

MARIO HERNANDEZ, COMPLAINANT, VS. SERGIO VILLAREAL, RESPONDENT.

Adm. Case No. 1646. September 30, 1981

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

This disbarment case was filed against Atty. Sergio Villareal of 927 Shuler St., Mandaluyong, Rizal and holding office at Rm. 511, Madrigal Bldg., Escolta, Manila by Mario Hernandez of Bo. Bangkal, Meycauayan, Bulacan.

In his complaint[1] the complainant alleges, among others:

"3. That the services of Respondent were hired by herein Complainant on August 20, 1974, in connection with the recovery of possession of a piece of land covered by TCT No. T-202322 of the Registry of Deeds of Bulacan, and in connection therewith Complainant was made to sign a Power of Attorney by Respondent in his favor;

"4. That Respondent was able to sell the said piece of land and received payment of the same from RANULFO DAVID for P120,000.00 but the Deed of Sale signed by Respondent states that the land was sold for P90,000.00;

"5. That on April 18, 1975, Subject gave Complainant P15,000.00 as part of the payment of the land, but he was made to sign a receipt in the amount of P20,000.00;

"6. That Respondent failed and still fails to deliver the balance of the price of the said piece of land to Complainant despite repeated demands;

"7. That sometime in September 24, 1975, Respondent delivered to Complainant three (3) Bank of the Philippine Islands, Makati (Quad) Branch Checks through Atty. LUIS CUVIN amounting to P52,000.00 drawn against the account of one AURORA C. DEAÑO in favor of Complainant;

"8. That the aforementioned checks were dishonored for the reason that they were drawn against a closed account;"

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In his answer[2] the respondent denied the material allegations of the complaint and prayed for its dismissal.

The case was, thereafter, referred to the Solicitor General for investigation, report and recommendation.[3]

Subsequently, the complainant filed a motion to dismiss[4] the complaint alleging:

"Upon a less emotional confrontation of the parties herein and a more thorough and impartial review and evaluation of the sequence of events which transpired between them in their relationship as client and counsel, the complainant is now convinced beyond any doubt and so confirms that, consonant to their agreement as affirmed in his letter of 28 October 1974, copy of which is attached hereto as part hereof and marked Annex 'A', he is entitled to the sum of only Sixty Seven Thousand Five Hundred (P67,500.00) Pesos, Philippine

Currency, as his net share, interest and participation in and out of the proceeds of the disposal of the land involved, which sum was pre-computed and ascertained at 75% of and on the basis of the pre-fixed price or consideration of P90,000.00, regardless of the actual amount of the price or consideration of such disposal, whether it be more or less than P90,000.00; that it is entirely none of his concern what methods, procedures and expenses the prospective buyer-whosoever he or it may be - may in fact adopt, pursue and/or incur in raising the price or consideration of sale or disposal; That, having already received a part payment of P15,000.00 against said P67,500.00, the only balance due to the complainant is P52,500.00; that the disagreement between the parties here really emanates from the demand of the complainant upon the respondent to pay on the basis of 75% of P120,000.00 and the refusal of the latter to pay on said basis; that there is thus no conversion or misappropriation, nor intent to convert or misappropriate on the part of respondent; that the parties herein have consequently arrived at a mutually satisfactory mode of settlement of their dispute and the liquidation of the subject account; that a dismissal of the case at bar is so desired, and in order."

In his report and recommendation,[5] the Solicitor General states:

"Before resolving the motion to dismiss, an investigation of both complainant-movant and respondent Atty. Sergio Villareal was conducted.

"Complainant-movant testified under oath:

