

SPOUSES STEVEN AND NORA WHITSON, COMPLAINANTS, VS. ATTY. JUANITO C. ATIENZA, RESPONDENT.*A.C. No. 5535. August 28, 2003*

Ponente: PUNO, J.

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At issue in this administrative case is the proper decorum that must be possessed and practiced by a member of the bar.

A civil case for "Damages with Application for the Issuance of a Temporary Restraining Order/Writ of Preliminary Mandatory Injunction/Stay Away Order,"[1] was filed by complainants, Spouses Steven and Nora Whitson ("Whitsons") against Spouses Wilardo and Edith Alcantara ("Alcantaras"). The Alcantaras obtained the services of respondent, Atty. Juanito C. Atienza ("Atty. Atienza") in connection with the case. During the course of the trial, there was a heated confrontation between Steven Whitson and Atty. Atienza, which culminated in the latter punching the chest of Steven. The incident led to the filing of this administrative case against Atty. Atienza.

The Whitsons alleged that they came to the Philippines to stay permanently with Nora's relatives. Steven enrolled at the Ramon Magsaysay Technological University. During their stay here, they got acquainted with the Alcantaras from whom they bought pieces of furniture. They became the Alcantaras' regular customers and close friends. As such, the Alcantaras allowed them to purchase furniture on credit on behalf of relatives who cannot pay on cash. They promptly and regularly paid the installments.

Sometime in March 2001, the Whitsons decided to purchase a multivan from Norkis Group of Companies for their personal use. They executed a Chattel Mortgage over the van and undertook to pay monthly amortizations for thirty-six (36) months. However, they planned to leave for the United States of America by November 2001 in time to be with their daughter who was to give birth. As such, they negotiated with the Alcantaras if they could turn over the van to them in exchange for the balance of their (Whitsons') credit. The Alcantaras were to assume the mortgage of the van. The Alcantaras agreed. Thus, both parties came to an understanding that if Norkis will approve the agreement, the van will be turned over to the Alcantaras. However, Norkis advised the parties to wait for the approval of the endorsement before possession of the van will be transferred.

A few days after, Wilardo Alcantara called the Whitsons and told them that Norkis allegedly approved the endorsement. He informed them that he will take possession of the van. Although surprised, the Whitsons trusted the Alcantaras and did not bother to confirm the approval from Norkis. After a briefing on how to operate the van, possession thereof was immediately transferred to Wilardo. Within a few days thereafter, Rene Tantay of Norkis visited the Whitsons and inquired as to why possession of the van was already with the Alcantaras when Norkis had not yet approved their agreement. Having been told the whole story, Tantay advised the Whitsons to get back the van from the Alcantaras, otherwise Norkis will forfeit the Chattel Mortgage and repossess the van.

Distressed, the Whitsons contacted the Alcantaras and requested them to return the van, informing them of the warning of Norkis. After ardent appeals, the Alcantaras conceded and returned the van, but only after asking the

Whitsons to tell Norkis that they (Alcantaras) used the van for a road test. However, when the Whitsons did not comply with the request, Wilardo Alcantara made a scene at the office of Norkis and alleged that the van was turned over voluntarily by the Whitsons as payment of the balance of the furniture the latter bought from them on credit. Nonetheless, since Norkis disapproved the endorsement, the van was given back to the possession of the Whitsons.

After this incident, the Alcantaras bombarded the Whitsons with persistent calls and visits, demanding payment for the balance of the credit the latter owed them. In the process, the Whitsons were subjected to embarrassment and worries since the Alcantaras always made a scene and did not bother to be discreet in their actions. The Whitsons also underwent mental and physical stress and anxiety. As such, they filed the aforesaid civil case for damages against the Alcantaras.

It was an incident during the hearing of the civil case that gave rise to this administrative case against Atty. Atienza, the counsel of the Alcantaras.

During the first hearing of the civil case, the judge advised the parties to compromise. Thus, the Whitsons sent a letter to the Alcantaras bearing the terms of their offer of settlement. However, the Whitsons were surprised with what happened on October 3, 2001, during the next hearing after the Alcantaras got the letter. The Whitsons went to court early that morning. While waiting for the session to start, they saw Atty. Atienza enter the room. The minute he saw them, he pointed a finger at them, erupting into an outburst of angry words, viz:

"Hey you, Mr. Whitson. Why did you call me stupid. You, son of a bitch! I demand an immediate apology! You should not forget that you are just a visitor here in the Philippines! You are only here on vacation. How dare you call me stupid! Fuck you! Tang-ina ka!"[2]

Aside from the vehement words, Atty. Atienza kept shoving the astounded and embarrassed Steven. Because of the actions of the respondent, the parties were told to move to the hallway. Nevertheless, despite being restrained by the people surrounding them, Atty. Atienza could not be stopped. They were thus further asked to go out of the building. Once outside, Atty. Atienza motioned for Steven Whitson to approach him, telling him, "I want an apology, Mr. Whitson(.) (W)e can talk over here."[3] Thinking the latter had already cooled down, Steven approached him and offered an apology. However, even before he was done with his apology, Atty. Atienza punched him on the chest. Because of the tense atmosphere, the hearing scheduled for the day had to be postponed.

