

GLORIA DELA ROSA OBIA, PETITIONER, VS. ATTY. BASILIO M. CATIMBANG, RESPONDENT.

A.C. No. 2731. April 19, 1991

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PER CURIAM:

In this administrative case, complainant seeks the dis-barmment of, or disciplinary action against respondent Basilio M. Catimbang, a member of the Philippine Bar, on the alleged ground that an amount of P11,000.00 which complain-ant entrusted to him was, by means of deceit, malpractice, gross misconduct in his office as attorney, and in violation of his oath as a lawyer, misappropriated by the said respondent.[1]

In her sworn complaint, dated 30 January 1985, it is alleged by complainant that:

"Complainant xxx is a Stenographic Reporter of the Municipal Trial Court of Buguey, Cagayan xxx." [2]

"Sometime in April 1981, the mother-in-law of complainant wrote to her that she may repurchase a parcel of land of about two (2) hectares located at Buhi, Camarines Sur, which her (mother-in-law's) father mortgaged to one Jose Rello for the amount of P11,000.00.

"Complainant borrowed money from friends and relatives at high rate of interest to raise the said amount of P11,000.00, and went to her mother-in-law's residence in Buhi, Camarines Sur, on May 22, 1981, the eve of the town fiesta.

"On May 26, 1981, respondent Atty. Basilio Catimbang arrived at her mother-in-law's resi-dence, and when he learned that complainant had the money to repurchase the land from Mr. Jose Rello, he invited complainant to see the said land. Complainant found the land to be satis-factory, so respondent advised her and her mother-in-law to be in his law office at Naga City the following day and bring the money in the amount of P11,000.00 for the repurchase.

"The following day, May 27, 1981, complainant and her mother-in-law went to respondent's office at Naga City but when they arrived there at about noontime, Mr. Jose Rello was not yet there to sign the document of repurchase. Complainant told respondent that she was willing to return the following day to pay the amount to Mr. Jose Rello but respondent stated that Mr. Rello was a busy man and he did not know when Mr. Rello could come to his office, so he advised complainant to leave the P11,000.00 with him under proper receipt. At first complainant was reluctant to leave the money with respondent, but the latter assured her that he had an extensive practice with a respectable Law Office, and would not swindle her with that amount. With the promise of respondent that he would return the amount in case Mr. Rello would not sign the document of repurchase, complainant gave the P11,000.00 to respondent, as evidenced by the receipt dated May 27, 1981, attached as Annex 'A' of the Complaint.

"On May 29, 1981, complainant and her mother-in-law again went to the law office of respondent in Naga City to take the documents pertaining to the land but respondent informed them that he was not able to contact Mr. Rello. So he promised that he would just bring the documents to Buhi.

"The next day, respondent arrived at the residence of complainant's mother-in-law and informed them that Mr. Rello left for Manila, and was not expected to return until after a few days. As complainant was then scheduled

to go home to Buguey, Cagayan, respondent prepared a document entitled 'Real Estate Mortgage' (Annexes 'B' and 'B-1' of the Complaint) which he asked the former owner of the land, Domingo Guido, to sign in complainant's favor, as mortgagee, with the assurance that after the payment of the P11,000.00 to Mr. Rello, he would have the mortgage released and the title of Domingo Guido would be again registered, and later the owner's duplicate copy with the mortgage duly annotated in complainant's favor would be sent to her in Cagayan.

"After about three (3) weeks since her arrival in Cagayan, complainant did not receive any document from respondent. With a premonition of having been swindled by respondent, complainant wrote a letter to respondent on June 18, 1981 (Annex 'C' of Complaint) asking him for the Deed of Repurchase from Mr. Jose Rello. But for about three (3) months, no reply was received from respondent. So, on September 13, 1982, complainant sent respondent a telegram demanding the return of her money or the document of repurchase signed by Jose Rello, but still respondent failed to answer. By that time, complainant's father, who guaranteed the loan she secured to raise the P11,000.00, was already being pestered by the creditors, and subsequently quarrels ensued, and on September 7, 1983, complainant's father was shot dead by unidentified persons.

