

RUBEN A. ANDAYA, COMPLAINANT, VS. ATTY. EMMANUEL ALADIN A. TUMANDA, RESPONDENT.

A.C. No. 12209. February 18, 2020

Ponente: HERNANDO, J.

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HERNANDO, J.:

Before the Court is a Complaint-Affidavit[2] for Disbarment dated September 9, 2010 filed by complainant Ruben A. Andaya before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) against respondent Atty. Emmanuel Aladin A. Tumanda for violation of the Code of Professional Responsibility (CPR).

The antecedent facts are as follows:

On July 16, 2008, respondent borrowed from complainant the amount of Five Hundred Thousand Pesos (P500,000.00).[3] In exchange for the said amount and in order to convince complainant to part with his money, respondent issued a post-dated check[4] of the same amount dated July 31, 2008. However, when complainant deposited the check with the bank, it was dishonored for the reason that the account was closed. Thus, complainant, through counsel, sent a demand letter[5] to respondent. To appease complainant, respondent offered as payment his Mercedes Benz, and accordingly, executed a Deed of Absolute Sale[6] over the same in favor of complainant. Respondent, however, failed to give complainant the original copy of the Certificate of Registration of the car on the pretext that he forgot to bring the same. Respondent likewise did not turn over the physical possession of the car because he allegedly still needed it for his business ventures. Complainant, however, later found out that respondent sold the same car to a certain John Edwin G. Felizardo.[7] Thus, complainant sent another demand letter to respondent,[8] and thereafter, filed criminal complaints for Estafa and violation of Batas Pambansa Blg. (BP) 22 against him.[9]

Despite due notice, respondent failed to file an answer and to attend the mandatory conference before the IBP.

In his August 26, 2015 Report and Recommendation,[10] the Investigating Commissioner of the IBP found respondent guilty of violating Canon 1 of the CPR for issuing a worthless check. Thus, the Investigating Commissioner recommended that respondent be suspended from the practice of law for a period of one (1) year with a stern warning that a repetition of the same offense will be dealt with more severely.

In its Notice of Resolution No. XXII-2016-245 dated March 17, 2016[11] the Board of Governors (BOG) of the IBP adopted the findings of the Investigating Commissioner but modified the recommended penalty to suspension from the practice of law to three (3) years. The BOG further resolved to direct Director Ramon S. Esguerra of the CBD to prepare an extended resolution explaining the BOG's action of increasing the period of suspension.

On December 15, 2016, Director Esguerra issued an Extended Resolution[12] explaining that respondent's acts of repeatedly changing his address to evade his obligation and of failing to answer and participate in the proceedings of the instant case are aggravating circumstances warranting the imposition of a longer period of suspension.

On June 19, 2018, the Court noted the Resolution of the IBP and referred the case to the Office of the Bar Confidant (OBC) for evaluation, report, and recommendation within thirty (30) days from notice.[13]

In its April 4, 2019 Report and Recommendation,[14] the OBC recommended the adoption of the Resolution of the IBP.

The Court's Ruling

The Court adopts the findings and recommendation of the IBP.

Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the CPR state:

CANON 1— A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 — A Lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 — A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

x x x x

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Lawyers, as guardians of the law, are mandated to obey and respect the laws of the land and to uphold the integrity and dignity of the legal profession. They should at all times, whether in their public or private life, "conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility." [15] Thus they should not engage in any unlawful, dishonest, immoral, or deceitful conduct.

Issuance of a worthless check

In this case, respondent obtained a loan from complainant in the amount of P500,000.00 and in exchange thereof issued a worthless check to complainant. This fact alone is a ground for disciplinary action as it constitutes gross misconduct. It indicates his unfitness for the trust and confidence reposed upon him and his lack of personal honesty and good moral character rendering him unworthy of public confidence.[16] In *Ong v. Atty. Delos Santos*, [17] the Court explained that a lawyer who issues a worthless check is in breach of his oath to obey the laws. The Court explained -

[BP 22] has been enacted in order to safeguard the interest of the banking system and the legitimate public checking account users. The gravamen of the offense defined and punished by [BP 22], according to *Lozano v. Martinez*, is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated. The Court has observed in *Lozano v. Martinez*:

The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest.[18]

Respondent, as a lawyer, should know that issuing a worthless check is a violation of BP 22 for which he may be disciplined under Rule 138, Section 27 of the Rules of Court, which provides that:

Section 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do x x x.

