

EDISON G. CHENG, COMPLAINANT, VS. ATTY. ALEXANDER M. AGRAVANTE, RESPONDENT.

A.C. No. 6183. March 23, 2004

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an administrative case for disbarment filed with the Integrated Bar of Philippines' (IBP) Commission on Bar Discipline.

The following facts have been established by the evidence.

Respondent Atty. Alexander M. Agravante served as counsel for The Rogemson Co., Inc. (hereinafter, Rogemson) in a case filed against it before the National Labor Relations Commission's (NLRC) Regional Arbitration Branch No. XI in Davao City by its former employee, a certain Beaver Martin B. Barril. On June 18, 1998, Labor Arbiter Newton R. Sancho rendered a decision in favor of the complainant, and ordered Rogemson to pay Barril separation pay and backwages.[1] A copy of said decision was received by respondent's law office on September 8, 1998. However, respondent filed a Memorandum of Appeal with the NLRC only on September 22, 1998. Consequently, the NLRC dismissed Rogemson's appeal in a Resolution dated May 27, 1999, and made the following incisive observation:

In the case at bar, respondents through counsel were duly served with a copy of the decision (Vol. 1, pp. 67-70) of Labor Arbiter Newton R. Sancho, dated 18 June 1998, declaring complainant illegally dismissed from employment and awarding him with separation pay and backwages in the total sum of P130,000.00 on September 8, 1998, Tuesday, said date being indicated in the mailed decision's registry return receipt which is attached to the records (Vol. 1, p. 75). Consequently, respondents had ten (10) calendar days but not later than September 18, 1998, Friday to perfect their appeal therefrom. However, the records similarly bear that this present appeal was filed belatedly by way of mail on 22 September 1998. It is necessary to state these facts candidly given the inaccurate certification by respondent's counsel that he received the decision being assailed on September 10, 1998. (Vol. 2, p. 7)

The complainants terminated the services of Atty. Agravante. Through their new lawyers, complainants wrote Atty. Agravante, demanding that they be compensated for the pecuniary damages they had suffered as a result of his negligence.[2]

When it appeared that Atty. Agravante had no intention of responding to their letter, Edison G. Cheng, General Manager of Rogemson, filed an affidavit-complaint with the IBP Commission on Bar Discipline.[3] The case was then assigned to Commissioner Caesar R. Dulay for investigation.

Allan P. Abelgas, Rogemson's Regional Sales Manager for Cebu, testified that he only learned of the decision of the Labor Arbiter when a secretary of Atty. Agravante informed him that a bond was required in filing an appeal to the NLRC. Abelgas was then about to take an emergency leave of absence, so he delegated the task of securing the bond to his sister Sheila A. Balandra, another Rogemson employee.[4]

Balandra testified that on September 18, 1998, she called up Cheng in Manila by phone, who then authorized her to procure the bond. Balandra then called the office of Atty. Agravante to ask if she can submit the bond on Monday, September 21, 1998. She was told to stay on the line while the secretary consulted with one of the other lawyers in the office. When the secretary came back, she informed Balandra that she could submit the bond on Monday, September 21, 1998 as long as it reached the law office before 5:00 p.m.[5]

On September 21, 1998, Balandra arrived at the office of Atty. Agravante with the bond at 4:00 p.m. She learned that Atty. Agravante had just returned from out of town and had just opened the envelope containing the adverse decision.[6]

Not surprisingly, Agravante tells a different story. He neither admitted nor denied receiving the decision of the Labor Arbiter on September 8, 1998. Instead, he alleges that he was out of town on said date and only returned to his office on September 10, 1998. Upon arriving at the office, his secretary handed to him all the correspondence addressed to him, including the envelope containing the Labor Arbiter's decision. He alleges that there were several markings on this particular envelope, one of which was the date "September 10, 1998," and he allegedly assumed that this was the date of receipt by his office.[7] He then informed Abelgas of the result of the case and the period within which to file a Memorandum of Appeal.[8] The instruction for Rogemson to proceed with the appeal came a full six (6) days later. He offered the services of his law office for procuring the appeal bond, but he was informed that Rogemson would take care of it. He alleges that Rogemson furnished them with the bond only in the morning of September 22, 1998, although the bond documents were notarized on September 21, 1998.[9]

On July 23, 2003, Commissioner Dulay submitted his Report recommending that respondent be suspended from the practice of law for two (2) months with an admonition that a similar offense would be dealt with more severely.[10]

On August 30, 2003, the Board of Governors of the IBP passed Resolution No. XVI-2003-97, approving the Report and Recommendation of the Investigating Commissioner.

The investigating commissioner found that Balandra's testimony that she furnished Agravante's law office with the appeal bond on September 21, 1998 and not on September 22, 1998, was not sufficiently rebutted by Agravante, who did not even cross-examine her. More importantly, the fact that the Memorandum of Appeal was filed four (4) days beyond the reglementary period for filing the same, which resulted in its dismissal by the NLRC, shows that Agravante was guilty of negligence.[11]

With regard to the date of receipt of the Labor Arbiter's decision, the registry return card indicated that respondent received the same on September 8, 1998.[12] Thus, Commissioner Dulay concluded that Agravante misled the NLRC when he certified in his Memorandum of Appeal that he received the adverse decision of the Labor Arbiter on September 10, 1998.[13]

Before lawyers are admitted to the bar, they must first solemnly swear to do no falsehood nor consent to the doing of any in court.[14] This oath, to which all lawyers subscribe in solemn agreement to dedicate themselves to the pursuit of justice, is not a mere ceremony or formality for practicing law to be forgotten afterwards, nor is it mere words, drift and hollow, but a sacred trust that every lawyer must uphold and keep inviolable at all times.[15] This duty is expressed in general terms in the Code of Professional Responsibility, thus:

CANON 10— A lawyer owes candor, fairness and good faith to the court.

