TERESITA T. BAYONLA, COMPLAINANT, VS. ATTY. PURITA A. REYES, RESPONDENT.

A.C. No. 4808. November 22, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

> Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.
>
> - Code of Professional Responsibility.

This canon of professional responsibility is at the center of this administrative complaint for disbarment for gross dishonesty, deceit, conversion, and breach of trust filed against Atty. Purita A. Reyes by Teresita T. Bayonla, her client.[1]

Antecedents

Petra Durban and Paz Durban were sisters who had jointly owned a parcel of land situated in Butuan City in their lifetimes. They died without leaving a will. Their land was thereafter expropriated in connection with the construction of the Bancasi Airport. An expropriation compensation amounting to P2,453,429.00 was to be paid to their heirs. Bayonla and her uncle, Alfredo Tabada (Alfredo), were the compulsory heirs of Paz, being, respectively, Paz's granddaughter and son.[2]

On June 22, 1997, Bayonla charged Atty. Reyes with gross dishonesty, deceit, conversion, and breach of trust. Bayonla alleged that on October 21, 1993, she and Alfredo had engaged the legal services of Atty. Reyes to collect their share in the expropriation compensation from the Air Transportation Office (ATO), Cagayan De Oro City,[3] agreeing to her attorney's fees of 10% of whatever amount would be collected; that in November 1993, Atty. Reyes had collected P1 million from the ATO; that Bayonla's share, after deducting Atty. Reyes' attorney's fees, would be P75,000.00, but Atty. Reyes had delivered to her only P23,000.00, and had failed to deliver the balance of P52,000.00 despite repeated demands; that on June 5, 1995, Atty. Reyes had collected the amount of P121,119.11 from the ATO; that Bayonla's share, after deducting Atty. Reyes' attorney's fees, would be P109,007.20, but Atty. Reyes had handed her only P56,500.00, and had failed to deliver the balance of P52,507.20; and that Atty. Reyes should be disbarred for depriving her of her just share.[4]

In her comment dated February 10, 1998,[5] Atty. Reyes admitted that Bayonla and Alfredo had engaged her legal services for the purpose of collecting their share in the expropriation compensation; that as consideration for her services, Bayonla and Alfredo had agreed upon a 40% contingent fee for her; that she had given to Bayonla more than what had been due to her; that Alfredo had received from the ATO the check for the second release corresponding to the share of both Bayonla and Alfredo; that Alfredo had gotten more than Bayonla out of the second release; that on June 5, 1995 she had received out of the second release by the ATO only her 40%

contingent fee; that Bayonla and Alfredo had agreed to bear the expenses for the collection of their share; that she had incurred travel and other expenses in collecting such share; and that she should be absolved from liability arising from the complaint.

On June 29, 1998, the Court referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[6]

On April 20, 1999, IBP Commissioner Lydia A. Navarro (Commissioner Navarro) rendered a report,[7] whereby she found and recommended against Atty. Reyes as follows:

