

RODOLFO M. BERNARDO, JR., COMPLAINANT, VS. ATTY. ISMAEL F. MEJIA, RESPONDENT.

A.C. No. 2984. July 29, 1992

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PER CURIAM:

By complaint filed with this Court on January 23, 1987, Rodolfo M. Bernardo, Jr. accused his retained attorney, Ismael F. Mejia, of the following administrative offenses:

1) misappropriating and converting to his personal use:

- a) part of the sum of P27,710.00 entrusted to him for payment of real estate taxes on property belonging to Bernardo, situated in a subdivision known as Valle Verde I; and
- b) part of another sum of P40,000.00 entrusted to him for payment of taxes and expenses in connection with the registration of the title of Bernardo to another property in a subdivision known as Valle Verde V;

2) falsification of certain documents, to wit:

- a) a special power of attorney dated March 16, 1985 purportedly executed in his favor by Bernardo (Annex P, par. 51, complainant's affidavit dated October 4, 1989);
 - b) a deed of sale dated October 22, 1982 (Annex O, par. 48, id.); and
 - c) a deed of assignment purportedly executed by the spouses, Tomas and Remedios Pastor, in Bernardo's favor (Annex Q, par. 52, id.);
- 3) issuing a check, knowing that he was without funds in the bank, in payment of a loan obtained from Bernardo in the amount of P50,000.00, and thereafter replacing said check with others known also to be insufficiently funded.

In his defense and in attempted refutation of Bernardo's averments, respondent Mejia filed an answer. He subsequently filed no less than thirty-two (32) other pleadings, affidavits and papers many bearing such quaint titles as "A Blinding Reptilia;" "Fish Caught in the Mouth;" "Society: Need for Lawyers; "Pains of Wounds;" "House of Law;" "Equal Submission;" "Christmas Star;" "The Advent: A New Beginning." Withal, he made no clear and categorical denials of the accusations against him. Bernardo himself filed no small number of pleadings, affidavits and other papers, numbering sixteen (16) in all.

The matter was in due course referred to the Integrated Bar of the Philippines for investigation, report and recommendation. There the parties submitted the case for resolution on the basis of their respective affidavits, amplified by their respective memoranda.

On October 8, 1991 a majority of the IBP Board of Governors rendered a Resolution which was submitted to this Court on April 6, 1992. In that Resolution the Board found all the accusations against respondent Mejia to have been fully substantiated by the evidence on record and recommended respondent's disbarment. The Governors' reasoned conclusions are as follows:

Anent the First Issue: After considering the various affidavits and pleadings of the parties, it clearly appears that complainant signed two (2) blank checks; delivered them to respondent and had authorized him to fill them up in the amounts sufficient to cover the amounts of the real estate taxes due on the complainant's property located at 8 Macapuno, Valle Verde I, Pasig, Metro Manila; that respondent filled up those blank checks as follows: P13, 450.00 for TBMC Check No. 24223700 dated February 1985 and P14,260.00 for TBMC Check No. 24223701 of even date (Exhibits "A" and "B", Complainant's Affidavit, Oct. 4, 1989); the respondent encashed these checks and received the proceeds therefor (P27,710.00) intended to pay the real estate taxes of complainant's property.

When asked to make an accounting of the P27,710.00, the respondent informed the complainant that he had paid all the real estate taxes due on the land and on the improvements. Respondent admitted in his written Computation (Annex "C", Complainant's Affidavit, Oct. 4, 1989) given to complainant that he spent P10,010.00 of the amount for his personal use which he expressly acknowledged and committed to return to the complainant. (Annex "C").

The complainant was however shocked to learn that the real estate taxes were not actually paid as represented in the written Computation submitted by the respondent. The non-payment is established by the Statement of Account on Real Property Tax dated December 27, 1985 obtained from the proper government authority (Exhibit "S", Complainant's Affidavit, Oct. 4, 1985). At this juncture, it must be noted that the Statement was addressed to Adonis Tupaz, the previous owner from which the property was purchased (See par. I, Affidavit of complainant attached to Exhibit "U").

There being no payments made, the respondent is presumed to have misappropriated the sum of P17,710.00 which he did not use for the payment of the taxes he was commissioned to pay by his client, the complainant. The respondent failed to explain satisfactorily the disappearance of the money. The presumption that he misappropriated the money stands. (See: *In re Bamberger*, 49 Phil. 962; *Mococo vs. Diaz*, 70 Phil. 97).

For this act of misappropriation he deserves severe punishment (*Daroy vs. Legaspi*, 65 SCRA 304; *Capulong vs. Alino*, Administrative Case No. 381, February 10, 1968).

However, the amount of P10,000.00 which he acknowledged as returnable to the complainant, will not be considered as having been misappropriated, although, in having used the money without prior consent of the complainant, he is guilty of misconduct, though not as grave as the act of misappropriation.

Anent the second and the third issues: It appears that in July 1985, the complainant (before the discovery of the anomaly concerning the first property) also gave the respondent P40,000.00 in four (4) checks of P10,000.00 each for the purpose of paying the taxes due and to secure the title of the property which complainant bought from Mr. and Mrs. Tomas Pastor. These checks were all encashed by respondent. (Exhibits "E", "F", "G" and "H", Complainant's Affidavit, Oct. 4, 1989).

