

SHIRLEY CUYUGAN-LIZASO, COMPLAINANT, VS. ATTY. SERGIO G. AMANTE, RESPONDENT.

A.C. No. 2019. June 03, 1991

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PER CURIAM:

On 27 March 1979, Shirley Cuyugan-Lizaso filed a sworn Complaint for disbarment against respondent Atty. Sergio G. Amante charging the latter with deceitful and grossly immoral conduct. The Court required respondent Amante to file an Answer to the complaint, and respondent did so on 25 May 1979. A Reply dated 23 September 1980 was filed by complainant.

By a Resolution dated 10 November 1980, the Court referred this case to the Office of the Solicitor General for investigation, report and recommendation.

On 18 June 1981, complainant wrote a letter to this Court requesting an order restraining respondent from leaving the country and an order restraining respondent's employer the University of the East; from disbursing monies that may be due to respondent on account of his retirement from the University's service. The Court referred this request to the Office of the Solicitor General in a Resolution dated 15 July 1981.

The Office of the Solicitor General accordingly held hearings at which the complainant appeared and testified on her own behalf and submitted documentary evidence to support her allegations of misconduct on the part of the respondent Amante. Respondent Amante appeared at these hearings, testified on his own behalf and was cross-examined. Respondent also presented documentary evidence on his behalf, but failed to complete his presentation of evidence despite repeated notices to do so. Moreover, respondent Amante failed to offer formally his documentary evidence.

The complainant's case was summarized by the Solicitor General in his Report and Recommendation dated 7 February 1990 in the following manner:

"On August 7, 1978, complainant handed to respondent Prudential Bank Check No. 655615 dated August 4, 1978 in the amount of P5,000.00 (Exh. 'A') payable to the latter and which, per agreement between the two of them, was to be invested in respondent's business venture in the casino. Complainant was enticed into investing in the business by respondent's proposition that the business will guarantee her an interest of 10% percent profit a day. Complainant was further convinced because she knows of her sister's friend who deals in the same business in the casino and who even accepts jewelries from gamblers who have lost heavily. The check was encashed by respondent as shown by his signature appearing at the back of the check.

A written receipt (Exh. 'B') for the amount of P5,000.00 was signed by respondent on August 7, 1978 and which states:

'Mrs. Shirley Cuyugan Lizaso entrusted the amount of P5,000.00 to Atty. Sergio Amante to be invested in business with a guarantee of 10% net profit a day starting Aug. 7, 1978, capital to be returned after two months.

Received by:

S.M. Amante

(signed)'

The complainant originally prepared the check and the receipt on August 4, 1978. She tried to seek respondent's signature on the receipt but it was only on August 7, 1978, when she was able to see respondent and gave to him the P5,000.00 check for which respondent signed the receipt/ promissory note.

Three days after August 7, 1978, complainant tried to see respondent in order to collect the interest on her investment but respondent failed to give her any. For the many weeks that followed, complainant even begged respondent to return her money if he could not give the interests but respondent merely made promises.

Afraid that her investment will not be returned, complainant sought the help of the UE Legal Department Head, Atty. Pedro Siojo and presented her written complaint dated August 27, 1978 against respondent (Exh. 'C'). Atty. Siojo scheduled a confrontation but the respondent failed to come. The second scheduled confrontation likewise resulted in respondent's failure to appear. In view of these, Atty. Siojo informed her that he cannot do anything if respondent refuses to appear.

Because of this, complainant sought the help of Mr. Antonio Ravelo, UE Faculty President, but the latter was not able to help her because respondent denied that he ever owed complainant anything.

Again, complainant sought the help of the University President, Conrado Aquino, by her letter of December 11, 1978 (Exh. 'D'). Mr. Aquino, however, was of the opinion that this was a personal agreement best left between the two of them to settle.[1]

Respondent Amante presented a different version of the facts, which was substantially as follows. Sometime in June 1978, complainant allegedly approached respondent for a loan of P20,000.00 needed to forestall foreclosure of a mortgage on complainant's house. Respondent Amante allegedly lent P5,000.00 to complainant, which loan fell due a month later. Complainant was allegedly very slow in repaying the loan. To provide complainant with an incentive for repaying her loan from the respondent, the latter dangled the possibility of a second loan of P20,000.00 to complainant, upon complainant's repayment of her first loan. Thus, on 7 August 1978, complainant tendered to respondent Amante the P5,000.00 check referred to in the complaint. Amante admitted he encashed the check, but argued that he did so to realize the payment of complainant's prior obligation to him. Respondent said he had no real intention of extending a second loan to complainant. This outraged the complainant and she allegedly then tried to extort money from respondent Amante by harassing him with her false and fabricated complaint.

