MAR YUSON, COMPLAINANT, VS. ATTY. JEREMIAS R. VITAN, RESPONDENT.

A.C. NO. 6955. July 27, 2006

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PANGANIBAN, CJ:

Once again this Court exhorts members of the bar to live up to the strictures of the Lawyers' Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics. Otherwise, they shall be sanctioned by this Court.

The Case

Before us is a Letter-Complaint[1] for the disbarment of Atty. Jeremias R. Vitan, filed by Mar Yuson with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP). Respondent was accused of taking advantage of complainant's generosity and credulity.

On August 5, 2004, IBP-CBD directed Atty. Vitan to submit his Answer within 15 days from receipt of the Order;[2] otherwise, he would be considered in default and the case heard ex parte.

Because respondent failed to submit his Answer within the given period, the CBD considered his failure and non-appearance as a waiver of his right to participate in the proceedings.[3] Thus, the hearing scheduled for August 11, 2005, pushed through, with the original copies of the checks he had issued presented by complainant as evidence. Afterwards, the CBD issued an Order submitting the case for Resolution.[4] On August 23, 2005, Commissioner Milagros V. San Juan rendered her Report and Recommendation.[5]

Respondent denied having received a copy of the Complaint against him and alleged that it was only on August 24, 2005, that he received the Order submitting the case for resolution. Thus, he filed an Urgent Motion to Revive/Re-open and with Leave to Admit Attached Answer.[6]

In its Resolution No. XVII-2005-101 dated October 22, 2005, the IBP Board of Directors adopted and approved, with modification, the investigating commissioner's Report and Recommendation. Upon respondent was imposed the penalty of suspension from the practice of law for two years, after the board found that he had taken advantage of complainant through deceit and dishonesty. The lawyer was further ordered to give back the money he had received from complainant.

The Facts

Complainant Mar Yuson was a taxi driver with eight children. In October 2002, he received a sum of money by way of inheritance. According to him, he and his wife intended to use the money to purchase a taxi, repair their dilapidated house, and hold a debut party for their daughter.[7]

They were able to purchase a secondhand taxi, and Atty. Vitan helped him with all the legal matters concerning this purchase. Regrettably, their other plans were put on hold, because the lawyer borrowed P100,000 from them in December 2002. It was agreed that the loan would be repaid before the end of the following year,[8] in time for

the debut on November 24, 2003.[9]

To guarantee payment, respondent executed in favor of complainant several postdated checks to cover the loaned amount. Those checks, however, turned out to be worthless, because they had been drawn against the lawyer's closed account in the Bank of Commerce in Escolta, Manila. The six dishonored checks were presented during the hearing before the IBP commissioner.[10]

Complainant maintained that he had repeatedly tried to recover the debt, only to be turned away empty-handed each time. He conceded, though, that respondent had given an undisclosed amount covered by the checks dated January and February 2003.[11] The amounts covered by the dishonored checks remained unpaid.

This development prompted complainant to seek the aid of the IBP National Committee on Legal Aid (NCLA) in obtaining payment. On November 14, 2003, the IBP-NCLA, through Deputy Director Rosalie J. de la Cruz, sent him a letter.[12] It informed him of the impending administrative case and advised him to confer with complainant, presumably to settle the matter. Upon receipt[13] of the letter, he again gave assurances that he would pay the loan in time for the debut.[14]

When the date passed without any payment, complainant demanded a collateral to secure the loan. Thus, in his favor, Atty. Vitan executed a document denominated as a Deed of Absolute Sale, covering the latter's parcel of land located in Sta. Maria, Bulacan. According to complainant, their intention was to transfer the title of the property to him temporarily, so that he could either sell or mortgage[15] it. It was further agreed that, if it was mortgaged, respondent would redeem it as partial or full payment of the loan.[16]

Curiously, however, the parties executed a second Deed of Absolute Sale,[17] this time in favor of Atty. Vitan, with complainant as vendor. The purpose of this particular document was not explained by either party.

On April 12, 2004, complainant was able to mortgage[18] the property for P30,000.[19] Contrary to their earlier agreement, respondent did not redeem it from the mortgagee and, instead, simply sent complainant a letter[20] dated July 7, 2004, promising to pay on or before July 12, 2004. As this promise was not fulfilled, the mortgagee demanded payment from complainant and thereby allegedly exposed the latter to shame and ridicule.[21]

On July 19, 2004, IBP-NCLA sent another letter[22] on behalf of complainant. Respondent was informed that an administrative case would be filed against him, unless he settled his obligations by July 30, 2004, the date given by complainant.