> In so far as this case of disbarment is concerned, the issue hinges only on the complainant's position; one of the heirs of Paz Durban whose legal services of the respondent was not revoked.
>
> The parties were required to submit documents relative to their respective defenses (sic) specially the actual amounts released by ATO, actual amount due to the complainant as her share, the remittances made by the respondent to the complainant of her share and receipts to prove the same.
>
> Unfortunately, only the respondent filed an answer without the necessary documents required of them and attached only a xerox copy of the computation made by Atty. Ismael Laya for the heir of Pedro Durban which had already been previously attached to the records of this case.
>
> In the said computation it appears that for the release on February 17, 1993, the heirs of Durban received P84,852.00 and for the second release each of them as well as the complainant was entitled P121,119.11. It could be inferred from here that complainant was supposed to received (sic) P205,971.11 as her share.
>
> Inasmuch as the attorney's fees of 40% was (sic) supported by evidence instead of (sic) complainant's allegation of ten [10%] percent; then respondent was entitled to P82,388.45 as attorney's fees; leaving a balance of P123,582.66 due to the complainant.
>
> Respondent's allegation that she gave more than what was alleged by the complainant is untenable for she did not submit evidence to prove the same, therefore, as it is complainant's allegation that she received only P79,000.00 for her share as a whole shall be considered for the moment until such time that proofs to the contrary shall have been submitted.
>
> Considering that complainant was supposed to receive the amount due her which was P123,582.66 and actually received only P79,000.00; then respondent still has to remit to complainant the amount of P44,582.66.
>
> From the records of this case respondent alleged that she only collected the 40% attorney's fees for the second release whereby Alfredo Tabada the other heir of Paz Durban received the check from ATO and got a large part of the same. Respondent did not mention how much she got as attorney's fees against complainant's share but on the whole amounting to P496,895.00 which is unfair to the complainant.
>
> As counsel for the heirs of Paz Durban, complainant herein should have been advised by the respondent and given a breakdown of whatever amount was received or came to her knowledge as complainant's counsel. Short of the foregoing, respondent violated Rule 16.01 Canon 16 Chapter III of the Code of Professional Responsibility; to wit:
> "Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client."

Respondent was given a chance to rectify whatever errors or misgivings (sic) she had done for her client but she unfortunately failed to do so and did not comply with the Order dated October 29, 1998.

Wherefore, in view of the foregoing, the Undersigned respectfully recommends that the respondent be required to render an accounting or inventory duly confirmed by the complainant of all the collected shares due the complainant and remit to the latter the said amount of P44.582.66;

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Until such time that respondent had complied with the aforementioned, she is suspended from the practice of her legal profession.

Respectfully submitted.

On June 19, 1999, the IBP Board of Governors adopted and approved the report of Commissioner Navarro through Resolution No. XIII-99-165.[8]

Atty. Reyes moved for reconsideration, but on September 27, 1999 the IBP Board of Governors denied her motion for reconsideration through Resolution No. XIV-99-117.[9]

Atty. Reyes then filed a motion for reinvestigation. However, through its Resolution No. XV-2001-111 adopted on July 28, 2001, the IBP Board of Governors denied the motion for reinvestigation for lack of jurisdiction, stating that the matter had already been endorsed to the Court.[10]

On July 30, 2002, the Court directed the IBP Board of Governors to report on whether Atty. Reyes had already accounted for and remitted the amount of P44,582.66 to Bayonla.[11]

On August 22, 2002, the IBP Board of Governors informed the Court that per the manifestation of Bayonla's counsel Atty. Reyes had not yet rendered an accounting and had not yet remitted the amount of P44,582.66 to Bayonla.[12]

Through her manifestation dated September 4, 2002 to the Court,[13] Atty. Reyes posed some queries, as follows: (a) whether she could be compelled to pay the amount of P44,582.66 to Bayonla even if the latter's claims had been based on perjured statements; (b) whether the payment of the amount would operate to dismiss the estafa case previously filed by Bayonla against her for allegedly failing to deliver the balance of Bayonla's share; and (c) whether she could deposit the amount of P44,582.66 with either the IBP Board of Governors or the Court.

Atty. Reyes also stated in the manifestation that the IBP Board of Governors did not accord to her the right to confront Bayonla during the investigation conducted by the IBP Board of Governors; that Bayonla's counsel had induced Bayonla to file the estafa charge against her; and that this had prompted her to initiate a disbarment complaint against Bayonla's counsel.[14]

On May 24, 2010, the Office of the Bar Confidant (OBC) recommended the final resolution of this case.[15] The recommendation was noted by the Court on June 29, 2010.[16]

Issue
Whether or not the findings and recommendations of the IBP Board of Governors were proper.

Ruling
We affirm the findings of the IBP Board of Governors, which were supported by the records, but we modify the sanctions to be imposed on Atty. Reyes.