The respondent also denied having signed the receipt for P5, 000.00 with the wording appealing in Exhibit "B" of the Complaint. At the same time, to substantiate his own version of the evidence, respondent offered in evidence Exhibits "1" and "2" being a copy of a receipt for P5,000.00 allegedly given in payment of complainant's loan from respondent, and purportedly signed by complainant.

After careful examination of the records of this case, we agree with the Solicitor General that complainant has discharged the burden of showing, by clear and convincing evidence, that she had delivered P5,000.00 to respondent Amante for investment purposes and that respondent not only failed to deliver the promised return on the investment but also the principal thereof, despite repeated demands therefor. The reasoning and conclusions of fact of the Solicitor General follow:

"First. Most persuasive in lending credence to this is the fact that the check, at the time of encashment by respondent, already contained the words 'capital investment' at the back thereof. The bank's microfilm copy of the reverse side of the check confirms it. This amply and clearly substantiate the material fact that at the time the check was received by respondent and presented by him to the bank, the agreement between him and

complainant was to invest the amount in respondent's business venture. It totally negates respondent's claim that the check was in payment of a previous loan given by him to complainant.

Second. The receipt/promissory note (Exh. 'B' dated August 7, 1978 clearly expresses the terms of their oral agreement that the amount of P5,000.00 was entrusted to respondent to be invested by him in his business venture, that said amount has a guarantee of 10% profit per day starting August 7, 1978, and that the capital of P5,000.00 shall be returned to complainant after two months from date thereof. Said receipt unquestionably bears the signature of respondent. To all these terms, respondent affixed his signature.

Third. After complainant had repeatedly demanded the return of her P5,000.00 capital investment which respondent failed to do, the latter wrote a note dated November 7, 1978 addressed to a certain Mr. Resty Noriega (Exh. 'H') authorizing complainant to collect in his (respondent's) behalf his fee from Mr. Noriega. Complainant presented this note to Mr. Noriega who informed her that the note is not clear enough to entrust complainant with payment of respondent's fee. Mr. Noriega then returned the note to her with the advice that she should secure a letter from respondent to specify the amount to be collected by complainant. Respondent's note does show an admission of his obligation to return or reimburse complainant's money.

Fourth. The tenacity and resourcefulness with which complainant repeatedly sought help from various school officials such as the UE Head of Legal Department, the UE Faculty President and the University President himself, in separate written complaints, prior to finally securing legal assistance from a private lawyer, all directed to seeking the return or reimbursement of her P5,000.00 investment, are evincive of the credibility and faithfulness to the truth of complainant's cause of action against respondent."^[2]

Upon the other hand, the Solicitor General found respondent's version of the facts to be unreal and implausible. Moreover, the exhibits submitted by respondent Amante appeared to have been fabricated by respondent. The analysis of respondent's evidence by the Solicitor General follows:

"x x x x x x x x

1. Annex '1' - photocopy of a stub in an actual size as short and as small as one inch by three inches, dated August 7, 1987, addressed to 'Gigi' which is the nickname of respondent and embodying ten words: 'Attached is check no. 655615 as payment of my "utang" ' and bearing the signature Shirley C. Lizaso. This evidence can only elicit disbelief as being incredible if not manufactured for the following reasons:

x x x x x x x x

Furthermore, the situation raises the question why complainant would give and sign such a note of receipt when, in the ordinary course of things as in the case at bar, it should be the respondent who should sign and give a receipt for the check of P5,000.00, if indeed complainant paid her loan to respondent.

d) Finally, the stub receipt had never been presented by respondent in any of the investigations/confrontations set by the UE Legal Department Head or the UE Faculty President. If there was any truth to the genuineness of the stub receipt claimed by respondent, he should have immediately presented this in the scheduled confrontations if only to dismiss the complaint outright or the malicious rumor he claimed complainant was spreading within the university. Instead, the stub receipt suddenly surfaced only during the investigation of this disbarment case.

2. Annex '2', subsequently marked as Exh. '1', is the alleged receipt dated August 4, 1978 embodying the following words:

'Received from Shirley C. Lizaso Check No. 655615C (P5,000.00) in payment of her loan.

