OSCAR M. ESPIRITU, COMPLAINANT, VS. ATTY. JAIME C. ULEP, RESPONDENT.

A.C. NO. 5808 [formely A.C. CBD No. 99-622]. May 04, 2005

Ponente: CORONA, J.

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CORONA, J.:

In a letter[1] addressed to the president of the Integrated Bar of the Philippines (IBP), Nueva Ecija Chapter, complainant Oscar M. Espiritu sought assistance to enable him to talk to respondent Atty. Jaime C. Ulep who had allegedly been avoiding him for more than a year. He wanted a meeting with respondent lawyer for the following reasons:

> (1) respondent failed to turn-over to his client, Mr. Ricardo Maon, the amount of P50,000 given to him by complainant on December 22, 1997 as settlement of Civil Case No. 1028, Municipal Trial Court (MTC), Rizal, Nueva Ecija, and
>
> (2) respondent refused to give complainant the amount of P30,000 plus interest and expenses as balance for a deed of absolute sale dated December 22, 1997 which the respondent brokered and notarized.

On April 5, 1999, the IBP Commission on Bar Discipline (CBD), through Commissioner J.V. Bautista invited respondent to a meeting at IBP Cabanatuan to determine whether an amicable settlement of the impending complaint could be reached.[2]

Due to respondent's failure to appear in the meeting, the IBP Nueva Ecija Chapter formally endorsed the verified letter-complaint to the IBP - CBD on April 19, 1999.

In an order[3] dated May 28, 1999, the IBP-CBD ordered respondent to file his answer to the complaint pursuant to Rule 139-B, Sec. 6 of the Rules of Court.[4]

Respondent complied with the order by filing an affidavit which turned out to be the same affidavit he submitted to the Provincial Prosecutor's Office for the preliminary investigation of the estafa case filed against him involving the same subject matter. We quote:

> COUNTER-AFFIDAVIT
>
> I, Atty. Jaime C. Ulep, of legal age, married, and a resident of and with postal address at Rizal, Nueva Ecija, after having been duly sworn, in accordance with law, depose and state:
>
> - The case should be dismissed because the same has no elements of estafa;
>
> - The truth of the matter is that, at the time the Deed of Sale of that agricultural land was prepared, Mr. ESPIRITU admitted for the first time that the owner's copy of the Title was lost but the petition for the issuance of the owner's copy was being prepared;
>
> - In order to please Mr. ESPIRITU and not to hamper the transaction and, at the same time protect the interest of the clients (Buyers), Mr. ESPIRITU agreed to hold the amount of fifty thousand pesos (P50,000.00) in trust

to be given to him after giving to me the Owner's Copy;

- Afterwards, his niece kept coming to my office to ask for money in order, according to her, to facilitate the issuance of the Title. On November 3, 1998, his niece demanded and received the amount of five thousand pesos (P5,000.00) from me. In other words, the total amount demanded and received from me (out of the P50,000.00) was twenty five thousand (P25,000.00), as of November 3, 1998. (A copy of the receipt with a note "Balance Twenty Five Thousand only (P25,000.00) was written.);

- After that date, no word was received by the undersigned from Mr. ESPIRITU whether the owner's copy was issued;

- I am obligated to give the amount of Twenty Five Thousand Pesos (P25,000.00), provided that he will give to me the genuine owner's copy of the Title;

- In view thereof, the case should be dismissed because this is a clear case of specific performance and not Estafa.

Atty. Jaime C. Ulep
Affiant[5]

In the cover letter[6] of the counter-affidavit, respondent lawyer sought a formal hearing on the administrative case.

Consequently, notice of hearing[7] was served upon the parties to appear before the Commission on August 13, 1999.

Both parties failed to appear on the scheduled hearing. On record, however, is a letter request[8] earlier filed by respondent to cancel the scheduled hearing due to a prior engagement. He also asked for a transfer of venue from Pasig City to Cabanatuan City. The Commission did not immediately act on this request pending complainant's conformity.

In the next scheduled hearing, only complainant appeared although respondent had been duly notified of the hearing as evidenced by the registry receipt card. In the order[9] dated September 17, 1999 the Commission denied the request for transfer of venue because of complainant's protestation.