I
Respondent was guilty of violating the canons
of the Code of Professional Responsibility
Canon 16 of the Code of Professional Responsibility requires that a lawyer shall hold in trust all moneys and properties of her client that may come into her possession. Rule 16.01 of Canon 16 imposes on the lawyer the duty to account for all money or property collected or received for or from the client. Rule 16.03 of Canon 16 demands that the lawyer shall deliver the funds and property of his client when due or upon demand, subject to the lawyer's lien over the funds, or the lawyer's option to apply so much of the funds as may be necessary to satisfy the lawful fees and disbursements, giving notice promptly thereafter to the client.

The canons are appropriate considering that the relationship between a lawyer and her client is highly fiduciary, and prescribes on a lawyer a great degree of fidelity and good faith. There is no question that the money or property received by a lawyer for her client properly belongs to the latter.[17] Conformably with these canons of professional responsibility, we have held that a lawyer is obliged to render an accounting of all the property and money she has collected for her client. This obligation includes the prompt reporting and accounting of the money collected by the lawyer by reason of a favorable judgment to his client.[18]

Based on the records, Bayonla and her uncle would each receive the amount of P84,852.00 out of the first release, and the amount of P121,119.11 out of the second release. Her total share from the two releases was P205,971.11. With Atty. Reyes being entitled to P82,388.44 as attorney's fees, the equivalent of 40% of Bayonla's share, the net share of Bayonla was P123,582.67. Yet, Atty. Reyes actually delivered to her only P79,000.00,[19] which was short by P44,582.67. Despite demands by Bayonla and despite the orders from the IBP Board of Governors for her to remit the shortage,[20] Atty. Reyes refused to do so.

By not delivering Bayonla's share despite her demand, Atty. Reyes violated the aforestated canons. The money collected by Atty. Reyes as the lawyer of Bayonla was unquestionably money held in trust to be immediately turned over to the client.[21] The unjustified withholding of money belonging to the client warrants the imposition of disciplinary sanctions on the lawyer.[22] Without doubt, Atty. Reyes' failure to immediately account for and to deliver the money upon demand was deceit, for it signified that she had converted the money to her own use, in violation of the trust Bayonla had reposed in her. It constituted gross misconduct for which the penalty of suspension from the practice of law became justified pursuant to Section 27, Rule 138 of the Rules of Court, to wit:

> Section 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.
>
> The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.
>
> The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension. (As amended by SC Resolution dated February 13, 1992.)

II

Pendency of other cases not an obstacle
to administrative proceeding against respondent

The filing of the perjury charge by Atty. Reyes against Bayonla and of the estafa charge by Bayonla against Atty. Reyes could not halt or excuse the duty of Atty. Reyes to render an accounting and to remit the amount due to Bayonla. Nor did the pendency of such cases inhibit this administrative matter from proceeding on its due course. It is indisputable that the pendency of any criminal charges between the lawyer and her client does not negate the administrative proceedings against the lawyer. We explained why in Suzuki v. Tiamson,[23] to wit:

> The settled rule is that criminal and civil cases are different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa. In this light, we refer to this Court's ruling in Berbano vs. Barcelona, citing In re Almacen, where it was held:

> 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 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.

Hence, our only concern in the instant case is the determination of respondent's administrative liability and our findings herein should not in any way be treated as having any material bearing on any other judicial action which the parties may choose to file against each other. [emphasis supplied]

Relevantly, we have also emphasized in Gatchalian Promotions Talents Pool, Inc. v. Naldoza [24] that –

> xxx a finding of guilt in the criminal case will not necessarily result in a finding of liability in the administrative case. 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.

It serves well to mention, lastly, that the simultaneous pendency of an administrative case and a judicial proceeding related to the cause of the administrative case, even if the charges and the evidence to be adduced in such cases are similar, does not result into or occasion any unfairness, or prejudice, or deprivation of due process to the parties in either of the cases.[25]

III
No denial of due process to respondent

Atty. Reyes contends that she was denied her right to due process because the IBP Board of Governors did not permit her to personally confront the complainant.