[Unusually long vacant space between the above words and signature below]

Sergio G. Amante

(signed)'

Exh. '1' is fully handwritten. According to respondent, Exh. '1' and Exh. 'B' are one and the same and that in view of the long and big vacant space between the handwritten words and his signature, he claimed that complainant inserted the words in Exh. 'B' embodying the agreement that the P5,000.00 was received by respondent as her capital to be invested in respondent's business venture with a guarantee of 10% net profit a day starting August 7, 1978 and the same to be returned two months thereafter; and that complainant allegedly cut off all the wordings of Exh. '1' so that what remained is the receipt/ promissory note or Exh. 'B' of the complainant and the same signature of respondent.

x x x x x x x x

Moreover, it taxes credulity on why respondent in Exh. '1' would affix his signature so far away below from the handwritten words, leaving a big void or vacant space in between which any ordinary layman knows may be used to another's advantage and manipulated to the Prejudice of the signatory, even more so that respondent is a lawyer.

Furthermore, a comparison of the edge of the cut top portion of Exh. 'B' with the last handwritten line in Exh. '1' which consisted of only one word 'loan' would readily show that the handwritten loops appearing on the edge of the cut portion of the top of Exh. 'B' do not, at all, correspond to the last line of Exh. '1', which does not contain any tail loops at all. In other words, the last line of respondent's Exh. '1' containing the handwritten word 'loan' does not have any tail loops that would correspond with those appearing on the edge of the top cut portion of complainant's Exh. 'B', if it were true that the paper showing Exh. 'B' is a physical continuation of Exh. '1' as respondent would want the undersigned Hearing Officer to believe. Immediately clear, therefore, is the conclusion that Exh. '1' and 'B' are not the same and are far different from each other.

Lastly, Exh. '1', just like Annex '1' (stub receipt), had never been presented by respondent in any of the confrontations set by the university officials between complainant and respondent, but was only presented during the investigation at bar.

3. Respondent's claim that he enticed complainant to pay him the alleged P5,000.00 loan/earlier gave to her, by promising to give her P20,000.00 if she pays the P5,000.00 loan, is quite hollow and very unlikely. Any person, the complainant no less, who knows that she will be given a P20,000.00 loan would very unlikely pay a previous loan of P5,000.00 but would merely partially offset said amount and received instead the balance of P15,000.00

Moreover, it must be remembered that complainant secured from the Prudential Bank a loan of P5,000.00 on August 4, 1978 in order to invest it on respondent's business venture. To follow respondent's twisted reasoning, it evokes wonder why complainant would secure a P5,000.00 loan from the bank just to pay a P5,000.00 loan to respondent who promised to give her, anyway, a P20,000.00 loan. If complainant really needed the balance of P15,000.00, she could have very well secured the same from the bank and not from the respondent. In other words, there was no necessity for complainant to obtain a subsequent loan from respondent because she could just as well, get the same loan from the bank as she was able to.

x x x x x x x x

5. For a lawyer, as the respondent is, it appears strange that he has not required complainant to sign any receipt for the P5,000.00 loan he allegedly gave her 'sometime in June, 1978.' If complainant, who is not a lawyer, was able to make him sign a receipt for P5,000.00 she gave him respondent, with all his legal expertise, would be doubly expected to protect his loan by a similar receipt. And yet, respondent was not able to as there was actually none to secure."^[3]

Thus, it appears to the Court that respondent failed to return and account for complainant's money notwithstanding repeated demands of complainant for such return and accounting. It also appears that when

finally brought before the Office of the Solicitor General in the disbarment proceedings, respondent tried to controvert complainant's charges by using in evidence documents that appear to be falsified and which try to make it appear that complainant had delivered the P5,000.00 to respondent in payment of a prior loan from the latter.

It is true, of course, that there was no attorney-client relationship between respondent Amante and complainant Cuyugan-Lizaso. The transaction that complainant entered into with respondent did not require respondent to perform professional legal services for complainant nor did that transaction relate to the rendition of professional services by respondent to any other person.

