JESUS M. FERRER, COMPLAINANT, VS. ATTY. JOSE ALLAN M. TEBELIN, RESPONDENT.

A.C. No. 6590. June 27, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

It appears that on December 3, 2001, the jeepney of Jesus M. Ferrer (complainant) was involved in a vehicular accident allegedly due to the reckless driving of the driver of Global Link Multimodal Transport, Inc. (Global Link). As a result of the vehicular accident, complainant claimed to have suffered damages in the amount of P34,650.00 representing cost of repair of the jeepney and P800.00 per day representing lost earnings.

Complainant sought assistance from the Complaint/Information Assistance Office of the Pasay City Prosecutor's Office wherein one Victor Veron referred him to Atty. Jose Allan M. Tebelin (respondent).

Agreeing to render legal services to complainant, respondent charged and received from him the amount of P5,000.00 as acceptance fee.

Complainant later brought to the attention of the Integrated Bar of the Philippines (IBP), by letter of March 23, 2002, [1] his complaint against respondent for allegedly abandoning his case and refusing to talk or see him.

Having been advised [2] by the IBP Commission on Bar Discipline (CBD) to file a verified complaint in accordance with Section 1, Rule 139-B of the Rules of Court, [3] complainant filed on May 16, 2002 a letter-complaint-affidavit [4] against respondent, the pertinent portions of which read:

> This is to follow up my complaint against Atty. Jose Allan M. Tebelin who was highly recommended to handle my case (Vehicle accident against Global Link Multimodal Transport) by Mr. Victor Veron of the Complainant/Information Assistance Office of the Pasay City Prosecutor.
>
> Atty. Jose Allan M. Tebelin agreed and charged me 5,000.00 Php as his Attorney's Acceptance Fee, which I gave him together with the necessary document needed. However, after accepting my 5,000.00 Php, he committed fraud by abandoning my case. He refused to talk to me or see me at his appointed given time at the office of Mr. Victor Veron. He hanged up when I called him in his cellular phone whose number was given to me by his secretary so that I can surely contact him.
>
> I wrote a letter to Mr. Victor Veron requesting his goodself to contact Atty. Jose Allan M. Tabelin to find out the situation and score of my case and also to inform him that I want him to return my 5,000.00 Php so that I can engage the service of another lawyer to carry on my case.
>
> Mr. Victor Veron received my letter and his immediate reply was for me to write a letter addressed to Atty. Jose Allan M. Tebelin informing him that I am withdrawing from our agreement and [to return] my 5,000.00 Php since he abandoned me. This I did.
>
> I wrote a letter to Atty. Jose Allan M. Tebelin and sent it by registered mail with Registry No. 2809 at Pasay City Hall (Cuneta Astrodome) Post Office. I did not receive any reply and somebody in the office of Mr.

> Victor Veron suggested that I refer my case to the Integrated Bar of the Philippines (IBP) and I will surely get an answer. This I did.
>
> x x x
>
> I am attaching herewith photocopies of all my letters whose contents when summed up will clearly and concisely state and support the facts complained of.
>
> Sheet 1: Photocopy of Atty. Jose Allan M. Tebelin's Calling card and at the back is his acknowledgment that he received my 5,000.00 Php as his Atty.'s Acceptance fee;
>
> Sheet 2: Photocopy of my letter addressed to Mr. Victor Veron informing that Atty. Jose Allan M. Tebelin have abandoned my case and to kindly contact him to find out the situation of my case and informed him too that I am withdrawing from our agreement and return my 5,000.00Php.
>
> Sheet 3: Photocopy of my letter [dated March 18, 2002] addressed to Atty. Jose Allan M. Tebelin and sent it by registered mail [on March 19, 2002] with Registry No. 2809 at Pasay City Hall (Cuneta Astrodome) Post Office.
>
> Sheet 4: Photocopy of my letter addressed to the IBP sent by registered mail Registry No. 3014 at Pasay City Hall (Cuneta Astrodome) Post Office.
>
> Sheet 5: Photocopy of the reply of Atty. Victor C. Fernandez, Director for Bar Discipline of the IBP.
>
> x x x (Emphasis and underscoring supplied)

Acting on the complaint, the IBP-CBD, by Order [5] of May 17, 2002, required respondent to submit his Answer.

Respondent, by Answer [6] dated August 1, 2002, denying some of the allegations against him, explained as follows: He agreed to handle the case of complainant for which he received P5,000.00 as acceptance fee. Prior to his acceptance to handle the case, however, he extensively interviewed complainant and advised him that the only "appropriate" case that could be filed against Global Link is a civil case for damages as a result of the reckless driving of Global Link's unidentified driver, but that the filing of a complaint would take some time as he (respondent) would "work first to have an audience or talk with [Global Link's] manager or representative". He thus accordingly called the attention of Global Link, through one Mr. Bongalos, "sometime in the last week of January 2002," regarding the claim of complainant but he received no word from Global Link, prompting him to send a demand letter [7] dated February 20, 2002 to it, photocopy of which letter he attached to his Answer.

