

NELIA PASUMBAL DE CHAVEZ-BLANCO, REPRESENTED BY HER ATTORNEY-IN-FACT, ATTY. EUGENIA J. MUÑOZ, COMPLAINANT, ATTY. JAIME B. LUMASAG, JR., RESPONDENT.

A.C. No. 5195. April 16, 2009

Ponente: TINGA, J.

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TINGA, J.:

This is an administrative complaint for disbarment filed by complainant Nelia P. de Chavez-Blanco against respondent Atty. Jaime Lumasag, Jr., for deceit, dishonesty and gross misconduct.

In a Report and Recommendation dated 11 December 2001,[1] the Integrated Bar of the Philippines (IBP) Commissioner Milagros San Juan found respondent guilty of the charges and recommended the penalty of disbarment. Subsequently, the IBP Board of Governors reduced the penalty to a five (5)-year suspension in its Resolution XV-2002-229 dated 29 June 2001. In a Resolution dated 9 December 2002, the Court, however, remanded the case to the IBP in view of its findings that no formal hearing/investigation was conducted.

Upon remand to the IBP, the case was re-assigned to IBP Commissioner Dennis A.B. Funa and hearings were accordingly held thereafter.

Through her attorney-in-fact, Atty. Eugenia J. Muñoz, complainant alleged in her Complaint[2] that she was a resident of the United States of America together with her husband, Mario Blanco. She also stated that she owned two (2) adjacent parcels of land in Quezon City, each with an area of 400 square meters, covered by Transfer Certificates of Title (TCT) Nos. 22162 and 22163 registered in her name. In a document dated 20 November 1989, she authorized respondent, who were her husband's first cousin, to sell said lots.[3]

In a letter dated 20 March 1990, respondent reported that he had sold only one lot for the price of P320,000.00 and therefrom he deducted P38,130.00 for taxes and commissions. And, allegedly, per complainant's instructions, he remitted the remaining balance of P281,900.00 to a certain Belen Johnnes.[4]

In 1995, complainant was informed by respondent that the other lot remained unsold due to the presence of squatters on the property.

In December 1998, Mario Blanco discovered that in truth, the two (2) lots had been sold on 11 March 1990 to the spouses Celso and Consolacion Martinez for the price of P1,120,000.00, and that new titles had been issued to the transferees. Mario Blanco confronted respondent with these facts in a letter, but the latter disregarded the same. Thus, in May 1999, complainant, through Atty. Muñoz sent a demand letter to respondent directing him to remit and turn over to her the entire proceeds of the sale of the properties.

Soon thereafter, respondent admitted the sale of the properties and his receipt of its proceeds, but he never tendered or offered to tender the same to complainant. Despite repeated and continued demands, respondent has since not remitted the amount equivalent to P838,100.00 (P278,000.00 for the first parcel of land and P560,000.00 for the second).[5]

Complainant also averred that the Special Power of Attorney dated 16 January 1989, which respondent had used to sell the lots is a forgery and a falsified document, as the signature therein were not the real signatures of complainant and her spouse. In addition, they could not have acknowledged the document before a notary, as they were not in the Philippines at the time.[6]

For his part, respondent vehemently denied all the accusations of deceit, dishonesty and gross misconduct.[7]

Respondent countered that Mario Blanco was the true owner of the properties, which had to be titled in complainant's name, as Mario Blanco was a U.S. citizen. Mario Blanco had requested him to look for a buyer of the properties and, in the course of selling them, respondent claimed that he had only transacted with the former and never with complainant. Respondent averred that he had been authorized in November 1989 to sell the property, through a Special Power of Attorney, for a price of not less than P250,000.00 net for the owner.[8]

