GATCHALIAN PROMOTIONS TALENTS POOL, INC., COMPLAINANT, VS. ATTY. PRIMO R. NALDOZA, RESPONDENT.

A.C. No. 4017. September 29, 1999

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PER CURIAM:

On April 19, 1993, Gatchalian Promotions Talents Pool, Inc., filed before this Court a Petition for disbarment against Attorney Primo R. Naldoza. The precursor of this Petition was the action of respondent, as counsel for complainant, appealing a Decision of the Philippine Overseas Employment Agency (POEA). In relation to the appeal, complainant asserts that respondent should be disbarred for the following acts:

> 1. Appealing a decision, knowing that the same was already final and executory
>
> 2. Deceitfully obtaining two thousand, five hundred and fifty-five US dollars (US$2,555) from complainant, allegedly for “cash bond” in the appealed case
>
> 3. Issuing a spurious receipt to conceal his illegal act.[1]

In his Answer,[2] respondent denies that he persuaded complainant to file an appeal. On the contrary, he asserts that it was the complainant who insisted on appealing the case in order to delay the execution of the POEA Decision.[3] He also controverts complainant’s allegation that he asked for a cash bond and that he issued the fake receipt.[4]

In a Resolution dated May 17, 1993, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The pertinent portions of the complaint were summarized by the IBP in this wise:

> “Under its petition, complainant alleges that the respondent was given the task to defend the interest of the complainant corporation in POEA Case No. 8888-06-468, entitled Olano, et al. versus Gatchalian Promotions Talents Pool, Inc., et al.; that when the said case was resolved in favor of the complainant therein on October 5, 1992, the respondent Atty. Naldoza knowing fully well that the said decision had already become final and unappealable[,] through malpractice in [an] apparent desire to collect or to ‘bleed’ his client of several thousand pesos of attorney’s fees, convinced the complainant to appeal the case before the Supreme Court. Thus, on December 14, 1992, the respondent filed with the Supreme Court a Petition for Review which was docketed as G.R. No. 107984 and that two (2) days thereafter misrepresented to the complainant corporation that the complainant ha[d] to pay, which it did, [a] “Cash Bond’ in UNITED STATES DOLLAR amounting to TWO THOUSAND FIVE HUNDRED FIFTY FIVE (U.S. $2,555.00) to the Supreme Court in order that the said appealed case could be heard or acted upon by the Supreme Court. The said amount was given to the respondent.
>
> “x x x [S]ubsequently the complainant corporation came to know that the fees to be paid to the Supreme Court consist[ed] only of normal filing and docket fees for such kind of appeal but in order to cover up respondent’s misrepresentation, Atty. Naldoza presented complainant a fake xerox copy of an alleged Supreme court receipt representing payment of U.S. $2,555.00.

> "Subsequent verification from the Supreme Court made by the complainant corporation revealed that the said receipt issued by the treasurer's office of the Supreme Court x x x [was] spurious, meaning a fake receipt. The said verification revealed that what was only paid by the respondent to the Supreme court was the amount of P622.00 as shown by the enumerated legal fees of the Supreme Court Docket-Receiving Section showing the handwritten name of the respondent for purpose of showing that the said computation was requested by and addressed to the respondent."[5] (citations omitted)

Meanwhile, a criminal case[6] for estafa based on the same facts was filed against herein respondent before the Regional Trial Court (RTC) of Makati City, Branch 141. Although acquitted on reasonable doubt, he was declared civilly liable in the amount of US$ 2,555.

Thereafter, respondent filed before the IBP a Manifestation with Motion to Dismiss on July 22, 1996, on the ground that he had already been acquitted in the criminal case for estafa. Complainant opposed the Motion.[7]

On February 16, 1998, this Court received the IBP Board of Governors' Resolution, which approved the investigating commissioner's report[8] and recommendation that respondent be suspended from the practice of law for one (1) year. In his Report, Investigating Commissioner Plaridel Jose justified his recommendation in this manner:

