

REMEDIOS MUNAR, COMPLAINANT, VS. ATTY. ERNESTO B. FLORES, RESPONDENT.

Adm. Case No. 2112. May 30, 1983

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The herein administrative sworn complaint was filed on January 9, 1980 by complainant Remedios Munar against respondent Atty. Ernesto B. Flores of Baguio City, charging that respondent attorney had deceitfully defrauded her of the sum of P5,863.00, which amount he induced her to entrust to him on the misrepresentation that it represented the cost of fees and other miscellaneous expenses in connection with the suit that he promised to file on her behalf, but which promised suit he never filed nor did he return the said amount despite repeated demands.

The Court required respondent to answer the complaint and to show cause why he should not be suspended from the practice of law during the pendency of the case. Upon receipt of respondent's answer which substantially bore out the averments of the complaint, the Court issued its Resolution of March 14, 1980 referring the case to the Solicitor General for investigation, report and recommendation and suspending respondent from the practice of law effective immediately and during the pendency of the case.

On December 15, 1982, the Office of the Solicitor General submitted its report and recommendation and therewith filed its complaint against respondent, charging him with having committed deceit and misrepresentation in office as a lawyer, as follows:

"That during the period comprised between August 3, 1979 and August 22, 1979, in Baguio City, Ernesto B. Flores, with deceit and intent to defraud, represented to one Remedios Munar, who was then facing an ejectment suit before the City Court of Baguio, as lessee-operator of the U.P. College Baguio Canteen, that he would file an action before the CFI of Baguio that would stop the ejectment proceedings against her, and that in consequence, she could continue managing the said canteen for as long as she pleased, well knowing said action to be absolutely groundless, thereby inducing the said Remedios Munar to give him, as in fact she did give him, the amount of P5,863.00, which he falsely alleged to be the cost of fees and other miscellaneous expenses in connection with the filing of said suit, and once in possession of the said amount, never filed the promised suit with the Baguio CFI, and despite demand made upon him to return the said amount, refused to do so, as said Ernesto E. Flores was nowhere to be found and efforts of said Remedios Munar to contact him proved futile."

and praying that respondent "be suspended from the practice of law for six (6) months, in addition to his suspension during the pendency of this case."

On January 26, 1983, the Court issued its Resolution requiring "(a) the Bar Confidant to serve respondent with a copy of the complaint of the Solicitor General; and (b) the respondent to file an answer thereto pursuant to Rule 139, Section 5, within fifteen (15) days from notice hereof."

Respondent filed on March 14, 1983 his answer, reiterating the denials and justifications for his actions that he

had made during the investigation, but which had been rejected by the Solicitor General and stating that "respondent has no wish anymore to submit additional evidence or testimony on his behalf and is willing to have it immediately submitted for resolution by the Honorable Court."

The charge against respondent has been duly established as set forth in the pertinent portions of the Solicitor General's report which are hereinbelow reproduced:

"This case was initially set for investigation on June 30, 1980, but upon agreement of the parties, the same was reset on September 5, 1980.

"At the scheduled hearing on September 5, 1980, the parties appeared, and complainant presented an affidavit dated September 5, 1980, which was eventually subscribed and sworn to before the undersigned investigating Solicitor. The Affidavit states in part—

"That I am no longer interested in pursuing my said complaint considering that I have decided to forgive Ernesto B. Flores upon his repeated pleas and after returning to me the amount of P6,300.00 only, despite all the troubles and expenses I have gone through since the beginning, believing as I do in the divine saying, 'To err is human, to forgive divine.'

in consequence of which the complainant asks that her complaint be considered withdrawn or dropped. She confirmed the restitution of her money and her desire to withdraw her complaint on the witness stand.

"Thereafter, the respondent, with permission first obtained, took the witness stand and presented a copy of the complaint for nullification, mandamus and injunction which, he said, he was supposed to have filed. He adopted the allegations stated in paragraph 2 of his answer as his reasons for failing to file the said complaint with the CFI of Baguio. In a letter dated September 13, 1979 (Exhibit 2) he had informed the complainant of his decision not to file the complaint. He denied having personally received complainant's letter of September 21, 1979 (Annex B, Complaint) demanding the return of the amount delivered to him, as that time he had always been out of the house on business for about three months and never came to know actually that there was such a demand letter. And finally, he maintained he really had no intention to defraud the complainant.

FINDINGS

"The filing by complainant of an affidavit of desistance does not ipso facto result in the termination of this case because a case for suspension or disbarment may proceed 'regardless of interest or lack of interest of the complainants, if the facts proven so warrant' (Go vs. Cabdoy, 21 SCRA 439). The power to discipline lawyers who are officers of the court may not be cut short by compromise and withdrawal of charges (Henry Davies, 39 AR, 229, 731). This is as it should be, especially when we consider that the law profession and its exercise is one impressed with public interest. Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof.

"The gravamen of complainant's charge is that having been assured by the respondent, (who had volunteered his legal services) that he would file a suit with the CFI of Baguio to stop the ejectment proceedings then pending against her before the city court as lessee-operator of the UP College Baguio Canteen, she delivered to respondent the sum of P5,863.00 (to cover cost of alleged filing fees and other miscellaneous expenses) but respondent nevertheless, never actually filed such suit and refused without just cause to return said sum, despite demands made upon him by complainant.

