DANIEL MORTERA, TERESITA MORTERA, FERDINAND MORTERA AND LEO MORTERA COMPLAINANTS,VS. ATTY. RENATO B. PAGATPATAN, RESPONDENT.

A.C. NO. 4562. June 15, 2005

Ponente: CORONA, J.

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CORONA, J.:

How far may a lawyer go to ensure that he gets paid?

The answer to this question is stated clearly in Canon 16 of the Code of Professional Responsibility for Lawyers[1] and in decisions[2] applying the same, but it is apparently not plain enough to the respondent in this case. It therefore behooves us to make an example of him for the improvement of the legal profession.

This disbarment case originated from the execution of a judgment in a civil action for "rescission of contracts with a prayer for prohibitory mandatory injunction."[3]

In brief, the complainants, then the plaintiffs, sued their mother, one Renato C. Aguilar and one Philip Arnold Palmer Bradfield for the rescission of a contract of sale. They secured judgment under which Aguilar was to pay them P155,000 for the property, which this Court affirmed.[4]

On April 15, 1994, respondent did the unthinkable. Under a secret agreement with Aguilar, he accepted P150,000 from the latter as partial payment of the judgment sum, issuing a receipt for the amount.[5] He then deposited the money in his personal bank account without the knowledge of complainants.[6] Until now, respondent adamantly refuses to surrender the money to complainants, despite the successive Orders of the RTC and the Court of Appeals.[7]

For his part, respondent, in his comment[8] admits his secret agreement with and receipt of the money from Aguilar, interposing as his defense the fact that the complainants and their mother owed him the money he appropriated for services previously rendered. They would not have paid him his fees had he not done what he did.[9] In support of his argument, the respondent narrated his years of service as counsel for the complainants and their mother. He alleged the amounts they owed him although he presented no evidence of any agreement between him and the complainants for the exact amount of his compensation.

Respondent's responsibility to the complainants is unequivocally stated in Canons 15 and 16 of the Code of Professional Responsibility. The four rules governing this situation were: he owed candor to his clients;[10] he was bound to account for whatever money he received for and from them;[11] as a lawyer, he was obligated to keep his own money separate from that of his clients;[12] and, although he was entitled to a lien over the funds in order to satisfy his lawful fees,[13] he was also bound to give prompt notice to his clients of such liens and to deliver the funds to them upon demand or when due.

Respondent violated each and every one of these rules.

Respondent cited the need to protect the money from other persons claiming to be heirs of Eusebio Montera[14] and from the volatile temperament of the complainants[15] but did not present any evidence at all to prove either claim. Thus, these claims should be ignored.

Because the respondent admitted concealing his clients' money, the only question in our minds is how severe his punishment should be.

The Board of Governors of the Integrated Bar of the Philippines resolved[16] to suspend the respondent for one year.

We do not agree.

In Aldovino v. Pujalte,[17] respondent Atty. Pedro C. Pujalte similarly faced disbarment charges for having withheld his clients' money in violation of Canon 16. Pujalte alleged a lien for his fees over the contested amount but adduced no evidence of this supposed lien.

In disposing of that case, we said:

> Respondent has no right to retain or appropriate unilaterally, as lawyer's lien, the sum of P250,000, as attorney's fees. In fact, he did not adduce any proof of such agreement. His mere allegation or claim is not proof. Obviously, his failure to return the money to complainants upon demand gave rise to the presumption that he misappropriated it in violation of the trust reposed on him. His act of holding on to their money without their acquiescence is conduct indicative of lack of integrity and propriety. He was clinging to something not his and to which he had no right.

As a penalty for his infraction, Atty. Pujalte was suspended for a year.

However, in the more recent case of de Guzman Buado and Lising v. Layag[18] which involved a violation of Canons 15, 16 and 17, the Court En Banc imposed the much heavier penalty of indefinite suspension.

