

## **RUBY MAE BARNACHEA, COMPLAINANT, VS. ATTY. EDWIN T. QUIOCHO, RESPONDENT.**

*A.C. No. 5925. March 11, 2003*

Ponente: CALLEJO, SR., J.

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### **CALLEJO, SR., J.:**

On January 3, 2002, Ruby Mae Barnachea filed a verified complaint for breach of lawyer-client relations against respondent Atty. Edwin T. Quiocho.

It appears that respondent had not been in the private practice of the law for quite some time. However, in September 2001, he decided to revive his legal practice with some associates. Complainant engaged the legal services of respondent for the latter to cause the transfer under her name of the title over a property covered by Transfer Certificate of Title No. 334411 previously owned by her sister, Lutgarda Amor D. Barnachea. The latter sold said property to complainant under an unnotarized deed of absolute sale. Complainant drew and issued BPI Family Bank Check No. 0052304 in the amount of P11,280.00 and BPI Family Bank Check No. 0052305 in the amount of P30,000.00, both dated September 5, 2001, or the total amount of P41,280.00 for the expenses for said transfer and in payment for respondent's legal services. Respondent encashed the checks.

However, despite the lapse of almost two months, respondent failed to secure title over the property in favor of complainant. The latter demanded that respondent refund to her the amount of P41,280.00 and return the documents which she earlier entrusted to him. However, respondent failed to comply with said demands. On November 1, 2001, complainant received a letter from respondent informing her that he had failed to cause the transfer of the property under her name and that he was returning the documents and title she had entrusted to him and refunding to her the amount of P41,280.00 through his personal check No. DIL 0317787. Said check was drawn against his account with the Bank of Commerce (Diliman Branch) in the amount of P41,280.00 and was postdated December 1, 2001. Respondent told complainant that he needed more time to fund the check. However, respondent failed to fund the check despite the demands of complainant.

In his Answer to the complaint, respondent denied that complainant contracted his legal services. Although respondent admitted having received the two checks from complainant, he claimed that said checks were intended to cover actual and incidental expenses for transportation, communication, representation, necessary services, taxes and fees for the cancellation and transfer of TCT No. 334411 under the name of complainant and not for legal services. He asserted that he acted in good faith as shown by the fact of his return of complainant's documents with an explanatory letter and his issuance of a personal check for P41,280.00 dated December 1, 2001. He insisted that he would not compromise for such meager amount his personal standing as well as his membership in the legal profession. His failure to transfer the title of the property under the name of the complainant was caused by his difficulty in making good the claimed amount, compounded by his affliction with diabetes and the consequent loss of sight of his right eye.

Respondent further alleged that he was a licensed real estate and insurance broker and had been a freelance

business management consultant. At the same time he engaged in real estate brokering, pre-need products marketing for Prudential Life, and life insurance underwriting for Insular Life. In 1999, he gave up the practice of his profession as a lawyer and subsequently managed to put up a business center with fellow insurance underwriters for their common insurance underwriting practice. He further claimed that sometime in August, 2001, an insurance client introduced complainant as an insurance prospect to him. In the course of their dealing, complainant intimated to respondent her willingness to consider respondent's insurance proposal provided the latter would help her facilitate the cancellation and eventual transfer to her name the property covered by TCT No. 334411 in the name of complainant's sister, Lutgarda Amor D. Barnachea. Respondent agreed to help complainant in the transfer of the title to her name, with the condition that no diligent study or verification of complainant's documents, nor preparation of any additional document or any application or petition whatsoever, will be made by respondent. He explained to complainant that his task was merely to go through the regular process of presenting the available documents, paying the taxes and fees, and following up the processing for the cancellation and issuance of the certificate of title. In other words, respondent offered to complainant services which a non-lawyer familiar with the procedure and the related offices can perform and provide to the complainant with respect to the transfer of the title of the property in her name.

