

HILARIA TANHUECO, COMPLAINANT, VS. JUSTINIANO G. DE DUMO, RESPONDENT.

A.C. No. 1437. April 25, 1989

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PER CURIAM:

On 24 February 1975, complainant Hilaria Tanhueco filed before the Court a Petition for Disbarment (docketed as Administrative Case No. 1437) against respondent Justiniano G. de Dumo for having violated the Canons of Professional Ethics by his (a) refusal to remit to her money collected by him from debtors of the complainant; and (b) refusal to return documents entrusted to him as counsel of complainant in certain collection cases.

In his Answer and Counter-Petition^[1] filed on 3 April 1975, respondent denied the charges. Complainant filed a Rejoinder [should be Reply] to Answer with Counter-Petition, on 18 April 1975. By a Resolution^[2] dated 16 June 1975, the Court referred this case to the Solicitor General for investigation, report and recommendation.

A year later, on 25 June 1976, one Jose Florencio N. Tanhueco, claiming to be the nephew and representative of the complainant, addressed a sworn letter complaint to Mrs. Imelda R. Marcos against the respondent for (a) refusal to remit the money collected by respondent from debtors of complainant's aunt, Mrs. Hilaria Tanhueco Vda. de David; (b) refusal to return documents entrusted to him in his capacity as counsel in certain cases; and (c) abandonment of cases in respect of which his professional services had been engaged. On 24 August 1976, the letter complaint was forwarded by the then Public Information Assistance Staff, Department of Public Information, to this Court for appropriate action (and docketed as Administrative Case No. 1683). After respondent had filed his Answer, the Court, by a Resolution^[3] dated 9 December 1976, referred this case to then Acting Judicial Consultant Ricardo C. Puno for study, report and recommendation.

Since Administrative Case No. 1683 and Administrative Case No. 1437 involved the same parties and the same subject matter, Hon. Ricardo C. Puno referred the former case to the Office of the Solicitor General for consolidation with the latter one.

The Office of the Solicitor General held two (2) hearings, one on 3 December 1975 and another on 18 April 1988. In the first hearing, respondent de Dumo was absent although he had been notified thereof. At the end of the first hearing, continuation of the hearing of the case was set for 14 January 1976. The records show that the second hearing took place on 18 April 1988 but do not indicate the reason for the 12-year interregnum. By then, complainant Tanhueco had died. There was no appearance at the second hearing by complainant Jose Florencio Tanhueco but respondent de Dumo was then present.

The report of the Solicitor General, dated June 15, 1988 in Administrative Case No. 1437 summarized the evidence for the complainant in the following manner:

"EVIDENCE FOR COMPLAINANT

Complainant Hilaria Tanhueco testified that she secured the legal services of respondent to collect indebtedness from her different debtors. Although she offered to execute a document evidencing their

lawyer-client relationship, respondent told her that it was not necessary. She nonetheless offered to give him 15% of what he may be able to collect from the debtors (pp. 4-7, tsn, Dec. 3, 1975).

Complainant also declared that respondent borrowed from her P2,000.00, P1,300.00, and P3,000.00 on three separate occasions, but she could not remember when she gave those amounts. Respondent did not pay those loans (pp. 8-9, tsn, id.)

She confirmed that respondent filed cases against her debtors and that one of them, Constancia Mañosca, paid P12,500.00 to respondent. Informed of such payment by Mañosca herself, complainant confronted respondent but the latter denied having received payment from any of her debtors. Complainant then brought the matter to the attention of Malacañang which referred her to Camp Crame. Notwithstanding subsequent demands of complainant for the money, respondent had refused to give her the amount (pp. 11-15, tsn, id.)."