Respondent also alleged that the deed of absolute sale if the two (2) lots had been executed on 19 March 1990 but, only one lot was initially paid in the amount of P281,980.00, which he immediately remitted to Mario Blanco. The payment for the other lot was withheld, pending the relocation of the squatters who had been occupying the premises. And when respondent had finally collected the proceeds of the second lot more than three (3) years after, he asked Mario Blanco if the former could use the amount for a real estate venture whose profit, if successful, he would share with the latter. Mario Blanco allegedly did not think twice and consented to the proposal. The venture, however, did not push through.[9]

Respondent strongly maintained that the two (2) lots had been sold for only P563,960.00.[10]

Finally, respondent denied the charge of falsification. He claimed that complainant and her spouse, Mario Blanco, had in fact signed the Special Power of Attorney, but it was only notarized later.[11]

In his Report and Recommendation dated 4 December 2006, Atty. Dennis A.B. Funa arrived at the following findings:

It appears from the records that the two lots were sold by Respondent for P560,000.00, not P1,120,000.00 as alleged by Complainant. The basis is the Deed of Absolute Sale dated March 11, 1990 which shows that the two lots composing 800 sq. meters being sold for P560,000.00. There appears to be no documentary basis for the claimed amount of P1,120,000.00 of Complainant. However, Respondent in his Comment stated that the two lots were sold by him for P563,960.00. In any case, we shall uphold and apply the amount stated in the Deed of Absolute Sale.

In Respondent's letter dated March 20, 1990, he acknowledged that he already received P320,000.00 as the "total value of one lot". Moreover, the computation shows that the P320,000.00 was only for 400 sq.m. as the computation stated: "400 sq.m. x 800p/sqm=P320,000.00." Therefore, if the first lot was sold for P320,000.00, then the second lot must have been sold for P240,000 x x x

x x x there was clear deception on the part of Respondent when he wrote the letter dated March 20, 1990 "informing" the Blanco spouses that he had sold only one of the two parcels of land for P320,000.00. This is belied by the fact that on March 11, 1990, or 9 days before he wrote the letter, a Deed of Absolute Sale was executed by him selling the two lots for P560,000.00. This Deed of Absolute Sale was notarized on March 19, 1990. During the hearing, Respondent admitted that the Deed of Sale covered two lots. Clearly, Respondent was not forthcoming towards the Blanco spouses.

x x x

x x x Instead of representing that two lots had been sold for P560,000.00. Respondent only represented that he sold only one lot for P320,000.00 and pocketing the balance of P240,000.00.

x x x

During the course of hearing, Respondent claims that the Deed of Sale referred to above is a fake, and that there is a Deed of Sale showing a selling price of P320,000.00 which is the real Deed of Sale. However, no such Deed of Sale has been presented by Respondent and no such Deed of Sale appears in the records. Later in the hearing, Respondent retracted his statement claiming he was merely confused.

As for the alleged falsification of a Special Power of Attorney dated January 16, 1989, wherein the signatures of the Blanco spouses appear in the SPA when they were not in the Philippines on January 16, 1989 but were allegedly in the United States, their absence in the country has not been satisfactorily established since mere xerox copies of their passports, although noted by a notary public, cannot duly establish their absence in the country on that date. Other acceptable documents such as a certification from the Bureau of Immigration would have been appropriate but which, however, had not been presented. In any case, Respondent denies the charge of falsification.[12] (Citations omitted) [Emphasis supplied]

Accordingly, the IBP Commissioner recommended that, in view of the fact that respondent was already 72 years old, he be meted out the penalty of suspension of one (1)-year suspension, not disbarment as had been prayed for and not 5 year-suspension as had been earlier resolved by the IBP Board of Governors. Moreover, the IBP Commissioner recommended that respondent be ordered to deliver to Complainant the amount of P240,000.00 plus the legal interest rate of 6% per annum computed from March 1990.

On 31 May 2007, the IBP Board of Governors passed Resolution No. XVII-2007-222 adopting and approving the Report and Recommendation of the IBP Commissioner.[13]

The Court agrees with the findings and conclusion of the IBP, but a reduction of the recommended penalty is called for, following the dictum that the appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[14]

A lawyer may be disciplined for any conduct, in his professional or private capacity, that renders him unfit to continue to be an officer of the court. Canon 1 of the Code of Professional Responsibility commands all lawyers to uphold at all times the dignity and integrity of the legal profession. Specifically, Rule 1.01 thereof provides:

Rule 1.01--A lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct.

