

OCA CIRCULAR NO. 45-2005, April 22, 2005

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TO:

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

SUSPENSION FROM THE PRACTICE OF LAW FOR ONE (1) YEAR OF ATTY. RAMON F. ISHIWATA

For the information and guidance of all concerned, quoted hereunder is the Decision of the Third Division dated November 23, 2004 in Administrative Case No. 5041, entitled "Salvador G. Villanueva vs. Atty. Ramon F. Ishiwata", to wit:

"Complainant Salvador G. Villanueva seeks the seeks the disbarment of Atty. Ramon F. Ishiwata, herein respondent, for gross professional misconduct.

In his amended complaint filed with this Court on April 12, 1999,[1]complainant alleged that sometime in May, 1994, he hired respondent to handle his case, NLRC-NCR Case No. 00-05-03808-94[2] against J.T. Transport, Inc. for payment of his unpaid wages, separation pay, and other benefits.

Due to insistence of respondent, complaint executed a Special Power of Attorney designating the former as his attorney-in- fact.[3]

In the course of the proceedings at NLRC, the parties entered into a compromise agreement whereby for consideration of P225,000.00, complainant agreed to release its obligations to him. As a result, respondent signed a "Quitclaim and Release" for and on behalf of complaint. The NLRC then considered NLRC-NCR Case No. 00-05-di808-94 closed and terminated.

Sometime between June and August 1998 , J.T. Transport delivered four (4) checks to respondent in the sum of P225,000.00 as payment of complainant's claims. However, respondent gave complainant only P 45,000.00 as "first installment ," without advising him that the settlement award had been paid in full.

Subsequently, complainant learned that J.T. Transport had fully settled its obligations to him. Thus, he made repeated demands upon respondent to deliver to him the balance. But the latter refused to comply, prompting complainant to hire the services of a new lawyer who sent respondent a demand letter. Still, respondent refused to pay.

In his comment on the complaint, respondent denied the charge. He alleged that it was actually one Z da Villanueva, claiming to be complainant's wife, who actually engaged his services. Due to a serious ailment, he

secured the services of another person to do research work for a contingent fee with complainant's acquiescence. In fact, from the amount of P225,000.00, he paid that other persons P33,000.00 with complainant's knowledge.

Respondent also alleged that since J. T. Transport paid in installments, the sums delivered to complainant were also in installments. Initially, complainant received P45,000.00. As the money came in, respondent paid complainant wife 90,000.00 in two installments, one in the sum of P11,000 and another in the amount of P79,000.00. However, the receipts she signed were misplaced by respondent's secretary. Respondent deducted his 25% attorney's fee or P56,250.00 from the award. According to his computation, all the payments are in the total sum of P24,250.00, leaving only P750.00 due and owing to complainant.

On October 11, 1999, we resolved to refer the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from notice.[4]

On July 7, 2004, the IBP Board of Governors submitted to this Court Resolution No. XVI-2004-225 dated April 16, 2004, adopting and approving the Report and Recommendation of the Investigating Commissioner. The latter found respondent guilty as charged and recommended that he be suspended from the practice of law for one (1) year; that he return the sums of P90,000.00 and P33,000.00 to complainant; and that his attorney's fee in NLRC- NCR Case No. 00-05-03808-94 be reduced from 25% to 10% of the settlement award.

We sustain the Resolution of the IBP Board of Governors.

Canon 16 and Rules 16.01 to 16.03 of the Code of Professional Responsibility provides:

"Canon 16 - A lawyer shall hold in trust all moneys and properties of his client that may come to his possession.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 - A lawyer shall keep the funds of each client separate and apart from his own and those for others kept by him.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements; giving notice promptly the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court."

Respondent violated the above provisions and should thus be penalized.

Obviously, respondent's failure to return the balance to complainant upon demand gave rise to the presumption that he misappropriated it in violation of the trust reposed on him. His act is indicative of lack of integrity and propriety. He was clinging to something not his and which he had no right. As found by the Investigating Commissioner, out of the settlement amount of P225,000.00, respondent gave complainant only P45,000.00. His claim that he gave complainant's alleged P11,000.00 and P79,000.00 is not true. He could not show the corresponding receipts. In *Gonato vs. Atty. Adaza*, [5] we held that conversion by a lawyer of the funds entrusted to him is a gross violation of professional ethics and a betrayal of the public confidence in the legal profession.

The relationship between an attorney and his client is highly fiduciary in nature.[6] Under his oath, a lawyer pledges himself not to delay any man for money and he is bound to conduct himself with good fidelity to his clients. A lawyer should thus refrain from any action whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client. Accordingly, any money collected for the client or other trust property coming into the lawyer's possession should promptly be reported by him.[7] A lawyer must at all times conduct himself, especially in his dealings with his clients and the public at large, with honesty and integrity

in a manner beyond reproach. A violation of the high standards of the legal profession subjects the erring lawyer to administrative sanctions by this Court."[8]

We agree with the holding of the Investigating Commissioner that since what respondent handled was merely a labor case his attorney's fee should not exceed 10%, the raise allowed under the Labor Code.[9] Accordingly, his legal fee should be reduced from P56,250.00 to P22,500.00 only.

We likewise sustain the finding of the Investigating Commissioner that respondent should pay the complainant the following; amounts:

P 225,000.00

—

Total amount received from J.T.

Transport

Less:

P 22,500.00

—

Representing the allowance 10 %

attorney's fees

P 199,500.00

—

amount due to complainant

Less:

P 45,000.00_____

—

Actual amount paid to complainant

P 154,500.00

—
Total balance which respondent

—
should pay complaint

IBP Board of Governors' recommended penalty of one (1) year is in order. In a recent case wherein respondent lawyer to deliver to his clients the sum of P236,000.00 awarded to them by the trial court, we imposed upon him suspension from the practice of law for one year.

WHEREFORE, respondent Atty. Ramon F. Ishiwata is hereby declared guilty of violation of Canon 16 of the Code of Professional Responsibility and is **SUSPENDED** from the practice of law for a period of one (1) year effective upon his receipt of a copy of this Decision, with a warning that a repetition of the same or similar acts will be dealt with more severely. He is ordered to retribute to complainant the sum of P154,500.00 from notice. Let copies of this Decision be furnished the Bar Confidant, the IBP, and the Court Administrator who shall circulate them to all courts, tribunals, and quasi-judicial agencies for their information and guidance.

SO ORDERED."

Copy of the Decision was received by respondent's authorized representative on December 15, 2004 as shown by Registry No. 66496.

__22__ April 2005.

PRESBITERO J. VELASCO, JR.

Court Administrator

[1] Rollo, Vol. 1, at 1-5.

[2] Id. at 1 & 7.

[3] Rollo at 2 & 8.

[4] Id. at 26.

[5] 385 Phil. 426, 43 I (2000), citing *Obia vs. Calimbang*, A.C. 2731, April 19, 1991, 196 SCRA 23.

[6] *Pemicostes vs. Ibanez*, 363 Phil. 624, 628 (1999), citing *Daroy vs. Legaspi*, A.C. No. 936, July 25, 1975, 65 SCRA 304.

[7] *Angeles vs. Uy, Jr.*, 386 Phil. 221, 233 (2000).

[8] *Ui vs. Bonifacio* A.C. No. 3319, June 8, 2000, 333 SCRA 38.

[9] Article 111 of the Labor Code, as amended, provides:

"Art. 111. Attorney's fees.- (a) In case of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent (10%) of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent (10%) of the amount of wages recovered."

[10] Milagrus N. Aldovino, et al. vs. Atty. Pedro C. Pujalte, A.C. No. 5082, February 17, 2004.

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