

OFELIA R. SOMOSOT, COMPLAINANT, VS. ATTY. GERARDO F. LARA, RESPONDENT.

A.C. No. 7024. January 30, 2009

Ponente: BRION, J.

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BRION, J.:

Once again, we are faced in this complaint for disbarment with the problem of a client-lawyer relationship developing into a legal action between the lawyer and the client.[1] The complaining client is Ofelia R. Somosot (complainant), a defendant in a collection case before the trial court; her defense was handled by Atty. Gerardo F. Lara (respondent).[2]

The Factual Background

In support of her complaint for disbarment, the complainant alleged that she retained the services of the respondent as her counsel in Civil Case No. Q01-43544, entitled "Golden Collection Marketing Corporation v. Ofelia Somosot, et al.," filed against her and her co-defendants for the collection of a sum of money amounting to P1.3 Million. Her defense was that it was the plaintiff who actually owed her P800,000.00. She claimed that she had the evidence to prove this defense at the trial. The respondent agreed to handle the case and duly entered his appearance as counsel after securing his acceptance fee.

The complainant expected the respondent to perform his duty as counsel and to defend her interests to the utmost. She alleged, however, that after filing the Answer to the Complaint, the respondent failed to fully inform her of further developments in the case. She only heard about the case when there was already a decision against her and her co-defendants. She even belatedly learned that the respondent had sought his discharge as counsel without her knowledge and consent. Contrary to the respondent's claim that he could no longer locate her, she claimed that the respondent knew all along where she lived and could have easily contacted her had he been in good faith.

After the court denied the respondent's motion to withdraw from the case, the complainant claimed that the respondent represented her interests in a half-hearted manner, resulting in the grant of the plaintiff's motion for judgment on the pleadings. Allegedly, the respondent failed to properly oppose the motion and she was thereafter deprived of the chance to present her evidence. Execution of the court's decision followed, resulting in the sale of her house and lot at public auction despite her efforts to reverse the judgment with the help of another lawyer. Thereafter, a third party to whom her property had been mortgaged sued her.

The complainant bewailed the respondent's evasive attitude when she confronted him about her problem with his representation. She found the respondent's excuse - that he could not contact her because she had changed her office address - to be unsatisfactory. She accused the respondent of miserably failing to comply with his oath as a lawyer and to discharge his duty of ably representing her.

In his comment,[3] the respondent denied that he failed to exercise the diligence required of him as counsel in Civil Case No. Q01-43544. He argued that pursuant to his oath as counsel, he pursued the complainant's case

"according to his own ability and knowledge." He alleged that:[4]

- He filed the complainant's Answer with Counterclaim on July 16, 2001. He presented all the complainant's defenses and claims, but the plaintiff, Golden Collection Marketing Corporation, filed for "interrogatories and request for admission." He filed an objection to the plaintiff's motion on the ground that the interrogatories and request for admission are, by law, properly addressed to the complainant herself and not to him as counsel.
- He filed a reply to the plaintiff's comment (on his objection) and the case proceeded despite the complainant's failure to pay his billing from May 3, 2001 to August 2, 2001 amounting to P27,000.00
- On November 1, 2001, he joined the government service as consultant in the Board of Investments and full-time counsel to BOI Gov. J. Antonio Leviste. He tried to inform the complainant of his appointment and to collect his billings at her office in Greenhills, but the office was locked. A security guard told him that the complainant had moved without leaving any forwarding address. He even tried to contact complainant and her husband's cellular phones, to no avail.
- Desperate, he filed a notice of withdrawal of appearance with the explanation that the conformity of the complainant could not be obtained since the complainant's corporation had moved its office without informing him of its new location, and the complainant had not been communicating with him.[5] He later learned that the complainant had moved to Pasig City.
- In late December 2001, he was able to talk with the complainant by phone and he informed her that he could no longer handle cases for the complainant's company, thereby terminating his relationship with complainant. He advised the complainant to look for another lawyer; the complainant replied that she already had another lawyer.
- Despite his situation and aware that the court had denied his motion to withdraw from the case, the respondent continued rendering legal services as the complainant's counsel. He filed a motion for reconsideration of the Court's decision dated June 3, 2002. He likewise filed an urgent opposition to the winning party's motion for execution.
- On September 2, 2005, he received a letter from the complainant giving him "one final opportunity to convince me, why she should not pursue disbarment proceedings." He promptly prepared a reply which, upon her suggestion, he delivered at the complainant's residence.
- He thought that he had given the complainant a satisfactory explanation only to learn later that she filed a complaint for disbarment against him.
- The respondent expressed his regret for what happened to the case, but stressed that he did not abandon the complainant and the cases he had been handling for her company. He did not likewise neglect to perform his duties as counsel. On the insinuation that he may have been "bought," he emphasized he that cannot and will never abandon a client as a Christian lawyer and a family man.

