

IN THE MATTER OF THE PETITION FOR DISBARMENT, EMILIO G. STA. MARIA, PETITIONER VS. EDUARDO M. TUAZON, RESPONDENT.*Adm. Case No. 396. July 31, 1964*

Ponente: PAREDES, J.

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Sometime in June, 1955, respondent Atty. Eduardo M. Tuason represented petitioner Emilio C. Sta. Maria and his two partners Andres Guanzon and Fausto E. Chincuanco in prosecuting Civil Case No. 894, CFI of Pampanga, entitled "Fausto E. Chincuanco, et al vs. Enriqueta M. de Hidalgo, et al", a collection case involving a promissory note of P50,000.00. Defendant Enriqueta M. de Hidalgo was declared in default, and the Court rendered judgment on October 8, 1955, ordering the defendant de Hidalgo to pay:—

"(a) Plaintiffs the sum of P30,000.00 with interests thereon at the rate of six percent (6%) per annum from June 18, 1955, the date of the filing of the complaint, until the same shall have been fully paid, plus the sum of P3,500.00 as plaintiffs' attorney's fees;

(b) Plaintiff Andres A. Guanzon the other sum of P3,000.00 as compensation for the injury caused to him in his credit standing; and—

(c) Plaintiff Fausto E. Chincuanco another sum of P3,000.00 as compensation for the injury caused to him in his credit standing."

On December 9, 1955, a writ of execution was issued. Sufficient amount of money to satisfy the judgment, came into the hands of the Provincial Sheriff of Pampanga. Respondent Tuason, on September 10, 1958, obtained from the Sheriff, the amount of P22,930.64, which he (Tuason) applied in the following manner: (1) P10,000.00 for his alleged attorney's fees; (2) P1,1618.00 to supposed expenses of litigation, which he claimed to have advanced in the prosecution of the case; and (3) the balance of P11,282.64, to plaintiff Fausto E. Chincuanco, his. uncle. Petitioner claims that respondent Tuason deprived him of his lawful share in the judgment which was P25,511.62; that respondent was not entitled to P10,000.00 as attorney's fees because even the lower Court awarded him only P3,500.00; that the foregoing acts were done, without the prior knowledge and consent of petitioner.

Upon finding that the respondent withdrew the P22,930.64 from the Office of the Provincial Sheriff, complainant Sta. Maria repaired to the office of Atty. Tuason and demanded the amount to be turned over to him, or to the Sheriff for proper disposition by the Court; that upon failure of respondent to comply any of the two things, contempt proceedings were instituted against respondent Tuason. In view, however, of the claim of Tuason that he gave the money to Guanzon and Chincuanco, petitioner filed with the CFI of Pampanga, Civil Case No. 1704, against said Tuason, Guanzon and Chincuanco, for collection of his rightful share in the judgment in Civil Case No. 894.

Respondent, in his Answer, admitted having received the amounts in question from the Sheriff of Pampanga, and disbursed the same in the manner stated by petitioner, but he denied that he obtained and disbursed the amounts, without the knowledge and consent of the petitioner; the truth of the matter being that he was given full authority

by petitioner's partners (Guanzon and Chincuanco) to receive P10,000.00 for his services; that the two were the ones who engaged his services in the prosecution of Civil Case No. 894, for their own behalf and in behalf of petitioner himself; that he delivered the balance of the amount, to Chincuanco, who was the one who had actually retained his services and who took charge of liquidating the accounts with his partners.

The matter was referred to the Office of the Solicitor General who made the following findings and recommendations :

"The foregoing evidence presented by the parties involves two issues, namely: (1) Whether the respondent was in connivance with Fausto Chincuanco and Andres Guanzon in delivering to them the full amount of ₱22,930.64 and thereby deprived the petitioner from getting his rightful share in the liquidation of the assets of the partnership and (2) whether the respondent was guilty of malpractice and gross misconduct in withholding the amount of P10,000 as his attorney's fees and also the amount of P1,648 as alleged expenses incurred in the litigation.

The complainant in this case contends that the respondent committed malpractice in delivering the proceeds of the judgment money to Pausto Chincuanco, his uncle, and Andres Guanzon, his close business associate (p. 17, tsn, July 10, 1961; p. 6, rec.)

As to the first issue, the petitioner claims that he was unable to collect his rightful share in the liquidation of the funds of the partnership as agreed upon by the partners (Exh. E, pp. 3-4, tsn, June 15, 1900) for which reason, he had to file a civil case against his partners. He attributes this failure mainly to the respondent who delivered the judgment money to Chincuanco, his partner, who disposed of the whole amount in the manner already indicated earlier. While it is true that Fausto Chincuanco was present in receiving the amount of ₱22,930.64 from the Sheriff (Exh. C, p. 14, rec), there is no clear evidence presented to show that the respondent connived with either Chincuanco or Guanzon in delivering the judgment money to them for the purpose of depriving the complainant of his rightful share in the partnership. What the respondent did in this case was to deliver the judgment money to the partnership through Chincuanco and Guanzon, the latter being the general manager. The proper action for the complainant was to demand his share from Guanzon, the managing partner, or from Chincuanco, the other partner. This he did by filing a complaint in the Court of First Instance of Pampanga (see Civ. Case No. 1704, Exh. 2). In this case Atty. Eduardo Tuason, the herein respondent, was included as defendant. A contempt proceeding was also filed by complainant, citing Atty. Tuason and the Sheriff of Pampanga as respondents. It appears, however, that an amicable settlement was finally agreed upon by the parties in this civil case resulting in a compromise agreement, duly approved by the Court of First Instance of Pampanga wherein the plaintiff waived all his claim against his other partners. In said compromise agreement the plaintiff also agreed not to proceed with the contempt case he filed against Atty. Eduardo Tuason and the Sheriff of Pampanga (Exhs. 2, 3 and 5. folder of exhibits).

