

JERRY T. WONG, COMPLAINANT, VS. ATTY. SALVADOR N. MOYA II, RESPONDENT.

A.C. No. 6972. October 17, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before us is a complaint^[1] dated December 1, 2003 for the disbarment of respondent Atty. Salvador N. Moya II filed by complainant Jerry T. Wong with the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 03-1172 for violation of Batas Pambansa 22 (B.P. 22) and non-payment of debt.

Complainant avers that he is the owner of J & L Agro-vets, a company engaged in the business of selling agricultural and veterinary products and medicine. Sometime in 1997, he retained the services of respondent for the purpose of collecting due and demandable debts in favor of the company. Respondent also handled personal cases of complainant and his wife.

As their relationship prospered, respondent asked financial help from complainant for the construction of his house and purchase of a car. Complainant willingly helped him. Pursuant to their arrangement, complainant purchased a car on installment basis from Transfarm for respondent. He issued postdated checks to cover its payment to Transfarm. The respondent in turn issued checks in favor of the complainant to reimburse the latter.

The checks issued by complainant in favor of Transfarm were duly encashed upon presentment. However, the checks issued by respondent to reimburse complainant were dishonored for the reason "Account Closed." Respondent refused to comply with the repeated demands of the complainant to replace the dishonored checks.

Furthermore, complainant introduced respondent to Quirino Tomlin and to the owner of Unisia Merchandising Corporation, from whom respondent obtained construction materials for the construction of his house on credit in the amount of P164,000.00. Respondent also failed to pay this indebtedness, which remained unsettled and thus caused embarrassment to complainant.

Respondent as well handled another case of complainant against Berting Diwa, docketed as Civil Case No. 1482 before the Municipal Trial Court (MTC) of Sta. Maria, Bulacan. It was decided on September 21, 2000. After the decision became final and executory, complainant and his wife sought the execution of the judgment through respondent.

On August 15, 2001, Diwa paid the amount of P15,680.50 for the satisfaction of the judgment. As complainant's counsel, respondent received the payment but he did not inform complainant about it. Complainant had knowledge of it only when he got hold of a copy of the Manifestation with Prayer to Terminate Proceedings filed by respondent before the MTC of Sta. Maria, Bulacan.

On December 1, 2003, the IBP-CBD ordered respondent to file his answer to the complaint for disbarment within 15 days from receipt of thereof. He filed three motions for extension of time to file his responsive

pleading/answer. The first motion dated January 5, 2004 asked for a 15-day extension from January 5, 2004 or until January 20, 2004 within which to file his responsive pleading. He filed on January 20, 2004 his second motion for extension of time for another 15-day or until February 4, 2004.[2] On February 4, 2004, he filed a Manifestation/Explanation for Extension of Time to File Responsive Pleading/Answer/Motion to Dismiss, citing that as early as October 1, 2003, complainant's third cause of action pertaining to a debt with Unisia Merchandising was already filed in court.

Subsequently, he filed his Motion to Dismiss[3] dated February 27, 2004 on the following grounds:

That complainant is not the proper party in interest and has no cause of action.

That complainant has prematurely prejudged respondent relative to the latter's intention of not paying his debt as the former impresses the honorable body that respondent would not pay at all.

That complainant's action in the Berting Diwa case should be addressed to the Municipal Trial Court of Sta. Maria, Bulacan and not to the IBP."

In the aforesaid motion, respondent never denied and even acknowledged what he described as honest debts to Unisia Merchandising and Mr. Tomlin,[4] which he admitted he was unable to pay on time due to financial constraints. He added that the IBP, being not a collection agency, was not the proper forum to lodge the complaint against him that merely concerned the collection of his monetary obligations which were then subject of pending court suits. Similarly, respondent argued that the complaint against case should be addressed to the MTC of Sta. Maria, Bulacan.

On April 28, 2004, the IBP-CBD issued an Order[5] denying respondent's motion to dismiss as it is prohibited pleading under Rule 3, Section 2 of the Rules of Procedure of the Commission. Respondent was given a new period of fifteen (15) days within which to file his verified answer.

