

LORENZANA FOOD CORPORATION REPRESENTED BY MR. SOLOMON U. LORENZANA, JR., AS ITS PRE-SIDENT AND GENERAL MANAGER, AND/OR MRS. ELIZABETH L. DIAZ, AS ITS VICE-PRESIDENT, PETITIONERS...

A.C. No. 2736. May 27, 1991

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PER CURIAM:

The respondent lawyer, Atty. Francisco L. Daria, is administratively charged^[1] on two counts, to wit:

1. Negligence and
2. Betrayal of his former client's confidences.

A verified complaint dated February 22, 1985 was filed by Lorenzana Food Corporation (LFC, hereinafter), and received by the Court on February 25, 1985.^[2]

The Court, on June 10, 1985, resolved to refer this case to the Office of the Solicitor General for investigation, report, and recommendation.

After proper proceedings, the Office of the Solicitor General submitted its "Report and Recommendation," dated February 21, 1990 and received by the Court on February 26, 1990.

From the findings made by the Solicitor General, the pertinent facts may be summarized as follows:

Respondent Francisco L. Daria is charged with negligence and betrayal of his former client's confidences. The following facts are in connection with the charge of negligence:

Respondent was hired by complainant Lorenzana Food Corporation (LFC) on January 8, 1981 as its legal counsel and was designated as its personnel manager six months later (tsn. pp. 6-7, Dec. 9, 1985). On May 23, 1983, LFC employee, Violeta Hanopol, filed a complaint for illegal dismissal and other monetary claims against complainant before the Ministry (now Department) of Labor and Employment (MOLE). On May 30, 1983, summons was served on the parties with the requirement that position papers be submitted (Exh. G).

During the initial hearing on June 13, 1973[*] (sic) Hanopol and respondent tried to explore the possibility of an amicable settlement. Since no agreement was reached, the hearing was reset to June 17, 1983. On the pretext that Hanopol was supposed to go to his office on that date, respondent failed to appear for the second setting (tsn. pp. 14-15, Dec. 9, 1985). So, the Labor Arbiter was constrained to further reset the hearing to June 28, 1983. Respondent received on June 23, 1983 the Order for the resetting to June 28, 1983 (Exh. J).

In the meantime, on June 20, 1983, respondent received an Order in another labor case, setting the hearing therein also on June 28, 1983 (Exh. H-6). Faced with a conflicting schedule, respondent decided to move to postpone the hearing in the Hanopol case. However, instead of filing a written motion for postponement, he opted to call, through his secretary, the Office of the Labor Arbiter to move for postponement (Exh. H-5; tsn. p. 16, Dec. 9, 1985). Respondent's telephone message apparently failed to reach the Labor Arbiter, because at the hearing on June 28, 1983, he considered the case submitted for decision on the basis of Hanopol's

complaint and affidavit (Exh. G-1). Respondent had not submitted a position paper.

After a month, on July 29, 1983, the Labor Arbiter issued a Decision directing LFC to pay Hanopol the total sum of P6,469.60 in labor benefits, on the basis of Hanopol's evidence alone.

Respondent Daria appealed the Decision to the National Labor Relations Commission (NLRC) on August 23, 1983 (Exh. 4). The case was remanded to the Labor Arbiter for further proceedings. The case was set for hearing on June 25, 1984 and July 12, 1984 wherein attempts for an amicable settlement still proved futile. The Labor Arbiter set two more dates for hearing: July 27, 1984 and August 8, 1984 (tsn. pp. 21-22, Dec. 9, 1985).

In the meantime, in the middle of June 1984, respondent signified to management his intention to resign. In the light of this development, management hired Atty. Rogelio Udarbe to take his place on July 16, 1984, the effective date of his resignation (Exh. 2). Respondent endorsed the cases of complainant to Atty. Udarbe (tsn. pp. 23-25, Dec. 9, 1985).

During the hearings in the Hanopol case on July 27, 1984 and August 8, 1984, no one appeared for complainant. So, on August 15, 1984, Hanopol filed a "Manifestation and Motion" praying that the earlier Decision of the Labor Arbiter dated July 29, 1983 be revived. (Exh. 5).

On September 1, 1984, Atty. Jose Loy, Jr. was hired by complainant LFC vice Atty. Udarbe and he immediately came across the above-mentioned "Manifestation and Motion". On September 5, 1984, he filed an Opposition (Exh. 6) thereto, and on September 19, 1984, he followed this up with a position paper for LFC (Exh. 7). However, the Labor Arbiter had already revived his earlier Decision dated July 29, 1983 in another Decision dated September 4, 1984, thereby prompting Atty. Loy to appeal the latter Decision (Exh. 3). In a Resolution dated May 9, 1985, the NLRC ordered anew the remand of the case for further proceedings (Exh. 8).

In connection with the other charge of betrayal by respondent of his former client's confidences, the following facts appear on record:

While respondent was still connected with complainant, its general manager, Sebastian Cortes, issued a memorandum dated February 28, 1984 (Exh. C) to its employee, Roberto San Juan, requiring him to submit a written explanation for his alleged double liquidation and unliquidated cash advances. Another memorandum dated March 15, 1984 (Exh. D) was issued this time by complainant's internal auditor, Rosario L. Bernardo, addressed to complainant's president, summing up San Juan's unliquidated advances amounting to P9,351.15. Respondent was furnished a copy of this memorandum (Exh. D-3). The executive committee, to which respondent belongs, investigated San Juan on his unliquidated advances. On account of the gravity of the charge, respondent placed San Juan under preventive suspension, per his letter to him dated April 25, 1984 (Exh. E).