As early as 1923, however, the Court laid down in *In Re Vicente Pelaez*[4] the principle that it can exercise its power to discipline lawyers for causes which do not involve the relationship of an attorney and client. In that case, the respondent Vicente Pelaez, a member of the Bar, was appointed guardian of a minor child. As such guardian, he came into possession of certain property, including some shares of stock in certain corporations. Pelaez, while still guardian of the minor, borrowed money from the Philippine National Bank and to guarantee that personal loan, Pelaez, without the knowledge or consent of the guardianship court, pledged the shares of stock belonging to the minor. In disciplining the respondent, Mr. Justice Malcolm said:

"x x x [A]s a general rule, a court will not assume jurisdiction to discipline one of its officers for misconduct alleged to have been committed in his private capacity. But this is a general rule with many exceptions. The courts sometimes stress the point that the attorney has shown, through misconduct outside of his professional dealings, a want of such professional honesty as render him unworthy of public confidence, and an unfit and unsafe person to manage the legal business of others. The reason why such a distinction can be drawn is because it is the court which admits an attorney to the bar, and the court requires for such admission the possession of a good moral character.[5]

x x x x x x x x

The nature of the office, the trust relation which exists between attorney and client, as well as between court and attorney, and the statutory rule prescribing the qualifications of attorneys, uniformly require that an attorney shall be a good moral character. If that qualification is a condition precedent to a license or privilege to enter upon the practice of the law, it would seem to be equally essential during the continuance of the practice and the exercise of the privilege. So it is held that an attorney will be removed not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which shows him to be unfit for the office and unworthy of the privileges which his license and the law confer upon him."[6] (Emphases supplied)

The rationale of the rule that misconduct, indicative of moral unfitness, whether relating to professional or non-professional matters, justifies suspension or disbarment, was expressed by Mr. Chief Justice Prentice in *In Re Disbarment of Peck*,[7] with eloquence and restraint:

"As important as it is that an attorney be competent to deal with the oftentimes intricate matters which may be intrusted to him, it is infinitely more so that he be upright and trust-worthy. Unfortunately, it is not easy to limit membership in the profession to those who satisfy the standard test of fitness. But scant progress in that direction can be hoped for if in the determination of the qualification of professional fitness, non-professional dishonor and dishonesty in whatsoever path of life is to be ignored. Professional honesty and honor are not to be expected as the accompaniment of dishonesty and dishonor in other relations. So it is that we, in common with other courts, hold, as did Lord Mansfield more than a century ago, that misconduct, indicative of moral unfitness for the profession, whether it be professional or non-professional, justifies dismissal as well as exclusion from the bar."[8] (Emphases supplied)

The rule in this jurisdiction was stated by Mr. Justice Malcolm in *Piatt v. Abordo*[9] in the following terms: that an attorney may be removed or otherwise disciplined "not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which showed him to be unfit for the office and unworthy of the privileges which his license and the law confer to him." Mr. Justice Malcolm went on to say:

"The courts are not curators of the morals of the bar. At the same time the profession is not compelled to harbor all persons whatever their character, who are fortunate enough to keep out of prison. As good character is an essential qualification for admission of an attorney to practice, when the attorney's character is bad in such respects as to show that he is unsafe and unfit to be entrusted with the powers of an attorney, the courts retain the power to discipline him." [10]

Finally, we should refer to Rule 101 set out in Chapter I entitled "The Lawyer and Society" of the "Code of Professional Responsibility" which requires that "a lawyer shall not engage in unlawful dishonest, immoral or deceitful conduct." We emphasize here that "conduct," as used in this rule, is not limited to conduct exhibited in connection with the performance of professional duties.

In the case at bar, it is clear to the Court that the conduct of respondent Amante in failing to account for and return the P5,000.00 delivered to him for investment purposes by complainant, constituted dishonest and immoral conduct. We are compelled to conclude that respondent attorney converted complainant's monies to his personal uses. This dishonest conduct was compounded by the efforts of respondent attorney to deny and dissimulate the transaction that he had entered into with complainant. As far as the records of this case show, respondent has not to date returned complainant's monies.

WHEREFORE, respondent Atty. Sergio G. Amante is hereby **SUSPENDED INDEFINITELY** from the practice of law. Copies of this Resolution shall be furnished to all courts of the land. Copies shall also be furnished to the Integrated Bar of the Philippines and to the Office of the Bar Confidant and spread on the personal record of respondent attorney.

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

[1] Report and Recommendation of the Solicitor General, pp. 11-14.

[2] Report and Recommendation of the Solicitor General, pp. 14-16.

[3] Report and Recommendation of the Solicitor General, pp. 17-24.

[4] 44 Phils. 567 (1923).

[5] 44 Phils. at 570.

[6] 44 Phils. at 572.

[7] 88 Conn. 447, 450, 451, 91 A. 274, 275, Ann. Cas. 1917B, 227.

[8] 91 A. 274 (1917) as quoted in Malcolm, *Legal and Judicial Ethics*, pp. 88-89 (1949).

[9] 58 Phils. 350 (1933).

[10] 58 Phils. at 351.

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