The issue, therefore, revolves more on the division of the partnership assets rather than on the right of the complainant to compel the respondent to turn over to him part of the judgment money which respondent applied as his attorney's fees and reimbursement for his expenses in connection with the litigation he handled for the partners. Under the foregoing circumstances, the undersigned investigator is of the opinion that the respondent Tuason has not committed any act that will constitute malpractice or gross misconduct in office.

As to the second issue, there is no dispute that the respondent collected the amount of P10,000 as attorney's fees for a collection suit in the amount of ₱50,000.00 based on a promissory note. It appears that since the defendant was declared in default, the case was terminated after one brief hearing. The respondent also collected P1,648 as alleged expenses incurred in connection with the litigation. No satisfactory evidence, however, was presented to show that the respondent actually spent that amount. On the other hand, there was the undisputed evidence which shows that the case represented by the respondent was terminated with one brief hearing after the defendant was declared in default. There is, likewise, no dispute that said attorney's fees and litigation expenses were deducted from the judgment money collected by the respondent from the Sheriff

of Pampanga. This act of the respondent seems to be irregular, if not suspicious, considering his close relationship with Mr. Chincuanco. Notwithstanding the opinion of Mr. Guanzon, the amount of P10,000 for attorney's fees is, to our mind, also unreasonable under the circumstances. It is to be noted in this connection that the respondent himself alleged in the complaint he filed for the partnership that 'the plaintiffs will incur for attorney's fees and expenses of the litigation P6,000' (p. 9, rec).

Moreover, the circumstances of the case show that the respondent took advantage of the fact that he was a nephew of Fausto Chincuanco and a close associate of Andres Guanzon in collecting his lawyer's fees. Even at the time that the respondent was already representing the partnership, the complainant inquired from Chincuanco about the respondent's fees. In reply Chincuanco said that he (Sta. Maria) should not worry about it because the respondent is a nephew of his. On this assurance, the complainant could be said to have assumed that the respondent would not collect an excessive amount, much less take advantage of his relationship with one of the partners by retaining the funds, considering that the case was one of a simple collection based on a promissory note. The act of the respondent in collecting P10,000 for attorney's fees and alleged expenses he incurred in the litigation, aggravated the burden of the complainant who claims that he was not given his due share in the distribution of the assets of the partnership as his two partners were already in possession of the money. While it is true that the partners of the complainant apparently acceded to the respondent's acts, it cannot be denied that the latter acted with indiscretion, induced by his close relationship with Chincuanco to the prejudice of the complainant. In effect, respondent's act constituted a retention of the funds of his client, an act of professional indiscretion bordering on misbehaviour.

It may be stated, however, that the respondent may have felt justified in his acts, since they were done with apparent acquiescence of his clients, Fausto Chincuanco and Andres Guanzon. Moreover, an amicable settlement of all the suits filed by the herein complainant resulted in a compromise agreement, whereby the complainant waived any and all claims against his partners and the respondent arising from the transactions which are the subject matter of the controversy, as well as from the incidents thereof (Exh. 2, folder of the exhibits). While it may be said that this compromise agreement may not affect the misconduct of the herein respondent as a member of the bar, at least, it cannot be denied that the complainant has, in effect, condoned respondent's acts.

RECOMMENDATION

IN VIEW OF FOREGOING, it is respectfully recommended that instead of a more severe penalty which he would have otherwise deserved, the respondent be reprimanded for professional indiscretion, with the warning that a more severe penalty lie imposed for a repetition of same or similar acts."

The report of the Solicitor General was duly set for hearing, by this Court. Respondent excepted from the recommendation which called for the imposition of a reprimand. Respondent points out that the findings of the Solicitor General did not warrant his recommendation, since he found that respondent "has not committed any act that will constitute malpractice or gross misconduct in office." Respondent also claims that the filing of different proceedings against him was simply intended to harass and embarrass him, because of petitioner's dissatisfaction over the disposition by his partners, of the award in Civil Case No. 894.

After an overall consideration of the facts and circumstances surrounding the case, we find that the findings and conclusions of the Solicitor General are supported by the evidence of record. The fact that the respondent has placed his private and personal interest over and above that of his clients constitutes a breach of a lawyer's oath, to say the least. Call it professional indiscretion or any other name, but the cold fact remains that the acts, as found by the Solicitor General, is not conducive to a healthy growth of the legal profession. The respondent is hereby admonished that a repetition of similar acts will merit more drastic action.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Regala and Makalintal, JJ., concur.

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