

MARY D. MALECDAN, COMPLAINANT, VS. ATTY. PERCIVAL L. PEKAS AND ATTY. MATTHEW P. KOLLIN, RESPONDENTS.

A.C. No. 5830 (formerly CBD No. 810). January 26, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant case arose when Mary D. Malecdan filed a verified Letter-Complaint dated January 19, 2001 addressed to Atty. Ceasar G. Oracion, then President of the Integrated Bar of the Philippines (IBP), Baguio and Benguet Chapters, charging Atty. Percival L. Pekas and Atty. Matthew P. Kollin, with violation of the lawyer's oath, as they "committed acts not only prejudicial to [the IBP] but are in themselves in violation of the oath that they have sworn to uphold as [a] condition for their admission to the bar."^[1]

The undisputed facts as culled from the records are as follows:

On November 25, 1999, the complainant entered into a deed of sale with the Spouses Washington and Eliza Fanged over a parcel of land located in Baguio City, covered by Transfer Certificate of Title No. T-71030.^[2] The complainant paid P10,000 as earnest money, and P2,600,000 as the full and final payment of the consideration of the sale. The money was received by Eliza Fanged and deposited in the account of Atty. Artemio Bustamante, then counsel for the latter. The complainant later found out, however, that the said lot was the subject of a controversy^[3] between the former owners and the Fanged Spouses.

When Atty. Bustamante refused to release the proceeds of the sale to Eliza Fanged, the latter, through her new counsel respondent Atty. Kollin, filed a complaint for rescission of contract with prayer for the issuance of a temporary restraining order with damages^[4] against the complainant, Atty. Bustamante, Philippine Commercial and Industrial Bank (PCIB) and Washington Fanged on December 2, 1999.^[5]

Eliza Fanged and the respondents thereafter caused the filing of a Manifestation of Compromise Settlement with Motion dated December 14, 1999.^[6] It was prayed, among others, that an order be issued directing defendant PCIB to transfer the amount of P30,000 from the account of Atty. Bustamante to a joint account in the name of respondents Atty. Kollin and Atty. Pekas by way of attorney's fees. The complainant was not a signatory to the compromise settlement, as she was in the United States at the time. The money was then transferred to the respective accounts as prayed for in the compromise settlement.

The Complainant's Allegations

According to the complainant, respondent Atty. Kollin knew very well that the money entrusted to him did not belong to his client, Eliza Fanged. Yet, when the complainant's duly authorized representative Wilfreda Colorado requested that the money be released to her, Atty. Kollin refused to do so, on the pretext that there was no written authorization from the latter. The respondent, however, admitted that the money was in his possession.^[7] The complainant further averred that:

- The said lawyers were aware that the money in the bank which was the subject of Civil Case No. 4580-R was

the consideration for a supposed sale between me and Eliza Fanged which did not materialize because it could not be registered aside from the fact that it is void pursuant to the decision in Civil Case No. 4528-R. They knew that the money is not owned by Eliza Fanged. Yet, despite this knowledge, they misled the court by making it appear that all the parties agreed to the settlement by filing the manifestation of compromise settlement with motion (Annex “G”) knowing that I was abroad and could not have given my consent thereto.

- Worse, they made it appear that I was copy furnished of the pleading when in truth and in fact I never received the same as I was in the United States of America. My investigation of the matter reveals that the sister of Eliza Fanged, Veronica Baking, received the pleading for me.

- When confronted, Eliza Fanged admitted to me that the money was actually entrusted to respondent Atty. Matthew Kollin.[8]

The complainant also alleged that she filed the complaint against the respondents because of the latter’s connivance in causing the withdrawal of the money in the bank. She pointed out that while the manifestation of compromise settlement does not bear the signature of Atty. Kollin, paragraph (b) of the prayer clearly shows that the amount of P30,000 was appropriated to a joint account belonging to the respondents by way of attorney’s fees.

