

GABRIELA CORONEL, PETITIONER, VS. ATTY. NELSON A. CUNANAN, RESPONDENT.

A.C. No. 6738. August 12, 2015

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

A lawyer who proposes to his client a recourse or remedy that is contrary to law, public policy, public order and public morals, or that lessens the public confidence in the legal system is guilty of gross misconduct, and should be suspended from the practice of law, or even disbarred.

Antecedents

On May 17, 2005, the complainant initiated this disbarment case against Atty. Nelson A. Cunanan, alleging that he had advised and convinced her to engage him for the transfer of Original Certificate of Title No. 9616 and Transfer Certificate of Title No. T-72074, which were both registered in the name of their deceased grandparents, to her name and to the names of her co-heirs by direct registration with the Office of the Register of Deeds in violation of the proper legal procedure; that following the engagement, he had received from her the amount of P70,000.00 for the payment of the transfer and other fees, and had misappropriated the same; and that he had not returned the money and the owner's duplicate copy of Transfer Certificate of Title No. T-72074.[1]

The Court ordered the respondent to comment on the complaint on July 11, 2005,[2] but he complied only on March 7, 2006.[3] In turn, the complainant submitted her reply on March 20, 2006.[4]

Proceedings before the IBP

On July 31, 2006, the Court referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[5]

On February 21, 2007, the IBP Commission on Bar Discipline set the mandatory conference on April 11, 2007, and notified the parties thereof.[6] At the hearing, the parties defined the issues upon which they would submit their position papers. The complainant stated the issue to be whether or not the actions of the respondent constituted malpractice, deceit or gross misconduct. The respondent defined the issue to be whether or not he had acted in a deceitful manner or committed any misconduct by entering into the contract of legal services with the complainant based on terms mutually agreed upon between them. Only the complainant submitted her verified position paper.[7]

On February 20, 2008, the complainant requested the early resolution of her complaint.[8] On September 1, 2009, however, she submitted an affidavit of desistance,[9] whereby she stated that she had meanwhile made amends with the respondent, and that the disbarment complaint had been due to a misunderstanding between them. A few days later, the parties also submitted their Joint Motion To Dismiss dated September 15, 2009,[10] which the Court referred to the IBP on November 18, 2009.[11]

On May 14, 2011, the IBP Board of Governors issued its resolution adopting and approving, with modification, the report and recommendation of the Investigating Commissioner finding the respondent guilty of malpractice and negligence; recommending his suspension from the practice of law for six months; and requiring his return of the P70,000.00 to the complainant.[12]

On August 8, 2011, the respondent filed a Motion for Reconsideration,[13] citing the affidavit of desistance executed by the complainant and their Joint Motion to Dismiss. The IBP Board of Governors denied the Motion for Reconsideration on December 15, 2012.[14]

Report and Recommendation of the IBP

The report of the Investigating Commissioner recited the following summary of the factual antecedents, to wit:

Complainant recounts that sometime in October 2003, she engaged the services Respondent to transfer to her name and her co-heirs the parcels of land covered under TCT No. T-72074 and OCT. No. 9616, which certificates of title are both registered under the name of Complainant's deceased grandparents. Respondent advised Complainant that for the registration of TCT. No. T-72074, the transfer may be effected by two means namely: first, by way of "ordinary procedure"; and second, by way of "direct registration". Ordinary procedure involves transfer by way of execution of Deed of Extrajudicial Settlement, publication, payment of capital gains tax, etc., and registration with the Register of Deeds. Transfer by this means will cost Complainant an estimate of Php56,000.00 with the amount of Php50,000.00 more or less to be spent for the payment of taxes. Transfer by this means may take a period of at least five (5) months. Direct registration, on the other hand, involves preparing documents upon advise of the Register of Deeds and will involve an estimated cost to be negotiated with the officials or employees of the Register of Deeds to a flat amount of Php50,000.00. Transfer by this means will take only one (1) month or less. As for the transfer of OCT No. 9616, Respondent advised Complainant of the filing of a petition for issuance of Owner's Duplicate Copy and thereafter, to proceed with the transfer in the same manner as that outlined in the transfer of TCT. No. T-72074.

