URBAN BANK, INC., COMPLAINANT, VS. ATTY. MAGDALENO M. PEÑA, RESPONDENT.

A.C. No. 4863. September 07, 2001

Ponente: PUNO, J.

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PUNO, J.:

Before us is an administrative case for disbarment filed by complainant Urban Bank, Inc., a commercial bank, against respondent Atty. Magdaleno M. Peña. Complainant charges that respondent is guilty of deceit, malpractice and gross misconduct in violation of Section 27, Rule 138, of the Revised Rules of Court. The allegations of the Complaint in support of the accusation are as follows:

> "3. Last 1 December 1994, Complainant bought a parcel of land located along Roxas Boulevard from the Isabela Sugar Company ("ISC" for brevity). One of the conditions of the sale was for ISC to cause the eviction of all the occupants found in said property. This condition was incorporated in the Contract to Sell and adopted in the subsequent Deed of Absolute Sale executed by and between ISC and Complainant dated 15 November 1994 and 29 Novemebr 1994, respectively.
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> 4. To fully implement the abovementioned condition, ISC engaged the services of herein Respondent Atty. Magdaleno M. Peña. This was communicated by ISC to Respondent in a Memorandum dated 20 November 1994 and relayed to Complainant in a Letter dated 19 December 1994.
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> 5. Respondent accepted the engagement of his services by ISC and he proceeded to take the necessary steps to evict the occupants of the property subject of the sale.
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> 6. During the eviction process, Complainant was informed by ISC and Respondent about the necessity of a letter of authority in favor of the latter, granting him the authority to represent Complainant in maintaining possession of the aforesaid property and to represent Complainant in any court action that may be instituted in connection with the exercise of said duty.
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> 7. Complainant acceded to the request and issued a letter-authority dated 15 December 1994, but only after making it very clear to the Respondent that it was ISC which contracted his services and not Complainant. This clarification was communicated to Respondent by Atty. Corazon M. Bejasa and Mr. Arturo E. Manuel, Jr., Senior Vice-President and Vice-President, respectively of Complainant bank in a letter addressed to respondent dated 15 December 1994. A copy of said letter is attached hereto and made an integral part of this Complaint as Annex "E".
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> 8. Subsequently however, Respondent requested for a modification of said letter of authority by furnishing Complainant with a draft containing the desired wordings (including the date, i.e., 19 December 1994) and asking Complainant to modify the previous letter by issuing a new one similarly worded as his draft. A copy of said request is attached hereto and made an integral part of this Complaint as Annex "F".
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> 9. If only to expedite and facilitate matters, Complainant willingly obliged and re-issued a new letter of authority to Respondent, this time incorporating some of Respondent's suggestions. Thus it came to pass that the actual letter of authority was dated 19 December 1994, while Complainant's clarificatory letter was dated

15 December 1994.

10. Eventually, the eviction of the occupants of the property in question was successfully carried out. After the lapse of more than thirteen (13) months, Respondent filed a collection suit against herein Complainant and its senior officers "for recovery of agent's compensation and expenses, damages and attorney's fees", on the strength of the letter of authority issued by Atty. Bejasa and Mr. Manuel, Jr. A copy of the complaint filed by herein Respondent with the Bago City Regional Trial Court is attached hereto and made an integral part hereof as Annex "G".

11. The act of Respondent in securing the letter of authority from Complainant, ostensibly for the purpose of convincing the occupants sought to be evicted that he was duly authorized to take possession of the property and then using the same letter as basis for claiming agent's compensation, expenses and attorney's fees from Complainant, knowing fully well the circumstances surrounding the issuance of said letter of authority, constitutes deceit, malpractice and gross misconduct under Section 27, Rule 138 of the Revised Rules of Court. Said provision enumerates the grounds for the suspension and disbarment of lawyers, namely:

Sec. 27. Attorneys removed or suspended by Supreme Court, on what grounds, - A member of the bar may be removed 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 of which he is required to take before admission to practice, or for willful disobedience of any lawful order of a superior court or for corruptly or wilfully appearing as an attorney for a party to a case without any authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)"[1]

In answer to these allegations, respondent submitted with this Court his Comment, wherein he refuted all the charges against him. Preliminarily, he claimed that the present complaint should be dismissed outright since its filing constitutes forum shopping and it involves a matter which is sub-judice, in view of the pending civil action involving the same parties. Respondent then disputed that he was guilty of deceit, malpractice or gross misconduct. He declared that complainant, through its duly authorized officers, engaged his services to rid the property of tenants and intruders in the course of a telephone conversation. He added that there was no reason for him to deceive complainant into writing a letter of authority because he knew very well that the verbal agreement was sufficient to constitute an attorney-client relationship. The request for a letter of authority, according to him, was "merely to formalize the engagement."[2] Lastly, he argued that the complainant accepted the benefits of his service, just as it never disclaimed that he was acting in its behalf during the period of engagement.

