

NOEL S. SORREDA, COMPLAINANT, VS. ATTY. DAVID L. KHO, RESPONDENT.

A.C. No. 10635. August 26, 2015

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is an administrative case filed by Noel S. Sorreda (Sorreda) against Atty. David L. Kho (Kho) for malpractice and/or gross misconduct.

The Facts

The records reveal that on 3 October 2006 Marissa L. Macarilay (Macarilay), through her then counsel Sorreda,[1] filed an administrative complaint[2] against Kho before the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 06-1866 (Macarilay's complaint). Sorreda withdrew as counsel for Macarilay on 10 March 2007.[3]

On 5 December 2007, Sorreda filed with the IBP the present complaint[4] against Kho, which contained exactly the same allegations in Macarilay's complaint. Sorreda alleged that: (1) Macarilay, through him as counsel, filed an arbitration case against Candelaria Kholoma (Candelaria) and Imelda Kholoma (Imelda), Kho's clients, before the Construction Industry Arbitration Commission (CIAC); (2) Kho notarized Candelaria and Imelda's affidavit in the arbitration case despite being disqualified under the 2004 Rules on Notarial Practice, since Candelaria and Imelda are Kho's sister-in-law and niece, respectively; (3) Kho did not furnish Macarilay and Sorreda a copy of his comment on their motion for substitution of arbitrator; (4) Kho did not countervail the manifestation alleging the mendacity of Kho and his clients; (5) Kho intentionally delayed the receipt of Macarilay's motion for time extension; (6) Kho advised Robert Kholoma (Robert), the husband of Candelaria, to forcibly eject Macarilay's watchman in the disputed property; (7) Kho notarized the answer filed by the Kholomas in the case for forcible entry; (8) Kho also notarized the Special Power of Attorney (SPA) executed by the Kholomas, which amounted to "self-notarization," because "the one being given power is the law firm of Kho Antonio Velasco & Payos Law Offices, of which [Kho] is the premier partner"; (9) Kho notarized the SPA with only one of the three signatories exhibiting her cedula; (10) Kho also notarized the petition for review filed by Candelaria and Imelda before the Court of Appeals; and (11) Kho and his clients deliberately failed to furnish the CIAC with a copy their appeal.

In his Answer,[5] Kho admitted that he notarized Candelaria and Imelda's affidavit, answer in the case for forcible entry, SPA, and petition for review. Kho, however, alleged that he acted in good faith for he believed that the decision in *Aznar Brothers Realty Co. v. Court of Appeals*,[6] where only "those convicted of the crime involving moral turpitude were disqualified to notarize documents," was still the prevailing rule. Kho pleaded for liberality in the application of the then recently enacted 2004 Rules on Notarial Practice, since there was no damage caused by the notarization. He admitted that he was not yet fully conversant with the new rules. As to the other allegations, Kho claimed that those were unsubstantiated conclusions, conjectures and speculations. Kho admitted

his failure to furnish Sorreda with a copy of the comment on the motion for substitution of arbitrator and his failure to furnish the CIAC with a copy of his clients' appeal. However, he alleged that no damage was caused and he immediately furnished the copies of the pleadings upon discovery of his inadvertence. Finally, Kho claimed that "Macarilay's penchant for deliberate forum shopping and splitting a cause of action, albeit baseless and unfounded, must be sanctioned." [7]

In an Order [8] dated 29 January 2009, IBP Commissioner Romualdo A. Din, Jr. (IBP Commissioner) denied Sorreda's motion to consolidate the present complaint with Macarilay's complaint, because there was already a report and recommendation by a different commissioner in Macarilay's complaint.

On 4 August 2009, Kho filed an urgent manifestation, [9] pleading for the dismissal of the present case. Kho attached a copy of this Court's Resolution [10] dated 30 March 2009, where the Third Division of this Court resolved to close and terminate CBD Case No. 06-1866 (docketed as A.C. No. 8161), considering that no motion for reconsideration was filed against the IBP Resolution [11] dismissing the case for lack of merit, and no petition for review was filed before the Court.

The Ruling of the IBP

In a Report and Recommendation dated 31 May 2011, [12] the IBP Commissioner recommended the dismissal of the present complaint against Kho because Sorreda failed to establish his allegations by clear, convincing, and satisfactory evidence. The IBP Commissioner also found that Sorreda did not establish how Kho's alleged violation of the 2004 Rules on Notarial Practice, if proven, would damage Macarilay.

In Resolution No. XX-2013-107 [13] issued on 12 February 2013, the IBP Board of Governors adopted and approved the IBP Commissioner's Report and Recommendation, dismissing the complaint for lack of evidence.