The complainant explained that respondent Atty. Kollin, as counsel for Eliza Fanged in Civil Case No. 4580-R, prayed that the sale of the property to her (the complainant) be declared null and void. Proceeding from this premise, then, Eliza Fanged had no right to the money in the bank; the respondents, likewise, had no right to withdraw the amount of P30,000 to answer for their attorney’s fees. She further averred that the respondents made it appear to the trial court that she (the complainant) was duly notified of the purported settlement, when she was, in fact, not a party thereto as evidenced by the records. Thus:

...[T]he records reveal that the person who received the copy of the document purporting to cover the settlement intended for me is the very sister of his client, Eliza Fanged, in the person of Veronica Baking. Veronica Baking is not and was never a resident of Dagsian, Baguio City, the location of my permanent residence. Eliza Fanged could not have thought of this scheme. ...

- But lawyer as he is, Atty. Kollin must have anticipated possible legal repercussion[s] that would ensue as a result of this scheme. In the Manifestation of Compromise Settlement with Motion, he asked his co-respondent, Atty. Pekas, to sign as counsel for Eliza Fanged. Atty. Pekas seem[ed] to be too willing to extend assistance to Eliza Fanged if only to get the money from the bank. However, in the actual release, and the partition of the money, the respondents reportedly actively participated to insure their share of P30,000.00 as attorney’s fees. Atty. Pekas did not stop there. As counsel for Eliza Fanged, he signed the Notice of Dismissal dated December 16, 1999 with a misleading statement that “the parties have extrajudicially settled this case amicably among themselves”, when in truth and in fact, I was never consulted. ...[9]

The Respondent’s Allegations

The respondents denied the foregoing allegations in their respective answers.

Respondent Atty. Kollin admitted that he knew that the money in the bank was the complainant’s payment for the land purchased from the Fanged Spouses. He pointed out, however, that it was unfair to state that his client Eliza Fanged was not entitled thereto, since in the first place, she appeared as the vendor in the deed of sale executed between her and the complainant. Furthermore, although Civil Case No. 4528-R had already been decided by the trial court, the same was appealed to the Court of Appeals,[10] and did not become final and executory as erroneously stated by the complainant. Atty. Kollin also pointed out that he was not the original counsel of the Spouses Fanged in the said case, but merely “inherited” the same from Atty. Artemio Bustamante.[11]

The respondent further averred that because Atty. Bustamante and the Fangeds failed to settle the problem, he filed a complaint for the rescission of the sale, and not for the release of the money in Atty. Bustamante's possession. According to the respondent:

To me, this is the gist of the problem. Complainant Mary Malecdan strongly believes that she was swindled because of the said decision. However, the only problem between Dato and Fanged is the determination of the actual balance and the payment thereof. Settle the balance with Mrs. Dato and everything would be settled likewise. As of this time, it is very safe to say that the issue is still "SUB JUDICE" and complainant could not even be sure of the outcome of said case, although there is a pending proposal for the eventual settlement of the case by the payment of the unpaid balance.

Moreover, the title of the subject land is in the possession of the Complainant and could transfer said title in her name anytime. Perhaps, what the complainant is saying is that the title could be transferred in her name, however, a "notice of lis pendens" was annotated therein due to the filing of the case between O. Dato and the spouses Fanged.

For all intents and purposes, complainant could transfer the title in her name and take possession of the property although the "notice of lis pendens" will be transferred or be likewise annotated in her title. Complainant knows very well that the problem between O. Dato and Eliza Fanged is the actual balance to be paid as per the first deed of sale; ...[12]

Respondent Atty. Pekas, for his part, admitted that the amount of P30,000 was transferred by Atty. Bustamante to their account, but averred that it was done voluntarily. He denied the allegation that they misled the court by making it appear that the parties agreed to the compromise settlement with motion, since, as can be gleaned from the compromise agreement itself, the complainant was not a party thereto.[13] The respondent further alleged that:

- As best as the respondent can recall, on the late afternoon of December 12, 1999, Atty. Matthew Kollin called up respondent on the telephone. He was requesting for respondent to attend a hearing of his case the following day, December 13, 1999, for the issuance of a temporary restraining order. This was on the pretext that he has another out of town case on the same date and cannot attend the hearing. As it is a common practice among lawyers, respondent acceded to the request;

- As agreed by the respondent and Atty. Matthew Kollin, respondent shall enter a special appearance for that hearing only. Respondent shall not argue on the matter but shall only manifest submission of the matter for resolution;

...