It appears that Complainant and Respondent agreed on the direct registration approach because sometime thereafter, Respondent billed Complainant with the following fees: Php50,000.00 as package deal for the direct transfer of title for TCT. No. T-72074; another Php50,000 as package deal for the transfer of title for OCT No. 9616; Php5,000 for litigation expenses for issuance of duplicate copy of OCT 9616 and another Php15,000 as professional fees, to which Complainant agreed.

On October 28, 2003, Complainant paid Respondent Php70,000.00 pesos [sic].

According to Complainant, she thereafter tried to contact Respondent but the latter cannot be contacted. Thus, she was constrained to write Respondent a letter dated March 5, 2004 asking the latter to contact her.

Subsequently, Respondent sent to Complainant an Extra-judicial Settlement Agreement. Complainant had it signed and sent back to Respondent. Thereafter, Respondent asked Complainant for the owner's duplicate copy of TCT. No. T-72074, which complainant, likewise, sent to Respondent.

Afterwards, Complainant heard nothing from Respondent. When her request for a call from Respondent was not heeded, Complainant wrote Respondent demanding that the amount of Php70,000 which she paid to Respondent be returned to her as well as the owner's duplicate copy of TCT. No. 72074. When Respondent refused, Complainant filed the instant disbarment case charging the former with deceit, malpractice and gross misconduct.

In his Comment, Respondent admitted most of the allegations of Complainant. However, he denied that there was deceit on his part insisting that he clearly outlined to Complainant the available procedures for the transfer of title and afforded Complainant the opportunity to think about the options. He claimed that there was nothing illicit in suggesting the direct registration scheme as the same was advised to him by the officials and

employees of the Register of Deeds upon his inquiry thereto. Respondent further argued that he was in constant communication with Complainant and that he processed the transaction for the transfer of registration but that the transfer could not be effected because the documents were inadequate and due, also, to the fact that several officials and employees of the Register of Deeds with whom he was transacting were transferred to other offices due to a revamp in the said office. Respondent added that he continued with the processing of the transfer and that he submitted the matter anew for the approval of the new officials of the Register of Deeds. However, the new officers have not yet approved the same.[15]

Ruling of the Court

We AFFIRM the findings and recommendations of the IBP.

A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.[16] He shall not engage in unlawful, dishonest, immoral or deceitful conduct;[17] or counsel or abet activities aimed at a defiance of the law or at a lessening of confidence in the legal system.[18] He should advise his client to uphold the law, not to violate or disobey it. Conversely, he should not recommend to his client any recourse or remedy that is contrary to law, public policy, public order, and public morals.

Although the respondent outlined to the complainant the "ordinary procedure" of an extrajudicial settlement of estate as a means of transferring title, he also proposed the option of "direct registration" despite being fully aware that such option was actually a shortcut intended to circumvent the law, and thus patently contrary to law. The transfer under the latter option would bypass the immediate heirs of their grandparents (i.e., the complainant's parent and her co-heirs parents), and consequently deprive the Government of the corresponding estate taxes and transfer fees aside from requiring the falsification of the transfer documents. He assured that he could enable the direct transfer with the help of his contacts in the Office of the Register of Deeds and other relevant agencies of the Government, which meant that he would be bribing some officials and employees of those offices. The proposal of "direct registration" was unquestionably unlawful, immoral and deceitful all at once.

