ROBERT BERNHARD BUEHS, COMPLAINANT, VS. ATTY. INOCENCIO T. BACATAN, RESPONDENT.

A.C. No. 6674. June 30, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for the disbarment of respondent Atty. Inocencio T. Bacatan filed on February 11, 2005 by complainant Robert Bernhard Buehs, charging respondent with representation of conflicting interests and gross misconduct for usurpation of authority.

It appears that on July 19, 1993, Genaro Alvarez and Sergia Malukuh, two employees of Mar Fishing Company, Inc., filed a labor case for illegal dismissal with prayer for backwages and other damages against said company and/or complainant in the latter's capacity as Executive Vice- President and Chief Operations Officer of Miramar Fish Company, Inc., and former General Manager of Mar Fishing Co., Inc., and the Mar Fishing Workers Union National Federation of Labor (MFWU-NFL).

The case was docketed as NCMB RB IX Case No. VA-12-0045-879 entitled Genaro Alvarez and Sergia Malukuh v. Mar Fishing Company, Inc. and/or Robert Buehs and Mar Fishing Workers Union NFL, and later assigned to respondent, who was then an accredited Voluntary Arbitrator of the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE), Regional Office 9, Zamboanga City.

Respondent rendered a Decision[1] dated May 30, 1997 in favor of Alvarez and Malukuh, ordering Mar Fishing Company, Inc. and MFWU-NFL to pay complainants in said case their separation pay, backwages, moral damages, exemplary damages and other benefits in the amount of P1,563,360.00. On appeal, the Court of Appeals (CA) modified said Decision by deleting the award of moral and exemplary damages.[2] The Decision became final and executory when the Court denied complainant's petition for review on certiorari and, subsequently, his motion for reconsideration, in its Resolution[3] dated April 4, 2001.

Upon motion of Alvarez and Malukuh, respondent issued a Writ of Execution[4] on February 8, 2002 to enforce the Decision dated May 30, 1997. Respondent also issued a levy on execution on the properties of Miramar Fish Company, Inc. prompting the latter to question said levy on execution on the ground that it was not a party to the labor case, and to file a case with the CA docketed as CA-G.R. SP No. 76721, entitled Miramar Fish Corp. v. Inocencio T. Bacatan, et al.

In the said case, the CA issued a Temporary Restraining Order (TRO) on April 30, 2003, and eventually, a Writ of Preliminary Injunction on July 11, 2003, restraining and enjoining respondent from enforcing his Order for the levy on execution of the properties owned by Miramar Fish Company.

During the pendency of the proceedings, Alvarez and Malukuh, represented by respondent as their counsel, filed a criminal complaint for violation of Article 41 of the Labor Code against petitioner. Respondent, in his Indorsement[5] dated June 26, 2003, stated that he was acting as counsel for complainants in said case, who were

the same complainants in the labor case pending before him.

On November 3, 2004, without notice and hearing, respondent also issued an Order[6] directing the BID to place herein complainant in its Watchlist and to issue a Hold Departure Order. However, complainant was not given a copy of the said Hold Departure Order.

In the present petition with administrative complaint against respondent, complainant alleged that:

- Respondent clearly represented conflicting interests by acting as counsel for Alvarez and Malukuh in the criminal case they filed against herein complainant while the labor case filed by Alvarez and Malukuh against complainant was still pending before him.

- Respondent usurped the judicial powers of the Regional Trial Court and the higher judicial authorities by issuing a Hold Departure Order/Watchlist Order without any notice or hearing.[7]

On the other hand, in his Comment[8] dated May 3, 2005, respondent asserted that it was complainant who resorted to legal maneuvers to delay, if not evade, his monetary obligations. Thus, the former was compelled to ask for an Order to place petitioner in the Watchlist of the Bureau of Immigration and Deportation (BID), as the latter had resigned from his position. He also claimed that it was erroneous to say that the issue was still pending with the arbitrator at the stage of execution because as of March 30, 1997, when he submitted the Decision, he was already in functus oficio. He further stated that the phrase "counsel for complainants" printed under his name was a misprint, and he could not be considered as one actively prosecuting the case.

Respondent, in turn, filed a Counter-Affidavit[9] wherein he prayed that the petition for disbarment against him be dismissed, and that the name of Atty. Dennis Pangan, counsel for petitioner, be stricken from the Roll of Attorneys. He likewise alleged that all the foregoing pleadings, including those filed through Atty. Pangan, were designed to unreasonably delay the judgment of the court.

In its Resolution[10] dated August 31, 2005, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from receipt of the record.

On November 23, 2005, respondent filed an Addendum and/or Supplement to his Comment[11] dated October 23, 2005. He claimed that he did not violate the principle of contradiction because, according to him, the labor case and criminal complaint were not cognate to each other.

On December 1, 2005, the IBP Commission on Bar Discipline directed the parties to appear in a mandatory conference on January 6, 2006.[12] On the scheduled date, the parties failed to appear and, thus, the mandatory conference was reset to February 3, 2006.

