CONRADO G. FERNANDEZ, COMPLAINANT, VS. ATTY. MARIA ANGELICA P. DE RAMOS-VILLALON, RESPONDENT.

A.C. No. 7084. February 27, 2009

Ponente: BRION, J.

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BRION, J.:

For our resolution is this administrative case filed by complainant Conrado G. Fernandez (Fernandez) against Atty. Maria Angelica P. De Ramos-Villalon (Atty. Villalon). The complainant was the respondent in Civil Case No. 05-1017, in which Carlos O. Palacios (Palacios) sought to nullify a Deed of Donation he purportedly executed in favor of Fernandez.[1] The respondent in this administrative action, Atty. Villalon, was Palacios' counsel in the early part of the case; she withdrew from the case after her appointment as prosecutor of Quezon City.[2]

A brief summary of Civil Case No. 05-1017 is in order to put this administrative complaint in proper context.

Palacios, in his Complaint in Civil Case No. 05-1017, alleged that he was the owner of a lot covered by Transfer Certificate of Title (TCT) No. 178587 located in Barangay San Lorenzo, Makati City.[3] He allegedly inherited the lot from his mother. Sometime in June 2004, he became aware that his lot was being eyed by a land-grabbing syndicate. The syndicate attempted to obtain a copy of TCT No. 178587 by pretending to be Carlos Palacios, Jr., and by filing a Petition for Judicial Reconstitution of Lost Owner's Duplicate Original Copy of TCT No. 178587. The petition was docketed as LRC Case No. M-4524.[4]

Palacios received information that Fernandez could help him oppose the syndicate's petition. Thus, Palacios approached Fernandez, and they eventually succeeded in causing the withdrawal of LRC Case No. M-4524, with the assistance of a certain Atty. Augusto P. Jimenez, Jr.. Palacios allegedly agreed to pay Fernandez P2,000,000.00 for the services he rendered in LRC Case No. M-4524.

On September 27, 2005, when Palacios visited the Village Administrator of the San Lorenzo Village Association, he bumped into Mrs. Jocelyn Lirio who expressed her interest in Palacios' San Lazaro property. She had heard it was being sold by Fernandez. Palacios was surprised by Mrs. Lirio's story, as he had no intention of selling the property. Upon investigation, he discovered that Fernandez had falsified a Deed of Donation that he (Palacios) purportedly executed in Fernandez' favor. This Deed was duly registered, and on the strength of the purported donation, TCT No. 178587 in Palacios' name was cancelled, and a new TCT (TCT No. 220869) was issued in Fernandez' name.

Palacios then employed the services of respondent Atty. Villalon to file a Complaint for the declaration of nullity of the Deed of Donation that became the basis for the issuance of a title in Fernandez' name.[5] This complaint was subsequently amended to implead Romeo Castro, Atty. Augusto P. Jimenez, Jr., Levy R. De Dios, and Rosario T. Abobo.[6]

In his Answer, Fernandez claimed that the transfer of title in his name was proper on account of an existing Deed of Absolute Sale dated January 12, 2005 between him and Palacios. He also alleged that it was Palacios who

falsified a Deed of Donation by forging their signatures and having it notarized;[7] Palacios did this in order to cheat the government by paying only the donor's tax, which was lower than the capital gains tax he would have paid had the transaction been represented as a sale. He additionally alleged that Palacios intended to falsify the Deed of Donation in order to have a ground for the annulment of the new TCT issued in favor of Fernandez and, ultimately, to recover the property.