Over the vehement objection of the complainant, respondent was given a last chance by the Commission to appear in a hearing reset to October 29, 1999. It warned that a motion for postponement would no longer be entertained. In case respondent still failed to appear, the Commission was going to receive the complainant's evidence ex-parte and deem the case submitted for resolution.

In a letter[10] dated October 28, 1999, respondent once again requested a cancellation of the hearing, alleging that he was undergoing "eye treatment."

The hearing was reset to November 19, 1999; again respondent failed to appear. The Commission, once again exercising leniency, afforded respondent "one last chance" to appear before it on January 21, 2000, with another warning of an ex-parte reception of evidence.[11]

In a letter[12] dated January 18, 2000, respondent again requested a cancellation. He explained that he had to appear before the MTC of Talavera, Nueva Ecija on the same date "in connection with a criminal case."

Considering that respondent failed to appear successively in all the scheduled hearings of the case, the Commission proceeded to conduct a hearing on January 21, 2000. Complainant was allowed to submit and offer his evidence against the respondent ex-parte, consisting of the following:

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> Exhibit "A" – Complainant's verified letter-request dated March 15, 1999;
>
> Exhibit "B" – Certification by Atty. Jaime C. Ulep dated December 22, 1997 that he had in his possession the amount of P50,000 as consideration for the settlement of Civil Case No. 1028;
>
> Exhibit "C" – Promissory note issued by Atty. Jaime C. Ulep dated December 22, 1997 for the amount of P30,000;
>
> Exhibit "D" – Deed of Absolute Sale executed by Oscar M. Espiritu dated December 22, 1997;
>
> Exhibit "E" – Letter of Ricardo Maon dated March 9, 1999 addressed to the Tanggapan ng Punong Barangay of Barangay Bicos, Rizal, Nueva Ecija that he has not received any amount from Atty. Jaime C. Ulep for the settlement of Civil Case No. 1028; and
>
> Exhibit "F" – Decision of the MTC of Rizal, Nueva Ecija in Civil Case No. 1028 incorporating the compromise agreement between Oscar Espiritu and Ricardo Maon.

After the pieces of evidence were marked, the case was submitted for decision.[13]

On December 29, 2000 Investigating Commissioner J.V. Bautista submitted his report and recommendation[14] to the IBP Board of Governors. He found respondent lawyer guilty of violating Canon 16 of the Code of Professional Responsibility when he misappropriated the money received by him for his client. A six-month suspension from the practice of law was recommended for his transgression.

In a notice of resolution[15] dated June 29, 2002, the IBP Board of Governors adopted and approved the report and recommendation of the Investigating Commissioner. It found that the recommendation was fully supported by the evidence on record and the applicable laws and rules. By failing to deliver the amount of P50,000 to his client Ricardo Maon despite demand — which constituted misappropriation of the client's money — it found respondent guilty of violating Canon 16 of the Code of Professional Responsibility. It ordered the immediate delivery to Ricardo Maon of the amount of P50,000 plus interest computed at the legal rate from December 22, 1997 to the date of delivery and suspended respondent from the practice of law for six months.

We agree with the IBP Board of Governors that respondent was guilty of violating Canon 16 of the Code of Professional Responsibility.

The relation between attorney and client is highly fiduciary in nature. Being such, it requires utmost good faith, loyalty, fidelity and disinterestedness on the part of the attorney. Its fiduciary nature is intended for the protection of the client.[16]

The Code of Professional Responsibility mandates every lawyer to hold in trust all money and properties of his client that may come into his possession.[17] Accordingly, he shall account for all money or property collected or received for or from the client.[18] Even more specific is the Canon of Professional Ethics:

> The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him.

Consequently, a lawyer's failure to return upon demand the funds or property held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use to the prejudice of, and in violation of the trust reposed in him by, his client. It is a gross violation of general morality as well as of

professional ethics; it impairs the public confidence in the legal profession and deserves punishment.[19]

Lawyers who misappropriate the funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession.[20] Those who are guilty of such infraction may be disbarred or suspended indefinitely from the practice of law.