On August 30, 2004, the IBP-NCLA received the reply[23] dated July 30, 2004, submitted by Atty. Vitan who explained that he had already settled his obligation. He maintained that he had in fact executed, in complainant's favor, a Deed of Absolute Sale over his 203-square-meter residential property in Sta. Maria, Bulacan. He clarified that "[their] understanding was that [complainant] ha[d] the option to use, mortgage or sell [the property] and return to me the excess of the proceeds after obtaining his money represented by my six (6) dishonored checks."[24] Interestingly, respondent attached the Deed of Absolute Sale in which he was the vendee and complainant the vendor.[25] It appears that this was the second Deed of Absolute Sale, also referred to in the Complaint.[26]

Only after the IBP investigating commissioner had rendered her Report and Recommendation[27] did Atty. Vitan submit his Answer to the Letter-Complaint. He called the second document a "Counter Deed of Sale," executed as a "sort of collateral/security for the account of [his] liaison officer [Evelyn Estur]."[28] He admitted having given several postdated checks amounting to P100,000, supposedly to guarantee the indebtedness of Estur to complainant. Atty. Vitan argued for the first time that it was she who had incurred the debts, and that he had acted only as a "character reference and/or guarantor."[29] He maintained that he had given in to the one-sided

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transactions, because he was "completely spellbound by complainant's seeming sincerity and kindness."[30] To corroborate his statements, he attached Estur's Affidavit.[31]

Report of the Investigating Commissioner

In her Report and Recommendation, Commissioner San Juan recommended that Atty. Vitan be suspended until his restitution of the amount he had borrowed. She held that respondent, having taken advantage of complainant and thus shown dishonesty and untrustworthiness, did not deserve to retain his membership in the bar.

On November 24, 2005, the Supreme Court received the IBP Resolution adopting, with modification, the Report and Recommendation of the investigating commissioner.

The Court's Ruling

We agree with the findings of the IBP Board of Governors, but reduce the period of suspension to six months.

Respondent's Administrative Liability

Lawyers are instruments for the administration of justice. They are expected to maintain not only legal proficiency but also a high standard of ethics, honesty, integrity and fair dealing. In this way, the people's faith and confidence in the judicial system is ensured.[32]

In the present case, Atty. Vitan undoubtedly owed money to complainant. In a letter[33] to IBP Deputy Director de la Cruz, respondent admitted having incurred the P100,000 loan. It was only in his Answer[34] that the lawyer suddenly denied that he had personally incurred this obligation. This time, he pointed to his employee, Estur, as the true debtor. We find his version of the facts implausible.

First, the story involving a certain Evelyn Estur was clearly a mere afterthought, conjured simply to escape his liability. If it were true that it was she who owed the money, he should have mentioned this alleged fact in his letter to the IBP NCLA deputy director. Instead, respondent was completely silent about Estur and merely asserted that he had already settled his debt with complainant.

Second, the promise of Atty. Vitan to settle his obligations on particular dates is contained in two handwritten notes signed by him and worded as follows:

> "I undertake to settle the financial obligations of P100,000 - plus before the end of the year."[35]
>
> "Mar:
>
> "We will settle on July 12, 2004, on or before said date."[36]

The wordings of these promissory notes disclose that he had a personal obligation to complainant, without any mention of Estur at all. If it were true that Atty. Vitan had executed those notes for the account of his liaison officer, he should have used words to that effect. As a lawyer, he was aware that the preparation of promissory notes was not a "mere formality;" it had legal consequences. It is quite far-fetched for a lawyer to assume the role of guarantor, without saying so in the notes.