Upon submission of complainant's exhibits and presentation of the witnesses, the IBP Commission on Bar Discipline, in an Order dated February 3, 2006, submitted the case for resolution and directed the parties to file their respective position papers. Of the parties, only complainant submitted his Position Paper[13] on March 16, 2006 reiterating his earlier arguments.

In the Report and Recommendation of the IBP dated May 31, 2006, Commissioner Lolita Quisumbing found respondent guilty of misconduct for representing the complainants in the criminal case filed by the latter against the petitioner. She held that respondent, as accredited Voluntary Arbitrator of the NCMB, exhibited his bias and partiality towards the complainants when he endorsed the criminal complaint and signed thereon as counsel for the complainants. She likewise found respondent guilty of gross ignorance of the law when he issued a Hold Departure Order in violation of Circular No. 39-97.[14]

The Investigating Commissioner also discovered from the respondent's Comment dated May 3, 2005 that the

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respondent's community tax certificate and IBP Number covered the year 2004, not the current year 2005, and concluded that respondent failed to update his IBP membership and pay his professional tax receipt for the year 2005.

In view of her findings, Commissioner Quisumbing recommended that respondent be suspended from the practice of law for one (1) year, and thereafter, submitted her Report and Recommendation to the Board of Governors of the IBP.

In its Resolution dated November 18, 2006, the Board of Governors of the IBP adopted and approved, with modification, the Report and Recommendation of the Investigating Commissioner, stating thus:

> x x x finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that Respondent is guilty of gross misconduct for representing conflicting interest, gross ignorance of the law for issuing a hold-departure and watchlist order without authority, and likewise, for failure to update his membership dues to the Integrated Bar of the Philippines, Atty. Inocencio T. Bacatan is hereby SUSPENDED from the practice of law for two (2) years.

In an Indorsement dated March 21, 2007, Atty. Rogelio Vinluan, Director for Bar Discipline of the IBP, referred the administrative case to the Office of the Bar Confidant (OBC).

In a Resolution dated July 16, 2007, the Court required the parties to manifest within thirty (30) days from notice whether they were willing to submit the case for decision on the basis of the pleadings/records already filed and submitted.

On February 20, 2008, the counsel for complainant filed a Manifestation stating that the complainant was submitting the case for decision on the basis of the pleadings/records already filed and submitted.

In a Resolution dated August 4, 2008, in view of respondent's failure to file a manifestation on whether he was willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, the case was then submitted for resolution.

Respondent claimed that when he indorsed the criminal complaint for the complainants, he could already do so as counsel because he had already rendered his Decision in the illegal dismissal case.

Respondent is mistaken. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated, or until the writ of execution has been issued to enforce the judgment.[15] The Indorsement was dated June 26, 2003, at which time the decision had not yet been enforced, as evidenced by respondent's issuance of an Alias Writ of Execution[16] dated December 28, 2004.

Even assuming that he had already lost jurisdiction over the illegal dismissal case, he remains liable for representing conflicting interests. Relevant provisions of the Code of Professional Responsibility[17] state:

> Rule 15.01 - A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or is own interest, and if so, shall forthwith inform the prospective client.
>
> Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In Samala v. Valencia,[18] the Court held that a lawyer may not undertake to discharge conflicting duties any more than he may represent antagonistic interests. This stern rule is founded on the principles of public policy and good taste, which springs from the relation of attorney and client, which is one of trust and confidence. Lawyers should not only keep inviolate the client's confidence, but also avoid the appearance of treachery and

double-dealing. Only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

A conflict of interests also exists when the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance thereof.[19]

In the present case, respondent was appointed as Voluntary Arbitrator for the parties in the illegal dismissal case. He took on the duty to act as a disinterested person to hear the parties' contentions and give judgment between them.[20] However, instead of exhibiting neutrality and impartiality expected of an arbitrator, respondent indorsed a criminal complaint to the Office of the City Prosecutor of Zamboanga City for possible criminal prosecution against herein complainant, and signed the said Indorsement as counsel for complainants in the illegal dismissal case. The Court cannot accept the contention of respondent that the phrase "counsel for the complainants," found in the Indorsement, was a mere misprint. For if it were so, he could have easily crossed out the phrase or prepared another Indorsement deleting said phrase. His claim of misprint, therefore, is a last futile attempt based on the clearly established evidence that he was acting in both capacities as counsel and arbitrator at the same time, an act which was clearly reprehensible and violative of the principle of conflict of interests.

Respondent likewise showed gross ignorance of the law when he issued a Hold Departure Order requesting the BID to place petitioner in its Watchlist, completely contravening Supreme Court Circular No. 39-97, which provides that said Orders shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts.[21] Apropos is Tadlip v. Borres, Jr.,[22] where therein respondent, lawyer and provincial adjudicator, failed to apply the specific provisions of the 1994 New Rules of Procedure of the Department of Agrarian Reform Regional Arbitration Board (DARAB). The Court found him guilty of gross ignorance of the law and ruled that, since respondent became part of the quasi-judicial system of the government, his case may be likened to administrative cases of judges whose manner of deciding cases was also subject of administrative cases.

