

FERNANDO SALONGA, COMPLAINANT, VS. ATTY. ISIDRO T. HILDAWA, RESPONDENT.

A.C. No. 5105. August 12, 1999

Ponente: VITUG, J.

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VITUG, J.:

In an affidavit-complaint, dated 29 March 1996, Fernando Salonga, President of Sikap at Tiya Alabang Vendors Association, Inc. ("STAVA"), of Muntinlupa City, charged Atty. Isidro T. Hildawa with gross misconduct and/or deceit. Complainant averred that respondent lawyer was a retained counsel of STAVA for a number of years and, in December 1993, represented the association in Civil Cases No. 2406, No. 2413 and No. 2416, for ejectment against, respectively, Linda Del Rosario, Angelita Manuel and Francisco Vega, all stallholders at the Alabang market, before the Municipal Trial Court of Muntinlupa. The defendants deposited the accrued rentals with the court. On 14 November 1994, respondent lawyer filed a motion to withdraw the deposit; thus:

"JOINT MOTION TO WITHDRAW DEPOSIT

"Counsel for complainant, unto this Honorable Court, most respectfully manifest:

"1. That, defendants-appellants Linda del Rosario, Angelita Manuel and Francisco Vega made their deposit of accrued rentals on their stalls up to October 15, 1994, as follows:

a. Linda del Rosario -- P24,440.60

b. Angelita Manuel -- 46,436.60

c. Francisco Vega -- 33,666.60

Total -- P104,543.80

"2. That, plaintiff is entitled to such deposits made by the appellants in order to pay its obligation with the cooperative which granted the concession to the transient area for the plaintiff to operate;

"3. That, counsel for the appellants register no objection to such withdrawal as shown by his conformity to the herein motion.

"Wherefore, it is prayed of this Honorable Court that plaintiff be authorized to withdraw the corresponding amounts deposited by the defendants in the above-entitled cases.

"RESPECTFULLY SUBMITTED.

"November 14, 1994.

"MAKATI for Muntinlupa.

"HILDAWA & GOMEZ

#3484 Gen. Lucban St., cor. South

Superhighway, Makati, Metro Manila

By:

"(Sgd.) ISIDRO T. HILDAWA

PTR NO. 9428868 / 1-21-94 / Muntinlupa

IBP NO. 347727 / 5-06-94 / Makati

With My Conformity:

(Sgd.) Atty. PATRICIO L. BONCAYAO, JR.

2nd Flr. Cattleya Commercial

National Road, Alabang"[1]

Respondent lawyer issued a receipt, dated 09 December 1994, that acknowledged his having received the withdrawn deposit of P104,543.80. Complainant alleged that STAVA was not informed of the filing of the motion nor did it authorize Atty. Hildawa to withdraw the amount. Despite repeated demands, respondent lawyer refused to turn over the withdrawn sum to STAVA. To make matters even worse, added the complainant, Atty. Hildawa appeared as counsel for Kilusang Bayan ng mga Magtitinda sa Pamilihing Bayan ng Muntinlupa ("KBMBPM"), an opponent of STAVA in Civil Case No. 95-192, for Injunction with Urgent Prayer for Restraining Order, before Branch 276 of the Regional Trial Court of Muntinlupa. Eventually, the RTC, acting on a motion to disqualify respondent in said case, directed, in its order of 26 December 1995, the latter "to withdraw from the case and avoid committing an unethical conduct." [2]

In his answer to the complaint, Atty. Hildawa countered that complainant was fully aware of the withdrawal of the rental in arrears deposited by the defendants in the ejectment cases and that complainant, on several occasions, even accompanied him in following up the release of the money. He said he did not turn over the amount withdrawn to complainant since Salonga was then on leave; instead he handed over, on 10 December 1994, the sum to Dolores Javinar, the treasurer of the association, who issued the corresponding receipt therefor.

In his reply, Salonga disclaimed the supposed turn-over of the money to Javinar and the allegation that he was on leave of absence.

This Court referred the case to the Integrated Bar of the Philippines ("IBP") for investigation, report and recommendation.

In a resolution, dated 13 March 1998, the Commission on Bar Discipline, through Commissioner Renato G. Cunanan, found respondent guilty of violation of Canons 16 and 21 of the code of Professional Responsibility and recommended that he be suspended for one year from the practice of law. On 25 April 1998, the IBP Board of Governors, in its Resolution NO. XIII-98-72, resolved to adopt and approve the recommendation of the Investigating Commissioner.

Soon after receiving a copy of the above-numbered resolution, respondent reverted to IBP seeking a reconsideration of its resolution only to be thereupon informed that the case had already been forwarded to this Court. Respondent submitted to the Court a memorandum, dated 05 August 1998, asseverating that the findings of the Investigating Commissioner were contrary to the evidence on record. He cited the resolution of the STAVA Board of Trustees, dated 30 October 1994, that read:

"KATITIKAN NG PULONG
NG

BOARD OF TRUSTEES
NG

SIKAP AT TIYAGA ALABANG VENDORS
ASSOCIATION, INC.

Ginanap noong ika-30 ng Oktubre, 1994 sa
Tanggapan nito sa Alabang

Mga Dumalo:

President - Fernando Salonga

Executive Vice-Pres.

