

JOSEPH SAMALA, COMPLAINANT, VS. ATTY. ANTONUITTI K. PALAÑA, RESPONDENT.

A.C. No. 6595. April 15, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a complaint filed by Joseph Samala against respondent Atty. Antonuitti K. Palaña for alleged fraudulent activities that violate the Code of Professional Responsibility.

Sometime in February 2001, complainant was looking for a company where he could invest his dollar savings. He met Raymond Taino, a trader-employee of First Imperial Resources, Inc. (FIRI), a company located at Legaspi Village, Makati City. Taino introduced him to FIRI Manager Jun Agustin, Chief Trader Diosdado Bernal, and Legal Officer Antonuitti K. Palaña, the respondent herein.

Complainant expressed his concern to the said three officers of FIRI about having been warned of numerous fraudulent businesses in the Philippines. Respondent assured him that through FIRI he would be directly putting his investment with Eastern Vanguard Forex Limited, a reputable company based in the Virgin Islands which has been in the foreign exchange business for 13 years. The three officers presented to him their company profile and documents purporting to establish their relationship with Eastern Vanguard Forex Limited.

Due to the personal representations and assurances of respondent, Agustin, and Bernal, complainant was convinced and he invested his dollar savings with FIRI on March 9, 2001.

Subsequently, complainant decided to pull out his investment. On April 5, 2001, he sent FIRI a letter requesting the withdrawal of his investment amounting to US\$10,000 and giving FIRI 10 days to prepare the money.

On April 15, 2001, complainant asked Agustin when his money would be returned. Agustin told him that the request was sent to Thomas Yiu of Eastern Vanguard at Ortigas Center. Complainant went to see Thomas Yiu at his office. Yiu was surprised when he saw the documents involving complainant's investment. Yiu phoned Agustin and demanded an explanation as to where the money was. Agustin said that he would return complainant's investment at FIRI's office in Makati. On the same day, in the presence of respondent, Agustin delivered to complainant a check in the amount of P574,045.09, as the peso equivalent of complainant's investment with FIRI. On May 2, 2001, the said check was dishonored because it was drawn against insufficient funds.

Complainant informed respondent of the dishonor of the check. Respondent assured him that the check would be replaced. On June 1, 2001, respondent, as legal officer of FIRI, gave complainant P250,000 in cash and a check in the amount of P329,045.09. Respondent told complainant that the check was signed by FIRI President Paul Desiderio in his (respondent's) presence and assured complainant that the check would be funded. But on June 28, 2001, the check was dishonored because it was drawn against insufficient funds.

On July 14, 2001, complainant charged Paul Desiderio of Estafa and Violation of Batas Pambansa Bilang 22 at

the Prosecutor's Office of Makati. On November 4, 2001, Judge Evelyn Arcaya-Chua of the Metropolitan Trial Court, Makati City, issued a warrant of arrest against Paul Desiderio.

On March 5, 2002, complainant joined three police officers in serving the warrant of arrest against Paul Desiderio at No. 10 Damascus St., Northeast Executive Village, B.F. Homes, Parañaque City. Complainant got the said address of Paul Desiderio from the documents of FIRI. Although there was a street named Damascus in the said village, there was no residence numbered "10." The police officers checked the existence of the said address and resident at the office of the subdivision association. They were told that no such address existed and that no resident named Paul Desiderio lived in the subdivision.

Complainant alleged that respondent's act of representing himself to be the legal officer of FIRI and his assurance that the check he personally delivered to him was signed in his presence by FIRI Officer Paul Desiderio, when no such person appears to exist, is clearly fraudulent and violative of the Canons of Professional Ethics.[1]

Complainant requested the Integrated Bar of the Philippines for a thorough investigation of respondent as a member of the bar.

In an Order dated January 27, 2003, Director for Bar Discipline Victor C. Fernandez required respondent to submit his Answer to the Complaint within 15 days from receipt thereof. Despite receipt of said order as evidenced by a registry return receipt dated February 3, 2003, respondent did not submit an Answer.

The case was referred to Commissioner Lydia A. Navarro of the Commission on Bar Discipline for investigation. Respondent failed to appear when the case was set for hearing on April 8, 2003, despite due notice. Hence, respondent was declared in default and the case was heard ex parte.