The Solicitor General then summed up the evidence for the respondent in the following terms:

"EVIDENCE FOR RESPONDENT

Respondent Atty. Justiniano G. de Dumo testified that complainant indeed secured his legal services to collect from her debtors, with the agreement that he gets 50% of what he may be able to collect. He thus filed collection cases against Tipace, Mañosca, Morena, Jr., and others, and was able to obtain favorable judgment in the cases against Mañosca, Tipace and Leonila Mendoza. The initial payments made by these judgment-debtors were all given to complainant. With respect to Mañosca, respondent obtained a judgment for P19,000.00 although the debt was only P12,000.00 (pp. 3-9, tsn, April 18, 1988).

Respondent also declared that complainant, who was then already old and sickly, was influenced by her debtors, who were also her friends, into distrusting him. Ultimately, because complainant filed a complaint against him with Malacañang which referred the matter to Camp Crame, he terminated his relationship with complainant and demanded his attorney's fees equivalent to 50% of what he had collected. Complainant refused to pay him, hence, he did not also turn over to her the P12,000.00 initial payment of Mañosca, which he considered, or applied, as part payment of his attorney's fee (pp. 9-19, tsn, id.) Respondent estimated his attorney's fee due from complainant in the amount of P17,000.00 (p. 20, tsn, id.)

Respondent denied having borrowed the amounts of P2,000.00, P1,300.00, P3,000.00 and P1,000.00, pointing out that complainant did not even have money to pay him so that he handled the cases for her on contingent basis (p. 17, tsn, id.) He also denied having received documentary evidence from complainant. What evidence he had were all gathered by him on his initiative (pp. 4-7, tsn, id.)."

The Solicitor General then set out the following

"FINDINGS

There is in the case at bar clear admissions by both complainant and respondent of an attorney-client relationship between them, specifically in the collection of debts owing complainant. Respondent also admitted, in his answer to the complaint and in his testimony, having received P12,000.00 from judgment-debtor Constancia Mañosca, without turning over the amount to his client, complainant herein, and applying it instead as part of his attorney's fees. It has been held that the money collected by a lawyer in pursuance of a judgment in favor of his client is held in trust (*Aya v. Bigonia*, 57 Phil., 8; *Daroy v. Legaspi*, 65 SCRA 304), and that the attorney should promptly account for all funds and property received or held by him for the client's benefit (*Daroy v. Legaspi*, supra; *In re Bamberger*, 49 Phil. 962). The circumstance that an attorney has a lien for his attorney's fees on the money in his hands collected for his client does not relieve him from the obligation to make a prompt accounting (*Doming[o] v. Doming[o]*, G.R. No. 30573, Oct. 29, 1971; *Daroy v. Legaspi*, supra). Undoubtedly, respondent's failure to account for the P12,000.00 representing payment of the judgment debt of Mañosca constitutes unprofessional conduct and subjects him to disciplinary action. Nonetheless, it has likewise been recognized that a lawyer is as much entitled to judicial protection

against injustice, imposition or fraud on the part of his client; and that the attorney is entitled to be paid his just fees. The attorney should be protected against any attempt on the part of his client to escape payment of his just compensation (Fernandez v. Bello, 107 Phil. 1140; Albano v. Coloma, G.R. Adm. Case No. 528, Oct. 11, 1967). This countervailing rule mitigates the actions of respondent.

As regards the charges that respondent received documents evidencing the debts to complainant and had refused to return them to the latter, and that respondent also borrowed some amounts from her, there [is] no competent, conclusive evidence to support them. Perforce, such allegations have no factual basis." (Underscoring supplied)

The Solicitor General then recommended that:

"For failure to turn over the amount of P12,000.00 to the complainant, and applying it as his attorney's fees, respondent Atty. Justiniano G. de Dumo be severely reprimanded and admonished that repetition of the same or similar offense will be dealt with more severely."

We find the findings of fact of the Solicitor General supported by the evidence of record. We are, however, unable to accept his recommendation.

Moneys collected by an attorney on a judgment rendered in favor of his client, constitute trust funds and must be immediately paid over to the client.[4] Canon 11 of the Canons of Professional Ethics[5] then in force, provides as follows:

"11. Dealing with trust property.