We do not consider Atty. Reyes's contention valid. She was accorded full due process, for she in fact participated in all stages of the proceedings.

It is true that a lawyer shall not be disbarred or suspended from the practice of law until she has had full opportunity upon reasonable notice to answer the charges against her, to produce witnesses in her behalf, and to be heard by herself or counsel.[26] Contrary to Atty. Reyes' insistence, however, the IBP Board of Governors was under no legal obligation to conduct a trial-type proceeding at which she could have personally confronted Bayonla. In other words, the lack of such proceeding neither diminished her right to due process nor deprived her of the right. A formal investigation entailing notice and hearing is required in administrative proceedings for disbarment, but the imperative need of notice and hearing does not always mean the holding of an adversarial trial-type proceeding. Due process is still satisfied when the parties are afforded the reasonable opportunity to be heard and to submit evidence in support of their respective sides.[27] As the Court said in Samalio v. Court of Appeals:[28]

> Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to

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> explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.
>
> In this case, petitioner was heard through the various pleadings which he filed with the Board of Discipline of the BID when he filed his answer and two motions to dismiss, as well as other motions and papers. He was also able to participate in all stages of the administrative proceeding. He was able to elevate his case to the Secretary of Justice and, subsequently, to the CSC by way of appeal.
>
> We have consistently held that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. And any seeming defect in its observance is cured by the filing of a motion for reconsideration. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration. [bold emphasis supplied]

Nevertheless, the IBP Board of Governors actually conducted a formal investigation of the complaint against Atty. Reyes upon the directive of the Court. In her formal investigation of the complaint, Commissioner Navarro allowed both parties to submit their respective proofs on the actual amounts released by the ATO, the amounts due to Bayonla as her share, Atty. Reyes' corresponding contingent fees, the remittances by Atty. Reyes to Bayonla, and the receipts showing such remittances.[29] In due course, Atty. Reyes submitted her written answer, attaching to the answer the documents supporting her defenses.[30] Commissioner Navarro took all of Atty. Reyes' submissions into good and proper account, as borne out by her report.[31] And even after the IBP Board of Governors had adopted Commissioner Navarro's report (and its recommendation), Atty. Reyes was still afforded the fair opportunity to challenge the adverse findings by filing her motion for reconsideration, although such motion was ultimately resolved against her.[32]

IV
Sanction

The penalty for gross misconduct consisting in the failure or refusal despite demand of a lawyer to account for and to return money or property belonging to a client has been suspension from the practice of law for two years. In Almendarez, Jr. v. Langit,[33] the lawyer who withdrew the rentals pertaining to his client totaling P255,000.00 without the knowledge of the client and who ignored the demand of the client to account for and to return the amount was suspended from the practice of law for two years. In Mortera v. Pagatpatan,[34] the lawyer received P155,000.00 from the adversary of his clients as partial payment of a final and executory decision in favor of the clients pursuant to a secret arrangement between the lawyer and the adversary, and deposited the amount to the lawyer's personal bank account without the knowledge of the clients; the lawyer thereafter refused to surrender the money to his clients. The suspension of the lawyer for two years from the practice of law was ordered by the Court. In Small v. Banares,[35] a similar penalty of suspension for a period of two years from the practice of law was imposed on a lawyer who had failed to file a case for the purpose of which he had received an amount of P80,000.00, and to return the amount upon demand. In Barcenas v. Alvero,[36] the Court suspended for a period of two years from the practice of law a lawyer who had failed to immediately account for and to return P300,000.00 received from a client for the purpose of depositing it in court, after the lawyer had been found not to have deposited the money in court.

Considering that the sin of Atty. Reyes had striking resemblance with the sins thus sanctioned in the aforementioned precedents, the proper penalty for her is suspension from the practice of law for two years, with

warning that a similar offense by her will be dealt with more severely.

