised a legal fee for his services and that, as this promise was not complied with, he "saw it fit to withhold said amount (the P840.00 for taxes) until he is paid." This explanation is obviously an afterthought and clearly unfounded. For the established fact is that respondent at first made complainant believe that the sum in question had already been applied by him to the payment of taxes, and, as testified to by complainant, for the little that respondent was able to do in connection with the case entrusted to him, he has already received his fee as shown by the above-copied receipt. The conclusion is therefore irresistible that respondent misappropriated the money of his client. This makes him guilty of unprofessional conduct.

In view of the gravity of the misconduct committed, the respondent Felix P. David is hereby ordered suspended from the practice of law for a period of five years from the date this decision becomes final, without prejudice to a more severe action if the sum misappropriated is not refunded within one month from the same date.

Moran, C.J., Ozaeta, Feria, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

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