We referred the matter to the Integrated Bar of the Philippines (IBP) for investigation. Both parties presented their respective evidence before the Commission on Bar Discipline of the IBP. After only one hearing, and upon agreement of the parties, the case was submitted for resolution on the basis of their respective pleadings and annexes thereto. The investigating officer, Commissioner Navarro, required both parties to file their own memoranda. The commissioner made the following findings:

"After going over the evidence submitted by the parties, the Undersigned noted that the complainant (plaintiff) in RTC Bago City Civil Case is the respondent in the present case which only showed that to get even with the respondent, complainant instituted the present case as leverage for respondent's complaint in the civil case. The complainant in the RTC Bago City Civil case is the respondent in the present case and vice-versa; therefore there was no institution by the same party for remedies in different fora which negates forum shopping.

The fact remains however that complainant never contested the actuations done by the respondent to rid its property from tenants and intruders; and even executed a letter of authority in favor of respondent dated December 19, 1994; otherwise complainant should have engaged the services of other lawyers.

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> Nevertheless, it is not for this Office to determine who should pay the respondent for this is a matter not within its jurisdiction but for the proper court to do so.
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> The only issue for resolution of this Office is whether or not respondent committed malpractice, deceit and gross misconduct in the practice of his profession as member of the bar.
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> The evidence on record showed that respondent successfully performed his task of evicting the tenants and intruders in the property in question. More so, no less than Senior Vice-President Corazon Bejasa was very thankful for his job well done.
>
> Complainant benefited from respondent's task and for a period of fifty (50) days no behest or complaint was received by the respondent from the complainant. It was only when payment for his legal services was demanded that complainant re-acted when it is incumbent upon the benefactor of services that just compensation should be awarded.
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> It is but just and proper that if refusal to pay just compensation ensues in any transaction, the proper remedy is to institute an action before the proper court and such actuation of the respondent herein did not constitute deceit, malpractice or gross misconduct.
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> In view of the foregoing, the Undersigned hereby recommends that the complaint against Atty. Magdaleno Peña be dismissed for lack of merit."[3]

Thereafter, IBP Board of Governors passed a Resolution DISMISSING the Complaint based on the Report and Recommendation of Commissioner Navarro. It appears that on April 26, 2000, the complainant was closed by the Monetary Board of the Bangko Sentral Ng Pilipinas and was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC). On May 8, 2000, it received a notice of the resolution. With the PDIC now acting as its counsel, it sought reconsideration of the resolution with the IBP, which was denied there being "no substantive reason to reverse the findings therein" and because "the pleading is improper as the remedy of the complainant is to file the appropriate Motion with the Supreme Court within fifteen days from receipt of notice of said Decision pursuant to Section 12 of Rule 139-B."[4]

On October 5, 2000, we received a Manifestation from the complainant, represented this time by Corazon M. Bejasa, praying that the IBP Commission on Bar Discipline and Board of Governors be ordered to make a more thorough determination of whether or not respondent committed the acts of deceit, malpractice and gross misconduct complained of as grounds for the latter's disbarment. We then resolved to treat this manifestation as an appeal. Disbarment proceedings are matters of public interest,[5] undertaken for public welfare and for the purpose of preserving courts of justice from the official ministration of the persons unfit to practice them.[6]

The sole issue raised in this appeal is whether or not respondent should be disbarred on the ground of deceit, malpractice and gross misconduct. We rule in the negative.

From the record and evidence before us, we agree with the commissioner's conclusion that respondent cannot be found guilty of the charges against him. Apart from the allegations it made in various pleadings, complainant has not proferred any proof tending to show that respondent really induced it, through machination or other deceitful means, to issue the December 19 letter of authority ostensibly for the purpose of evicting illegal occupants, then using the very same letter for demanding agent's compensation. During the scheduled hearing, it did not introduce a single witness to testify apropos the circumstance under which the letter was dispatched. Those who signed and issued the letter, Corazon M. Bejasa and Arturo E. Manuel Jr., were never presented before the investigating commissioner to substantiate its assertion that the letter it gave to the respondent was only "for show," and for a purpose which is limited in scope. Similarly, not even the sworn statements from these or other vital witnesses were attached to the memorandum or the other pleadings it submitted. It is one thing to allege deceit, malpractice

and gross misconduct, and another to demonstrate by evidence the specific acts constituting the same.

To be sure, no evidence in respect of the supposed deceit, malpractice or gross misconduct was adduced by the complainant. It is axiomatic that he who alleges the same has the onus of validating it. In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence.[7] In this regard, we find that complainant failed to meet the required standard.