The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be co-mingled with his own or be used by him." (Underscoring supplied)

When respondent withheld and refused to deliver the money received by him for his client, the deceased complainant Hilaria Tanhueco, he breached the trust reposed upon him. The claim of the respondent that complainant had failed to pay his attorney's fees, is not an excuse for respondent's failure to deliver any amount to the complainant.[6] It is of course true that under Section 37 of Rule 138 of the Revised Rules of Court, an attorney has ---

"a lien upon the funds documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements."

The fact that a lawyer has a lien for fees on moneys in his hands collected for his client, does not relieve him from his duty promptly to account for the moneys received; his failure to do so constitutes professional misconduct.[7]

In the present case, what respondent could have properly done was to make an accounting with his client, the complainant, deduct his attorney's fees due in respect of the amount actually collected by him, and turn over the

remaining balance to the complainant. The Court notes that the services of respondent de Dumo were engaged by the complainant on a number of cases and that these were on differing stages of completion. Respondent was not entitled to hold on to the entire amount of P12,000.00 collected by him until all his fees for the other cases had also been paid and received by him. There was not enough evidence in the record to show how much money, if any, respondent had in fact previously (i.e., other than the P12,000.00 from Mañosca) collected for and turned over to complainant (thereby waiving his lien thereon) without deducting therefrom his claimed contingent fees in respect of such collections.

The relationship of attorney and client has always been rightly regarded as one of special trust and confidence. An attorney must exercise the utmost good faith and fairness in all his relationships vis-a-vis his client. Respondent fell far short of this standard when he failed to render an accounting for the amount actually received by him and when he refused to turn over any portion of such amount received by him on behalf of his client upon the pretext that his attorney's fees had not all been paid. Respondent had in fact placed his private and personal interest above that of his client. Respondent's act constitutes a breach of his lawyer's oath and a mere reprimand is not an adequate sanction.

There is another aspect to this case which the Court cannot gloss over. Respondent claimed that he charged complainant, his client, a contingent fee of fifty percent (50%) of the amount collected by him, plus interest and whatever attorney's fees may be awarded by the trial court chargeable to the other party. In this jurisdiction, contingent fees are not per se prohibited by law.[8] But when it is shown that a contract for a contingent fee was obtained by undue influence exercised by the attorney upon his client or by any fraud or imposition or that the compensation is clearly excessive, the Court must and will protect the aggrieved party.[9]

From the Answer of respondent de Dumo, it appears that in three (3) collection cases filed by him for the complainant and which were decided in favor of the complainant, the awards totalled P31,390.00. Respondent asserted that he was entitled to attorney's fees amounting to P18,840.00 out of the aggregate total of P31,390.00:

"7. That the understanding between Hilaria Tanhueco and me was a fifty-fifty on collected principal and interests. The lawyer has the right to charge attorney's fees to the other party-defendant and that Hilaria Tanhueco shall not interfere nor be included in the computation.

That of the cases filed, the following made payments:

a. 'Hilaria Tanhueco vs. Constanca Manosca'

Amount Collectible (principal)..... P12,000.00

Interest added from May 1972

to Nov/73 at 1% a month..... P 2,280.00

Attorney's fees charged to the

defendant and not to be included

in the computation..... P 4,720.00

TOTAL and Amount specified in P19,000.00

the Compromise Agreement and

Subject of the Decision.

b. 'Hilaria Tanhueco vs. Melchor Tipace et al.'