Respondent asserted that in the latter part of September 2001, he discovered and became aware for the first time that the original copy of TCT No. 334411 with the Register of Deeds of Quezon City was destroyed in a fire in Quezon City Hall several years earlier and that complainant's copy of the title needed to be reconstituted before it can be cancelled and transferred. At about the same time, the working relations of respondent in the business center with his non-lawyer associates had become difficult and strained, impelling him to sever his business relations with them and cease from going to the business center. Consequently, telephone communications between respondent and complainant at the business center was cut. Communications became much more limited when, apart from the fact that respondent did not have a landline at his residence, respondent's mobile phone was stolen sometime in October 2001.

The Integrated Bar of the Philippines (IBP) designated Atty. Dennis B. Funa as Commissioner to conduct a formal investigation of the complaint. Despite several settings, respondent failed to appear and adduce evidence.

On April 26, 2002, Investigating Commissioner Dennis B. Funa submitted his report and recommendation stating in part that:

- Respondent is not able to meet his financial obligations due to financial difficulties, and that respondent is in good faith in his failure to meet this obligation.
- It is recommended that respondent be ORDERED TO REPAY HIS CLIENT within ninety (90) days from receipt of this Decision. The principal amount being P41,280.00. Failure to comply with the Order shall be considered as proof of evident bad faith, and shall be considered in the continuing evaluation of the case in view of the continued failure to repay his client.
- Respondent should also be given a WARNING that a repetition shall be dealt with more severely.[1]

The Investigating Commissioner gave credence to the claim of complainant that she engaged the legal services of respondent and paid him for his services and that respondent failed in his undertaking and refund the amount of P41,280.00 to complainant despite her demands and that respondent appeared to be evading the complainant.

On October 19, 2002, the IBP Board of Governors passed Resolution No. XV-2002-550 adopting and approving the Investigating Commissioner's recommendation with the additional sanction of reprimand for respondent:

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. Respondent is hereby reprimanded and ordered to return the Forty One Thousand Two Hundred Eighty (P41,280.00) Pesos to complainant within ninety (90) days from receipt of notice.[2]

While the Court agrees with the Board of Governors that respondent should be meted a disciplinary sanction, it finds that the penalty of reprimand recommended by the Board of Governors is not commensurate to the gravity of the wrong committed by respondent. As found by the Investigating Commissioner, the complainant engaged the legal services of the respondent. As admitted in his letter to the complainant, respondent had just resumed his private practice of law two months before complainant contracted his services for the notarization of the Deed of Absolute Sale, the registration thereof with the Register of Deeds and the transfer of the title over the property to the complainant:

NOVEMBER 1, 2002

DEAR RUBY,

I AM SORRY I AM RETURNING YOUR DOCUMENTS WITHOUT CHANGES.

I HAD A SERIES OF MONEY PROBLEMS RIGHT AFTER YOU GAVE ME THE TWO CHECKS AND COMING WITH THE AMOUNTS WITH PERSONAL FUNDS.

I WAS REVIVING MY LEGAL PRACTICE ONLY FOR TWO MONTHS WHICH WE MET AND HAD JUST SET UP THE OFFICE WITH TWO ASSOCIATES WHICH A FEW WEEKS LATER WE HAD DISAGREEMENTS AND DECIDED TO DISBAND. I WILL HAVE TO REFURBISH MY OFFICE. I AM ISSUING MY PERSONAL CHECK TO GUARANTEE THE AMOUNT I TOOK. I NEED A LITTLE TIME TO COVER THE AMOUNT. THANKS FOR YOUR UNDERSTANDING.