It is codified further in the following rule of the Code of Professional Responsibility:

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he

mislead or allow the court to be misled by any artifice.

In the case at bar, Agravante lied when he said he received the Labor Arbiter's decision on September 10, 1998 in order to make it appear that his Memorandum of Appeal was filed on time.

It cannot be stressed enough how important it is for a lawyer as an officer of the court to observe honesty at all times, especially before the courts.[16] A lawyer must be a disciple of truth,[17] and Agravante has clearly failed to live up to this duty.

Moreover, the Code of Professional Responsibility states that:

CANON 18 — A lawyer shall serve his client with competence and diligence.

x x x

x x x

x x x

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

A lawyer owes entire devotion in protecting the interest of his client, warmth and zeal in the defense of his rights. He must use all his learning and ability to the end that nothing can be taken or withheld from his client except in accordance with the law. He must present every remedy or defense within the authority of the law in support of his client's cause, regardless of his own personal views. In the full discharge of his duties to his client, the lawyer should not be afraid of the possibility that he may displease the judge or the general public.[18]

In this case, respondent's filing of the Memorandum of Appeal four (4) days after the deadline proves that his efforts fell short of the diligence required of a lawyer. His failure to perfect an appeal within the prescribed period constitutes negligence and malpractice proscribed by the Code of Professional Responsibility, which provide that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.[19]

Agravante's insistence that it was not his place to file an appeal without express instructions from his client to do so is not persuasive. He could easily withdraw the appeal if his client should later decide not to pursue the same.[20]

Furthermore, the belated filing of the Memorandum of Appeal cannot in any way mitigate respondent's liability; on the contrary, it shows ignorance on his part. As a lawyer, he ought to know that his Memorandum of Appeal, having been filed beyond the reglementary period, would surely be struck down for late filing.[21]

In sum, respondent utterly failed to perform his duties and responsibilities faithfully and well as to protect the rights and interests of his client.[22]

A word regarding the imposable penalty. In the case of *Perea v. Almadro*,[23] the respondent therein was similarly punished for negligence in the discharge of his duty as well as misrepresentation committed before the court. In said case, the respondent lawyer failed to file a demurrer to the evidence after asking for leave to file the same. He compounded this transgression by spinning concocting stories about the loss of the file of his draft, which somehow led him to believe that the pleading had already been filed. Finding him guilty of serious neglect of his duties as a lawyer and of open disrespect for the court and the authority it represents, as embodied in Canon

18, Rules 18.03 and 18.04 and Canon 10, Rule 10.01 of the Code of Professional Responsibility, the Court suspended the respondent therein from the practice of law for one (1) year and imposed a fine in the amount of Ten Thousand (P10,000.00) Pesos, with warning that any similar acts of dishonesty would be dealt with more severely.[24] Evidently, this case seems to be on all fours with the case at bar, so we are thus constrained to increase the penalty recommended by the IBP.

WHEREFORE, in view of the foregoing, respondent Atty. Alexander M. Agravante is SUSPENDED from the practice of law for a period of one (1) year and is FINED in the amount of Ten Thousand Pesos (P10,000.00). He is STERNLY WARNED that a repetition of the same or similar offense will be dealt with more severely.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Carpio, and Azcuna, JJ., concur.

Panganiban, J., on official leave.

[1] Rollo, p. 10.

[2] TSN, November 20, 2001; Rollo, p. 33.

[3] Rollo, p. 2.

[4] Id., p. 50.

[5] Id., p. 52.

[6] Id.,

[7] Id., p. 38.

[8] TSN, April 29, 2002, p. 38; Rollo, p. 40.

[9] Rollo, p. 40.

[10] Report and Recommendation, p. 12.

[11] Report and Recommendation, p. 10.

[12] Id., pp. 10-11.

[13] Id., p. 11.

[14] Rules of Court, Rule 138, sec. 3.

[15] Radjaie v. Alovera, A.C. No. 4748, 4 August 2000; citing In Re: Al Argosino, 270 SCRA 26, 30-31 [1997] and Masinsin v. Albano, 232 SCRA 631, 636-637 [1994].

[16] Perea v. Almadro, A.C. No. 5246, 20 March 2003

[17] Benguet Electric Cooperative, Inc. v. Flores, A.C. No. 4058, 12 March 1998.

[18] Legarda v. Court of Appeals, G.R. No. 94457, 18 March 1991, 195 SCRA 418, 425, cited in Reontoy v.

Ibadlit, A.C. CBD No. 190, 28 January 1998.

[19] Guiang v. Antonio, A.C. No. 2473, 3 February 1993, 218 SCRA 381, cited in Reontoy v. Ibadlit, supra.

[20] Reontoy v. Ibadlit, supra.

[21] Reontoy v. Ibadlit, supra.

[22] Reontoy v. Ibadlit, supra.

[23] A.C. No. 5246, 20 March 2003.

[24] A.C. No. 5246, 20 March 2003.

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