In a Resolution dated July 17, 2006, the Court referred the case to the Integrated Bar of the Philippines (IBP) "for investigation, report and recommendation." The complainant filed a Position Paper (dated January 12, 2007) before the IBP Commission on Bar Discipline through her counsel Honorato V. Reyes, Jr.[6] She reiterated in this position paper the allegations in her complaint. She could not understand how a simple collection case against her where she felt she had a good defense and which she expected to go through a full-blown litigation could be lost virtually through a mere technicality, i.e., through a judgment on the pleadings for her failure to answer the plaintiff's interrogatories and request for admission. She insisted she had not been informed by the respondent of the plaintiff's motion for written interrogatories and request for admission. Had he informed her, she could have

responded.

The complainant was even more surprised to learn that the respondent tried to withdraw from the case because she (the complainant) could not be contacted. She maintained that she had never transferred her residence where she could be reached had the respondent exerted a meaningful effort to contact her. She claimed that the respondent was able to do so later when he was collecting the balance of his legal fees. She denied that she had not paid respondent his retainer fees.

The complainant stressed that the respondent violated his oath as a lawyer by mishandling her case, resulting in the loss of her house and lot and other damages.

The respondent's Position Paper (dated January 3, 2007) essentially reflected the arguments presented in his Comment before this Court.[7] He clarified that the complainant did not incur extra expenses in defending herself in the collection case since its handling was part of the services covered by his retainer. He insisted that he vigorously pursued the case and defended the complainant to the utmost despite the complainant's unpaid billings of P27,000.00.

The respondent contended that he had good reasons not to continue as the complainant's counsel. He reasoned out that under the Code of Professional Responsibility, a lawyer may withdraw from a case upon a good cause such as when the client deliberately fails to pay the fees for the lawyer's services, or fails to comply with the terms of the retainer agreement, or when the lawyer is elected or appointed to public office.[8] Two of these possible causes applied to his situation; he was appointed legal consultant at the BOI requiring full-time work and the complainant had failed to pay his legal fees to him amounting to P27,000.00. He filed the formal notice of withdrawal without the conformity of the complainant because he could not locate her.

The respondent insinuated that that the complainant's real intent was merely to harass him and his family as indicated by her non-appearance, despite due notice, at the preliminary conference before the IBP. He argued that he could not be disbarred considering that it was the complainant who was negligent in informing him of her whereabouts. While he expressed regret for what happened in the case, he insisted that he exerted every effort to locate her, filed the necessary pleadings, protected her and her company's interest as best as he could.

The IBP Recommendation

In a letter to the Chief Justice dated January 28, 2007, the IBP Board of Governors, through the IBP Commission on Bar Discipline, transmitted to the Court a Notice of Resolution[9] and the records of the case. The resolution was for the adoption and approval of the Report and Recommendation of Commissioner Rico A. Limpingo who had investigated the case. [10]

Commissioner Limpingo recommended that respondent be reprimanded for lack of reasonable diligence in representing the complainant.

His recommendation was based on the following evaluation:

It appears that the respondent was to some degree, remiss in fulfilling his duties to complainant Somosot. While it may be true that he had filed an answer in Civil Case No. Q01-43544, objected to the plaintiff's interrogatories and requests for admission, asked for reconsideration of the decision rendered by the court and opposed the adverse party's efforts to have the same executed, it can nevertheless be seen that the remedial measures taken by the respondent were inadequate, especially in view of the direction which the proceedings were taking.

The respondent is not incorrect in saying that a lawyer may be relieved of his duties even without the

conformity of his client when he lost all contact with the latter, and the complainant's failure to settle his unpaid fees is not received without sympathy. The fact remains, however, that the respondent's efforts to be discharged as counsel were disallowed by the court, under the circumstances, he was bound by his oath to represent complainant Somosot and to advocate her cause to the best of his ability.