> "x x x [R]espondent fails to rebut the position of the complainant that the signature [on the receipt for the amount of $2,555.00] was his. Hence, respondent anchors his position on a mere denial that it is not his signature. Likewise, the respondent denies the check voucher dated December 15, 1992, and the encircled signature of the respondent, which x x x according to him is falsified and irregular. No evidence, however, was presented by the respondent that his signature therein was falsified and irregular. [As to the altered Supreme Court Official Receipt, the respondent denied] that he ha[d] anything to do with it because it was the complainant who signed the Petition for Review and tried to explain that his name appear[ed] to be the payee because he [was] the counsel of record of the petitioner. But while it is true that the affiant in the said Petition for Review [was] Mr. Rogelio G. Gatchalian, president of the complainant company, the respondent does not deny that he signed the said petition as counsel of the petitioner corporation and that he was actually the one who prepared the same and the notary public before whom the affiant subscribed and [swore] as the one who 'caused the preparation' of the said petition.
>
> "The legal form (Exh. "G") of the legal fees for the Petition for Review re G.R. 107984 was denied by the respondent because according to him he was never given a chance to cross-examine the person who issued the [certification] x x x. However, respondent does not deny that he is the person referred to by the handwritten name P.R. Naldoza who paid the legal fees of P622.00.
>
> "In addition to the said respondent's Formal Offer of Evidence, he submitted to this Commission as his most important piece of evidence the Decision of acquittal in Criminal Case No. 93-8748 entitled 'People of the Philippines versus Primo R. Naldoza', the copy of which Decision is appended to his Manifestation with Motion to Dismiss dated July 22, 1996 praying for the dismissal of the present administrative case in view of his being exonerated in the said criminal case based on the same facts and evidence."[9] (citations omitted)

Commissioner Jose brushed aside respondent's contention that his acquittal in the companion criminal case should result in the dismissal of this administrative complaint. The commissioner emphasized that the criminal case for estafa[10] was completely different from the proceedings before him; acquittal in the former did not exonerate respondent in the latter.[11] He further noted that the RTC Decision itself hinted at the administrative liability of respondent, since it found him civilly liable to herein complainant for $2,555.[12]

We agree with the IBP Board of Governors that respondent should be sanctioned. However, the recommended penalty is not commensurate to the gravity of the wrong perpetrated.

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At the outset, the Court agrees with the IBP that respondent's Motion to Dismiss should be denied. In that Motion, he maintains that he should be cleared of administrative liability, because he has been acquitted of estafa which involved the same facts. He argues that the issue involved there was " the very same issue litigated in this case,"[13] and that his exoneration "was a result a full blown trial on the merits of this case."[14]

In a similar case, we have said:

> "x x x The acquittal of respondent Ramos [of] the criminal charge is not a bar to these [administrative] proceedings. The standards of legal profession are not satisfied by conduct which merely enables one to escape the penalties of xxx criminal law. Moreover, this Court in disbarment proceedings is acting in an entirely different capacity from that which courts assume in trying criminal cases."[15]

Administrative cases against lawyers belong to a class of their own.[16] They are distinct from and they may proceed independently of civil and criminal cases.

The burden of proof for these types of cases differ. In a criminal case, proof beyond reasonable doubt is necessary;[17] in an administrative case for disbarment or suspension, "clearly preponderant evidence" is all that is required.[18] Thus, a criminal prosecution will not constitute a prejudicial question even if the same facts and circumstances are attendant in the administrative proceedings.[19]

It should be emphasized that a finding of guilt in the criminal case will not necessarily result in a finding of liability in the administrative case.[20] Conversely, respondent's acquittal does not necessarily exculpate him administratively. In the same vein, the trial court's finding of civil liability against the respondent will not inexorably lead to a similar finding in the administrative action before this Court. Neither will a favorable disposition in the civil action absolve the administrative liability of the lawyer.[21] The basic premise is that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa. For this reason, it would be well to remember the Court's ruling in In re Almacen,[22] which we quote:

> "x x x Disciplinary proceedings against lawyers are sui generis. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but are rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, [they are] in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. [They] may be initiated by the Court motu proprio. Public interest is [their] primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have prove[n] themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. x x x" (emphasis ours)

We shall now discuss seriatim the specific charges against respondent.

First. Complainant alleges that respondent appealed the POEA Decision, despite knowing that it had already become final and executory. The IBP investigating commissioner had no explicit finding on this point. Rogelio G. Gatchalian testified that during the pendency of the appeal, his company had received from the POEA a Writ of Execution which led him to the conlcusion that "they [had] lost the case before the Supreme Court."[23] This, however, does not substantiate the charge.