Principal amount collectible..... P 7,100.00

Interest at 1% per month

starting June/71 to Sept./74 2,840.00

Attorney's fees charged to

the defendant and not

included in the computation..... 1,450.00

T O T A L P11,390.00."

c. 'Hilaria Tanhueco vs. Estimo'

Principal Amount collectible..... 1,000.00

SUMMATION OF THE THREE CASES FILED AND AMOUNTS RECEIVABLE BY THE
UNDERSIGNED INCLUDING ATTORNEY'S FEES:

MANOSCA CASE:

Attorney's fees to be paid by

Manosca and not to be included

in the computation..... P 4,840.00

Fifty per cent on the

principal amount collectible

plus interests..... 7,080.00

TOTAL AMOUNT RECEIVABLE P11,920.00

TIPACE'S CASE:

Attorney's fees to be paid by

Tipace and not to be included

in the computation..... P1,450.00

Fifty per cent on the principal

amount collectible from Tipace

plus interests..... 4,970.00

TOTAL AMOUNT RECEIVABLE P6,420.00

8. The total amount which I ought to receive as attorney's fees under paragraph seven, sub-paragraph a, b and c
is:

P11,920.00

6,420.00

500.00.

P18,840.00 TOTAL"[10]

We note that respondent attorney claimed as his contingent fee the following:

- 1) fifty percent (50%) of the sum of principal and interest collectible from different debtors; and
- 2) attorney's fees charged to the defendant (presumably under promissory notes or written agreements) and "not to be included in the computation."

Under this scheme, respondent was actually collecting as attorney's fees sixty percent (60%) or more than half of the total amount due from defendant debtors; indeed, he was appropriating for himself more than what he was according to him to turn over to his client.

We believe and so hold that the contingent fee here claimed was, under the facts obtaining in this case, grossly excessive and unconscionable.[11] Such a fee structure, when considered in conjunction with the circumstances of this case, also shows that an unfair advantage was taken of the client and legal fraud and imposition perpetrated upon her.

The complainant was an old and sickly woman and, in respondent's own words, "penniless." She was at the time she filed her complaint in 1976, already seventy-six (76) years old. In her circumstances, and given her understandable desire to realize upon debts owed to her before death overtook her, she would easily succumb to the demands of respondent attorney regarding his attorney's fees. It must be stressed that the mere fact that an agreement had been reached between attorney and client fixing the amount of the attorney's fees, does not insulate such agreement from review and modification by the Court where the fees clearly appear to be excessive or unreasonable. In *Mambulao Lumber Company v. Philippine National Bank, et al.*, [12] this Court stressed:

"The principle that courts should reduce stipulated attorney's fees whenever it is found under the circumstances of the case that the same is unreasonable, is now deeply rooted in this jurisdiction to entertain any serious objection to it. Thus, this Court has explained:

'But the principle that it may be lawfully stipulated that the legal expenses involved in the collection of a debt shall be defrayed by the debtor does not imply that such stipulations must be enforced in accordance with the terms, no matter how injurious or oppressive they may be. The lawful purpose to be accomplished by such a stipulation is to permit the creditor to receive the amount due him under his contract without a deduction of the expenses caused by the delinquency of the debtor. It should not be permitted for him to convert such a stipulation into a source of speculative profit at the expense of the debtor.

xxx xxx xxx.'

Since then this Court has invariably fixed counsel fees on a quantum meruit basis whenever the fees stipulated appear excessive, unconscionable, or unreasonable, because a lawyer is primarily a court officer charged with the duty of assisting the court in administering impartial justice between the parties, and hence, the fees should be subject to judicial control. Nor should it be ignored that sound public policy demands that courts disregard stipulations for counsel fees, whenever they appear to be a source of speculative profit at the expense of the debtor or mortgagor (*See, Gorospe, et al. v. Gochangco, supra*). And it is not material that the present action is between attorney and client. As courts have power to fix the fee as between attorney and client, it must necessarily have the right to say whether a stipulation like this, inserted in a mortgage contract, is valid (*Bachrach vs. Golingo, supra*).

x x x x x x x x x x."[13]

This Court has power to guard a client,[14] especially an aged and necessitous client,[15] against such a contract. We hold that on a quantum meruit basis, no circumstances of special difficulty attending the collection cases

having been shown by respondent, respondent attorney's fees should be reduced from sixty percent (60%) to fifteen percent (15%) of the total amount (including attorney's fees stipulated as chargeable to the debtors) collected by him on behalf of his client.