- Tirso Sapar

VP Internal - Domingo Silava

VP Security

-

Leonardo Gumapos

Auditor -

Undo Cipriano

Hindi Dumalo:

VP External

-

Aser Arevalo

Treasurer -

Dolores Javinar

"Unang tinalakay sa pagpupulong and kaayusan ng samahan at mga dapat tupdin ng mga kasapi bilang kanilang tungkulin sa samahan at sa lugar na kanilang pinagtitindahan. Ang kalinisan ay pinagtutuunan ng pansin.

"Bagama't `on-leave' ang pangulo natin, sa kahalagahan ng pinaguusapan siya ay narito sa pagpupulong.

"Tinalakay ang hindi pagbabayad ng Market Fee at gamit electrical ng 11 dating miyembro ng STAVA na tuwirang nagbabayad ngayon sa kooperatiba. Dahil dito ay nawawalan ng P450.00 hanggang P500.00 ang samahan sang-ayon sa taya ng pangulo.

"Dahil dito, binigyan ng karapatan ang abogado ng samahan na isaayos ang dapat na hakbanging legal upang malikom ang salapi para sa STAVA upang makatugon ito sa bayarin sa KBMBMP at sa iba pang pagkakagastusan sa hinaharap na okasyon.

"Mayroong pag-uusap upang wakasan ang usapin na idinulog ng STAVA laban sa Kooperatiba sapagkat sa diwa ng magandang pagkakaunawaan at mabuting samahan, nais ng ipagkaloob ng Kooperatiba ang hinihingi ng STAVA na lagyan ng hangganan ang lugar na ang mga miembro ng STAVA ang siya lamang magtitinda sa halagang itatakda ng bawa't panig.

"Dito tumindig si Ester Dalde at ipinabatid sa kapulungan na siya ay kinausap ng Gen. Manager ng Kooperatiba at tinatanong kung maari daw ay huwag ng paalisin ang labing-isang (11) tumiwalag sa STAVA.

"Tinalakay ng pamunuan ang bagay na ito at ang lahat ay nagkakaisa sa kanilang paninindigan na dapat lamang palayasin ang lahat ng taksil at anay ng samahan upang maiwasan ang hindi pagkakaunawaan at tuloy maging aral na din sa iba pa.

"Isinunod na tinalakay ang mga `balimbing' o nagdadalawang mukha at inatasan na bumuo ng kommitte tungkol dito upang mabatid kung sino-sino ang mga ito at malapatan ng kaukulang lunas.

"Sa ano mang Compromise Agreement na gagawin, hindi dapat pumayag na manatili pa ang mga taksil sa STAVA at ang kooperatiba ang siyang magbibigay sa kanila ng lugar sa alin mang parte ng palengke ngunit hindi sa Transient Area.

"Ang pagpupulong ay itinindig sa ganap na ika-2:00 ng hapon.

(Sgd.)

(Sgd.)

Fernando Salonga

Tirso Sapar

President

Executive Vice-President

(Sgd.)

(Sgd.)

Domingo Silava

Leonardo Gumapos

VP Internal

VP Security

(Sgd.)

Undo Cipriano

Auditor"[3]

Respondent likewise sought to make the clarification that his services as counsel of STAVA were already terminated in February 1995, long before he appeared as counsel for KBMBPM in December 1995.

After a close review of the records, the Court is inclined to partially grant the motion for reconsideration submitted by respondent.

The basis of the Investigating Commissioner for finding respondent lawyer to have violated Canon 16[4] was the supposed admission of Atty. Hildawa that he withdrew the amount of P104,543.80 for STAVA. This fact, however, was never denied by Atty. Hildawa. It would appear that the real focus should have been then on the issue of whether or not the withdrawal of the deposit by respondent had the client's authority. Apparently, he did have that authority under the resolution, dated 30 October 1994, of the Board of Trustees of STAVA. The resolution, in part was to the following effect:

"Dahil dito, binigyan ng karapatan ang abogado ng samahan na isaayos ang dapat na hakbanging legal upang malikom ang salapi para sa STAVA upang makatugon ito sa bayarin sa KBMBPM at sa iba pang pagkakagastusan sa hinaharap na okasyon."[5]

One of the signatories of the resolution was complainant Fernando Salonga himself. Atty. Hildawa did not keep the money but turned it over on 10 December 1994, or just one day after receiving it (on 09 December 1994), to Dolores Javinar, the STAVA treasurer, who issued a corresponding receipt therefor. What the treasurer or STAVA might have done thereafter with the funds was no concern of respondent counsel.

The Court agrees with the Investigating Commissioner, however, that respondent lawyer has transgressed Canon 21 which requires a lawyer to preserve the confidences and secrets of his client even after the attorney-client relation ceases, a mandate that he has placed in possible jeopardy by agreeing to appear as counsel for a party his client has previously contended with in a case similarly involving said parties.

WHEREFORE, the Court ABSOLVES Atty. Isidro T. Hildawa from the charge of having violated his obligation to hold in trust the funds of his client but REPRIMANDS him for having placed at risk his obligation of preserving the confidentiality relationship with a previous client, with a warning that a repetition of the same or similar conduct in the future will be dealt with most severely.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 8-9.

[2] Rollo, p. 17.

[3] Rollo, Vol. I, pp. 169-170.

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

[5] Rollo, p. 169.

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