"A careful analysis of respondent's answer readily shows that it substantially confirms the facts and circumstances narrated by the complainant as basis for the charge of deceit and misrepresentation practiced upon her by the

respondent. Indeed, a reading of excerpts from respondent's answer hereinbefore quoted justifies this view.

"Thus, by having admitted receipt of the sum of P5,863.00 from complainant for the purpose of filing a complaint before the CFI, Baguio, which complaint he did not file and which sum he did not return, the allegations the complaint are deemed established. Long familiar is rule that admitted allegations of a pleading need not be proved with evidence. Consequently, the burden of proof had shifted to the defense. It became incumbent upon the respondent to prove his defenses that: (1) the non-filing of the proposed suit was impelled by his discovery that the complainant had seriously misrepresented and grossly distorted the true facts and circumstances of her ejectment case; and (2) he did not return the questioned sum because he did not personally receive the complainant's demand letter (Annex 'B', Complaint).

"Explaining his first defense, respondent had this to say:

' . . . He (respondent) asked her if in their answer to the complaint they had impleaded a third party complaint against the members of the university committee on awards to enjoin an award instead to her and stop any other award temporarily pending resolution of the ejectment case against her, and she (complainant) said, no. He asked her again, if they ever filed an independent third-party complaint against the committee, and she said, they had not.'

.....

' . . . respondent . . . went to the city court below to consult with the expediente of Civil Case No. 6354. To his dismay, there, he found out, a third-party complaint filed by her against the members of the committee on awards for the same purpose as the said petition for nullification and injunction that respondent was about to file in the Court of First Instance. This latest discovery in effect, removed the very legal basis for the contemplated petition. It was too much a misrepresentation. Respondent had decided not to file the said petition, at all cost.'

"This contention is bereft of merit. It is an uncontroverted fact that the complainant borrowed the record of the ejectment case (Civil Case No. 6354) from her lawyer therein, Atty. Fallarme, and loaned to the respondent (on his instruction) to enable him to study the feasibility of filing the proposed action before the CFI. Admittedly, respondent 'pored over the records'. Thus, whatever complainant told him beforehand in regard to her ejectment case was inconsequential; the record of the case was made available to him for his own personal verification and study. And even if complainant's copies of the record were not loaned to him, it was nevertheless his duty to inform himself of the various aspects of the ejectment suit by consulting the court record before giving out assurances. The filing of the proposed suit was his sole responsibility, he himself assured complainant, and he cannot now be allowed to pass the buck to complainant for his failure to do so. Surely, having gone over the record, he must have found the proposed action to be absolutely baseless and unfounded. And yet, he falsely impressed upon complainant the merit of the contemplated suit by representing to her that with the suit he was going to file, she would no longer be ejected from the U.P. Canteen premises and she could stay there as long as she pleased, which induced her to give him the sum of P5,863.00 for alleged filing fees and other miscellaneous expenses. Respondent's behavior subsequent to his receipt of the said amount, i.e., of placing himself beyond the complainant's reach, in the days and weeks that ensued, spelled out his guilt of deceit and misrepresentation employed as a means to defraud complainant of the aforestated amount.

"The letter dated September 13, 1979 (Exhibit 2) which respondent claims he had sent to complainant, informing her of his decision not to file the contemplated suit, raises doubts as to whether it was actually sent and delivered, for no proof of receipt by the complainant was offered. If, in fact, respondent wrote this letter, it is surprising that, by his own testimony, he still had to absent himself from home for some three months, which sent complainant in frantic search for him to no avail.

"Respondent's contention that he did not personally receive complainant's demand letter, although the members of his household may have, as he was then out of the house for about three months, serves only to reinforce the complainant's assertion that in the succeeding days after the delivery of the said sum, she never more heard from the respondent and her frantic efforts to reach him proved futile. He had, in fact, absconded with the above amount."

Respondent, through his malpractice and gross misconduct in office, has committed a most serious breach of public trust which under other circumstances could well result in the forfeiture of his privilege and license as a member of the Philippine Bar. Taking into consideration, however, respondent's submission in effect to the report and recommendation of the Solicitor General through his above-quoted manifestation that he is submitting the case for the Court's resolution without further evidence or testimony and his manifestations of remorse as in his urgent motion ex parte to lift order of suspension dated February 5, 1982 "(T)hat, in all sincerity, respondent would like to confess he has more than learned great lessons by what happened in the premises, and here and now, firmly resolves, if given that one chance to resume the privilege of practising his law profession to adhere more closely than before to the ideals, cannons and ethics of the law profession, and this time strive to improve and be more careful in his conduct as a member of the Philippine Bar in law practice, subject to such conditions as the Honorable Court may impose," and finally, considering that this happens to be his first offense, the Court is inclined to extend to respondent a measure of liberality and approves the Solicitor General's recommendation for his suspension.

ACCORDINGLY, respondent Ernesto B. Flores is hereby meted the penalty of suspension from the practice of law for six (6) months effective from date of promulgation hereof and not counting the period of his preventive suspension during the pendency of this case, with warning that any repetition of the same or similar offense will be dealt with severely. Let copy hereof be entered in respondent's personal record.

Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.

Relova, J., on leave.

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