Lastly, as the Investigating Commissioner also discovered that respondent failed to update his IBP membership dues and pay his community tax certificate for the year 2004, he is likewise liable under Sections 9 and 10,[23] Rule 139-A of the Rules Court, which read:

> Section 9. Membership dues. - Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court. A fixed sum equivalent to ten percent (10%) of the collections from each Chapter shall be set aside as a Welfare Fund for disabled members of the Chapter and the compulsory heirs of deceased members.
>
> Section 10. Effect of non-payment of dues. - Subject to the provisions of Section 12 of this Rule, default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys.

Having established the administrative liabilities of respondent, the Court now proceeds to determine the corresponding penalty.

Under Section 27, Rule 138 of the Rules of Court, a member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office.[24] Gross misconduct has been defined as any inexcusable, shameful or flagrantly unlawful conduct on the part of the person involved in the administration of justice, conduct that is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional

purpose. The term, however, does not necessarily imply corruption or criminal intent.[25]

In previous cases involving representation of conflicting interests, the Court has sanctioned erring lawyers either by reprimand, or by suspension from the practice of law from six months to two years.[26]

In the afore-cited case Tadlip v. Borres, Jr.,[27] therein respondent lawyer and provincial adjudicator found guilty of gross ignorance of the law was suspended from the practice of law for six (6) months.

In Santos, Jr. v. Llamas,[28] where the respondent lawyer did not pay his IBP dues for eight years because he believed that as a senior citizen, he was exempt from paying the same, the Court suspended him from the practice of law for one (1) year, or until the respondent paid his dues.

In the present case, the Investigating Commissioner recommended the imposition of a one (1) year suspension, while the IBP Board of Governors recommended a two (2) year suspension. The Court, taking into account the recommendations of the Investigating Commissioner and the Board of Governors of the IBP, deems it appropriate to impose a penalty of two (2)- year suspension upon respondent, which is within the range of the penalty of six (6) months to two (2) years for offenses similar to those committed by respondent Atty. Bacatan, as held in several cases.[29]

WHEREFORE, respondent Atty. Inocencio T. Bacatan is found GUILTY of gross misconduct for representing conflicting interests, gross ignorance of the law for issuing an order without authority, and failure to update his membership dues to the IBP; and is SUSPENDED from the practice of law for two (2) years, effective upon receipt of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, and Bersamin, JJ., concur.
Carpio Morales, J., on leave.

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[1] Rollo, Vol. I, pp. 13-14.

[2] Docketed as C.A. GR SP No. 45145, entitled "Mar Fishing Company, Inc., et al. v. Alvarez et al."

[3] Rollo, Vol. I, p. 50.

[4] Id. at 25-27.

[5] Id. at 28.

[6] Id. at 31.

[7] Id. at 8-9.

[8] Id. at 35-44.

[9] Id. at 45-48.

[10] Id. at 172.

[11] Rollo, Vol. II, pp. 2-4.

[12] Rollo, Vol. III, p. 1.

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[13] Id. at 25-36.

[14] Dated June 19, 1997, superseding Circular No. 38-94 dated June 6, 1994 and Circular No. 62-96 dated September 9, 1996.

[15] Abalos v. Philex Mining Corporation, G.R. No. 140374, November 27, 2002, 393 SCRA 134, 141, citing Deltaventures Resources, Inc. v. Cabato, 327 SCRA 521 (2000).

[16] Rollo, Vol. I, pp. 108-109.

[17] Promulgated by the Supreme Court on June 21, 1988.

[18] A.C. No. 5439, January 22, 2007, 512 SCRA 1, 7-8.

[19] Pormento, Sr. v. Pontevedra, A.C. No. 5128, March 31, 2005, 454 SCRA 167, 177.

[20] Black's Law Dictionary Abridged, Fifth Ed., p. 56.

[21] Supra note 14.

[22] A.C. No. 5708, November 11, 2005, 474 SCRA 441.

[23] Effective January 16, 1973.

[24] As amended by SC Resolutions dated May 20, 1968 and February 13, 1992.

[25] Spouses Donato v. Asuncion, Sr., A.C. No. 4914, March 3, 2004, 424 SCRA 199, 204, citing Yap v. Judge Inopiquez, Jr., 403 SCRA 141 (2003).

[26] Paz v. Sanchez, A.C. No. 6125, September 19, 2006, 502 SCRA 209, 218, citing Gamilla v. Mariño, Jr., 339 SCRA 308 (2003); Abragan v. Rodriguez, 429 Phil. 607 (2002); Artezuela v. Maderazo, 431 Phil. 135 (2002); De Guzman v. De Dios, 403 Phil. 222 (2001); Maturan v. Gonzales, 350 Phil. 882, 887 (1998); Vda. De Alisbo v. Jalandoni, Sr., 199 SCRA 321 (1991); and Natan v. Capule, 91 Phil. 640 (1952).

[27] Supra note 22.

[28] A.C. No. 4749, January 20, 2000, 322 SCRA 529.

[29] Supra note 26.

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