The respondent argues that his proposal did not deceive the complainant because he had informed her on all the "steps" to be taken on her behalf. His argument misses the point, which is that he made the proposal despite its patent illegality in order to take advantage of the complainant's limited legal knowledge of the regular procedures for the transfer of title under circumstances of intestacy. In other words, he made her agree to the "direct registration" through deceitful misrepresentation. He then ignored the written demands from her, which forced her in the end to finally charge him with disbarment. He thereby abused his being a lawyer to the hilt in order to cause not only his client but also the public in general to doubt the sincerity of the members of the Law Profession, and consequently diminish the public's trust and confidence in lawyers in general.

Lastly, the respondent pleads for the Court to consider in his favor the fact that the complainant subsequently executed the affidavit of desistance, and later on the Joint Motion To Dismiss.

His plea is unworthy of consideration.

An administrative case proceeds independently from the interest, or lack thereof, of the complainant, who only sets the case in motion through the filing of the complaint. Upon her doing so, she becomes a witness to testify against the respondent lawyer. The disciplinary proceedings against the lawyer do not involve private interests, but only how the lawyer conducts himself in his public and private lives. Accordingly, neither the affidavit of desistance nor the Joint Motion To Dismiss should bear any weight, or be relevant in determining whether or not the respondent was fit to remain as a member of the Law Profession. The desistance by the complainant was a matter that was the concern only of the parties, and was non-binding on the Court. What will be decisive in this administrative proceeding are the facts borne out by the evidence competently adduced herein.[19]

The complainant testified that the respondent had proposed to her two methods to transfer title, and one was patently contrary to law. She presented documentary proof to her testimony against him. She established that he had not communicated with her after receiving the money and the documents. The affidavit of desistance and the Joint Motion To Dismiss only came about after the complainant had completed her testimony, a true indication that their submission was done in hindsight and insincerely. His remorse, if it was that, came too late.

In *Bengco v. Bernardo*,^[20] the respondent lawyer was suspended for one year from the practice of law because he had represented that he could expedite the titling of the clients' property with the help of his contacts in various government offices, including the Department of Natural Resources, the Community Environment Office, and Register of Deeds. After convincing his clients through such representations, and taken their money for that purpose, he did not bother to even update them on the progress of the undertaking. In that regard, he was also convicted of estafa.

In *Espinosa v. Omaña*,^[21] the respondent lawyer was also suspended for one year from the practice of law for advising her clients that they could legally live separately and dissolve their marriage by executing the *Kasunduan ng Paghihiwalay* (Agreement to Separate) that she had drafted. Her advice was blatantly contrary to law and public policy.

ACCORDINGLY, the Court ADOPTS and AFFIRMS the Resolution dated May 14, 2011 of the Integrated Bar of the Philippines Board of Governors, WITH MODIFICATION as to the recommended penalty by suspending respondent Atty. Nelson A. Cunanan from the practice of law for one year effective immediately upon his receipt of this decision.

The Court ORDERS respondent Atty. Cunanan to RETURN to the complainant the amount of P70,000.00 within 10 days from receipt of this decision, and to report on his compliance within five days thereafter.

Let copies of this decision be entered in the personal records of respondent Atty. Cunanan in the Office of the Bar Confidant, and be furnished to the Integrated Bar of the Philippines, and the Office of the Court Administrator for dissemination to all courts in the country.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 1-4.

[2] Id. at 23.

[3] Id. at 29-31.

[4] Id. at 33-36.

[5] Id. at 39.

[6] Id. at 81-82.

[7] Id. at 55-64.

[8] Id. at 53-54.

[9] Id. at 101.

[10] Id. at 46-47.

[11] Id. at 49-50.

[12] Id. at 105.

[13] Id. at 111-113.

[14] Id. at 124.

[15] Id. at 107-108.

[16] Canon 1, Code of Professional Responsibility.

[17] Id., Rule 1.01.

[18] Id., Rule 1.02.

[19] See *Yu v. Palaña*, A.C. 7747, July 14, 2008, 558 SCRA 26, 28.

[20] A.C. 6368, June 13, 2012, 672 SCRA 8, 20.

[21] A.C. 9081, October 12, 2011, 659 SCRA 1, 7.

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