Complainant has failed to present proof regarding the status of the appeal. Neither has there been any showing that the appeal was dismissed on the ground that the POEA Decision had become final and executory. Worse,

there has been no evidence that respondent knew that the case was unappealable. Indeed, the records of this Court shows that the Petition for Review was dismissed for petitioner's failure to submit an Affidavit of Service and a legible duplicate of the assailed Order. Clearly, this charge has no leg to stand on.

Second. Be that as it may, we agree with the IBP that respondent obtained from complainant the amount of $2,555, on the false representation that it was needed for the appeal before this Court. According to Gatchalian,[24] respondent explained that the amount would "cover all the expenses to be incurred in the Petition for Review with the Supreme Court and which amount also will answer for the payment as sort of deposit so that if our case is lost, the money will be given or paid to the complainant in that case so that our deposit with the bank would not be garnished."[25] Corroborating Gatchalian's testimony, Edna Deles declared that respondent received the amount on the representation that it "would be paid to the Supreme Court in connection with the Olano case."[26]

The defense of denial proferred by respondent is not convincing. Quite the contrary, when he paid P10,000 and issued a check to complainant as his "moral obligation," he indirectly admitted the charge. Normally, this is not the actuation of one who is falsely accused of appropriating the money of another. This is an admission of misconduct.[27] In his Answer submitted to this Court, he declared:

> "(8). That I have no knowledge, information or belief as to truthfulness of the allegation of the Petitioner, on his allegation no. 8 and no. 9, the truth being that in all the cases and assignments made by the Petitioner to me, I was made to report to him personally and to his Board of Directors the progress of the cases both orally and in writing. I even [went] to the extent of paying him P10,000.00 as my moral obligation only to find after accounting that he still owes me P180,000.00 as attorney's fee [to] which I am entitled under rule 130 of the rules of court sec. 24, and under sec. 37 of the above-cited rules, I have the right to apply the funds received from Gatchalian in satisfaction of my claim for Professional Services, otherwise known as Attorney's Lien, as shown in my Service Billings and Statement of Accounts."[28] (emphasis ours)

Contrary to respondent's claim, the amount of $2,555 was not a part of his attorney's lien. He demanded the money from his client on the pretext that it was needed for the Petition before the Supreme Court, but he actually converted it to his personal gain. This act clearly constitutes malpractice.[29] The claim that respondent merely applied his lien over the funds of his client is just an afterthought, the accounting being made after the fact. It is settled that the conversion by a lawyer of funds entrusted to him is a gross violation of professional ethics and a betrayal of public confidence in the legal profession.[30]

Third. In an effort to conceal his misappropriation of the money entrusted to him, respondent gave complainant a photocopy of a receipt purportedly showing that the Supreme Court had received the sum of $2,555 from him. Again, the testimonies of Gatchalian[31] and Deles[32] were equally clear on this point. After respondent had presented the false receipt, Gatchalian learned that no such payment was made. Ms Araceli Bayuga of the Supreme Court Cash Collection and Disbursement Division issued a certification that respondent had paid the amount of P622 only, not $2,555. In fact, the records of the said case[33] contain no indication at all the Court has required the payment of the latter sum, or that it has been paid at all.

Juxtaposed to the complainant's evidence, the bare denials of respondent cannot overturn the IBP's findings that he has indeed presented a false receipt to conceal his misappropriation of his client's money. We agree with the IBP that "it is unbelievable that the complainant in the person of Rogelio Gatchalian, being a layman as he is without any knowledge in the procedure of filing a case before the Supreme court, could spuriously weave such documents which are denied by the respondent."[34]

In view of the foregoing, respondent has clearly failed the standards of his noble profession. As we have stated in Resurrecion v. Sayson:[35]

> "[L]awyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach."

Clearly reprehensible are the established facts that he demanded money from his client for a bogus reason, misappropriated the same, and then issued a fake receipt to hide his deed. In Dumadag v. Lumaya,[36] the Court ordered the indefinite suspension of a lawyer for not remitting to his client the amount he had received pursuant to an execution, viz.:

> "[E]ven as respondent consistently denied liability to Dumadag, his former client, the records abundantly point to his receipt of and failure to deliver the amount of P4,344.00 to his client, the herein complainant, a clear breach of the canons of professional responsibility."

In Obia v. Catimbang,[37] we meted out the same penalty to a lawyer who had misappropriated the money entrusted to him:

> "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."

