

GIL T. AQUINO, COMPLAINANT, VS. ATTY. WENCESLAO C. BARCELONA, RESPONDENT.

A.C. No. 5668 (A.C. No. CBD-99-637). April 19, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For resolution is the administrative complaint[1] filed on May 27, 1999, by Gil T. Aquino against Atty. Wenceslao C. Barcelona for gross dishonesty and conduct unbecoming a lawyer.

Complainant engaged the legal services of Atty. Barcelona for the restructuring of his loan with the Philippine National Bank which was secured by a mortgage over his real estate property located in Malibay, Pasay City, and covered by TCT No. 131969. He paid a total amount of P60,000 to respondent who claimed to know a certain Gonzalo S. Mericullo, a legal assistant of the PNB, who will help complainant with the bank. The property of complainant, however, was subsequently foreclosed. Later, complainant found out that there is no Gonzalo S. Mericullo employed at PNB, contrary to the representations of respondent.

Pursuant to the complaint filed by Aquino, the IBP Commission on Bar Discipline (IBP-CBD) issued an Order[2] on July 22, 1999, requiring Atty. Barcelona to file an answer within fifteen (15) days from receipt thereof. Respondent failed to give any answer, despite a long lapse of the period given.

Hearing was then set for February 17, 2000. But despite due notice, respondent failed to appear. Hence, on the same day, another Order[3] was issued by the IBP-CBD requiring Atty. Barcelona to file his answer to the complaint within ten (10) days from receipt thereof. All to no avail.

On July 25, 2000, Commissioner Lydia A. Navarro of the IBP-CBD filed a report, the pertinent portion of which reads:

From the foregoing, it is evident that the respondent was given full opportunity and reasonable notice to answer and defend himself against complainant's charges, but was indifferent and ignored the same, whereby the Commission proceeded under the law to determine the matter ex-parte.

A careful examination and evaluation of the evidences on record showed that respondent deliberately misrepresented to the complainant that he was successful to secure the restructuring of complainant's loan with the PNB through his connection with a certain Gonzalo Mericullo, legal assistant in the PNB. On the basis of said false pretenses respondent asked and received P60,000.00 from the complainant allegedly to be paid to the PNB. The aforesaid actuations of the respondent were supported by the fact that instead of complainant's loan being restructured, the property as collateral for said loan was foreclosed by the PNB; there was no such legal assistant in the PNB by the name Gonzalo Mericullo and there was no receipt of payment to the PNB submitted to prove the same. As it is, respondent's acts constitute professional misconduct, which he deserves to be disciplined.

Inasmuch as the amount entrusted to the respondent's (sic) allegedly to be used to pay the PNB was not applied for the said purpose, the same is a clear case of misappropriation and the said act of the respondent

constitute[s] malpractice for which he should be accountable and the same should be restituted to the complainant.

WHEREFORE, in view of the foregoing, the Undersigned respectfully recommends that the respondent be required to render an accounting and retribute to the complainant whatever remained from the amount of P60,000.00 within two (2) months from receipt of the report and shall be suspended from the practice of his profession for a period of six (6) months from receipt of this report and recommendation.[4]

On April 29, 2001, a resolution[5] was passed by the Board of Governors of the IBP adopting the above quoted recommendation, thus:

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, Respondent is SUSPENDED from the practice of law for Six (6) months for misappropriation and ordered to render the accounting and retribute whatever remained of the P60,000.00 to the complainant.

Given the foregoing circumstances, we find no reason to disturb the findings of the IBP Board of Governors. Respondent, Atty. Wenceslao C. Barcelona, was given ample opportunity to defend himself from the complaint filed against him. Despite a long lapse of time, he did not make any effort to refute the accusations made against him. As found by the Investigating Commissioner and based on the evidence on record, respondent did not even try, despite notice, to appear and clear his name before the IBP Commission on Bar Discipline. We are thus constrained to agree with the recommendations of the IBP Board of Governors that indeed respondent has committed professional misconduct for which he should be duly disciplined.

WHEREFORE, respondent ATTY. WENCESLAO BARCELONA is found GUILTY of gross dishonesty and conduct unbecoming a member of the bar. He is hereby ordered SUSPENDED from the practice of law for six (6) months, effective immediately. Further, he is also ordered to account for the amount of P60,000 entrusted to him by his client, with the obligation to return the entire amount, or so much thereof remaining, to complainant.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 1.

[2] Id. at 4.

[3] Id. at 9.

[4] Id. at 14-15.

[5] Id. at 11.

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