On May 28, 2004, respondent filed his Motion for Reconsideration[6] which was denied in an Order dated June 16, 2004.[7]

On June 28, 2004, respondent filed a Manifestation with Motion to Give Respondent Extension of Time to File His Answer/or Responsive Pleadings,[8] requesting for a fresh period of fifteen (15) days or until July 13, 2004 to file his answer. In the Order dated June 30, 2004, respondent's motion was granted with warning that no further request for extension shall be entertained.[9]

On July 13, 2004, respondent filed another Very Urgent Motion for Extension to File Answer,[10] seeking another period of ten (10) days within which to file his answer or responsive pleading. On July 21, 2004, the IBP-CBD issued an Order finding the ground for extension not justifiable. Respondent was also declared in default and complainant was directed to file his verified position paper within ten (10) days from receipt of the Order, after which, the case shall be considered submitted for report and recommendation, with or without the position paper.

On July 23, 2004, respondent filed a Manifestation with Motion to Terminate Proceedings on the Ground of Prescription, considering that six (6) months had already passed from the date of discovery of the offense.[11]

On August 10, 2004, respondent filed an Omnibus Motion to Recall Order Dated July 21, 2004[12] in the interest of higher justice and fair play.

On January 3, 2005, the IBP-CBD issued an Order giving both parties a period of ten (10) days to file their respective verified position paper, as follows:

"Respondent should be informed that a "complaint for disbarment, suspension or discipline of attorneys prescribes in two (2) years from the date of the professional misconduct." (Section 1, Rule VIII, Rules of Procedure of the Commission on Bar Discipline). And records show that the acts complained of took place in 2002.

In the interest of justice, both parties are given ten (10) days from receipt of this Order to file their respective verified position papers. After the expiration of the said period, with or without the position paper, the case shall be considered submitted for report and recommendation."

Respondent did not file any responsive pleading at all.

Thus, on April 27, 2005, the Investigating IBP Commissioner Rebecca Villanueva-Maala submitted her Report and Recommendation.[13] She recommended that respondent be suspended from the practice of law for one (1) year. The pertinent portions of the said Report and Recommendation read as follows:

After a careful study and consideration of the facts and evidence presented, we find merit to warrant disciplinary action against respondent. His failure to answer the complaint for disbarment despite due notice on several occasions and to appear on the scheduled hearings set, shows his flouting resistance to lawful orders of the court and illustrates his despicency for his oath of office as a lawyer, which deserves disciplinary sanction. (Ngayan v. Tugade, 193 SCRA 779).

Respondent's contention that there were cases already filed in court against him is of no moment. The pendency of a criminal action against a respondent from the facts of which the disciplinary proceedings is predicated, does not pose a prejudicial question to the resolution of the issues in the disbarment case (In re Brillantes, 76 SCRA 1; Calo v. Degamo, 20 SCRA 447).

PREMISES CONSIDERED, it is hereby recommended that respondent ATTY. SALVADOR N. MOYA II be SUSPENDED for a period of ONE YEAR from receipt hereof from the practice of his profession as a lawyer and as a member of the Bar.

RESPECTFULLY SUBMITTED.[14]

On October 22, 2005, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Commissioner Maala in its Resolution No. XVII-2005-113.[15] Respondent was ordered suspended from the practice of law for two (2) years with a notification that this suspension of two (2) years must be served in succession to the initial recommendation of the IBP Board of Suspension of two (2) years in CBD Case No. 03-1171, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby 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 record and the applicable laws and rules, and considering respondent's violation of B.P. 22 and for failure and refusal to comply with his obligations, Atty. Salvador N. Moya is hereby SUSPENDED from the practice of law for two (2) years, with a notification that this suspension of two years must be served in succession to the initial recommendation of the IBP Board of Suspension of two years in CBD Case No. 03-1171.[16]

On January 12, 2006, respondent through counsel filed with the Office of the Bar Confidant (OBC) a notice informing it that respondent is filing an Appeal Memorandum. On the same date, respondent filed his Appeal Memorandum with the following assignment of errors:

I

THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ERRED IN RECOMMENDING RESPONDENT'S SUSPENSION FORM THE PRACTICE OF LAW FOR TWO (2)

YEARS FOR HAVING ALLEGEDLY FAILED TO FILE HIS ANSWER ON THE COMPLAINT FOR DISBARMENT DESPITE DUE NOTICE.