Respondent's acts are more despicable. Not only did he misappropriate the money entrusted to him; he also faked a reason to cajole his client to part with his money. Worse, he had the gall to falsify an official receipt of this Court to cover up his misdeeds. Clearly, he does not deserve to continue being a member of the bar.

WHEREFORE, Primo R. Naldoza is hereby DISBARRED. The Office of the Clerk of Court is directed to strike out his name from the Roll of Attorneys and to inform all courts of this Decision.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

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[1] Petition, pp. 1-3; records, vol. 1, pp. 1-3.

[2] Received on June 7, 1993.

[3] Answer, pp. 3-4; records, vol. 1, pp. 29-30.

[4] Ibid. pp. 5-6 & 31-32.

[5] Report, pp. 1-2; records, vol. 1.

[6] Criminal Case No. 93-8748, before Judge Manuel D. Victorio.

[7] The Opposition to Motion to Dismiss was received by the IBP on September 26, 1996.

[8] An Ex Parte Motion to Resolve was filed by complainant on September 19, 1997. The commissioner's Report was dated October 13, 1997.

[9] Report, pp. 5-6.

[10] Citing Batacan, Legal and Judicial Ethics, 1973 ed.

[11] Ibid., citing In re Terrel, 2 Phil 266 [1903]; In re Del Rosario, 52 Phil 399 [1928]; Piatt v. Abordo, 58 Phil

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350 [1933].

[12] We quote the following from the RTC decision:

“Under the evidence, it is shown by the testimonies of Rogelio Gatchalian and Edna Deles that indeed the accused [respondent herein] told them that the Supreme Court required him to deposit a cash bond in the appealed case. In view of such representation of the accused, private complainant [delivered] to him this said sum of money. Although the accused disavowed having received the money and disowned his signatures on the receipt and voucher, x x x his lone and uncorroborated testimony could not override the candid and positive declarations of the prosecution witnesses.

xxx xxx xxx

“There is however preponderance of evidence to hold the accused civilly liable to the private complainant in the amount of US$ 2,555.00 which he received from the private complainant and for which he should be ordered to refund.” (citations omitted, emphasis supplied)

[13] Manifestation with Motion to Dismiss; records, vol. 2, p. 310.

[14] Ibid.

[15] Pangan v. Ramos, 107 SCRA 1 [1981]; citing In re Del Rosario, 52 Phil 399 [1928].

[16] Sui generis. See In re Almacen, 31 SCRA 562 [1970].

[17] See Moreno v. Bragat, 293 SCRA 581 [1998].

[18] See Re: Agrapino A. Brillantes, 76 SCRA 1 [1977]; Maderazo, v. Del Rosario, 73 SCRA 540 [1976]; Lim v. Antonio, 41 SCRA 44 [1971]; In re Tionko, 43 Phil 191 [1922].

[19] See Re: Brillantes, supra; Calo v. Degamo, 20 SCRA 447 [1967].

[20] See Villanos v. Subido, 45 SCRA 299 [1972].

[21] See Esquivas v. CA, 272 SCRA 803 [1997].

[22] 31 SCRA 562, 600 [1970]; cited in Esquivas v. CA, supra, pp. 812-813.

[23] TSN, July 26, 1994, pp. 31-32.

[24] TSN, July 26, 1994, pp. 12, 17.

[25] TSN, July 26, 1994, pp. 12-13.

[26] TSN, January 13, 1995, pp. 9-10, 12-13.

[27] Obia v. Catimbang, supra.

[28] Respondent’s Answer, p. 7; records, vol. 1, p. 33.

[29] See Cabigao v. Rodrigo, 57 Phil 20 [1932].

[30] See Obia v. Catimbang, 196 SCRA 23 [1991]; Quilban v. Robinol, 171 SCRA 768 [1989]; Manaloto v. Reyes, 15 SCRA 131, 134 [1965]; Daroy v. Legaspi, 65 SCRA 304 [1975].

[31] TSN, July 26, 1994, pp. 39-44.

[32] TSN, January 13, 1995, pp. 22-24.

[33] GR No. 107984, Gatchalian Promotions Talents Pool, Inc. v. NLRC, Teresita Olano, Secretary of Labor, POEA Administrator, et al..

[34] IBP Report, p. 10.

[35] Adm. Case No. 1037, December 14, 1998.

[36] 197 SCRA 303, 307 [1991].

[37] 196 SCRA 23, 27-28 [1991].

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