

MILAGROS N. ALDOVINO, VIRGILIO NICODEMUS, ANGELA N. DELA CRUZ, JULITA N. SOCO, MAGDALENA N. TALENS AND TEODORO S. NICODEMUS, COMPLAINANTS, VS. ATTY. PEDRO C. PUJALTE, JR., RESPO...

A.C. No. 5082. February 17, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is a complaint for disbarment and/or disciplinary action^[1] against Atty. Pedro C. Pujalte, Jr. filed by Milagros Nicodemus-Aldovino, Virgilio Nicodemus, Angela Nicodemus-dela Cruz, Julita Nicodemus-Soco, Magdalena Nicodemus-Talens and Teodoro S. Nicodemus for violation of Canon 16 of the Code of Professional Responsibility.

Complainants alleged in their complaint that they are brothers and sisters and heirs of Arcadia Nicodemus. Sometime in March, 1995, they hired the services of respondent Atty. Pujalte, Jr. as their counsel in Civil Case No. 95-46 filed with the Regional Trial Court, Branch 56, Lucena City. The suit was for specific performance with damages to compel their sister, Loreto Nicodemus Pulumbarit, to deliver to them their shares in the estate of their deceased mother.

On November 9, 1998 the trial court rendered its Decision, the dispositive portion of which reads:

“WHEREFORE, FROM THE FOREGOING, the court finds for the defendant Loreto Pulumbarit and accordingly orders the dismissal of the case with costs against plaintiffs and orders the Branch Clerk of Court of this branch, upon finality of this decision to withdraw from Savings Account No. 435-527745-9 at the Philippine National Bank and to deliver the proceeds to all the heirs of Arcadia Nicodemus upon proper receipt. Both counsels are directed to oversee the distribution and for them to jointly file their manifestation on the matter.”^[2]

Accordingly, on December 1, 1998, Branch Clerk of Court Angelo A. Serdon withdrew from the Philippine National Bank the sum of P1,335,109.68 under Savings Account No. 435-527745-9.

In the presence of defendant Mrs. Loreto N. Pulumbarit and respondent counsel, Branch Clerk of Court Serdon divided the withdrawn amount into eight shares of P166,888.71 each. He gave the defendant two shares. Then he handed the remaining amount of P1,001,332.26, corresponding to six shares, to respondent upon his representation that he is authorized to receive the money and to oversee the distribution to complainants of their respective shares.

However, complainants did not receive their shares from respondent despite repeated demands. Thus, they engaged the services of Atty. Francisco I. Chavez who, on December 17, 1998, sent a letter to respondent demanding that the amount of P1,001,332.26 entrusted to him by the Branch Clerk of Court be turned over to complainants.

On December 21, 1998, respondent wired Atty. Chavez that he will deliver to complainants their respective shares “tomorrow morning.”

What respondent delivered to herein complainants was only P751,332.26, instead of P1,001,332.26 because he deducted P250,000.00 therefrom. He claimed that this amount is his attorney’s fees per his agreement with Milagros Aldovino, complainants’ representative. On February 23, 1999, Atty. Chavez again wired respondent demanding that he return to complainants the amount of P236,000.00. As explained by Atty. Chavez in his telegram, respondent could retain only P14,000.00 (not P250,000.00), which amount is in addition to the P86,000.00 initially paid to him by complainants as his attorney’s fees. According to complainants, the sum of P100,000.00 (P86,000.00 plus P14,000.00) is more than the amount of attorney’s fees agreed upon by the parties. Still, respondent failed to return to complainants the amount of P236,000.00, which is the balance after deducting P14,000.00 from P250,000.00.

In his comment dated September 3, 1999, respondent admitted that he received from the Branch Clerk of Court “P1,335,109.68” representing complainants’ shares. Thereafter, he waited for complainants Virgilio and Teodoro Nicodemus and Engr. Isidro Aureada at the Sangguniang Panlalawigan of Quezon where he had a hearing, but they did not come.

To disprove deceit on his part, he attached to his comment his letter dated December 2, 1998 to Engr. Isidro Aureada^[3] informing the latter that he waited for those complainants in order to give them the money.

Respondent claimed that there is a verbal agreement between him and Milagros Aldovino, representative of complainants, that they will pay him P250,000.00 as his attorney’s fees. Consequently, he deducted and retained this amount from the money delivered to him by the Branch Clerk of Court. At any rate, he wrote complainants on December 23, 1998 regarding this matter.^[4]

In her Report dated March 10, 2003,^[5] IBP Commissioner Rebecca Villanueva-Maala made the following findings and recommendation:

“xxx. In the case at bar, after respondent got hold of the entire settlement amount, he did not immediately turn over the said amount to the complainants who had to look and search for him. It was only when respondent was threatened with a legal action (Estafa, docketed as Grim. Case No. 99-1017, RTC Br. 58, Lucena City) that he decided to return the balance of the settlement amount but after deducting P250,000.00 which he claims to be his attorney’s fees. Complainants alleged that they have already paid respondent the amount of P86,000.00 which was more than double the agreed upon professional fees. Complainants even agreed to pay an additional P14,000.00 to complete the amount of P100,000.00 but there was no agreement to the effect that respondent will be paid P250,000.00. Respondent unilaterally appropriated the amount of P250,000.00 without the conformity of complainants. The lawyer is allowed to apply so much of the funds as may be necessary to satisfy his lawful fees and disbursement subject to the condition that he shall promptly notify his client (Rule 16.03, CPR). The lawyer cannot unilaterally appropriate for himself the money of his client for payment of his attorney’s fees which the client owes to the former (Cabigao vs. Rodrigo, 57 Phil 20; Capulong vs. Alino, 22 SCRA 491).

