

CERINA B. LIKONG, PETITIONER, VS. ATTY. ALEXANDER H. LIM, RESPONDENT.

A.C. No. 3149. August 17, 1994

Ponente: PADILLA, J.

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PADILLA, J.:

Cerina B. Likong filed this administrative case against Atty. Alexander H. Lim, seeking the latter's disbarment for alleged malpractice and grave misconduct.

The circumstances which led to the filing of this complaint are as follows:

Sometime in September 1984, complainant obtained a loan of P92,100.00 from a certain Geesnell L. Yap. Complainant executed a promissory note in favor of Yap and a deed of assignment, assigning to Yap pension checks which she regularly receives from the United States government as a widow of a US pensioner. The aforementioned deed of assignment states that the same shall be irrevocable until the loan is fully paid. Complainant likewise executed a special power of attorney authorizing Yap to get, demand, collect and receive her pension checks from the post office at Tagbilaran City. The above documents were apparently prepared and notarized by respondent Alexander H. Lim, Yap's counsel.

On 11 December 1984, about three (3) months after the execution of the aforementioned special power of attorney, complainant informed the Tagbilaran City post office that she was revoking the special power of attorney. As a consequence, Geesnell Yap filed a complaint for injunction with damages against complainant. Respondent Alexander H. Lim appeared as counsel for Yap while Attys. Roland B. Inting and Erico B. Aumentado appeared for complainant (as defendant).

A writ of preliminary injunction was issued by the trial court on 23 January 1985, preventing complainant from getting her pension checks from the Tagbilaran City post office. Yap later filed an urgent omnibus motion to cite complainant in contempt of court for attempting to circumvent the preliminary injunction by changing her address to Mandaue City. Upon motion by Yap, the court also issued an order dated 21 May 1985 expanding the scope of the preliminary injunction to prevent all post offices in the Philippines from releasing pension checks to complainant.

On 26 July 1985, complainant and Yap filed a joint motion to allow the latter to withdraw the pension checks. This motion does not bear the signatures of complainant's counsel of record but only the signatures of both parties, "assisted by" respondent Attorney Alexander H. Lim.

On 2 August 1985, complainant and Yap entered into a compromise agreement again without the participation of the former's counsel. In the compromise agreement, it was stated that complainant Cerina B. Likong admitted an obligation to Yap of P150,000.00. It was likewise stated therein that complainant and Yap agreed that the amount would be paid in monthly installments over a period of 54 months at an interest of 40% per annum discounted every six (6) months. The compromise agreement was approved by the trial court on 15 August 1985.

On 24 November 1987, Cerina B. Likong filed the present complaint for disbarment, based on the following allegations:

"7. In all these motions, complainant was prevented from seeking assistance, advise and signature of any of her two (2) lawyers; no copy thereof was furnished to either of them or at least to complainant herself despite the latter's pleas to be furnished copies of the same;

8. Complainant was even advised by respondent that it was not necessary for her to consult her lawyers under the pretense that: (a) this could only jeopardize the settlement; (b) she would only be incurring enormous expense if she consulted a new lawyer; (c) respondent was assisting her anyway; (d) she had nothing to worry about the documents foisted upon her to sign; (e) complainant need not come to court afterwards to save her time; and in any event respondent already took care of everything;

9. Complainant had been prevented from exhibiting fully her case by means of fraud, deception and some other form of mendacity practiced on her by respondent;

10. Finally, respondent fraudulently or without authority assumed to represent complainant and connived in her defeat; x x x "[1]

Respondent filed his Answer stating that counsel for complainant, Atty. Roland B. Inting had abandoned his client. Atty. Lim further stated that the other counsel, Atty. Enrico Aumentado, did not actively participate in the case and it was upon the request of complainant and another debtor of Yap, Crispina Acuna, that he (respondent) made the compromise agreement.

Respondent states that he first instructed complainant to notify her lawyers but was informed that her lawyer had abandoned her since she could not pay his attorney's fees.

Complainant filed a reply denying that she had been abandoned by her lawyers. Complainant stated that respondent never furnished her lawyers with copies of the compromise agreement and a motion to withdraw the injunction cash bond deposited by Yap.

At the outset, it is worth noting that the terms of the compromise agreement are indeed grossly loaded in favor of Geesnell L. Yap, respondent's client.

Complainant's original obligation was to pay P92,100.00 within one (1) year from 4 October 1984. There is no provision in the promissory note signed by her with respect to any interest to be paid. The only additional amount which Yap could collect based on the promissory note was 25% of the principal as attorney's fees in case a lawyer was hired by him to collect the loan.

In the compromise agreement prepared by respondent, dated 2 August 1985, complainant's debt to Yap was increased to P150,000.00 (from 92,100.00) after the lapse of only ten (10) months. This translates to an interest in excess of seventy-five percent (75%) per annum. In addition, the compromise agreement provides that the P150,000.00 debt would be payable in fifty-four (54) monthly installments at an interest of forty percent (40%) per annum. No great amount of mathematical prowess is required to see that the terms of the compromise agreement are grossly prejudicial to complainant.

With respect to respondent's failure to notify complainant's counsel of the compromise agreement, it is of record that complainant was represented by two (2) lawyers, Attys. Inting and Aumentado. Complainant states that respondent prevented her from informing her lawyers by giving her the reasons enumerated in the complaint and earlier quoted in this decision.

There is no showing that respondent even tried to inform opposing counsel of the compromise agreement. Neither

is there any showing that respondent informed the trial court of the alleged abandonment of the complainant by her counsel.

Instead, even assuming that complainant was really abandoned by her counsel, respondent saw an opportunity to take advantage of the situation, and the result was the execution of the compromise agreement which, as previously discussed, is grossly and patently disadvantageous and prejudicial to complainant.

Undoubtedly, respondent's conduct is unbecoming a member of the legal profession.

Canon 9 of the Code of Professional Ethics states:

"9. Negotiations with opposite party

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel and he should not undertake to advise him as to the law."

The Code of Professional Responsibility states:

"Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct

Rule 8.02 - A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. "

The violation of the aforementioned rules of professional conduct by respondent Atty. Alexander H. Lim, warrants the imposition upon him of the proper sanction from this Court. Such acts constituting malpractice and grave misconduct cannot be left unpunished for not only do they erode confidence and trust in the legal profession, they likewise prevent justice from being attained.

ACCORDINGLY, respondent Atty. Alexander H. Lim is hereby imposed the penalty of SUSPENSION from the practice of law for a period of ONE (1) YEAR, effective immediately upon his receipt of this decision.

Let a copy of this decision be entered in respondent's personal record as attorney and member of the Bar, and furnished the Bar Confidant, the Integrated Bar of the Philippines and the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] P. 2, Complaint.

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