(Sgd.) EDWIN.[3]

Respondent’s claim that complainant did not retain his legal services flies in the face of his letter to complainant. Even if it were true that no attorney-client relationship existed between them, case law has it that an attorney may be removed or otherwise disciplined not only for malpractice and dishonesty in the profession but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.[4]

In this case, respondent failed to comply with his undertaking for almost two months. Worse, despite demands of complainant, he failed to refund the amount of P41,280.00 and to return to complainant the deed of absolute sale and title over the property. Respondent’s claim that complainant could not contact him because he did not have any landline at his residence and that his mobile phone was stolen in October 2001, is hard to believe. He failed to adduce a morsel of evidence to prove that his telephone at the business center was cut or that his mobile phone had been stolen. Even then, respondent could have easily contacted the complainant at her residence or could have written her a letter informing her that the original copy of TCT No. 324411 in the custody of the Register of Deeds was burned when the Quezon City Hall was gutted by fire and that there was a need for the reconstitution of said title. Neither did respondent adduce evidence that he was a life insurance underwriter for Insular Life or that he had been sick with diabetes and had lost his sight in his right eye. Respondent simply refused to adduce evidence to prove his allegations in his Answer to the complaint.

The Court is led to believe that respondent’s failure to cause the transfer of the title of the property under the name of complainant was due to a financial problem that beset him shortly after he received the checks from complainant. It can easily be inferred from respondent’s letter that he used complainant’s money to alleviate if

not solve his financial woes. What compounded respondent's unethical conduct was his drawing of a personal check and delivering the same to complainant without sufficient funds in his bank account to cover the check. Even as he promised to fund his account with the drawee bank, respondent failed to do so when the check became due.

A lawyer is obliged to hold in trust money or property of his client that may come to his possession. He is a trustee to said funds and property.[5] He is to keep the funds of his client separate and apart from his own and those of others kept by him. Money entrusted to a lawyer for a specific purpose such as for the registration of a deed with the Register of Deeds and for expenses and fees for the transfer of title over real property under the name of his client if not utilized, must be returned immediately to his client upon demand therefor. The lawyer's failure to return the money of his client upon demand gave rise to a presumption that he has misappropriated said money in violation of the trust reposed on him.[6] The conversion by a lawyer funds entrusted to him by his client is a gross violation of professional ethics and a betrayal of public confidence in the legal profession.[7]

In this case, respondent intransigently refused to return to the complainant the amount of P41,280.00 which he received for the expenses for the transfer to her of the title of the property and for his professional fees. His dishonest conduct was compounded by his interjection of flimsy excuses for his obstinate refusal to refund the amount to complainant.

The relation of attorney and client is highly fiduciary in nature and is of a very delicate, exacting and confidential character.[8] A lawyer is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with his clients.[9] The profession, therefore, demands of an attorney an absolute abdication of every personal advantage conflicting in any way, directly or indirectly, with the interest of his client. In this case, respondent miserably failed to measure up to the exacting standard expected of him.

IN LIGHT OF ALL THE FOREGOING, Respondent Atty. Edwin T. Quiocho is found guilty of violation of Canons 15 and 16 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for One (1) Year with a stern warning that a repetition of the same or similar acts shall be dealt with more severely. He is **DIRECTED** to retribute to the complainant the full amount of P41,280.00 within ten (10) days from notice hereof. Respondent is further **DIRECTED** to submit to the Court proof of payment of said amount within ten (10) days from said payment. If Respondent fails to retribute the said amount within the aforesaid period, he shall be meted an additional suspension of three (3) months for every month or fraction thereof of delay until he shall have paid the said amount in full. In case a subsidiary penalty of suspension for his failure to retribute the said amount shall be necessary, respondent shall serve successively the penalty of his one year suspension and the subsidiary penalty. This is without prejudice to the right of the complainant to institute the appropriate action for the collection of said amount.

### **SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Quisumbing and Austria-Martinez, JJ., concur.

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[1] Rollo, p. 31.

[2] Id. at 26.

[3] Id., at 6.

[4] Constantino vs. Saldares, 228 SCRA 233 (1993).

[5] Canon 16, CODE OF PROFESSIONAL RESPONSIBILITY.

[6] In Re: David, 84 Phil. 627; Capulong vs. Alino, 22 SCRA 491 (1968).

[7] Nabor vs. Beterina, 360 SCRA 6 (2001).

[8] Canon 15, CODE OF PROFESSIONAL RESPONSIBILITY.

[9] Id.

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