A lawyer may be disciplined for evading the payment of a debt validly incurred.[37] In this case, the failure of Atty. Vitan to pay his debt for over three years despite repeated demands puts in question his standing as a member of the bar. Worse, he made several promises to pay his debt promptly, but reneged on all of them. He even started to hide from complainant according to the latter .[38]

Failure to honor just debts, particularly from clients, constitutes dishonest conduct that does not speak well of a member of the bar.[39] It is vital that a lawyer's conduct be kept beyond reproach and above suspicion at all

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times. Rule 1.01 of the Code of Professional Responsibility clearly provides that lawyers must not engage in unlawful, immoral or deceitful conduct. They must comport themselves in a manner that will secure and preserve the respect and confidence of the public for the legal profession.[40]

Atty. Vitan contends that his obligation was already extinguished, because he had allegedly sold his Bulacan property to complainant.[41] Basically, respondent is asserting that what had transpired was a dation in payment. Governed by the law on sales, it is a transaction that takes place when a piece of property is alienated to the creditor in satisfaction of a debt in money.[42] It involves delivery and transmission of ownership of a thing -- by the debtor to the creditor -- as an accepted equivalent of the performance of the obligation.[43]

Going over the records of this case, we find the contention of Atty. Vitan undeserving of credence. The records reveal that he did not really intend to sell and relinquish ownership over his property in Sta. Maria, Bulacan, notwithstanding the execution of a Deed of Absolute Sale in favor of complainant. The second Deed of Absolute Sale, which reconveyed the property to respondent, is proof that he had no such intention. This second Deed, which he referred to as his "safety net,"[44] betrays his intention to counteract the effects of the first one .

In a manner of speaking, Atty. Vitan was taking back with his right hand what he had given with his left. The second Deed of Absolute Sale returned the parties right back where they started, as if there were no sale in favor of complainant to begin with. In effect, on the basis of the second Deed of Sale, respondent took back and asserted his ownership over the property despite having allegedly sold it. Thus, he fails to convince us that there was a bona fide dation in payment or sale that took place between the parties; that is, that there was an extinguishment of obligation.

It appears that the true intention of the parties was to use the Bulacan property to facilitate payment. They only made it appear that the title had been transferred to complainant to authorize him to sell or mortgage the property.[45] Atty. Vitan himself admitted in his letter dated July 30, 2004, that their intention was to convert the property into cash, so that payment could be obtained by complainant and the excess returned to respondent.[46] The records, however, do not show that the proceeds derived were sufficient to discharge the obligation of the lawyer fully; thus, he is still liable to the extent of the deficiency.

We hasten to add, however, that this administrative case is not the proper venue for us to determine the extent of the remaining liability. This Court will not act as a collection agency from faltering debtors, when the amount of the indebtedness is indefinite and disputed.[47]

Nevertheless, the records satisfactorily reveal the failure of respondent to live up to his duties as a lawyer in consonance with the strictures of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, thereby degrading not only his person but his profession as well. So far, we find that his lack of sincerity in fulfilling his obligations is revealed by his acts of issuing promissory notes and reneging on them; executing a simulated Deed of Absolute Sale; and breaking his promise to redeem the property from the mortgagee.

The repeated failure of Atty. Vitan to fulfill his promise puts in question his integrity and character. Indeed, not only his integrity as an individual but, more important, his stature as a member of the bar is affected by his acts of welching on his promises and misleading complainant. Canon 1 and Rule 1.01 of the Code of Professional Responsibility explicitly state thus:

> "CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> "Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

Any wrongdoing, whether professional or nonprofessional, indicating unfitness for the profession justifies disciplinary action.[48]

There is yet another reason to find Atty. Vitan administratively liable. In his letter of July 30, 2004, was an admission that the personal checks he issued in favor of complainant had all been dishonored.[49] Whether those checks were issued for the account of respondent or of Estur is not important. The fact remains that the lawyer knowingly issued worthless checks and thus revealed his disposition to defraud complainant.

The act of a lawyer in issuing a check without sufficient funds to cover them -- or, worse, drawn against a closed account --constitutes such willful dishonesty and unethical conduct as to undermine the public confidence in the law and in lawyers.[50] The act also manifests a low regard for the Oath taken by the lawyer upon joining the profession, whose image should be held in high esteem, not seriously and irreparably tarnished.[51]

Moreover, the inimical effect of the issuance of worthless checks has been recognized by this Court in an earlier case, from which we quote:

> "[T]he effect [of issuance of worthless checks] transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public since the circulation of valueless commercial papers can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest."[52]

We have also held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct,[53] for which a lawyer may be sanctioned with one year's suspension from the practice of law,[54] or a suspension of six months upon partial payment of the obligation.[55]

In the instant case, complainant himself admits that respondent had already paid the amounts covered by the January and February checks.[56] Thus, there has been a partial payment that justifies a modification of IBP's recommended penalty.