Here, it was established that respondent lawyer received for his client Ricardo Maon the amount of P50,000 as settlement of Civil Case No. 1028 and that he did not deliver the same upon demand. As summarized by the IBP Investigating Commissioner:

> First, Exhibit "F"[21] proved that there was an obligation on the part of complainant Espiritu to deliver to Ricardo Maon, who was respondent's client, the amount of P50,000 as full settlement of Civil Case No. 1028. Second, Exhibit "B"[22] proved that complainant Espiritu gave to respondent lawyer who acknowledged receipt thereof the amount of P50,000 as settlement of Civil Case No. 1028. And finally, Exhibit "E"[23] proved that Ricardo Maon, respondent's client, did not receive any amount of P50,000 from his lawyer as settlement of Civil Case No. 1028.[24]

His failure to appear on five consecutive, scheduled hearing dates — requesting the cancellation and resetting of three and absolutely ignoring two — showed an evasive attitude towards the resolution of the administrative case filed against him and of which he himself sought a formal hearing. Aside from his patent lack of respect for the Commission and its proceedings, his repeated and obviously deliberate failure to appear in the scheduled hearings revealed an attempt to wiggle away from having to explain and ventilate his side. Worse, he did not file an answer to controvert the allegations in the complaint. Instead, he filed a counter-affidavit he had earlier submitted in a criminal case which, upon scrutiny, referred only to a transaction involving what appeared to be a sale of real property documented in exhibit "D"[25] of the complainant.

Respondent has no one else to blame but himself. Had he taken the time to appear before the Commission and present his defenses, he could have explained why he kept the money delivered to him by the complainant as settlement of the civil case. As things stand therefore, complainant's allegations against respondent remain completely uncontroverted.

For misappropriating and failing to promptly report and deliver money received on behalf of their clients, some lawyers have been disbarred while others have been suspended for six months.[26] Since this appears to be the first case of respondent in the IBP-CBD, we impose the lighter penalty on him.

As to complainant's other claim for P30,000 which respondent lawyer allegedly promised him, we rule the evidence to be lacking and therefore find it premature to grant the award.

WHEREFORE, respondent Atty. Jaime C. Ulep is hereby found GUILTY of violating Canon 16 of the Code of Professional Responsibility and is hereby SUSPENDED from the practice of law for a period of six months from notice, with a STERN WARNING that a repetition of the same or similar act will be dealt with more severely.

Respondent is further ordered to restitute to his client Ricardo Maon, in cash within 30 days from notice, the amount of P50,000 with interest at the legal rate, computed from December 22, 1997 to the date of delivery.

Let copies of this Resolution be furnished all courts of the land, the Integrated Bar of the Philippines, as well as the Office of the Bar Confidant for their information and guidance, and let it be entered in respondent's record in this Court.

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SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

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[1] Records, pp. 1-2.

[2] Id., p. 3.

[3] Id., p. 11.

[4] Rule 139-B, Section 6: The answer shall be verified. The original and five (5) legible copies of the answer shall be filed with the Investigator, with proof of service of a copy thereof on the complainant or his counsel.

[5] Id., p. 13.

[6] Id., p. 12.

[7] Id., p. 27.

[8] Id., p. 28.

[9] Id., p. 32.

[10] Id., p. 33.

[11] Id., p. 38.

[12] Id. p. 40.

[13] Id., pp. 41 and 49.

[14] Id., pp. 48-52.

[15] Id., pp. 46-47.

[16] Espiritu v. Cabredo IV, A. C. No. 5831, 13 January 2003, 395 SCRA 19.

[17] Canon 16, Code of Professional Responsibility.

[18] Rule 16.01, id.

[19] Agpalo, Legal Ethics, 6[th] Edition (1997) at 190 citing Daroy v. Legaspi, 65 SCRA 304 (1975).

[20] Burbe v. Magulta, 432 Phil. 840 (2002).

[21] Records, pp. 5-6.

[22] Id., p. 8.

[23] Id., p. 7.

[24] Id., p. 50.

[25] Id., p. 10.

[26] Judge Angeles v. Atty. Uy, Jr., 386 Phil. 221 (2000).

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