Atty. Atienza, on the same day, likewise filed a case for libel against the Whitsons. He alleged that their letter of compromise sent to the Alcantaras contained libelous remarks, viz: "Your stupid attorney did not know where the van is (sic)."[4] A warrant of arrest was issued against the Whitsons. They were not able to immediately post bail and had to spend the night in jail.

Atty. Atienza denied the incident. He alleged that "what happened was a very emotional and heated exchange of words between respondent and Mr. Steven Whitson, which did not result to (a) physical confrontation because of the intervention of a police officer."[5] He claimed that the incident was caused by a letter[6] sent by the Whitsons to his clients, the Alcantaras, which contained words/remarks written against him, i.e., "liar" and "stupid," which he found libelous and defamatory, and that his clients even hesitated to show him the letter, knowing that he would be hurt and embarrassed.

An investigation was conducted by the Integrated Bar of the Philippines ("IBP"). The Investigating Commissioner recommended the suspension of the respondent for three months with the following rationalization:

From the facts obtaining, it is apparent that the respondent lost his composure at the sight of complainant who

accused him of being stupid and (a) liar,) which led him to forget his sense of propriety and proper decorum unbecoming of a seasoned and respectable practitioner in law.

Respondent should have been magnanimous in dealing with the complainant, (es)pecially so (sic) he had already made the proper remedy of filing a libel suit against the complainant; and for such misgiving of having punched complainant, proper sanction should be made against the respondent.

Wherefore, in view of the foregoing, the undersigned respectfully recommends that respondent be suspended from the practice of law for a period of three (3) months from receipt hereof.[7]

The Board of Governors of the IBP Commission on Bar Discipline, in its Notice of Resolution, modified the recommendation of the Investigating Commissioner, viz:

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RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A;" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, with modification, and considering that respondent should have been magnanimous in dealing with complainant, especially so that he had already made the proper remedy of filing a libel suit against complainant, Atty. Juanito C. Atienza is hereby SUSPENDED from the practice of law for six (6) months.

We affirm with modification the recommendation of the IBP Board of Governors. The practice of law is a privilege that is subject to regulation by the State.[8] The Supreme Court is mandated by the 1987 Philippine Constitution to "promulgate rules concerning the protection and enforcement of ... the admission to the practice of law, the Integrated Bar"[9] Thus, Sec. 27, Rule 138 of the Revised Rules of Court provides for:

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 for 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 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 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.

It is shown that Atty. Atienza exhibited gross misconduct in his dealing with the Whitsons. Gross misconduct is "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error in judgment." [10] Any gross misconduct of a lawyer in his professional or private capacity which shows him unfit to manage the affairs of others, is a ground for the imposition of the penalty of suspension or disbarment because good character is an essential qualification for the admission of an attorney and for the continuance of such privilege.[11]

In the case at bar, the medical certificate[12] presented proved that Steven Whitson suffered contusion from the blow delivered by Atty. Atienza. Respondent failed to exercise the propriety and proper decorum expected from members of the bar. Even in the heat of anger, his act, along with vehement words and shouts, was uncalled for. Furthermore, the Board of Governors correctly noted that Atty. Atienza should have been more magnanimous in dealing with the Whitsons, especially since he already vindicated himself with the filing of the libel suit.

Thus, Atty. Atienza should properly be penalized for his conduct which is unbecoming of a lawyer. The penalty

of suspension is imposed to punish the lawyer[13] or to set an example or a warning for the other members of the bar.[14]

However, we believe that the penalty of suspension recommended by the Integrated Bar of the Philippines is not commensurate to the act committed by Atty. Atienza. Pursuant to the Court's power of discipline over the members of the Bar and Bench, we reduce the penalty to a fine, considering that it is the respondent's first offense.[15] There was likewise sufficient provocation on the part of Steven Whitson when he referred to Atty. Atienza as "stupid" and a "liar." [16]

IN VIEW WHEREOF, the Resolution of the Board of Governors of the IBP Commission on Bar Discipline is AFFIRMED, with the MODIFICATION that respondent Atty. Juanito C. Atienza is fined P1,000.00 with a stern warning that a repetition of a similar offense will merit a more severe sanction.

SO ORDERED.

Panganiban, and Sandoval-Gutierrez, JJ., concur.
Corona, and Carpio-Morales, JJ., on official leave.

[1] Civil Case No. 5030 filed before the Municipal Trial Court in Cities in Olongapo City.

[2] Rollo, p. 6.

[3] Id. at 7.

[4] Id. at 27.

[5] Id. at 43.

[6] Id. at 31-33 68-69.

[7] Report and Recommendation of the Integrated Bar of the Philippines, dated 7 Nov. 2002, pp. 7-8.

[8] In re: Atty. Marcial Edillon, 84 SCRA 554 (1978).

[9] Section 5 (5), Article VIII, 1987 Philippine Constitution.

[10] Osop v. Fontanilla, 365 SCRA 398 (2001).

[11] Jesena v. Oñasa, 126 SCRA 385 (1983).

[12] Annex B; Rollo, p. 24.

[13] Noriega v. Sison, 125 SCRA 293 (1983).

[14] Calo v. Degamo, 20 SCRA 1163 (1967).

[15] Alcantara v. Atty. Pefianco, A.C. No. 5398, December 3, 2002.

[16] Rollo, pp. 31-33 68-69.

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