There is no need to stretch one's imagination to arrive at an inevitable conclusion that respondent committed dishonesty and abused the confidence reposed in him by the complainant and her spouse.

Records show that two lots had been sold by respondent as evidenced by the Deed of Absolute Sale of 11 March 1990. Respondent, however, taking advantage of the absence of complainant and her spouse from the Philippines and their complete trust in him, deceitfully informed them in a letter dated 20 March 1990 that he had sold only one. It can be reasonably deduced from the exchanges between the parties that the proceeds of the first lot had been transmitted to complainant and her spouse. Respondent's contention, though, that he had been authorized to retain the proceeds of the second is specious, as complainant and her spouse could not have given the same, having been left in the dark as regards its sale. And despite repeated demands, to date, there is no showing that the outstanding amount has been paid. Thus, respondent's deceitful conduct warrants disciplinary sanction and a directive for the remittance of the remaining proceeds is in order.

As to the charge of falsification, the Court agrees with the IBP that the same appears to be unsubstantiated. Settled is the rule that, in administrative proceedings, the burden of proof that the respondent committed the acts complained of rests on the complainant. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is

under no obligation to prove his exception or defense.[15] Mere allegation is not evidence and is not equivalent to proof.[16]

Respondent's actions erode the public perception of the legal profession. They constitute gross misconduct for which he may be suspended, following Section 27, Rule 138 of the Rules of Court, which provides:

Sec. 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 the admission to practice, or for a willful disobedience appearing as attorney for a party to a case without authority to so do.

Complainant asks that respondent be disbarred. The Court finds, however, that suspension from the practice of law is sufficient to discipline respondent. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. While the Court will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, the Court will also not disbar him where a lesser penalty will suffice to accomplish the desired end. In this case, the Court finds the recommended penalty of suspension of two (2) years for respondent to be too severe, considering his advanced age. The Court believes that a suspension of six (6) months is sufficient. Suspension, by the way, is not primarily intended as punishment, but as a means to protect the public and the legal profession.[17]

WHEREFORE, in view of the foregoing, respondent Atty. Jaime Lumasag, Jr. is **SUSPENDED** from the practice of law for a period of **SIX (6) MONTHS**, effective immediately, with a warning that a repetition of the same or a similar act will be dealt with more severely. Further, respondent is ordered to deliver to complainant the amount of P240,000.00 plus legal interest rate of 6% per annum computed from March 1990.

Let notice of this Resolution be spread in respondent's record as an attorney in this Court, and notice thereof be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all the courts concerned.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 740-750.

[2] Dated 20 December 1999; id. at 1-7.

[3] Id. at 1.

[4] Id. at 1-2.

[5] Id. at 2-3.

[6] Id. at 5-7.

[7] In his Comment with Motion to Dismiss dated 19 April 2000; id. at 41-46.

[8] Id. at 42.

[9] Id. at 43-44.

[10] Id. at 45.

[11] Id.

[12] Report and Recommendation; id. at 745-749.

[13] Id. at 739.

[14] Endaya v. OCA, 457 Phil. 314 (2003); see also Uytengsu III v. Baduel, A.C. No. 5134, December 14, 2005, 477 SCRA 621, 630, citing Marcelo v. Javier, A.C. No. 3248, 18 September 1992, 214 SCRA 1, 14-15.

[15] Tam v. Judge Regencia, A.M. No. MTJ-05-1604, 27 June 2006, 493 SCRA 26, 37-38.

[16] Nedia. v. Laviña, A.M. No. RTJ-05-1957, 26 September 2005, 471 SCRA 10, 20.

[17] Garcia v. Atty. Manuel, 443 Phil. 478, 489 (2003).

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