"That he caused the filing of the complaint against Atty. Sergio Villareal; that the complaint arose from an oral agreement entered on August 20, 1974 between him (Mario Hernandez) and Atty. Sergio Villareal regarding the sale of a parcel of land owned by the former; that as per said agreement, Atty. Sergio Villareal was to sell said parcel of land for P90,000.00; that the terms of the sale, whether on cash or installment basis, was left to the sound discretion of Atty. Villareal; that there was no condition attached to their agreement as to the time within which Atty. Sergio Villareal was to deliver to Mario Hernandez the proceeds of the sale; that as per the oral agreement, Atty. Villareal was to receive 25% of the proceeds of the sale of P90,000.00; that in the event the land was sold for an amount in excess of P90,000.00 there was no agreement as to whom the said excess amount should go; that on April 18, 1975, he (Mario Hernandez) inquired from Atty. Sergio Villareal whether or not the land was already sold; that on the same occasion, he was given P15,000.00 by Atty. Villareal, which amount represented part of the proceeds of the sale of the land; that on that occasion, April 18, 1975, Atty. Villareal did not tell him (Mario Hernandez) that subject parcel of land was sold way back in 1974; that he came to know that the land was already fully paid only about the latter part of July, 1975 as per information received from Mr. David, the vendee of subject land; that after April 18, 1975 when the amount of P15,000.00 was delivered to him, and before the institution of this administrative case, no other amount representing the proceeds of the sale was given to him by Atty. Villareal; that it was only in July, 1975 that he came to know that the vendee of subject land paid Atty. Villareal on different occasions; check for P5,000.00 in October 1974; check for P20,000.00 on March 15, 1975; check for P20,000.00 with notation "cancelled replaced by cash" and check for P30,000 with notation "cancelled replaced by cash"; that in November 1976, he and Atty. Sergio Villareal agreed that full payment of the land be delivered to the former at the rate of P5,000 a month; that after April 18, 1975 and after the institution of this administrative case, he was paid P5,000 monthly in December 1976, January and February, 1977; that he was prompted to file the complaint against Atty. Villareal for the latter's failure to deliver monthly the amounts of P15,000 or P20,000 as earlier agreed upon between them; that he understood all the allegations in his complaint; that he caused the filing of the Motion to Dismiss because he and Atty. Villareal have come to agree that instead of P20,000 Atty. Villareal would pay him (Mario Hernandez) P5,000 monthly; that he wants to end the case as he cannot afford anymore to pursue this complaint; that he was not forced nor influenced in any manner by Atty. Villareal in causing the filing of the motion to dismiss; that he understood fully the allegations in his Motion to Dismiss; that he realizes that the allegations in said motion to dismiss are contrary to the allegations in the complaint he earlier filed; that he understands the legal consequences of the motion to dismiss; and that he affirms under oath the contents of the

Motion to Dismiss.

"Respondent Sergio Villareal testified under oath:

"That he is the respondent in the complaint for disbarment filed by Mario Hernandez; that he knows of the filing of the Motion to Dismiss said complaint; that as a matter of fact, he had affixed his signature or conformity to said motion to dismiss; that he did not have anything to do in causing this motion to dismiss to be prepared; that the motion to dismiss was the product or the consequence of a long series of confrontations with the complainant in the presence of his counsel; that he did not give any consideration nor promise anything to complainant for the latter to file the motion to dismiss; that he did not exercise any undue influence on complainant to file this motion to dismiss; and that as a matter of fact, the complainant was all the time assisted by his counsel;"

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"There is no question that the burden of proof in disbarment proceedings rests upon the Complainant, and for the Court to exercise its disciplinary powers, the case against respondent must be established by convincing evidence. In the case at bar, Complainant is no longer interested in prosecuting this Administrative Case.

"Be that as it may, the trust relation which exists between attorney and client as well as between court and attorney, and the statutory rule prescribing the qualifications of attorneys, uniformly require that an attorney shall be a person of good moral character. If that qualification is a condition precedent to a license or privilege to enter upon the practice of law, it would seem to be equally essential during the continuance of the practice or the exercise of the privilege. So it is held that an attorney will be removed not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which shows him to be unfit for the office and unworthy of the privilege which his license and the law confer upon him. (In re Pelaez 44 Phil. 572 citing Peyton's Appeal 12 Kan. 398, 404).

"Thus, while complainant has filed a motion to dismiss the complaint, the evidence on record shows censurable conduct on the part of respondent in failing to deliver to complainant, per agreement, the proceeds of the sale of subject land. Considering that the object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court (Deles v. Aragonas, Jr., Adm. Case No. 598, March 28, 1969, 27 SCRA 634), undersigned, therefore, are of the view that respondent deserves to be admonished to behave with more circumspection and display at all times the highest degree of uprightness befitting a member of the bar."

WHEREFORE, the complaint for disbarment against respondent Atty. Sergio Villareal is DISMISSED but he is reprimanded for his misconduct with a warning that a more drastic punishment will be imposed on a repetition of the same act.

SO ORDERED.

Barredo, (Chairman), Aquino, Abad Santos, and De Castro, JJ., concur.

[1] Rollo, p. 4.

[2] Ibid., p. 81.

[3] Ibid., p. 101.

[4] Ibid., p. 121.

[5] Ibid., p. 127.

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