"Complainant consulted a lawyer and she was advised to send formal demands on respondent for the return of the P11,000.00. Thus, demand letters dated December 4, 1981 (Annex 'F' of Complaint) and March 1, 1984 (Annex 'G' of Complaint) were sent to respondent but still he failed to return the money." [3]

The respondent in his answer dated 4 May 1985 admitted his receipt of the P11,000.00 from complainant. He stated the reasons for his failure to return the same, thus —

"(a)

that complainant's mother-in-law insisted that the amount should not be returned until and unless Mr. Rello would definitely say that he is no longer willing to have the land resold to complainant. The only hindrance to the repurchase is the presence of a tenant on the land and complainant's mother-in-law insisted that said tenant be ejected before effecting the repurchase.

"(b)

all the demand letters sent by complainant to respondent were referred to her mother-in-law because it was she (mother-in-law) who is bound and obligated to return the said amount." [4]

Complainant in her reply [5] dated 27 May 1985 disputed respondent's factual allegations.

The question, therefore, is: Did respondent commit the acts complained of, which would warrant the imposition of disciplinary action against him, pursuant to Section 27, Rule 138 of the Rules of Court? [6]

As directed by the Court, the Office of the Solicitor General (OSG for brevity) conducted an investigation of the complaint in the above-entitled case, but on several scheduled hearings, it appears that respondent did not appear before the OSG. In its "Report and Recommendation" dated 23 February 1990, OSG stated the following:

"The case was set for hearing on August 26, 1985, then on September 2, 1985, then on October 28, 1985, then on December 16, 1985, but respondent never appeared but only sent motions for postponement on account of illness. Complainant was allowed to testify ex-parte on February 10, 1986 and she substantiated her allegations in her Complaint.

"The case was set for hearing several times thereafter to afford the respondent a chance to cross-examine her, and also present his own evidence, but again respondent never appeared. The case was set for hearing for the last time on February 16, 1987, and due to the failure of respondent to appear, the case was deemed submitted

for resolution, even without respondent's evidence.

"However, on March 5, 1987, respondent sent to complainant's counsel at Aparri, Cagayan the amount of P7,000.00 by means of a PNB telegraphic transfer." [7]

After considering all the pleadings filed with the Court, and the Report submitted by the OSG, we agree with its finding that the "act of respondent in remitting the amount of P7,000.00 to complainant's counsel, after knowing that the case against him had been considered submitted for resolution, was a clear admission that he had the obligation to return the P11,000.00 entrusted to him by complainant for the repurchase of the land mortgaged to Jose Rello." [8]

But it took respondent more than five (5) years from the time he received on 27 May 1981 the money from complainant, before he returned on 5 March 1987 part (P7,000.00) of said amount of P11,000.00. The records show that, during the intervening period, respondent maintained a "no-response" attitude in the face of demand letters sent to him by complainant. Even during the investigation conducted by the OSG, respondent never personally appeared and maintained his "silence" throughout.

The reasons given by respondent in his answer for the delay in returning the amount are flimsy and inexcusable in the light of the evidence presented against him and the findings of the OSG.

The acts committed by respondent definitely constitute malpractice and gross misconduct in his office as attorney. These acts are noted with disapproval by the Court; they are in violation of his duty, as a lawyer, to uphold the integrity and dignity of the legal profession and to engage in no conduct that adversely reflects on his fitness to practice law. Such misconduct discredits the legal profession. [9]

ACCORDINGLY, respondent Atty. Basilio M. Catimbang is hereby **SUSPENDED INDEFINITELY** from the practice of law, effective from date of notice hereof. He is also ordered to return to complainant (if he still has not done so) within fifteen (15) days from date of notice hereof the balance of P4,000.00 with interest at 12% per annum, from 13 September 1982 to date of actual payment — as he has, in effect, held on to said amount in the concept of a loan — under pain of a more severe penalty if he fails to do so.

Let copy of this resolution be served personally on Atty. Basilio M. Catimbang at his given or any known address. Copies of this resolution shall be entered in his record as attorney and served on the IBP and the Court Administrator to be circulated to all the courts in the country for their information and guidance.

SO ORDERED.

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

[1] Rollo, p. 1

[2] Ibid.

[3] "Report and Recommendation" dated 23 February 1990, sub-mitted by the Office of the Solicitor General, pp. 1-5.

[4] Ibid., p. 6

[5] Rollo, pp. 34-39

[6] Section 27, Rule 138: Attorneys removed or suspended by Supreme Court on what grounds. — A member of

the bar may be removed 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 willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[7] "Report and Recommendation," dated 23 February 1990, submitted by the Office of the Solicitor General, p. 7

[8] Ibid., p. 8

[9] Chapter II, Canon 7, Rule 7.03, Code of Professional Responsibility

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