

MELVIN D. SMALL, COMPLAINANT, VS. ATTY. JERRY BANARES, RESPONDENT.

A.C. NO. 7021. February 21, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a complaint for disbarment filed by Melvin D. Small (complainant) against Atty. Jerry Banares[1] (respondent) for failure to render legal services and to return the money received for his legal services.

The Facts

On 30 August 2001, complainant engaged the services of respondent in connection with several complaints to be filed against one Lyneth Amar (Amar). Complainant paid respondent P20,000 as acceptance fee.[2]

On 4 September 2001, complainant gave respondent P60,000 as filing fees for the cases against Amar.[3] Respondent then wrote a demand letter for Amar and talked to Amar on the phone. Respondent also informed complainant that he would be preparing the documents for the cases. Complainant consistently communicated with respondent regarding the status of the cases. But respondent repeatedly told complainant to wait as respondent was still preparing the documents.

On 5 January 2002, complainant required respondent to present all the documents respondent had prepared for the cases against Amar. Respondent was not able to present any document. This prompted complainant to demand for a full refund of the fees he had paid respondent.[4] Complainant even hired the services of Atty. Rizalino Simbillo to recover the money from respondent. But respondent failed to return the money. Hence, complainant filed a case for disbarment before the Integrated Bar of the Philippines (IBP) against respondent.

On 15 October 2004, IBP Director for Bar Discipline Rogelio A. Vinluan ordered respondent to submit his answer to the complaint. Respondent did not file an answer despite receipt of the order.

On 21 January 2005, IBP Investigating Commissioner Wilfredo E.J.E. Reyes (IBP Commissioner Reyes) notified the parties to appear before him for a mandatory conference on 3 March 2005. Only complainant appeared at the conference. As there was no proof that respondent received the notice, IBP Commissioner Reyes reset the mandatory conference to 30 March 2005 and, later, to 14 April 2005. Respondent was warned that, if he fails to appear at the conference, the case will be considered submitted for resolution.

On the 14 April 2005 conference, only complainant appeared despite respondent's receipt of the notice. The Commission on Bar Discipline considered the case submitted for resolution.

The IBP's Report and Recommendation

On 14 July 2005, IBP Commissioner Reyes submitted his Report and Recommendation (Report) with the finding

that respondent failed to render any legal service to complainant despite having been paid for his services. The Report considered complainant's evidence sufficient to find respondent guilty of violating Canons 16,[5] 18,[6] and 19[7] of the Code of Professional Responsibility (Code). IBP Commissioner Reyes recommended the imposition on respondent of a penalty of suspension from the practice of law for two years and that respondent be ordered to return complainant's P80,000.

In a Resolution dated 12 November 2005, the IBP Board of Governors adopted and approved the Report. The IBP Board of Governors forwarded the instant case to the Court as provided under Section 12(b), Rule 139-B[8] of the Rules of Court.

The Court's Ruling

We sustain the findings and recommendation of the IBP.

The Code provides that a lawyer shall serve his client with competence and diligence.[9] The Code states that a lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.[10]

The records show that after receiving P80,000 respondent was never heard from again. Respondent failed to give complainant an update on the status of the cases. Moreover, it appears that respondent failed to file the appropriate cases against Amar. Respondent's failure to communicate with complainant was an unjustified denial of complainant's right to be fully informed of the status of the cases. When respondent agreed to be complainant's counsel, respondent undertook to take all the necessary steps to safeguard complainant's interests.[11] By his inaction, respondent disregarded his duties as a lawyer.

The Code also mandates that every lawyer shall hold in trust all moneys of his client that may come into his possession.[12] Furthermore, a lawyer shall account for all money received from the client and shall deliver the funds of the client upon demand.[13]

In *Meneses v. Macalino*,[14] the Court ruled that:

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.[15]

Respondent specifically received P80,000 for his legal services and the filing fees for the cases against Amar. Since respondent failed to render any legal service to complainant and he failed to file a case against Amar, respondent should have promptly accounted for and returned the money to complainant. But even after demand, respondent did not return the money. Respondent's failure to return the money to complainant upon demand is a violation of the trust reposed on him and is indicative of his lack of integrity.[16]

Moreover, respondent's misconduct is aggravated by his failure to file an answer to the complaint and his refusal to appear at the mandatory conference. The IBP rescheduled the mandatory conference twice to give respondent a chance to answer the complaint. Still, respondent failed to appear, exhibiting his lack of respect for the IBP and its proceedings.[17]

The relation of attorney and client is highly fiduciary, requiring utmost good faith, loyalty, and fidelity on the part of the attorney. In this case, respondent clearly fell short of the demands required of him as a member of the Bar.

WHEREFORE, we find respondent Atty. Jerry Banares GUILTY of violating Canons 16 and 18 and Rules 16.01, 16.03, and 18.04 of the Code of Professional Responsibility. Accordingly, we SUSPEND respondent from the

practice of law for two years effective upon finality of this Decision. We ORDER respondent to RETURN, within 30 days from notice of this decision, complainant's P80,000, with interest at 12% per annum from the date of promulgation of this decision until full payment. We DIRECT respondent to submit to the Court proof of payment within fifteen days from payment of the full amount.

Let copies of this decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

[1] Sometimes spelled in the records as Bañares.

[2] Rollo, p. 4.

[3]Id. at 5.

[4] Id. at 6.

[5] Canon 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

[6]Canon 18 – A lawyer shall serve his client with competence and diligence.

[7] Canon 19 – A lawyer shall represent his client with zeal within the bounds of the law.

[8]Section 12(b), Rule 139-B of the Rules of Court provides:

SEC. 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.

[9] Supra note 6.

[10]Rule 18.04, Code of Professional Responsibility.

[11] Almendarez, Jr. v. Langit, A.C. No. 7057, 25 July 2006.

[12] Supra note 5.

[13]Rules 16.01 and 16.03, Code of Professional Responsibility.

[14] A.C. No. 6651, 27 February 2006, 483 SCRA 212.

[15] Id. at 219.

[16]Aldovino v. Pujalte, Jr., A.C. No. 5082, 17 February 2004, 423 SCRA 135.

[17] Meneses v. Macalino, supra.

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