Respecting complainant's allegation that he (respondent) would always hang up the telephone whenever complainant called him, respondent denied the same, he asseverating that complainant never called him up, albeit his (complainant's) daughter called him up and it was to her that he explained that Global Link's reply to the demand for payment of damages had to be awaited first.

Respondent did deny too having abandoned complainant's case, he advancing that he in fact prepared a draft of a complaint [8] dated January 15, 2002 against Global Link a copy of which he also attached to his Answer.

Respondent nevertheless proffered that he was willing to return the P5,000.00 and complainant's records of the case.

Complainant, in a pleading entitled "COMPLAINANT'S ANSWER AND COMMENTS TO ANSWER OF RESPONDENT," [9] manifested that he welcomed and appreciated respondent's offer to return the P5,000.00 "as that is the very intention under the sound discretion of the Honorable Commission on Bar Discipline (sic)."

The IBP-CBD set the case for hearing on March 13, 2003 during which respondent, who was the only one who

showed up, furnished the IBP-CBD his new address — 2nd Floor, Lomat Building, 111 Pasadeña Street, F.B. Harrison, Pasay City. [10]

The hearing of the case was reset on May 29, 2003 at which only two ladies who identified themselves as Conchita Ferrer and Grace Ochoa appeared and informed the IBP-CBD that complainant had died on January 2, 2003. The heirs of complainant were thus ordered to submit a certified true copy of his death certificate and a formal notice of substitution of party-complainant, [11] but there is no showing that they complied therewith.

On the scheduled hearing on July 10, 2003, only Conchita Ferrer appeared. [12] What transpired on said date, the records do not show.

The IBP-CBD subsequently issued on January 30, 2004 a Notice of Mandatory Conference on March 12, 2004. [13]

On the scheduled mandatory conference, no one showed up. While a copy of the notice of said conference was sent to respondent at his given address, it was returned with a notation "moved out." [14]

The hearing of the case was reset to April 16, 2004 [15] and June 24, 2004 [16] during which, again, no one showed up.

The IBP-CBD thereupon acted on the pleadings and submitted its Report and Recommendation prepared by Commissioner Wilfredo E. J. E. Reyes reading as follows, quoted verbatim:

> Based on the pleadings submitted by the parties, the following facts are undisputed:
>
> The undersigned admits that it agreed that to handle the case of the complainant Mr. Jesus M. Ferrer against Global Link Multimodal Transport (GLMT for brevity) referred to by Mr. Vic Beron of the Pasay City Prosecutor's Office, however, it is true that I undertake to handle the same for P5,000.00 as my acceptance fee because he is a friend of Mr. Beron;
>
> That the undersigned is willing to return the P5,000.00 and the complainant's records if only to avoid any slightest prejudice between the herein two parties.
>
> In fact, in one occasion on March 13, 2003, the respondent appeared and informed the Commission that he was willing to return the money to the complainant. He failed to return the money and failed to respond to the notices of the Commission and he failed to comply with his obligation to his client. Obviously, the complainant has been telling the truth when he alleged that the respondent has failed in his duty to act as his counsel.
>
> The undersigned Commissioner believes in the allegation of the complainant that Atty. Jose Allan M. Tebelin agreed and charged him in the amount of P5,000.00 as attorney's fees and after accepting the fee, has abandoned his case.
>
> The complainant was able to show as part of his Annex the receipt of P5,000.00 at the back of his calling card and he was able to show the demand letter wherein he requested to return to him the amount of P5,000.00 as acceptance fee because respondent failed to act as his counsel.
>
> In his Answer, the respondent had the temerity to even offer the reimbursement of the P5,000.00 only to disappear and never heard from.
>
> Under Canon 18 – A lawyer shall serve his client with competence and diligence.
>
> "Rule 18.03 – A lawyer shall not neglect legal matters entrusted to him [x x x]."
>
> In this case the respondent lawyer has an obligation to his client.

> RECOMMENDATION
>
> It is respectfully recommended that respondent Atty. Jose Allan M. Tebelin be suspended for a period of two (2) years for his failure to perform his services for a client and returning the acceptance fee upon demand. It is further recommended that respondent be ordered to return to his client the money in the amount of P5,000.00 to the heirs of complainant. And an additional penalty of at least one (1) year for failure of said lawyer to appear and present his proper address before the Commission on Bar Discipline. (Emphasis and underscoring supplied)

By Resolution [17] of July 30, 2004, the Board of Governors of the IBP:

> . . . ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on records and the applicable laws and rules, and for failure to perform his services for a client and failure to return the acceptance fee upon demand, Atty. Jose Allan M. Tebelin is hereby SUSPENDED from the practice of law for two (2) years and Ordered to Return to the heirs of complainant the money in the amount of P5,000.00. (Emphasis in the original; underscoring supplied)

As reflected above and confirmed by the records, after respondent showed up during what appears to be the initial setting of the case for hearing on March 13, 2003, nothing had been heard from him. In complainant's case, he naturally did not show up on March 13, 2003 for, if the information given to the IBP-CBD by Conchita Ferrer and Grace Ochoa were true, he had earlier died on January 2, 2003.