The respondent claims that in late December 2001, he was finally able to talk to complainant Somosot and was told that she already had another lawyer by the name of Atty. Tomas Dulay. Considering his stated desire to withdraw from the case and his own declaration that he had again come into the means of contacting the complainant, it is thus entirely puzzling why he did not at this point, revive his efforts to be relieved of his responsibilities in Civil Case No. Q02-43544 given complainant Somosot's alleged engagement of Atty. Tomas Dulay and her presumed willingness to give her consent to such discharge. As it is, respondent Atty. Lara remained as counsel of record and for some undisclosed reason did not appeal the decision against his client.

This is not to say that the client is entirely without fault. While complainant Ofelia Somosot's narrative is in many respects at odds with that of the respondent, it is nevertheless clear from her submissions that she never made any effort to contact the respondent to follow up the status of the case, but instead expected the latter to take complete initiative in this regard.

It has been held that it is the duty of a party-litigant to remain in contact with his lawyer in order to be informed of the progress of his case. "True enough, the party-litigant should not rely totally on his counsel to litigate his case even if the latter expressly assures that the former's presence in court will no longer be needed. No prudent party will leave the fate of his case entirely to his lawyer. Absence in one or two hearings may be negligible but want of inquiry or update on the status of his case for several months (four, in this case) is inexcusable. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case." Thus the complainant did not do, and such circumstance can only mitigate in respondent's favor.

The Court's Ruling

As the IBP did, we find that the respondent deserves to be sanctioned for having fallen short of the standards required of him as defense counsel in Civil Case No. Q01-43544. He violated the basic rule, expressed under Canon 18 of the Code of Professional Responsibility,[11] that "a lawyer shall serve his client with competence and diligence." [12]

While it may be said that the respondent did not completely abandon the case, his handling of the complainant's defense left much to be desired.

The records show that the plaintiff in the collection case filed interrogatories and a request for admission. The respondent duly filed his objection to the plaintiff's move, but the court apparently allowed the interrogatories and request for admission and directed the complainant (as the defendant in the civil case) to respond. The complainant was never informed of this development and the omission eventually led to the grant of the plaintiff's motion for judgment on the pleadings, which in turn led to the decision against the defendants.[13]

In his submissions before this Court and before the IBP, the respondent alleged that he objected to the interrogatories and request for admission and did all he could, even filing a reply to the defendant's comment to his objection. He likewise alleged that from May 3, 2001 to August 2, 2001, the complainant had not paid the billings sent to her; that the complainant could not be contacted because she had closed her office without any forwarding address; [14] that as of November 1, 2001, he had been appointed as a consultant in the office of BOI Governor J. Antonio Leviste; and that he continued to represent the complainant even after the trial court's decision by filing a motion for reconsideration and opposing the plaintiff's motion for execution.[15]

After examining the whole record of the case, we find the respondent's positions to be very revealing with respect to what they say and do not say.

First, the respondent failed to precisely allege in his submissions how he tried to contact the defendant on or about the time the interrogatories and request for admission were pending. It appears that he really had not; by his own admission, his attempt to contact the complainant came in December 2001 and only to inform her of his government appointment and to collect his billings. It was only after the discovery of the closure of the defendant's office did the respondent try to contact the complainant and her husband by cellular phone, but they could not be reached.

Second. The interrogatories/admission issue happened in August 2001, which tells us that the respondent at about that time was already very sensitive about his billing issue against his client as he had not been paid from May to August 2001. Assuming the non-payment to be true, such failure should not be a reason not to inform the client of an important development, or worse, to withhold vital information from her. As the court held in *Luisito Balatbat v. Atty. Edgardo Arias*,^[16] a client must never be left in the dark for to do so would destroy the trust, faith and confidence reposed in the retained lawyer in particular and the legal profession in general.