WHEREFORE, Atty. Jeremias R. Vitan is hereby found guilty of gross misconduct and SUSPENDED from the practice of law for six (6) months, effective upon his receipt of this Decision, with the warning that a repetition of the same or any other misconduct will be dealt with more severely.

Let a copy of this Decision be entered in respondent's record as a member of the Bar, and notice served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

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[1] Rollo, pp. 1-3.

[2] Id. at 15.

[3] IBP Report, p. 3.

[4] See rollo, pp. 23-24.

[5] Annex "A" of the IBP Board of Governors' Resolution; rollo, unnumbered.

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[6] Rollo, pp. 24-31.

[7] Id. at 1-2.

[8] Id. at 5.

[9] Id. at 1-2.

[10] Id. at 21-22.

[11] Id. at 2.

[12] Id. at 6.

[13] See notation "rec'd 11-14-03" bearing respondent's corresponding signature on Annex "B;" rollo, p. 6.

[14] Rollo, p. 2.

[15] According to complainant, their agreement was as follows:

> "Noong Enero 2004 ay binigay niya [respondent] sa kin ang titulo ng isang pirasong lupa sa Sta. Maria Bulacan at napagkasunduan naming na ipangalan pansamantala sa pangalan ko upang aking mai-benta o kaya ay maisanla at siya ang tutubos bilang partial payment o kabayaran at kung siya naman ang may buyer ay kaagad kong dadalhin sa kanya ang titulo at kaliwaan kami sa bayaran." (Letter-Complaint, p. 2; rollo, p. 2).

[16] Rollo, p. 2.

[17] Id. at 7-8 and 13-14.

[18] More precisely, complainant alleges: "[N]apilitan po ako na isanla an[g] nasabing titulo sa isang kakilala na nagpapa "5-6" x x x sa halagang P30,000.00 na may tubong P6,000 sa buwan-buwan at sa loob lamang ng dalawang buwan, x x x." (Letter-Complaint, p. 2; rollo, p. 2).

[19] Rollo, pp. 2-3.

[20] Id. at 9.

[21] Id. at 3.

[22] Id. at 10.

[23] Id. at 11.

[24] Id.

[25] Id. at 13-14.

[26] Id. at 2.

[27] See Respondent's Urgent Motion to Revive/Re-Open and with Leave to Admit Attached Answer; rollo, pp. 24-31.

[28] Id. at 29.

[29] Id. at 28.

[30] Id.

[31] Id. at 33-34.

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[32] Lao v. Medel, 405 SCRA 227, July 1, 2003.

[33] Rollo, p. 11.

[34] Id. at 27-32.

[35] Id. at 5.

[36] Id. at 9.

[37] Grande v. De Silva, 407 SCRA 310, July 29, 2003.

[38] Rollo, p. 3.

[39] Constantino v. Saludares, 228 SCRA 233, December 7, 1993.

[40] Constantino v. Saludares, supra.

[41] Rollo, p. 11.

[42] CIVIL CODE, Art. 1245.

[43] Philippine National Bank v. Pineda, 197 SCRA 1, May 13, 1991.

[44] Rollo, p. 29.

[45] Id. at 2.

[46] Id. at 11.

[47] See In Re: Complaint for Failure to Pay Just Debts against Esther T. Andres, 452 SCRA 654, March 1, 2005; Villaseñor v. De Leon, 399 SCRA 342, March 20, 2003; Martinez v. Muñoz, 249 SCRA 14, October 6, 1995.

[48] Grande v. De Silva, supra note 35.

[49] Rollo, p. 11.

[50] Barrios v. Martinez, 442 SCRA 324, November 12, 2004.

[51] Barrientos v. Libiran-Meteoro, 437 SCRA 209, August 31, 2004; Sanchez v. Somoso, 412 SCRA 569, October 3, 2003.

[52] Moreno v. Araneta, 457 SCRA 329, 337, April 27, 2005, per curiam.

[53] Barrientos v. Libiran-Meteoro, supra note 49.

[54] Lao v. Medel, supra note 30.

[55] Barrientos v. Libiran-Meteoro, supra note 49.

[56] Rollo, p. 2.

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