In that case, Atty. Eufracio Layag, the lawyer of the complainants Lising and de Guzman, successfully prosecuted a case against Inland Trailways, Inc. (Inland). Pursuant to the judgment, Inland issued three checks, one payable to Layag, one payable to Lising and one payable to de Guzman who had already passed away by then. Layag received all three checks from the deputy sheriff but did not inform the complainants. He then gave them to one Marie Paz Gonzales for encashment on the strength of a special power of attorney (SPA) purportedly executed by the late de Guzman appointing her as his attorney-in-fact. This SPA authorized Gonzales to encash any check or bill of exchange received in settlement of the case. Even after complainants learned of the issuance of the checks two years later and demanded delivery of the proceeds, Layag refused to do so.

In imposing upon Layag the penalty of indefinite suspension, the Court En Banc considered his years of experience as a lawyer, his ignorance of the law, specifically the Civil Code, and his violation of not one but three Canons.

Even though, on its face, this case has more in common with Pujalte than with Layag, a one-year suspension seems too lenient for a number of reasons.

First, the respondent in this case has been a practicing lawyer since 1974[19] and even runs his own small law firm. For all his vast experience, however, he claims that he has done nothing wrong by concealing and withholding his clients' money from them.[20] Coming from a seasoned practitioner of the law, this attitude is inexcusable.

Second, the respondent had other means of recovering his fees, having filed a case for that purpose which was, however, dismissed for his failure to properly implead an indispensable party.[21] In short, having botched his

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own effort to recover his fees, he sought to simply subvert both law and proper procedure by holding on to the money.

Clearly, the respondent's actuations were thoroughly tainted with bad faith, deceit and utter contempt of his sworn duty as a lawyer. Thus, a heavier penalty than a mere one-year suspension is definitely called for.

WHEREFORE, the IBP Board of Governors Resolution No. XV-2002-223 in Administrative Case No. 4562, finding respondent liable for violation of Canon 16 of the Code of Professional Responsibility is hereby AFFIRMED with the MODIFICATION that instead of a one-year suspension, Atty. Renato B. Pagatpatan is hereby SUSPENDED from the practice of law for two years.

Respondent is further directed to turn over to the complainants, within five (5) days from receipt of this resolution, the P150,000 he received in their behalf.

Respondent is also ORDERED to report to the Office of the Bar Confidant his compliance herewith within 15 days from such compliance.

Let a copy of this Resolution be attached to the personal record of Atty. Renato B. Pagatpatan and copies furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts.

This Resolution is immediately executory.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

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[1] CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

[2] Milagros N. Aldovino, Virgilio Nicodemus, Angela N. Dela Cruz, Julita N. Soco, Magdalena N. Talens and Teodoro S. Nicodemus v. Atty. Pedro C. Pujalte, A.C. No. 5082, February 17, 2004; Susana De Guzman Buado and Nena Lising v. Atty. Eufracio T. Layag, A.C. No. 5182, August 12, 2004.

[3] Danilo, Teresita, Ferdinand, Leo, All Surnamed Mortera v. Rosario F. Mortera, Renato C. Aguilar and Philip Arnold Palmer Bradfield, Civil Case No. 17427, Regional Trial Court, Branch 9, Davao City, Rollo, pp. 16-31

[4] Renato C. Aguilar v. Court of Appeals et al., G.R. No. 112342, November 24, 1993, Rollo. p. 32

[5] Rollo, p. 37

[6] Rollo, p. 3

[7] Rollo, pp. 41-54

[8] Rollo, p. 60

[9] Comment, Rollo pp. 60-67

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[10] CANON 15

[11] Code of Professional Responsibility, CANON 16, Rule 16.01

[12] Id., Rule 16.02

[13] Id., Rule 16.03

[14] Rollo, pp. 63-64

[15] Rollo, p. 66

[16] Dated June 29, 2002

[17] A.C. No. 5082, 17 February 2004, 423 SCRA 135.

[18] A.C. No. 5182, August 12, 2004

[19] Rollo, p. 60

[20] Rollo, p. 66

[21] Rollo, p. 65

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