

BERNARDA ARGANA, COMPLAINANT, VS. ATTY. VIRGILIO ANZ. CRUZ, RESPONDENT.*A.C. No. 1236. July 31, 1975*

Ponente: FERNANDO, J.

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A case for dereliction of duty was attempted to be shown by complainant Bernarda Argana based on the allegations that respondent Virgilio Anz. Cruz, a member of the Philippine Bar, failed to attend a hearing of a civil case[1] in the Rizal Court of First Instance, resulting in the cancellation of her one-ninth share in two lots,[2] as the case did go on in his absence, his negligence being compounded by his keeping the documents and papers relevant to the case, as well as the attorney's fees of P1,500.00. Respondent, when required to answer, explained his non-attendance due to his not receiving the notice on time and the non-filing of a motion for reconsideration as in the meanwhile his services had been unceremoniously terminated. He denied that the amount of P1,500.00 was given him by way of attorney's fees, the correct amount being only P1,000, when the promised retainer was in the sum of P10,000.00 for two cases then at a difficult stage, the writs of execution having been already issued.

The matter was referred to the Solicitor General for study, report and recommendation. On July 18, 1975, such a Report was submitted to this Court.

It speaks for itself. After setting forth what had been mentioned above, it goes on to state: "Issues having been joined the undersigned Solicitor proceeded to hear the parties. However, complainant, after presenting a part of her evidence filed on September 21, 1974, a motion for the dismissal of her complaint as she was no longer interested in its prosecution. *** [Subsequently came] an affidavit dated March 24, 1975 [where] complainant reiterated her desire to have this case dismissed. She alleged therein, among others, that she signed the complaint without understanding the circumstances of the case very well, but the truth is that the respondent actually helped her in some way." [3] Then comes this portion of the Report: "From the answer, the compliance and rejoinder filed by respondent, and the order in Civil Case No. 14053 *** it really appears that respondent handled the case for complainant already during the stage of execution, x x x This Honorable Court earlier had affirmed the decision of the lower court in civil case x x x finding the complainant to have fraudulently registered parcels of land in her name and that of her husband. It was during the execution of that decision that the complainant secured the legal services of respondent. Respondent accepted under two conditions, namely, (1) that he would advance only purely legal defenses and (2) should these defenses not prosper, he will not delay or prevent the partition of the property, as that seems to be the ultimate result of said final and executory decision in its execution stage. His legal defenses seem to have been centered on the fact that complainant's children who are the legitimate heirs of complainant's deceased husband, were not made parties to said final and executory decision. Said children were, therefore, deprived of their day in Court. Because of said legal defense which was sustained by the trial court, the prevailing parties in said final and executory decision had to file the action for partition in Civil Case No. 14053. This case was later archived. Then a joint motion to revive was filed and it was during the hearing of this joint motion to revive that respondent did not appear. It was also during that hearing that the trial court ordered the

cancellation of the one-ninth participation of complainant over Lots Nos. 1237 and 1249 described in TCTNo. 168538 and the adjudication of said portion to Delfin Argana."[4]

The Report did not stop there. Thus: "Regarding the charge that he did not appear during the hearing which resulted in the cancellation of complainant's part ownership in the lands in question, we submit that respondent's claim that he did not receive the notice of hearing on time, and that he did not file a motion for reconsideration to the said order because he was dismissed as counsel by complainant, is un rebutted. Although the order issued, as aforesaid, has resulted in the cancellation of complainant's part ownership in the said lands, she may now be deemed to have agreed to said cancellation, because she withdrew her instant complaint against the respondent. Her said withdrawal of her complaint against respondent no doubt bolsters respondent's other contention that she acquired said interest on the said lands through fraud, as found by the trial court and affirmed by this Honorable Court. So that complainant by withdrawing her herein charges against respondent is but making amends. Anent the charge that respondent did not return the documents, respondent's explanation that complainant's representatives refused to accept them as they were insisting that respondent handle other cases where such documents may be needed, has not also been disputed by complainant. As to the charge that respondent did not refund the attorney's fees paid him, we submit that under the circumstances, he had a right to retain them."[5]

The recommendation is for the dismissal of the charges based on this appraisal: "Consequently, there is a lack of that convincing proof to warrant subjecting the respondent to disciplinary action. .. "[6] This Court accepts such recommendation. It is in conformity with what has been so uniformly held in cases of this nature from *In re Tionko*[7] decided in 1922 to *In re de Guzman*,[8] a 1974 resolution. In the *Tionko* opinion penned by Justice Malcolm, it was stressed; "The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath."[9] In the other case mentioned, in *re de Guzman*, Justice Muñoz Palma relied on this categorical affirmation of Justice Castro in *Go v. Candoy*: [10] "To be made the basis for suspension or disbarment of a lawyer, the charge against him must be established by convincing proof. The record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers." [11]

WHEREFORE, this administrative complaint against respondent Virgilio Anz. Cruz is dismissed for lack of merit. Let a copy of this resolution be spread on his record.

Makalintal, C.J., Barredo, Aquino, and Concepcion, Jr., JJ., concur.

Antonio, J., is on official leave.

[1] Civil Case No. 14053 of the Court of First Instance of Rizal, Branch II

[2] Lots Nos. 1237 and 1249 described in TCT No. 168538.

[3] Report and Recommendation. 3-4.

[4] *Ibid*, 5-6.

[5] *Ibid*, 6-7.

[6] *Ibid*, 7.

[7] 43 Phil. 191.

[8] Administrative Case No. 838, January 21, 1974. 55 SCRA 139.

[9] 43 Phil. 191, 194.

[10] Administrative Case No. 736, October 23, 1967. 21 SCRA 439.

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