II

THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ERRED IN RECOMMENDING RESPONDENT'S SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS FOR HAVING ALLEGEDLY VIOLATED BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECKS LAW.

III

THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ERRED IN RECOMMENDING RESPONDENT'S SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS FOR HAVING ALLEGEDLY REFUSED TO SETTLE HIS OBLIGATIONS.

On January 31, 2006, the Court issued a Resolution noting the aforesaid Notice of Resolution No. XVII-2005-113 dated October 22, 2005 of the IBP.[17]

On various dates,[18] the Court issued Resolutions noting the following pleadings filed by the respondent:

- Appeal Memorandum filed on January 12, 2006;
- Manifestation/Supplement[19] to the Appeal Memorandum With Motion to Give Due Course To said Pleading More So That The IBP Had Gone Beyond the Period Provided For By Law To Conduct Investigation As In The Case of Malonzo v. Principe, 447 SCRA 1.
- Urgent Manifestation with Motion to Remand the Case to the IBP-CBD and Treat the Appeal Memorandum as Motion for Reconsideration to the Resolution of the IBP-CBD filed on November 3, 2006.

At the outset, respondent's Urgent Manifestation with Motion to Remand the Case to the IBP-CBD and Treat the Appeal Memorandum as Motion for Reconsideration to the Resolution of the IBP-CBD, is denied. It is not necessary to remand this case to the IBP because the latter no longer have jurisdiction over the case which had already been endorsed to this Court for final action. Rule 139-B, § 12(b) of the Rules of Court provides:

Section 12. - Review and decision by the Board of Governors.

X x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

Regarding the merits of the case, we sustain the findings and conclusions of Commissioner Villanueva-Maala, as approved, adopted and modified by the IBP Board of Governors.

Respondent was charged for having failed to pay his debts and for issuing worthless checks as payment for his loan from complainant and the latter's friends which were incurred at the time when he was engaged as complainant's counsel. He did not deny the aforesaid allegations but he contended that he committed neither a violation of the Code of Professional Responsibility nor any dishonest, immoral or deceitful conduct because he never denied his debts and he was only unable to pay them on time due to financial constraints.

Respondent's contention is untenable.

Under Sec. 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, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so.[20]

In *Lao v. Medel*,[21] we ruled as follows:

Canon 1 of the Code of Professional Responsibility mandates all members of the Bar to obey the laws of the land and promote respect for law. Rule 1.01 of the Code specifically provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." In *Co v. Bernardino*, [A.C. No. 3919, January 28, 1998, 285 SCRA 102] the Court considered the issuance of worthless checks as violation of this Rule and an act constituting gross misconduct.

Moreover, in *Cuizon v. Macalino*,[22] we also ruled that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action. Similarly, *Sanchez v. Somoso*[23] held that the persistent refusal to settle due obligations despite demand manifests a lawyer's low regard to his commitment to the oath he has taken when he joined his peers, seriously and irreparably tarnishing the image of the profession he should, instead, hold in high esteem. This conduct deserves nothing less than a severe disciplinary action.

Clearly, therefore, the act of a lawyer in issuing a check without sufficient funds to cover the same constitutes such willful dishonesty and immoral conduct as to undermine the public confidence in the legal profession. He cannot justify his act of issuing worthless checks by his dire financial condition. Respondent should not have contracted debts which are beyond his financial capacity to pay. If he suffered a reversal of fortune, he should have explained with particularity the circumstances which caused his failure to meet his obligations. His generalized and unsubstantiated allegations as to why he reneged in the payment of his debts promptly despite repeated demands and sufficient time afforded him cannot withstand scrutiny.

The Court finds unmeritorious the justification of the respondent as to his failure to immediately deliver to the complainant the payment made by Diwa for the satisfaction of the judgment in Civil Case No. 1482 of the MTC of Sta. Maria, Bulacan. Respondent is accused of delay in the delivery of the sum of money due to his client. His failure to explain such delay cannot be excused by his bare allegation that the same had already been transmitted to the complainant.