In Resolution No. XXI-2014-221 [14] issued on 2 May 2014, the IBP Board of Governors likewise denied the motion for reconsideration filed by Sorreda, since the Board found no cogent reason to reverse its initial findings and the matters raised were reiterations of those which had already been taken into consideration.

The Ruling of the Court

We dismiss the complaint against Kho.

Applying the principle of *res judicata* or bar by prior judgment, the Court finds that the present administrative case becomes dismissible. Section 47, Rule 39 of the Rules of Court enunciates the rule of *res judicata* or bar by prior judgment. [15] It provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies, and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. [16] A.C. No. 8161 and the present case have substantially identical parties, refer to the same subject matter, raise the same issue, and claim the same relief. The present complaint is a mere duplication of Macarilay's complaint in A.C. No. 8161. Thus, the Resolution of this Court in A.C. No. 8161 is conclusive in the present case.

Furthermore, Sorreda failed to discharge the burden of proving Kho's administrative liability by clear preponderance of evidence. The legal presumption is that an attorney is innocent of the charges against him until the contrary is proved. [17] The burden of proof in disbarment and suspension proceedings always rests on the complainant, [18] and the burden is not satisfied when complainant relies on mere assumptions and suspicions as evidence. [19] Considering the serious consequences of disbarment and suspension, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of administrative penalty. [20]

In the present case, Sorreda did not substantiate his allegations, and he relied on his own assumptions and suspicions. Sorreda did not show how Kho's alleged actions amount to malpractice or gross misconduct, which will subject Kho to administrative sanction. Sorreda cannot shift the burden of proof to Kho by asking him to rebut his allegations. It is axiomatic that one who alleges an act has the onus of proving it.[21] If the burden of proof is not overcome, the respondent is under no obligation to prove his defense.[22]

WHEREFORE, we DISMISS the complaint against respondent Atty. David L. Kho. Costs against complainant.

SO ORDERED.

Del Castillo, Mendoza Leonen, and Jardeleza,[*] JJ., concur.

[*] Designated acting member per Special Order No. 2147 dated 24 August 2015.

[1] Disbarred from the practice of law in Re: Letter dated February 21, 2005 of Atty. Noel S. Sorreda, 533 Phil. 22 (2006).

[2] Rollo (A.C. No. 8161), pp. 1-3.

[3] Id. at 97.

[4] Rollo (A.C. No. 10635), pp. 3-5.

[5] Answer, dated 15 February 2008, in A.C. No. 10635 is similar to Kho's Answer, dated 21 December 2006, in A.C. No. 8161.

[6] 384 Phil. 95 (2000).

[7] Rollo (A.C. No. 10635), p. 51.

[8] Id. at 86.

[9] Id. at 196.

[10] Id. at 197.

[11] Rollo (A.C. No. 8161), p. 103.

[12] Rollo (A.C. No. 10635), pp. 202-210.

[13] Id. at 201. The Resolution states: "RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and for lack of evidence, the complaint is hereby DISMISSED."

[14] Id. at 226.

[15] Rules of Court, Rule 39, Section 47(b) states that: "In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

[16] Guerrero v. Benitez, G.R. No. 183641, 22 April 2015; Exec. Judge Basilla v. Judge Becamon, 487 Phil. 490

(2004), citing *Bardillon v. Barangay Masili of Calamba, Laguna*, 450 Phil. 521 (2003); *Halimao v. Villanueva*, 323 Phil. 1 (1996).

[17] *Joven v. Cruz*, A.C. No. 7686, 31 July 2013, 702 SCRA 545.

[18] *Joven v. Cruz*, id.; *Ylaya v. Gacott*, A.C. No. 6475, 30 January 2013, 689 SCRA 452; *Chan v. Go*, 614 Phil. 337 (2009); *Berbano v. Barcelona*, 457 Phil. 331 (2003).

[19] *Rubin v. Corpus-Cabochan*, OCA I.P.I. No. 11-3589-RTJ, 29 July 2013, 702 SCRA 330, citing *Dela Pena v. Huelma*, 530 Phil. 322 (2006).

[20] *Ylaya v. Gacott*, A.C. No. 6475, 30 January 2013, 689 SCRA 452; *Berbano v. Barcelona*, 457 Phil. 331 (2003).

[21] *Chan v. Go*, 614 Phil. 337 (2009).

[22] *Anonymous v. Achas*, A.M. No. MTJ-11-1801, 27 February 2013, 692 SCRA 18, citing *Go v. Judge Achas*, 493 Phil. 343 (2005).

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