Third. The respondent failed to provide details on the developments that led to the adverse rulings on the interrogatories/admissions and the judgment on the pleadings. We gather under Annex "G" of the respondent's Comment filed with this Court that the trial court ruled in open court on March 8, 2002 that a judgment on the pleadings was appropriate. This was confirmed by an Order of the same date (attached as Annex "B" to the complainant's Position Paper before the IBP) which partly states;

The Court NOTES the manifestation of Atty. Honorato M. Gutierrez, counsel for the plaintiff that the defendants have not been appearing in the case for one (1) year as per December 14, 2001 Order of this Court. The Court even denied the Notice of Withdrawal of Appearance of Atty. Lara, counsel for the defendants, with the end purpose of obviating the further delays of the proceedings of this case. Moreover, in the said Order, this Court ruled that the Rule on judgment on the pleading under Rule 34 of the Rules of Court will now obtain.

The respondent never bothered to explain this court order whose highlighted portions give hints on the reasons for the adverse developments for the defendants. While the records do not explicitly state what remedies the respondent took to react to the Order and to the trial court ruling on the interrogatories/admission issue, we feel it safe to assume that the respondent did not move at all to question the trial court's rulings; nowhere in the records, both from the complainant's and the respondent's end, is there any allegation that the respondent sought to review the trial court's rulings. What intrigues us is that the respondent could have reacted to the trial court's ruling on the interrogatories/request for admission; he was aware of the recourses open to him under the ruling in *Briboneria v. Court of Appeals*, G.R. 101682, December 4, 1992, that he cited in his objection to the interrogatories and request for admission.

Fourth, on the matter of the respondent's withdrawal from the case, the respondent might have had valid reasons to withdraw and terminate his relationship with his client. As the respondent now states, he could withdraw under paragraphs (e) and (f) of the Code of Professional Responsibility^[17] - i.e., deliberate failure of the client to pay the fees for the services, or failure to comply with the retainer agreement, or appointment or election to public office. However, he does not appear to have cited these reasons before the trial court. Instead, he merely filed a Notice of Withdrawal of Appearance, citing his client's unknown location and failure to communicate as reasons for his client's lack of express consent to his withdrawal.^[18] It is undisputed that the trial court denied the respondent's notice of withdrawal; thus, he remained as counsel of record burdened with all the responsibilities that his representation carried.

By his own admission, the respondent succeeded in contacting the complainant in late December, 2001, i.e., soon after he filed his notice of withdrawal with the trial court. As Commissioner Limpingo observed, it was quite puzzling that he did not then revive his efforts to be relieved of his responsibilities in the case, given the complainant's reported engagement of a new counsel. He could have then secured his client's consent to his withdrawal but did not.

Fifth. As Commissioner Limpingo did, we wonder why the respondent did not appeal the decision against his client. It even appears from one of the annexes (Annex "I" of the respondent's comment) that he did not immediately inform the complainant of the decision against her. To quote the complainant's letter (Annex "I"):

"However, for reasons you have not fully explained, you virtually

abandoned the case and interest therein after having initially filed an answer in my behalf.

You never informed me of any further developments in the case. As a result, I lost the said case by reason of default and technicality.

You never informed me of this loss, thus denying me the opportunity to appeal the adverse decision. . . "

The respondent never bothered to refuse this very damaging allegation; neither in his Position Paper before the IBP nor in the Comment filed with us did he offer an explanation. Thus, it appears that the respondent could not have really taken any instructions from his client on how to handle the trial court's adverse decision. He simply took it upon himself to decide not to appeal the trial court's decision and the denial of his motion for reconsideration.

While the respondent expressed regret for the reverses the complainant suffered, regret is a belated response that will not bring back the complainant's lost case. It cannot erase the fact that he mishandled the complainant's defense. By the exacting standards of the legal profession, he has been weighed and found wanting.

What lightens the impact of the respondent's mishandling of the case is the complainant's own failings as a client. The non-payment of fees is a factor that we cannot simply disregard. As a rule, law practice is not a pro bono proposition and a lawyer's sensitivity and concern for unpaid fees are understandable; lawyers incur expenses in running their practice and generally depend, too, on their law practice income for their living expenses. Likewise, the respondent's appointment as a consultant should be considered although it is a matter that none of the parties have fully examined. Both the non-payment of fees and the appoint to a public office, however, were not reasons properly presented before the trial court through a motion that informed the court of all the surrounding circumstances of the desired withdrawal. Instead, another reason was given by way of a mere notice lacking the client's express consent. Thus, the court's denial of the desired withdrawal was not totally unexpected.