On September 20, 1984, when respondent had already resigned, complainant sent a demand letter to San Juan requiring him to restate the amount of P9,351.15 (Exh. N-2). Since he failed to pay the amount demanded, a complaint for estafa was lodged against him before the Office of the Provincial Fiscal. San Juan thereafter resigned and sought the assistance of respondent in the preparation of his counter affidavit in January 1985 (tsn. p. 35, Nov. 5, 1985). Respondent prepared San Juan's counter affidavit and signed it (Exh. F). San Juan then submitted his counter affidavit to the Office of the Provincial Fiscal (tsn. p. 42, Nov. 5, 1985).[3]

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For failure to appear in two consecutive hearings and to submit a position paper in the Hanopol case which resulted in complainant LFC's default and judgment against it by the Labor Arbiter, the respondent is faulted for negligence. The respondent avers that Hanopol should have seen him in his office to work out a compromise agreement, on the scheduled day of the second hearing, June 17, 1983, but did not.[4]

It is the finding of the Solicitor General that this excuse by the respondent is not borne by the Constancia[5] setting the case for hearing. The Constancia clearly states: "By agreement of the parties, case reset to June 17, 1983 at 2:00 p.m. as previously scheduled." [6] Since it was signed by both Hanopol and the respondent, the Solicitor General argues that the respondent's explanation is manifestly unsatisfactory.

With regard to his second non-appearance for the hearing on June 2, 1983, the respondent justified his absence by claiming that he had another hearing on the same date and that he told his secretary to call up the Office of the Labor Arbiter to have the hearing of the Hanopol case postponed.[7] The Solicitor General avers:

. . . It is submitted that respondent's actuation was not warranted by the circumstances. As it turned out, the telephone request apparently did not reach the Labor Arbiter, thereby constraining him to declare complainant in default and render judgment against it.[8]

In an effort to extricate himself from this charge, the respondent submits that since he was able to persuade the National Labor Relations Commission (NLRC) on appeal to set aside the Decision of the Labor Arbiter and to remand the case for further proceedings, then the charge of negligence should be considered moot and academic already.[9] We find this submission not meritorious. Instead, we agree with the position of the Solicitor General:

Respondent's plea is untenable. The setting aside of the adverse Decision of the Labor Arbiter cannot obliterate the effects of respondent's negligence. Indeed, had respondent attended the two scheduled hearings and filed the required position paper, then at least, there would have been no delay in the resolution of the case, which, perhaps, would have been in favor of complainant. The delay, by itself, was prejudicial to complainant because it deprived successor-counsel Atty. Loy of time which he should be devoting to other cases or complainant. In fact he had to prepare complainant's position paper which respondent should have done earlier (Exh. 7).[10]

From the foregoing, it is manifest that the respondent is indeed guilty of negligence, a clear violation of the Code of Professional Responsibility:[11]

CANON 18 -

A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 -

A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

The other accusation against the respondent by the Solicitor General was that he had betrayed complainant LFC's confidences in violation of the then Canon 37 of the old Canons of Professional Ethics, to wit:

It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantages of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

.....

Superseded by the Code of Professional Responsibility, the appropriate Canon now is:

CANON 17 -

A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

The Solicitor General further found that the respondent assisted Roberto San Juan in the preparation of the counteraffidavit,[12] submitted in defense of the latter in the accusation of estafa filed against San Juan by LFC. As a matter of fact, the respondent signed the jurat of the San Juan counter-affidavit he (respondent) helped prepare. It is also a fact that the respondent investigated this same charge of estafa while he was still the lawyer of the complainant and San Juan still likewise an employee of LFC.

Again, we concur with the findings and evaluation of the Office of the Solicitor General:

. . . Respondent, however, tried to extricate himself from his predicament by testifying that the counter-affidavit was prepared by a lawyer-friend, Atty. Joselito R. Enriquez, who had his (respondent's) name typed on it; that after reading it, he called up Atty. Enriquez so that he will delete his name and signature thereon; that he instructed San Juan to bring the counteraffidavit to Atty. Enriquez so that he will delete his name and signature, but San Juan did not obey him; and that San Juan filed the counteraffidavit with the office of the Provincial Fiscal with his name and signature still on it (tsn. pp. 47-51, Dec. 9, 1985).

It is submitted that, apart from being a mere afterthought, respondent's explanation is incredible. His foregoing testimony is not reflected in his comment on the complaint. . . .[13]

We are convinced that the respondent had betrayed the confidences of the complainant, his former client.

. . . An attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated, and it is not a good practice to permit him afterwards to defend in another case other persons against his former client under the pretext that the case is distinct from and independent of the former case.[14]

WHEREFORE, premises considered, the respondent is found guilty of both the charge of negligence, a transgression of Rule 18.03, Canon 18, and the charge of betrayal of his former client's confidences, in violation of Canon 17 of the Code of Professional Responsibility.

The respondent is hereby **SUSPENDED** from the practice of law for a period of six (6) months.

Let this Decision be entered in the personal records of the respondent and copies thereof furnished to all courts and IBP chapters.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Report and Recommendation of the Solicitor General, 1.

[2] Rollo, 1.

[*] Should be 1983.

[3] Report and Recommendation of the Office of the Solicitor General, 1-6.

[4] Rollo, 3.

[5] Id., 20.

[6] Id.

[7] Id., 15.

[8] Report and Recommendation of the Office of the Solicitor General, 7.

[9] Comment of the Respondent, 9-10; Rollo, 40-41.

[10] Report and Recommendation of the Office of the Solicitor General, 8.

[11] Promulgated by the Supreme Court of the Philippines on June 21, 1988.

[12] Rollo, 23.

[13] Report and Recommendation of the Office of the Solicitor General, 8-9.

[14] San Jose vs. Cruz, 57 Phil.794.

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