Atty. Reyes is further obliged to pay to Bayonla the amount of P44,582.67, which the IBP Board of Governors found to be still unpaid, by way of restitution. Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restitute the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability. That has been the reason why the Court has required restitution of the amount involved as a concomitant relief in the cited cases of Mortera v. Pagatpatan, supra, Almendarez, Jr. v. Langit, supra, and Small v. Banares, supra.

In addition, Atty. Reyes is liable for interest of 12% per annum reckoned from June 22, 1997, the date when she was formally charged with disbarment. This rate of interest was prescribed by the Court in Almendarez, Jr. v. Langit and Small v. Banares.

WHEREFORE, the Court FINDS AND PRONOUNCES ATTY. PURITA A. REYES guilty of violating Rule 16.01 and Rule 16.03 of Canon 16 of the Code of Professional Responsibility, and SUSPENDS her from the practice of law for a period of two years effective upon receipt of this Decision, with warning that a similar offense by her will be dealt with more severely.

The Court ORDERS Atty. Reyes to pay to complainant Teresita T. Bayonla within 30 days from receipt of this Decision the amount of P44,582.67, with interest of 12% per annum from June 22, 1997, and to render unto the complainant a complete written accounting and inventory of: - (a) the amounts she had collected from the Air Transportation Office as expropriation compensation; (b) the total amount due to the complainant; (c) the total amount she had actually remitted to the complainant; and (d) the amount she had deducted as her contingent fee vis-à-vis the complainant.

Within the same period of compliance, Atty. Reyes shall submit to the Court, through the Office of the Bar Confidant, authentic written proof that her accounting, inventory, and payment were furnished to and received by the complainant in due course.

This Decision is without prejudice to any pending or contemplated proceedings against Atty. Reyes.

Let this Decision be disseminated to all lower courts and to the Integrated Bar of the Philippines, with a copy of it to be included in Atty. Reyes' file in the Office of the Bar Confidant.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.
Brion, J., concur.

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[1] Rollo, pp. 3-4.

[2] Id., pp. 32-33.

[3] Id., p. 5.

[4] Id., pp. 3-4.

[5] Id., pp. 24-28.

[6] Id., p. 94.

[7] Id., pp. 97-102.

[8] Id., p. 96.

[9] Id., p. 105.

[10] Id., p. 107.

[11] Id., pp. 146-147.

[12] Id., pp. 148-149.

[13] Id., pp. 153-155.

[14] Id.

[15] Id., pp. 190-191.

[16] Id., p. 192.

[17] Angeles v. Uy, Jr., A.C. No. 5019, April 6, 2000, 330 SCRA 6, 17.

[18] Id., at p. 20; Marquez v. Meneses, Jr., Adm. Case No. 675, December 17, 1999, 321 SCRA 1, 6.

[19] Rollo, pp. 61 and 100-101.

[20] Id., p. 96.

[21] Marquez v. Meneses, Jr., supra, note 18, at p. 5.

[22] Macarilay v. Serina, A.C. No. 6591, May 4, 2005, 458 SCRA 12, 25.

[23] Adm. Case No. 6542, September 30, 2005, 471 SCRA 129, 141.

[24] Adm. Case No. 4017, September 29, 1999, 315 SCRA 406, 413.

[25] Saludo, Jr. v. Court of Appeals, G.R. No. 121404, May 3, 2006, 489 SCRA 14, 19.

[26] Section 30, Rule 138, Rules of Court.

[27] Pormento, Sr. v. Pontevedra, A.C. No. 5128, March 31, 2005, 454 SCRA 167, 174.

[28] G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472-473.

[29] Rollo, p. 176.

[30] Id., pp. 177-186.

[31] Id., pp. 99-101.

[32] Id., pp. 105 and 107-113.

[33] A.C. No. 7057, July 25, 2006, 496 SCRA 402.

[34] A.C. No. 4562, June 15, 2005, 460 SCRA 99.

[35] A.C. No. 7021, February 21, 2007, 516 SCRA 323.

[36] A.C. No. 8159, April 23, 2010, 619 SCRA 1.

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