Based on the evidence adduced, Commissioner Navarro reported, thus:

[R]espondent was instrumental in the issuance of the check signed by the alleged President of FIRI, Paul Desiderio, whose whereabouts could not be located and whose identity was unknown[,] for respondent was the one who handed personally to the herein complainant the check which was dishonored due to insufficient funds, when it was the very respondent, Atty. Palaña, who allegedly assured that the check was funded. Respondent was also one of those alleged officers of FIRI who assured complainant that his investment was directly placed in a re[p]utable company.

Further investigation by the complainant with the assistance of NBI officers showed that respondent Palaña was also linked with Belkin's whose activity was the same as the FIRI and the SEC has on file the By-Laws of FIRI wherein it was stated that[,] to wit: "the primary purpose of which is to act as consultant in providing professional expertise and reliable data analysis related to partnership and so on. And the corporation shall not engage in the business as securities advisor, stockbroker or investment house[:] Q. x x x A. First Imperial is prohibited from engaging in foreign exchange business. Q. x x x A. And despite [. . .] this prohibition, they went on and engaged in activities which are prohibited specifically in their by-laws" (TSN pages 16 and 17 of July 17, 2003, CBD Case No. 02-1048).

It is evident from the foregoing that respondent and his cohorts violated the main purpose of the FIRI By-Laws particularly investment or foreign exchange business which must have been the reason why Yiu was surprised and got mad when complainant approached him about his dollar savings investment of USD10,000 received by the respondent as Legal Officer and the two (2) other alleged officers Agustin and Bernal of the FIRI[,] a transaction expressly prohibited by the FIRI By-laws.[2]

Respondent was found to have violated Rule 7.03 of Canon 7 of the Code of Professional Responsibility, which states:

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall

he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Commissioner Navarro thus recommended that respondent be suspended from the practice of law for six (6) months.

In its Resolution dated July 30, 2004, the Board of Governors of the IBP adopted and approved the Report and Recommendation of the Investigating Commissioner with the modification that respondent should be suspended from the practice of law for three (3) years.

This Court agrees with the IBP Board of Governors.

The Code of Professional Responsibility mandates that "a lawyer shall at all times uphold the integrity and dignity of the legal profession.[3] To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.[4]

In this case, respondent assured complainant that by investing his dollar savings with FIRI, his investment was in a stable company, even if, as it was later discovered, the by-laws of FIRI prohibited it from engaging in investment or foreign exchange business and its primary purpose is "to act as consultant in providing professional expertise and reliable data analysis related to partnership and so on."

When complainant decided to withdraw his investment from FIRI, the first check given to him in the amount of his total investment bounced. Thereafter, respondent, as legal officer of FIRI, gave complainant P250,000 in cash and a check for P329,045.09. Respondent assured complainant that the second check was a "good check" and that it was signed by Paul Desiderio, the alleged president of FIRI. However, the said check bounced because it was drawn against insufficient funds, and the drawer of the check, Paul Desiderio, could not be located when sought to be served a warrant of arrest since his identity was unknown and his residential address was found to be non-existent.

Hence, it is clear that the representations of respondent as legal officer of FIRI caused material damage to complainant. In so doing, respondent failed to uphold the integrity and dignity of the legal profession and lessened the confidence of the public in the honesty and integrity of the same.

WHEREFORE, respondent Atty. Antonuitti K. Palaña is found GUILTY of violating Rule 7.03 of the Code of Professional Responsibility and hereby SUSPENDED from the practice of law for a period of three (3) years effective from receipt of this Resolution, with a WARNING that a repetition of the same or similar acts will be dealt with more severely. Let a copy of this resolution be spread on the records of respondent, and furnished to all courts, the Integrated Bar of the Philippines, and the Office of the Bar Confidant.

SO ORDERED.

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

[1] Now covered by the Code of Professional Responsibility, effective on June 21, 1988.

[2] Rollo, pp. 6-7.

[3] Canon 7, Code of Professional Responsibility.

[4] Marcelo v. Javier, Sr., A.C. No. 3248, 18 September 1992, 214 SCRA 1, 13.

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