On March 2, 2006, Fernandez filed a complaint for disbarment against Atty. Villalon for violation of Rule 1.01,[8] Rule 7.03,[9] Rule 10.01,[10] Rule 10.02,[11] and Rule 10.03[12] of the Canons of Professional Responsibility.[13] Fernandez alleged that Atty. Villalon, acting as Palacios' counsel, deceitfully:

- suppressed and excluded in the Original and Amended Complaint her knowledge about the existence of the Deed of Absolute Sale dated January 12, 2005;

- used the fake and spurious Deed of Donation to deceive the court into trying Civil Case No. 05-1071, the action for the annulment of TCT No. 220869, despite her knowledge of the existence of the Deed of Absolute Sale;

- committed misrepresentations as follows: to verify whether the attached Deed of Absolute Sale was properly notarized, the respondent Villalon personally inquired before the notarial section of the Regional Trial Court (RTC) of Quezon City thru a letter-request, whether a record of the deed existed in the said office; in the letter-request, the respondent misrepresented that there was already a pending case in the RTC of Makati before November 9, 2005;

- refused to receive the complainant's Answer with Compulsory Counterclaim so that she could file on behalf of her client an Amended Complaint without leave of court and without presenting the Deed of Absolute Sale;

- induced her witness Agnes Heredia (Heredia) to sign a false Affidavit by telling her that it would only be for purposes of compelling Fernandez to pay additional sums to her client; however, Atty. Villalon used it as evidence to frame the complainant Fernandez for her own personal gain;

- only submitted the Deed of Donation for signature examination and certification by the NBI and intentionally failed to submit the Deed of Absolute Sale.[14]

The Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation. On January 30, 2008, Commissioner Dennis A.B. Funa (Commissioner Funa) issued a Report and Recommendation to dismiss the case, which in part reads:

> There is no sufficient basis to hold respondent accountable for failure to mention in the Complaint and Amended Complaint the existence of the January 12 Deed of Absolute Sale. No such duty is imposed upon the legal counsel under any law or the Rules of Court. This Commissioner agrees with respondent's argument that only the client's operative facts and not the other evidentiary facts need to be included in the Complaint. It is correct for the respondent to argue that pointing out the existence of the January 12 Deed of Absolute Sale was a matter of defense which the defendant in said civil case can freely point out to the trial judge through his own pleadings.
>
> It cannot be argued that there was suppression of evidence on the part of the respondent as she is not the only person who had access or possession of the said Deed of Absolute Sale. It was a document readily available to the general public through the Notarial Office. Moreover, it was a document which was fully known to herein complainant as he was supposed to be a party to the said Deed of Absolute Sale. In other words, a person cannot possibly suppress the existence of a document which everyone else, especially the opposing party-litigant, knows about.
>
> Furthermore, it is noted that while the letter to the Notarial Office was dated November 9, it was actually

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> received by said office only on November 14, 2005. The civil Complaint was filed on November 15, or on the next day. We take note that there is no indication when the Notarial Office formally replied to the respondent's letter inquiry. Therefore, it cannot be said with certainty that respondent acquired knowledge about the Deed of Absolute Sale on November 14 or November 15.
>
> We also take note that assuming the respondent had knowledge about (sic) the existence of the Deed of Absolute Sale before the civil complaint was filed, her role as the legal counsel is limited by the client's choice of cause of action. Moreover, its mere existence as a document is not an affirmation of its validity or due execution. In other words, the client, possibly believing in the invalidity of the Deed of Absolute Sale, may have chosen to refute the validity of the document at a later time when and if its existence is raised. This is a choice within the discretion of the party-litigant. The opposing party cannot impose it as a duty upon the other party or his legal counsel. There is, therefore, no sufficient factual basis to hold respondent accountable in this charge. As it turns out, respondent's client claims no consideration was ever given for the Deed of Absolute Sale and is consequently arguing that said Deed is void.
>
> As for the accusation that respondent committed misrepresentation in her November 9 letter by stating that a case had already been filed when in truth no such case is yet pending, we take note that assuming a misrepresentation was committed, such act does not attain a degree of materiality or gravity so as to attribute evil malice on the part of respondent. The intent on the part of respondent remains the same, that is, to obtain relevant information. We cannot attribute any evil deception in the said letter considering the surrounding facts especially since a civil complaint was in fact filed the very next day the letter was sent.
>
> As for the accusation that respondent refused or failed to receive registered mail matters, such has not been factually substantiated. The same goes with the accusation that respondents failed to furnish herein complainant's lawyer with a copy of the Amended Complaint.
>
> PREMISES CONSIDERED, it is submitted that respondent did not commit any act for which she should be disciplined or administratively sanctioned.
>
> It is therefore recommended that this CASE BE DISMISSED for lack of merit.[15]