With respect to charges of refusal to return documents entrusted to respondent lawyer and abandonment of cases in which his services had been engaged we accept the findings of the Solicitor General that the evidence of record is not sufficient to prove these allegations.

WHEREFORE, the Court Resolved that:

1. respondent is guilty of violation of the attorneys' oath and of serious professional misconduct and shall be **SUSPENDED** from the practice of law for six (6) months and **WARNED** that repetition of the same or similar offense will be more severely dealt with;
2. the attorney's fees that respondent is entitled to in respect of the collection cases here involved shall be an amount equivalent to fifteen percent (15%) of the total amount collected by respondent from the debtors in those cases;
3. respondent shall return forthwith to the estate of complainant Hilaria Tanhueco, the P12,000.00 respondent received on behalf of his client less attorney's fees due to him in respect of that amount (P12,000.00 less fifteen percent [15%] thereof) or a net amount of P10,200.00; and
4. respondent shall return to the estate of complainant Hilaria Tanhueco any documents and papers received by him from the deceased complainant in connection with the collection cases for which he was retained. If he has in fact made any other collections from deceased complainant's debtors, he shall promptly account therefor to complainant's estate and shall be entitled to receive in respect thereof the fifteen percent (15%) attorney's fees provided for herein.

Let a copy of this Resolution be furnished each to the Bar Confidant and spread on the personal record of respondent attorney, and to the Integrated Bar of the Philippines.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] In said Answer and Counter-Petition, respondent also charged Atty. Jose Beltran Sotto, counsel for complainant, with malpractice, considering that Atty. Sotto allegedly acted as lawyer of the opposing party in a previous litigation against Hilaria Tanhueco. In a Resolution dated 21 May 1978, in Administrative Case No. 1437 (Rollo, p 28), this Court ruled that the complaint against Atty. Jose Beltran Sotto cannot be the subject of a Counter-Petition but only of a separate complaint in due form. "The prayer to prohibit Atty. Sotto from appearing on behalf of the complainant, was likewise denied.

[2] Rollo of Adm. Case No. 1437, p. 41.

[3] Rollo of Adm. Case No. 1683, p. 33.

[4] *Aya v. Bigornia*, 57 Phil. 8 (1932).

[5] Adopted by the Philippine Bar Association in 1917.

[6] In *In re W.H. Booram*, 39 Phil. 247 (1918), this Court ruled that the attorney who received an account of P265.17 for collection, and collects one-half of the (P132.58), and leaves the balance uncollected and present a

statement to his client, claiming all the money collected as his fees for the work done in that case, is guilty of unprofessional conduct and should be suspended from the practice of law.

[7] *In re Bamberger*, 49 Phil. 962 (1924); *Daroy v. Legaspi*, 65 SCRA 304 (1975).

[8] See Canon 13; Canons of Professional Ethics, in force at the time here material. Under Canon 20 and Rule 20.01 of the new Code of Professional Responsibility, the contingent character of attorney's fees may be taken into account in assessing the fairness and reasonableness of such fees.

[9] *Ulanday v. Manila Railroad Co.*, 45 Phil. 540 (1923); *Grey v. Insular Lumber Co.*, 97 Phil. 833 (1955).

[10] Rollo of Adm. Case No. 1437, pp. 15-16; underscoring supplied.

[11] Cf. *Amalgamated Laborers' Association, et al. v. Court of Industrial Relations*, 22 SCRA 1266 (1968); and *Quitoriano, et al. v. Centeno*, 59 Phil. 646 (1934).

[12] 130 Phil. 366 (1968).

[13] 130 Phil. at 381, 382; underscoring supplied.

[14] *Virginia M. Ramos. v. Hon. Judge Abdulwahid A. Bidin, etc.*, G.R. No. 53650, *Rosaura P. Jaldon v. Hon. Judge Abdulwahid A. Bidin, etc., et al.*, G.R. No. 55460, promulgated 28 May 1988.

[15] Article 24, Civil Code of the Philippines.

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