Respondent was supposed to register the Deed of Sale executed by and between the complainant and Mr. and Mrs. Tomas Pastor. The deed was prepared and notarized by the respondent. The consideration for the sale was P570,000.00 (Exhibit "D", Complainant's Affidavit, Oct. 4, 1989). The respondent kept the original copy of the deed and gave a duplicate copy thereof to each of the parties.

For the services rendered and to be rendered by the respondent which includes the transfer of the title of the property to the complainant, he was paid P10,000.00 in check by the complainant.

After the lapse of some weeks, complainant tried to communicate with the respondent in order to find out the status of the property. Complainant meantime negotiated the property and was being rushed by his buyer, a certain Menandro Cancio, who was allegedly becoming impatient over the delay in the transfer of the property in his name and which could only be effected after the Deed of Sale in favor of complainant by the previous owner (Tomas Pastor) shall have been first registered.

Sensing that respondent was deliberately evading him, the complainant made a personal follow-up at the BIR office and the Registry of Deeds of Pasig. Thereat, he discovered that respondent had not paid the taxes he was supposed to pay out of the P40,000.00 he received from the complainant.

As Menandro Cancio was already threatening the complainant, the latter was constrained to pay as he did pay the sums of P22,204.00 to cover up registration fee, transfer fee, capital gains tax and other requirements. Officials receipts were duly issued for the payments made by the complainant. (Exhibits "J", "K", "L", "M" and "N", Complainant's Affidavit, Oct. 4, 1989).

After paying the above taxes, complainant was given the various documents which respondent submitted to the BIR and the Registry of Deeds. It was thus discovered that respondent instead of submitting the original and genuine Deed of Sale with a consideration of P570,000.00 had instead submitted a different Deed of Sale with a reduced consideration of P35,000.00 only.

From the evidence on record, including the NBI Report, it appears that complainant and Tomas Pastor did not sign this Deed of Sale submitted by the respondent. (Exhibit "O", Complainant's Affidavit dated Oct. 4, 1989). This fake deed was notarized by Atty. Apolinar Mangahas, who however, claimed that the document was brought to him by respondent for notarization with a person whom he introduced as Rodolfo Bernardo, Jr. However, during the NBI investigation, when Atty. Mangahas saw the complainant, he admitted that he had not seen him yet before.

It also appears that respondent submitted a falsified Special Power of Attorney purportedly signed by the complainant. (Exhibit "P", Complainant's Affidavit, Oct. 4, 1989). To this, respondent counters that complainant himself authorized a woman to sign his name to avoid delay in the registration and so that the respondent as attorney-in-fact for the complainant might be able to register then an adverse claim on the title of the property in question. Even assuming this claim to be true, respondent who is a lawyer, sworn to do no falsehood, must not have agreed to take any part in such acts of falsification.

It further appears that respondent submitted to the BIR spurious Deed of Assignment purportedly executed by the Spouses Tomas Pastor and Remedios Pastor in favor of complainant. Again the parties did not sign this deed.

As a result of the faking of the aforesaid documents, the respondent succeeded in reducing the taxes and fees to be paid. He paid only the sum of P6,885.96 to the BIR and the Registry of Deeds.

Consequently, he gained P33,114.04 out of the P40,000.00 entrusted to him intended for the payment of taxes due and the expenses for securing the title of the property in the name of the complainant. Respondent had thus cheated the Government and his client.

In devising schemes through the preparation and submission of spurious deeds to defraud the Government and his client, respondent is guilty of deceit. (In re Avanceña, 20 SCRA 1012).

Moreover, in receiving the money and pocketing it for his own personal use, respondent has betrayed his client's trust and these acts justify the imposition of disciplinary sanctions upon him. (Daroy vs. Legaspi, 65 SCRA 304; Melegrito vs. Barba, 58 Phil. 513).

Anent the fourth issue: There is no question that the postdated check in the amount of P50,000.00 which the respondent issued to complainant had bounced. (Exhibit "P", Complainant's Affidavit, Oct. 4, 1989). Upon his supplication, this was later substituted by him with new checks which however also bounced due to insufficiency of funds. This constitutes also grave misconduct.

A lawyer must always observe good faith and justice in his dealings whether in the pursuit of his profession or in his private affairs. (See: In re Pelaez, 44 Phil. 569; Piatt vs. Abordo, 58 Phil. 350). And as recently decided by the Supreme Court, violation of B.P. BLG. 22 is considered a crime involving moral turpitude.

For all the foregoing, the Board of Governors most respectfully recommends that respondent Atty. Ismael F. Mejia be disbarred."

A thoroughgoing review of the affidavits, pleadings and other papers filed by the parties convinces this Court of the correctness of the foregoing conclusions of the IBP Board of Governors. They are consequently hereby adopted and approved.

WHEREFORE, the Court DECLARES the respondent, Atty. Ismael F. Mejia, guilty of all the charges against him and hereby imposes on him the penalty of DISBARMENT. Pending finality of this judgment, and effective immediately, Atty. Ismael F. Mejia is hereby SUSPENDED from the practice of law. Let a copy of this Decision be spread in his record in the Bar Confidant's Office, and notice thereof furnished the Integrated Bar of the Philippines, as well as the Court Administrator who is DIRECTED to inform all the Courts concerned of this Decision.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Medialdea, Regalado, Davide Jr., Romero, Nocon, and Bellosillo, JJ., concur.
Paras*, J., retired.

* Retired as of July 4, 1992

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