A penalty of one-year suspension from the practice of law is usually imposed upon a lawyer who issues a worthless check.[19] However, considering the attendant circumstances in the instant case, the Court agrees with the IBP and the OBC that the penalty imposed should be increased to three years.

Aggravating circumstances

Here, aside from issuing a worthless check, respondent has acted in utmost bad faith when he sold to another person the Mercedes Benz he previously sold to complainant as full payment for the loan obligation. Such act is a clear violation of the CPR. It is a deceitful conduct that shows his lack of honesty and good moral character.

Moreover, his deliberate failure to settle his obligation despite repeated demands is in itself a gross misconduct for which he may be sanctioned with one-year suspension from the practice of law.[20] As pointed out by complainant in his Complaint-Affidavit and as aptly found by the IBP, respondent has been using several addresses to avoid being traced and to evade his obligation to complainant. In fact, because of this, the IBP had to send copies of the Notice of Hearing to the different addresses of respondent as he could not be located. Such aberrant behavior of respondent lays bare his lack of integrity and moral soundness.

In addition, respondent even refused to answer the accusations against him and to appear in the mandatory conferences despite due notice, thereby causing undue delay in the resolution of the instant case.

All these circumstances taken together justify the imposition upon respondent of a three-year suspension[21] from the practice of law. It bears stressing that the determination of the appropriate penalty to be imposed on an erring lawyer is within the sound judicial discretion of the court taking into consideration the factual circumstances of the case.[22]

WHEREFORE, the Court ADOPTS the findings and ACCEPTS the recommendation of the Integrated Bar of the Philippines and the Office of the Bar Confidant to SUSPEND respondent Atty. Emmanuel Aladin A. Tumanda from the practice of law for a period of THREE (3) YEARS effective upon finality of this Decision with a stern warning that a repetition of the same or a similar act would be dealt with more severely.

Atty. Tumanda is DIRECTED to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Peralta (C.J.), Perlas-Bernabe, Leonen, Caguioa, A. Reyes, Jr., Gesmundo, J. Reyes, Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and Gaerlan, JJ., concur.

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- [1] Also referred to as Atty. Emmanuel Aladin D. Tumanda in some parts of the records.
- [2] Rollo, pp. 2-6.
- [3] Id. at 7.
- [4] Id.
- [5] Id. at 10-11.
- [6] Id. at 8-9.
- [7] Id. at 15.
- [8] Id. at 13-14.
- [9] Id. at 52-56.
- [10] Id. at 80-82; prepared by Commissioner Eldrid C. Antiquiera.
- [11] Id. at 78-79.
- [12] Id.
- [13] Id. at unpagged.
- [14] Id. (unpagged).
- [15] Lim v. Atty. Rivera, A.C. No. 12156, June 20, 2018.
- [16] Nulada v. Atty. Paulma, 784 Phil. 309, 316 (2016).
- [17] 728 Phil. 332 (2014).
- [18] Id. at 37-338.
- [19] See Lao v. Atty. Medel, 453 Phil. 115, 116 (2003) and Lim v. Atty. Rivera, supra note 15.
- [20] Yap v. Buri, A.C. No. 11156, March 19, 2018, 859 SCRA 411, 420.
- [21] See Yu v. Atty. Dela Cruz, 778 Phil. 557, 567-568 (2016) and Samala v. Atty. Palaña, 496 Phil. 13, 19 (2005).
- [22] Lim v. Atty. Rivera, supra note 15.

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