“PREMISES CONSIDERED, we find respondent to have violated Canon 16 and 16.03 of the Code of Professional Responsibility and recommends that he be suspended for the period of one (1) year from the practice of his profession as a lawyer and as a member of the Bar.”

On June 21, 2003, the IBP Board of Governors, Pasig City, passed Resolution No. XV-2003-347 adopting and approving the Report of IBP Commissioner Maala.

We sustain the Resolution of the IBP Board of Governors finding that respondent violated Canon 16, Code of

Professional Responsibility and suspending him from the practice of law for one (1) year.

Canon 16 and its Rule 16.03 provide:

“CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

“x x x x x x x x

“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.”

Respondent should have complied with the above provisions. When complainants demanded that the sum of P1,001,332.26 be delivered to them, he should have heeded promptly. Had they not hired a lawyer and charged him with estafa, he would not have turned over the money to them. While it may be true that he has “a lien over the funds,” he should have notified complainants about it in due time.

Respondent has no right to retain or appropriate unilaterally as lawyer’s lien,[6] the sum of P250,000.00. As found by IBP Commissioner Maala, there was no agreement between him and complainants that he could retain P250,000.00 as attorney’s fees. In fact, he did not adduce any proof of such agreement. His mere allegation or claim is not proof.[7] 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.[8] His act of holding on to their money without their acquiescence is conduct indicative of lack of, integrity and propriety.[9] He was clinging to something not his and to which he had no right.[10]

This Court has been exacting in its demand for integrity and good moral character of members of the Bar. They are expected at all times to uphold the integrity and dignity of the legal profession[11] and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession.[12] Membership in the legal profession is a privilege.[13] And whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of the public, it becomes not only the right but also the duty of this Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw the privilege.[14] Respondent, by his conduct, blemished not only his integrity as a member of the Bar, but also that of the legal profession.

WHEREFORE, respondent Atty. Pedro C. Pujalte, Jr. is hereby declared guilty of violation of Canon 16 of the Code of Professional Responsibility and is **SUSPENDED** from the practice of law for a period of one (1) year effective immediately. He is ordered to return the sum of P236,000.00 to complainants within five (5) days from notice.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] Filed on June 22, 1999 with the Office of the Bar Confidant, Spreme Court and referred for investigation, report and recommendation (Resolution dated October 25, 1999, Rollo at 37) to the Commission on Bar Discipline, Integrated Bar of the Philippines (IBP), Pasig City.

[2] Rollo at 2.

[3] Rollo at 31.

[4] Id. at 32.

[5] Id. at 78-80.

[6] Cabigao vs. Rodrigo, 57 Phil. 20 (1932).

[7] Sadhwani vs. Court of Appeals, G.R. No. 128119, October 17, 1997, 281 SCRA 75.

[8] Barnachea vs. Quiocho, A.C. No. 5925, March 11, 2003, citing In Re: David, 84 Phil. 627 (1949); Capulong vs. Alino, 22 SCRA 491 (1968).

[9] Manalang, et al. vs. Angeles, A.C. No. 1558, March 10, 2003.

[10] Id., citing Gonato vs. Adaza, A.C. No. 4083, March 27, 2000, 328 SCRA 694, 697.

[11] Sipin-Nabor vs. Bateria, A.C. No. 4073, June 28, 2001, 360 SCRA 6; Eustaquio, et al. vs. Rimorin, A.C. No. 5081, March 24, 2003, citing Tapucar vs. Tapucar, 355 Phil. 66, 74 (1998).

[12] Manalang, et al. vs. Atty. Francisco F. Angeles, supra, citing Maligsa vs. Cabanting, 272 SCRA 408, 413 (1997).

[13] Lao vs. Medel, A.C. No. 5916, July 1, 2003, citing Dumadag vs. Lumaya, 334 SCRA 513 (2000), Arrieta vs. Llosa, 346 Phil. 932 (1997), NBI vs. Reyes, 326 SCRA 109 (2000); Eustaquio, et al. vs. Rimorin, supra.

[14] Eustaquio, et al. vs. Rimorin, supra, citing In Re: Almacen, No. L-27654, 31 SCRA 562, 601-602 (1970); In Re: Paraiso, 41 Phil. 24 (1920); In Re: Sotto, 38 Phil. 532, 549 (1918).

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