The death of a complainant in an administrative case notwithstanding, the case may still proceed and be resolved. As Tudtud v. Colifores instructs: [18]

> x x x The death of the complainant herein does not warrant the non-pursuance of the charges against respondent Judge. In administrative cases against public officers and employees, the complainants are, in a real sense, only witnesses. Hence, the unilateral decision of a complainant to withdraw from an administrative complaint, or even his death, as in the case at bar, does not prevent the Court from imposing sanctions upon the parties subject to its administrative supervision.

From respondent's Answer, it is gathered that while he contends that it was only when complainant lodged the complaint against him at the IBP that he learned of complainant's desire to have the P5,000.00 acceptance fee returned, he never categorically denied having received complainant's letter of March 18, 2002 advising him that he was withdrawing from their agreement to represent him in the case against Global Link "since [he] refused to talk with [complainant] personally or by phone, make appointments that [he] will see [complainant] at the Hall of Justice, Pasay City Hall but did not show up at the Office of Mr. Victor Veron who had highly recommended [him] to represent [complainant] and lastly by hanging up on [complainant] when [the latter] called [him] on [his] cell phone whose number was given to [complainant] by [his] secretary so that [complainant] will surely contact [him]," [19] and asking him to return the P5,000.00 acceptance fee, he having abandoned him.

Given, however, respondent's asseveration that he first brought to the attention of Global Link in the last week of January 2002 the claim of complainant arising from the December 3, 2001 vehicular accident, through one Mr. Bongalos and that he followed it up by a February 20, 2002 demand letter to Global Link, which asseveration was not refuted by complainant in his Comments on respondent's Answer, it cannot be reasonably concluded that respondent failed to perform services for complainant when complainant, by letter [20] of March 23, 2002 or five (5) days after he sent the March 18, 2002 letter [21] to respondent asking for a refund of the P5,000.00, complained to the IBP.

That complainant failed to contact or communicate with respondent immediately before he was prompted to seek

a refund due to respondent's alleged unavailability, as conveyed by respondent's secretary, does not necessarily make out a case of abandonment, especially in light of respondent's above-mentioned unrefuted claim that in January and February 2002, he had proffered demands for damages to Global Link and explained to complainant's daughter that they still had to await for the response of Global Link.

This Court faults respondent, however, for ignoring the notices of hearing sent to him at his address which he himself furnished, or to notify the IBP-CBD his new address if indeed he had moved out of his given address. His actuation betrays his lack of courtesy, his irresponsibility as a lawyer.

This Court faults respondent too for welching on his manifestation-undertaking to return the P5,000.00, not to mention the documents bearing on the case, to complainant or his heirs. Such is reflective of his reckless disregard of the duty imposed on him by Rule 22.02 of the Code of Professional Responsibility:

> Rule 22.02 – A lawyer who withdraws or is discharged shall, subject to a retaining lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

WHEREFORE, respondent Atty. Jose Allan M. Tebelin is hereby SUSPENDED from the practice of law for Two (2) Months and ORDERED to return to complainant's heirs the amount of P5,000.00, with legal interest, with a WARNING that a repetition of the same or similar offenses will be dealt with more severely.

Let a copy of this Decision be furnished the Integrated Bar of the Philippines and all the courts in the Philippines, and entered in the personal records of Atty. Tebelin in the Office of the Bar Confidant.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

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[1] Rollo at 7.

[2] Id. at 3.

[3] Section 1, Rule 139-B of the Rules of Court reads:

> Section 1. How instituted. Proceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court motu propio, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complainant shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said acts.
>
> x x x (Emphasis supplied)

[4] Rollo at 1-2.

[5] Id. at 9.

[6] Id. at 10-14.

[7] Id. at 17. The photocopy of the letter bears Registry Receipt indicating that it was posted at the "POEA Post Office" on March 12, 2002.

[8] Rollo at 18-21.

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[9] Id. at 35-36.

[10] Id. at 47.

[11] Id. at 50.

[12] Id. at 51.

[13] Id. at 52.

[14] Id. at 54.

[15] Id. at 56.

[16] Id. at 58.

[17] Id. at 60.

[18] 411 SCRA 221, 223-224 (2003).

[19] Rollo at 6.

[20] Id. at 7.

[21] Id. at 6.

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