In an effort to lend credence to its claim that there was no contractual relation between them, complainant attempted to establish that the legal services of the respondent was engaged, not by it, but by the seller of the lot, Isabela Sugar Company. This should presumably settle any doubt that the December 19 letter was only to be used by respondent for the purpose of supervising the eviction of the occupants of the property and protecting it from intruders, and nothing more. To support this, it submitted correspondence coming from people who appear to be responsible officers of ISC (one from Enrique Montilla III, and another from Julie Abad and Herman Ponce) informing respondent of the engagement of his services by the ISC. These letters, though, cannot by themselves be accorded strong probative weight in the face of respondent's emphatic assertion that he has never seen any of these documents.[8] Likewise, they do not indicate that copies thereof were received by him or by any authorized person in his behalf. It bears stressing that they do not carry his signature, nor the time or date he took possession of them. It follows that they cannot be used to bind and prejudice the respondent absent any showing that he had actual and ample knowledge of their contents.

Lastly, complainant seems to belabor under the mistaken assumption that the basis of the respondent in instituting the civil case against it was the December 19 letter of authority. Well to point out, the suit was grounded on an oral contract of agency purportedly entered into between him and the complainant, represented by its duly authorized officers. This is evident from the averments embodied in the Complaint filed with the Bago City Trial Court, the pertinent portions of which state:

> "7. The defendant URBAN BANK through its president, defendant TEODORO BORLONGAN, and the defendants Board of Directors as well as its Senior Vice President CORAZON BEJASA and Vice President, ANTONIO MANUEL, JR., entered into an agency agreement with the plaintiff, whereby the latter in behalf of the defendant URBAN BANK, shall hold and maintain possession of the aforedescribed property, prevent entry of intruders, interlopers and squatters therein and finally turn over peaceful possession thereof to defendant URBAN BANK; it was further agreed that for the services rendered as its agent, defendant URBAN BANK shall pay plaintiff a fee in an amount equivalent to 10 % of the the market value of the property prevailing at the time of payment;
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> 8. The plaintiff accepted the engagement and in a letter dated December 19, 1994, defendant URBAN BANK through its authorized officials, namely, defendant CORAZON BEJASA and ARTURO E. MANUEL, JR., Senior Vice President and Vice President respectively, of defendant URBAN BANK, officially confirmed the engagement of the services of the plaintiff as its Agent-representative for the following specific purposes; x x x to hold and maintain possession of our abovecaptioned property and to protect the same from tenants, occupants or any other person who are threatening to return to the said property and/or to interfere with your possession of the said property for and in our behalf. You are likewise authorized to represent Urban Bank in any court action that you may institute to carry out your aforementioned duties, and to prevent any intruder, squatter or any other person not otherwise authorized in writing by Urban bank from entering or staying in the premises.'
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> A photocopy of the letter dated December 19, 1994 is hereto attached as Annex "C" and made integral part hereof."[9] (Emphasis supplied.)

It is clear from the above that what respondent was trying to enforce were the terms and conditions of the

contract. The letter, from the his own admission, just served to officially confirm a done deal. It was, hence, utilized solely as documentary evidence to buttress respondent's assertion regarding the existence of the agency agreement. In fact, the amount of compensation (to the tune of 10% of the market value of the property) he was recovering in the action was never mentioned in the letter, but apparently settled in the course of an oral conversation. Indeed, respondent, with or without the letter, could have instituted a suit against the complainant. There is no gainsaying that a verbal engagement is sufficient to create an attorney-client relationship.[10]

In sum, we find that, under the premises, respondent can hardly be faulted and accused of deceit, malpractice and gross misconduct for invoking the aid of the court in recovering recompense for legal services which he claims he undertook for the complainant, and which the latter does not deny to have benefited from. Indeed, what he did was a lawful exercise of a right.

IN VIEW WHEREOF, the disbarment complaint against respondent Atty. Magdaleno M. Peña is hereby DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Complaint, pp. 1 - 4; Rollo, pp. 1 - 4.

[2] Reply, p. 9; Rollo, p. 45.

[3] Report and Recommendation, pp. 5-6.

[4] IBP Resolution No. XIV-2000-436.

[5] Nakpil v. Valdes, A.C. No. 2040, March 4, 1998.

[6] Rayos-Ombac v. Rayos, 285 SCRA 93 (1998).

[7] Narag v. Narag, 291 SCRA 451 (1998).

[8] In fact, respondent has vehemently claimed that he does not know any officer of the ISC by the name of Julie Abad and Herman Ponce, and has repeatedly challenged complainant to present them for examination.

[9] Complaint, Annex G, Complaint for Disbarment, pp. 2-3; Rollo, pp. 20-21.

[10] See Hilado v. David, 84 Phil. 569 (1949).

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