

**WILFREDO G. PEÑALVER, COMPLAINANT, VS. ATTY. ORLANDO A. GONZALES, RESPONDENT.***Adm. Case No. 975. October 27, 1973*

Ponente: MAKASIAR, J.

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In his sworn complaint (p. 11, rec.) dated January 7, 1971, Wilfredo G. Peñalver states that the late Atty. Marcos Estacio was his counsel in his claim for back wages against the Chemical Industries of the Philippines; that respondent Atty. Orlando A. Gonzales succeeded the late Atty. Estacio as his counsel; that respondent received from Chemical Industries of the Philippines a check in the amount of P4,719.00 covering his back wages; and that respondent deposited said check for his own account and illegally refused to deliver the check, despite complainant's repeated demands therefor and despite complainant's payment to respondent of his attorney's fee in the amount of P471.81, representing 10% of the amount of the check.

In his answer dated February 13, 1971, respondent asserts that complainant indorsed to him for valuable consideration the check for P4,719.00, for the complainant was paid and received the sum of P2,900.00, evidenced by the receipt dated October 17, 1970 and signed by the complainant in the presence of two witnesses (Annex B, p. 9, rec.), after deducting the attorney's fee of the late Atty. Marcos Estacio in the amount of P1,100.00 corresponding to 30% of the award plus 10% as his (respondent's own fees in accordance with their contract which he and complainant signed on February 6, 1970 (Annex A, p. 8, rec.); that the attorney's fee of the late Atty. Estacio equivalent to 30% of the award was paid to Atty. George Arciaga, who represented the heirs of Atty. Marcos Estacio, evidenced by the corresponding receipt dated October 16, 1970 (Annex C, p. 10, rec.); that the attorney's fee he received was even less than 10% of the award of P4,719.00; and that after working for nine months on the claim of complainant in ULP case of PAFLU vs. Chemical Industries of the Philippines (Annexes B & C, pp. 9-10, rec.) from the time Atty. Marcos Estacio died, he succeeded in securing the payment of the award notwithstanding the opposition of the employer (pp. 4-10, rec.).

In his reply dated March 24, 1971 and filed on March 26, 1973 (p. 13, rec.) to respondent's answer, complainant asserts that respondent gave him only the sum of P1,900.00, for which he issued the receipt (Annex B, p. 9, rec.), but the figures therein appear to have been changed to P2,900.00 without his consent; and prays that the balance of about P931.00 should be paid to him by the respondent as he is now jobless.

During the investigation, it was established that respondent received P719.00 out of the sum of P1,887.60, which latter sum represents 40% of the amount of the award of P4,719.00.

At the hearing on August 21, 1972, the parties intimated that they wanted to settle the case amicably; and at the subsequent hearing on September 26, 1972, complainant filed a motion to dismiss, supported by an affidavit of desistance which states that after a careful study and re-examination of the facts, he found that the charge he filed against respondent "has no basis in fact and in law because the same arose from (his) misapprehension of the facts involved in the case"; and that he is no longer interested in prosecuting the same.

Accordingly, the Solicitor General recommends dismissal of the complaint.

However, under Section 15, paragraphs (e) and (f) of Republic Act No. 602, the competent Court may allow a reasonable attorney's fee not exceeding 10%, of the amount of the award, unless the amount awarded is less than P100.00, in which event the fee may be P10.00, but not in excess of that amount; and no attorney shall receive any fee in excess of the maximum specified therein.

Respondent admitted he paid P1,100.00 to the heirs of Atty. Marcos Estacio and collected P719.00 for himself, making a total of P1,819.00. The collection by said respondent of said amount of P1,819.00 as attorney's fee violates the aforementioned provisions of the Minimum Wage Law, as the fee is 40% of the total amount of the award of P4,719.00, 10% of which is only P471.19. The contract (Annex A, p. 8, rec.) signed by complainant stipulates that the attorney's fee of 40% of the award decreed by the Court of Industrial Relations should be apportioned as follows -- 30% for the late Atty. Estacio and 10% for respondent, whose share is therefore only one-fourth of P471.90. Consequently, respondent should receive only P117.97; while the heirs of Atty. Estacio are entitled to P353.93. Respondent overpaid himself and the heirs of the late Atty. Marcos Estacio, in the total amount of P1,347.10, which he should refund to complainant.

Under the circumstances, therefore, respondent deserves to be disciplined. It should be stressed that paragraph (a) of Section 15 of Republic Act No. 602, as amended, penalizes a violation of any provision of said Act or any of the rules and regulations promulgated thereunder with a fine of P500.00 to P2,000.00, and for a second conviction, with an imprisonment of from six months to one year, or both fine and imprisonment.

**WHEREFORE, RESPONDENT ATTY. ORLANDO A. GONZALES IS HEREBY:**

(1)

SUSPENDED FROM THE PRACTICE OF LAW FOR SIX [6] MONTHS FROM RECEIPT HEREOF; AND

(2)

ORDERED TO PAY COMPLAINANT WILFREDO G. PEÑALVER THE AMOUNT OF P1,347.10 WITHIN THIRTY [30] DAYS FROM RECEIPT HEREOF, WITHOUT PREJUDICE TO HIS RIGHT TO RECOVER THE AMOUNT OF P746.07 FROM THE HEIRS OF THE LATE ATTY. MARCOS ESTACIO, WITH THE RESERVATION THAT A MORE SEVERE PENALTY WILL BE IMPOSED ON RESPONDENT IF HE FAILS TO PAY THE AFORESAID AMOUNT TO COMPLAINANT.

**LET A COPY HEREOF BE ENTERED IN RESPONDENT'S PERSONAL RECORD.**

Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.  
Makalintal, C.J., dit not take part.

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