- That after Eliza Fanged and Wilfreda Colorado related the foregoing story, respondent asked about the settlement being proposed by the Honorable Court. Eliza Fanged then expressed her willingness to accept the counter-offer of Atty. Artemio Bustamante to settle the case in the amount of Two Million;

- With the new development, respondent contacted the office of Atty. Matthew Kollin to refer the matter but was informed that the latter is still out of town. Respondent then advised that if Eliza Fanged is willing, he can assist her in the settlement, to which advice Eliza Fanged acceded;

- Respondent contacted Atty. Artemio Bustamante who likewise was willing to settle and the details of the settlement were agreed upon. After which the proper manifestation and motion was submitted to the Honorable Court for consideration and ultimately dismissal of the case;

- That during the whole time that respondent participated in the resolution of the case, he never committed any act involving deceit and machination. He acted in a way which he thinks is proper ...[14]

Respondent Atty. Pekas prayed that the case be dismissed for lack of merit, averring that as a new and young lawyer, there was no reason for him to risk his future for a measly sum, through dishonest conduct.[15]

The Proceedings Before the Integrated Bar of the Philippines (IBP)
Commission on Bar Discipline

On May 7, 2002, Commissioner Milagros V. San Juan issued the following Order:

When this case was called for hearing, Atty. Percival Pekas appeared. Atty. Matthew P. Kollin failed to appear despite the notice duly served on him.

Complainant Mary D. Malecdan appeared without counsel. She manifested that she is submitting her case for resolution based on the pleadings on record.

The complainant was ordered to present certified true copies of Annex “A” attached to her complaint, the Agreement of Purchase and Sale and the Deed of Absolute Sale, Annex “B” of her complaint in favor of Mary Malecdan and the Decision Annex “D.” Complainant is given ten (10) days from today to present true copies of her documentary evidence.

Atty. Percival Pekas is given ten (10) days from today to file his rejoinder. Atty. Pekas likewise manifested that after he shall have filed his rejoinder he submits this case for resolution.[16]

In his Rejoinder, respondent Atty. Pekas reiterated that he acted in good faith, and did not commit any act of deceit or machination. He also averred that Atty. Artemio Bustamante would have been a great help in determining the truth, but unfortunately, the complainant chose not to implead him.[17]

On August 3, 2002, the IBP Board of Governors passed Resolution No. XV-2002-395, finding respondent Atty. Kollin guilty of dishonesty to the court, while dismissing the complaint as to respondent Atty. Pekas, 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, and considering Atty. Matthew P. Kollin’s dishonesty to the court with resulting damage and prejudice to the complainant, Respondent Atty. Kollin’s (sic) is hereby SUSPENDED from the practice of law for three (3) years. The complaint against Atty. Pekas is DISMISSED for there is no evidence on record to prove that he was aware of the defect in Eliza Fange[d]’s right to claim the sales proceeds with a WARNING that Atty. Pekas should be more circumspect with respect to taking over other lawyers’ cases and handling sensitive matters such as the compromise settlement in Civil Case No. 4580-R.

According to IBP Commissioner Milagros V. San Juan’s Report dated May 30, 2002, the main issue to be resolved in the case was factual in nature: whether or not the respondents knowingly caused the withdrawal from the bank of the purchase price of the lot in question, despite their knowledge of a defect in their client’s right to claim the said amount. The Commission found that respondent Atty. Kollin knew that his client’s title was defective, having represented her in Civil Case No. 4528-R. He should have been mindful that his client had no right over the purchase price as paid by the complainant. Respondent Atty. Pekas was, however, exonerated of the charges against him, thus:

Insofar as respondent Atty. Pekas is concerned, it should be noted that there is no evidence on record to prove that respondent Atty. Pekas was aware of the defect in Eliza Fanged’s right to claim [t]he sales proceeds. It is likely that respondent Atty. Pekas unwittingly played into the hands of respondent Atty. Kolin when he signed said Manifestation of Compromise Settlement. ...[18]

In his October 12, 2002 Motion for Reconsideration of the foregoing IBP Resolution, respondent Atty. Kollin alleged that contrary to the finding of the Commission, he was unaware of the defect in his client's (Eliza Fanged's) right to claim the sales proceeds. He filed the case for nullification of contract with prayer for the rescission of the sale between the complainant and his client on the ground that the latter would be disadvantaged if Atty. Bustamante succeeded in taking a huge chunk of the money deposited in his name. According to the respondent, if he was, indeed, interested in the money, he could have filed a case to compel Atty. Bustamante to release the money to his client, and not a complaint for rescission of contract. The respondent also reiterated that the reason why he requested respondent Atty. Pekas to attend the hearing of the case as collaborating counsel was that he attended a hearing in Bontoc, Mt. Province on December 14, 2002.[19]

According to the respondent, the complainant should have filed the instant case against Atty. Bustamante who was "the real architect in the release of the money and the execution of the compromise settlement with motion." The complainant should have also questioned the order of the RTC judge concerned as to why no notice was issued to her before the money was released.

The Ruling of the Court

It is a settled principle that the compensation of a lawyer should be but a mere incident of the practice of law, the primary purpose of which is to render public service.[20] The practice of law is a profession and not a money-making trade.[21] As they are an indispensable part of the system of administering justice, attorneys must comply strictly with the oath of office and the canons of professional ethics – a duty more than imperative during these critical times when strong and disturbing criticisms are hurled at the practice of law. The process of imbibing ethical standards can begin with the simple act of openness and candor in dealing with clients, which would progress thereafter towards the ideal that a lawyer's vocation is not synonymous with an ordinary business proposition but a serious matter of public interest.[22]

Respondent Atty. Kollin knew that the money did not belong to his client, Eliza Fanged. He admitted this much in the complaint he himself prepared in Civil Case No. 4580-R, thus:

WHEREFORE, in view of the foregoing premises, it is most respectfully prayed of this Honorable Court:

- BEFORE HEARING:

- That it orders (sic) the issuance of a temporary restraining order directing the manager of the PCIBank Session Rd., Baguio City branch, through its branch manager, Oscar Aquino, to cease and desist from allowing withdrawal by Atty. Bustamante of the amount of P2,450,000.00 deposit in his account;

- DURING HEARING:

- That it orders the issuance of a writ of preliminary injunction restraining the defendant PCIBank or its agents from disbursing or allowing withdrawal by Atty. Bustamante of the amount of P2,450,000.00 deposited in his account;

- AFTER HEARING:

- To order defendants Atty. Artemio Bustamante and the PCIBank, Session Rd., Baguio City branch, to release the amount of P2,450,000.00 in favor of Mary Malicdan (sic);

- To order defendant Atty. Artemio Bustamante to pay the amount of P30,000.00 as attorney's fees;

- To order that the deed of sale executed between the Spouses Washington Fanged and Eliza Fanged in favor of Mary Malicdan (sic) be declared null and void;

- To order Atty. Artemio Bustamante to release the original owner's copy of title no. T-71030 of the registry of deeds of Baguio City to the complainant;[23]

Respondent Atty. Kollin cannot now assert that the reason why the prayer in the complaint included the release of the money in favor of the complainant was that "his client realized that P600,000 would be too much to be given to Atty. Bustamante as attorney's fees." The respondent is bound by this assertion in his pleading,[24] which, as can reasonably be inferred, was made because he himself believed that his client was not entitled to the money in question. The respondent cannot, likewise, find refuge in the fact that his signature did not appear in the compromise agreement executed between the parties. As found by the IBP Commission on Bar Discipline:

... [A]lthough it was respondent Atty. Pekas who signed the Manifestation of Compromise Settlement with Motion as counsel for Eliza Fanged, it is unbelievable that respondent Atty. Pekas would dare to sign said Manifestation without the approval or consent of respondent Atty. Kollin, the counsel of record of Eliza Fanged. As respondent Atty. Pekas himself stated his authority with respect to Civil Case No. 4580-R was limited as follows: "As agreed by the respondent and Atty. Matthew Kollin, respondent shall enter a special appearance for that hearing only. Respondent shall not argue on the matter but shall only manifest submission of the matter for resolution." If as respondent Atty. Pekas claims he was only authorized by respondent Atty. Kollin to attend one hearing of Civil Case No. 4580-R, why did he exceed such authority by executing the Manifestation of Compromise Settlement on behalf of Eliza Fanged, respondent Atty. Kollin's client?

The most plausible explanation in this matter is that respondent Atty. Kollin in fact authorized respondent Atty. Pekas to execute the Manifestation of Compromise Settlement on behalf of his (respondent Atty. Kollin) client Eliza Fanged in order to pave the way for the release of the sales proceeds. This maneuver was resorted to by the respondent Atty. Kollin in order to avoid any responsibility for securing the release of the sales proceeds to his client despite his knowledge that his client Eliza Fanged had no right thereto. By having respondent Atty. Pekas sign the Manifestation of Compromise Settlement, it was the intention of respondent Atty. Kollin to distance himself from such pleading and claim no responsibility or participation therein so that the same would not be tainted by his apparent knowledge of the defect in Eliza Fanged's right to claim the sales proceeds. In this respect, respondent Atty. Kollin and his client Eliza [F]anged have succeeded as they have secured the release of the sales proceeds to the detriment and prejudice of herein complainant.[25]

Contrary to the findings of the IBP, respondent Atty. Pekas cannot validly claim that he acted in good faith as his superior, respondent Atty. Kollin, merely authorized him to attend the December 2, 1999 hearing of Civil Case No. 4580-R. Atty. Pekas, in entering into a compromise agreement, overstepped the authority he was purportedly given. He was only authorized "to manifest submission of the matter for resolution." Furthermore, respondent Atty. Pekas himself claimed that the complainant could not question the compromise agreement as she was not a party thereto. Atty. Pekas, thus, knew that there was no valid compromise agreement, as one of the parties in the case was absent at the time it was entered into. He knew that no valid notice was given to the complainant, since the signatory to the notice of the manifestation of compromise agreement was a certain Veronica Buking.[26]

Canon 1 of the Code of Professional Responsibility mandates all members of the bar to obey the laws of the land and promote respect for the law. Rule 1.01 of the Code specifically provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." [27] A lawyer is expected, at all times, to uphold the integrity of the legal profession. Whenever it is made to appear that a lawyer is no longer worthy of the trust and confidence of the public, it becomes not only the right but the duty of the Court which made him one of its officers and gave him the privilege of ministering within its bar to withdraw the privilege.[28]

A lawyer may legally apply a client's funds in his possession to satisfy professional fees which the client owes him, in the absence of any dispute as to the legality of the amount thereof.[29] However, the fact that a lawyer has a lien for his fees on the client's money in his possession or the circumstance that the client owes him more than

the client's funds in his hands may not excuse him from making an accounting nor entitle him to unilaterally apply the client's money to satisfy his disputed claims.[30] In this case, the amount of P30,000 which the respondents took for themselves as attorney's fees belonged to a third person, not their client, as admitted by them in their complaint; the owner was, in fact, an adverse party. It was the possession of the money, its entitlement, which was in fact put in issue in the complaint for rescission of contract, and, if respondent Atty. Kollin is to be believed, prompted the filing of the complaint itself. Thus, the respondents could not, without a claiming party's knowledge, apply the amount of P30,000 for themselves as attorney's fees. If there was someone liable for the respondents' attorney's fees, it was their client, Eliza Fanged. It cannot be said that there was a real "compromise" as to the manner in which the amount of P2,600,000 was to be applied, since the complainant was not present when the said agreement was made.