More than these reasons and as Commissioner Limpingo correctly noted, the complainant never made any effort to contact the respondent to follow up the status of her case, expecting instead the respondent to take full and complete initiative in this regard. While the respondent, as counsel, has the obligation to inform his client of the material developments in the case, particularly of the aspects of the case that would require the client's instructions or participation, this obligation is balanced by a complementary duty on the part of a party-litigant to remain in contact with his lawyer in order to be informed of the progress of the case.

The complainant's failing in this regard is her failure to inform her counsel of her change of business address, a serious lapse but one that a resourceful counsel could have easily handled. In a balancing, the greater fault still lies with the respondent as he did not appear, based on the records of the case, to be a lawyer whose practice routine included regular reporting to clients on matters other than billings. We note that he did not bother to report (or even allege that he bothered to report) on the interrogatories and request for admission - incidents that can

make or break a case as it did break the defendant's case before the trial court. Despite knowledge of his client's location gained in late December 2001, he did not likewise bother to inform the complainant of the adverse decision against her in June 2002, taking it upon himself to simply file a motion for reconsideration and to accept the court's ruling when his motion was denied. In our view, these are law practice mortal sins that we cannot allow to simply be glossed over or be penalized by a simple reprimand.

However, we cannot also disbar the respondent as the complainant demands in light of the complainant's own contributory faults. Disbarment is an ultimate remedy in the professional world, no less serious and weighty as the power to impose reclusion perpetua in criminal cases; in both, recovery from the penalty - although not totally impossible - is extremely difficult to attain. Thus, we must at all times act with caution and due consideration, taking into account not only the interests of the immediate parties, but the interest of the public, the bar and the administration of justice as well.

The general public must know that the legal profession is a closely regulated profession where transgressions merit swift but commensurate penalties; it is a profession that they can trust because we guard our ranks and our standards well. The Bar must sit up and take notice of what happened in this case to be able to guard against any repetition of the respondent's transgressions, particularly his failure to report the developments of an ongoing case to his clients. Unless the Bar takes a pro-active stance, we cannot really blame members of the public who are not very well disposed towards, and who may even distrust, the legal profession after hearing experiences similar to what the complainant suffered. The administration of justice is served well when we demonstrate that effective remedies exist to address the injustice and inequities that may result from transgressions by those acting in the dispensation of justice process.

In these lights, we hold that while the respondent is liable for a clear case of misconduct that seriously affects his standing and character as an officer of the Court and as a member of the Bar, this liability ought to be tempered by the mitigating circumstances we pointed out above. We therefore cannot impose disbarment as penalty. Given the mitigating circumstances and the extent of their effects on the respondent's culpability, we hold that a three-month suspension from the practice of law is the penalty that is more in keeping with the damage the complainant suffered and the interests that the public, the bar and the administration of justice have to protect.

WHEREFORE, premises considered, respondent ATTY. GERARDO F. LARA is hereby SUSPENDED from the practice of law for a period of three (3) months, effective upon receipt of a copy of this Decision.

SO ORDERED.

Quisumbing, (Chairperson), Corona[*], Carpio Morales, and Tinga, JJ., Concur.

[*] Designated additional member per Special Order No. 558 dated January 15, 2009.

[1] Filed on January 19, 2006.

[2] Rollo, Vol. 1, pp. 1-5.

[3] Id., pp. 9-15.

[4] Id.

[5] Annex "F," respondent's position paper.

[6] Rollo, Vol. II, pp. 20-24.

[7] Id., pp. 4-15.

[8] Canon 22.01(e) & (f).

[9] Resolution No. XIII-2007-90, adopted on September 19, 2007 by the IBP Board of Governors.

[10] Id., Annex "A."

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

[12] Canon 18.01 further provides -

- A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render
xxx

Rule 18.02. - A lawyer shall not neglect a legal matter without adequate preparation.

Rule 18.03. - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04. - 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.

[13] Complainant's Position Paper; Rollo Vol. II, pp. 21-22.

[14] Respondent's Position Paper, id., p. 6.

[15] Id.

[16] A.C. No. 1666, April 13, 2007, 521 SCRA 1.

[17] Supra note 8, p. 6.

[18] Supra note 3, p. 3.

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