His conduct in the course of the IBP proceedings in this case is also a matter of serious concern. He submitted a motion to dismiss after requesting several extensions of time to file his answer. His failure to attend the hearings and belated plea to dismiss the case, despite orders to the contrary, show a callous disregard of the lawful orders of the duly constituted authority, which caused undue delay in the IBP proceeding. This conduct runs counter to the precepts of the Code of Professional Responsibility[24] and violates the lawyer's oath which imposes upon every member of the bar the duty to delay no man for money or malice. Respondent has failed to live up to the values and norms of the legal profession as embodied in the Code of Professional Responsibility.

We stress that membership in the legal profession is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the Rules of the Legal Profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. The Supreme Court, as guardian of the legal profession, has ultimate

disciplinary power over attorneys. This authority to discipline its members is not only a right but a bounden duty as well.[25] Sadly, herein respondent's conduct falls short of the exacting standards expected of him as a member of the legal profession. Accordingly, administrative sanction is warranted by respondent's gross misconduct.

We come now to the penalty imposable in this case. In *Co v. Bernardino*[26] and *Lao v. Medel*[27] we held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law.

However, in this case, we deem it reasonable to affirm the sanction imposed by the IBP-CBD, i.e., respondent was ordered suspended from the practice of law for two (2) years, because aside from issuing worthless checks and failure to pay his debts, respondent also had seriously breached his client's trust and confidence to his personal advantage and had shown a wanton disregard of the IBP's Orders in the course of its proceedings.

WHEREFORE, Resolution No. XVII-2005-113 dated October 22, 2005 of the IBP which found that respondent Atty. Salvador N. Moya II is guilty of gross misconduct and violation of the Code of Professional Responsibility is **AFFIRMED** in toto. He is hereby **SUSPENDED** for two years from the practice of law, effective upon his receipt of this Decision. He is warned that a repetition of the same or a similar act will be dealt with more severely.

Let copies of this Decision be served on the Court Administrator who shall circulate it to all courts for their information and guidance as well as the Office of the Bar Confidant, which is directed to append a copy to respondent's personal record. Let another copy be furnished the National Office of the Integrated Bar of the Philippines.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Brion, JJ., concur.

[1]Rollo, pp. 1-9.

[2] Report and Recommendation of the IBP, rollo at 145; Respondent's Appeal Memorandum, rollo at 116-117.

[3] Rollo, p. 28.

[4]Id., pp. 37-49.

[5] Annex "I" - Appeal Memorandum.

[6]Annex "J" - Appeal Memorandum.

[7] Annex "K" - Id.

[8] Annex "L" - Id.

[9] Annex "O" - Id.

[10] Annex "M" - Id.

[11] Annex "N" - Appeal Memorandum.

[12] Annex "P" - Appeal memorandum.

[13] Annex "B."

[14] Annex "B."

[15] Annex "1."

[16] Annex "1."

[17] Rollo at 110.

[18] (1) June 20, 2006; noting the Manifestation/Supplement to the Appeal Memorandum; (2) July 11, 2006, noting respondent's Appeal Memorandum; and (3) December 5, 2006, noting the Urgent Manifestation with Motion to remand the case to the IBP.

[19] Filed on March 14, 2006.

[20] Michael P. Barrios v. Atty. Francisco P. Martinez, A.C. No. 4585, November 12, 2004, 442 SCRA 332.

[21] A.C. No. 5916, July 1, 2003, 405 SCRA 232-233, citing the case of Co v. Bernardino, A.C. No. 3919, January 28, 1998, 285 SCRA 102.

[22] A.C. No. 4334, July 7, 2004, 433 SCRA 484.

[23] Sanchez v. Somoso, A.C. No. 6061, October 3, 2003, 412 SCRA 569, 572.

[24] "Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

x x x

"Canon 7. A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.

x x x

"Rule 7.03. A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession."

[25] Dumadag v. Lumaya, A.C. No. 2614, June 29, 2000, 334 SCRA 513, 521.

[26] A.C. No. 3919, January 28, 1998, 285 SCRA 102.

[27] A.C. No. 5916, July 1, 2003, 405 SCRA 232-233.

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