In the recent case of *Emiliano Court Townhouses Homeowners Association v. Atty. Michael Dioneda*,^[31] we had the occasion to state, thus:

The primary objective of administrative cases against lawyers is not only to punish and discipline the erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose utter disregard of their lawyer's oath has proven them unfit to continue discharging the trust reposed in them as members of the bar. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor or unworthy to continue as an officer of the court.^[32]

An attorney's only safe guide is high moral principle, as the torch to light his way; his best shield is a clear conscience and an unblemished personal record; and his just reward is to find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.^[33] The fiduciary duty of a lawyer and advocate is what places the law profession in a unique position of trust and confidence, and distinguishes it from any other calling. Once this trust and confidence is betrayed, the faith of the people not only on the individual lawyer but also in the legal profession as a whole is eroded. To this end, all members of the bar are strictly required to, at all times, maintain the highest degree of public confidence in the fidelity, honesty, and integrity of their profession.^[34]

WHEREFORE, respondent Atty. Matthew P. Kollin is **SUSPENDED** from the practice of law for a period of three (3) years. Atty. Percival L. Pekas is, likewise, **SUSPENDED** from the practice of law for a period of six (6) months.

Let a copy of this Decision be furnished to the Office of the Court Administrator, the Integrated Bar of the Philippines, and the Office of the Bar Confidant.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

[1] Rollo, p. 2.

[2] Annexes "A" and "B," Rollo, pp. 7-10.

[3] Docketed as Civil Case No. 4528-R, entitled *Olympia O. Dato v. Sps. Washington and Eliza Fanged*.

[4] Docketed as Civil Case No. 4580-R, entitled *Eliza Fanged v. Mary Malecdan, Atty. Artemio Bustamante, The*

PCIBank Session Rd., Baguio City Branch, represented by its manager, Oscar Aquino and Washington Fanged.

[5] Annex “E,” Rollo, p. 18.

[6] Annex “G,” *id.* at 29.

[7] Complaint, Rollo, p. 5; Annex “H,” Rollo, p. 35.

[8] Rollo, pp. 4-5.

[9] Memorandum dated May 20, 2002, Rollo, p. 179.

[10] Docketed as CA-G.R. CV-No. 68552, Olympia O. Dato v. Sps. Washington and Eliza Fanged.

[11] Rollo, p. 39.

[12] *Id.* at 42.

[13] *Id.* at 66.

[14] *Id.* at 69.

[15] *Id.* at 72.

[16] *Id.* at 155.

[17] *Id.* at 189-190.

[18] Report and Recommendation in CBD Case No. 01-810, p. 16.

[19] Annex “A” of the Motion for Reconsideration.

[20] Rule 2.04, Canon 20, Code of Professional Responsibility; Sections 24 and 32, Rule 138, Revised Rules of Court.

[21] *Albano v. Coloma*, 21 SCRA 411 (1967).

[22] *Dr. Gil Y. Gamilla v. Atty. Eduardo Marino, Jr.*, A.C. No. 4763, March 20, 2003.

[23] Rollo, pp. 106-107; 141-142. (Italics supplied).

[24] Section 26, Rule 130 of the Revised Rules of Court provides that “the act, declaration or omission of a party as to a relevant fact may be given in evidence against him.”

[25] Report and Recommendation, pp. 15-16.

[26] Annex “G,” Rollo, p. 32.

[27] *Selwyn F. Lao v. Atty. Robert W. Medel*, A.C. No. 5916, July 1, 2003.

[28] *Emiliana M. Eustaquio, et al. v. Atty. Alex C. Rimorin*, A.C. No. 5081, March 24, 2003.

[29] *In Re: Rillaroza*, 99 Phil. 1041 (1956).

[30] *Domingo v. Domingo*, 42 SCRA 131 (1971).

[31] A.C. No. 5162, March 20, 2003, citing *Rivera v. Corral*, A.C. No. 3548, July 4, 2002.

[32] *Id.* at 11.

[33] Legal Ethics, Agpalo, 6[th] ed., p. 137.

[34] A.C. No. 4724, Goretti Ong v. Atty. Joel M. Grijaldo, April 30, 2003.

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