Before this Court, Fernandez filed a Petition for Review raising the following issues:

- whether Commissioner Funa committed grave abuse of discretion in recommending the dismissal of the disbarment case against the Respondent;

- whether Commissioner Funa committed grave abuse of discretion in failing to resolve the matter regarding the affidavit of Heredia, in which she retracted her affidavit in Civil Case No. 05-1017 and further said that the respondent induced her to issue a false affidavit by telling her that the said affidavit would only be used to compel Fernandez to pay additional sums to Palacios.

THE COURT'S RULING

We agree with the recommendation of IBP Commissioner Funa. The charges against the respondent do not constitute sufficient grounds for disbarment.

A lawyer, as an officer of the court, has a duty to be truthful in all his dealings.[16] However, this duty does not require that the lawyer advance matters of defense on behalf of his or her client's opponent. A lawyer is his or her client's advocate; while duty-bound to utter no falsehood, an advocate is not obliged to build the case for his or her client's opponent.

The respondent's former client, Palacios, approached her to file a complaint for the annulment of the Deed of Donation. This was the cause of action chosen by her client. Assuming arguendo that the respondent knew of the

presence of the Deed of Absolute Sale, its existence, is, indeed, a matter of defense for Fernandez. We cannot fault the respondent for choosing not to pursue the nullification of the Deed of Absolute Sale. The respondent alleged that her former client, Palacios, informed her that the Deed of Absolute Sale was void for lack of consideration. Furthermore, unlike the Deed of Donation, the Deed of Absolute Sale was not registered in the Registry of Deeds and was not the basis for the transfer of title of Palacios' property to Fernandez. Under the circumstances, it was not unreasonable for a lawyer to conclude, whether correctly or incorrectly, that the Deed of Absolute Sale was immaterial in achieving the ultimate goal - the recovery of Palacios' property.

On the second issue, the petitioner complains that Commissioner Funa failed to consider Heredia's affidavit of retraction.[17] As a rule, we view retractions with caution; they can be bought and obtained through threats, intimidation, or monetary consideration.[18] The better rule is to examine them closely by considering the original, the new statements and the surrounding circumstances, based on the rules of evidence.[19]

The petitioner raised the retraction for the first time in his Supplemental to (sic) Reply to Comment filed with the Office of the Bar Confidant on November 10, 2006.[20] The petitioner attached Heredia's affidavit of December 11, 2005 and her affidavit of retraction.

In her affidavit of December 11, 2005, Heredia attested that: 1) Palacios sought her help when a syndicate attempted to grab his land; 2) she referred Palacios to the group of Castro, Fernandez, and Jimenez who were then helping her with her own legal problems; 3) she regretted having referred Palacios to this group as she herself was later "victimized by the group; 4) they made her sign blank papers after gaining her trust and confidence, which signed blanks the group later filled up to make it appear that they bought and paid for her real property; 5) she terminated the services of this group sometime in April 2005; 6) she only recently came to know of this group's modus operandi; and 7) Palacios eventually became one of the group's victims.

In her affidavit of retraction, Heredia basically averred that the statements in the affidavit of December 11, 2005 were prepared by Villalon who asked her, in the presence of Palacios, to sign the affidavit; that the affidavit contained lies which she rejected outright, but Palacios and the respondent convinced her that they would only use the affidavit to convince Fernandez to give additional sums of money for Palacios' property; that Palacios admitted getting a motorcyle from Fernandez; that Palacios had been paid not less than P6,000,000.00 for his property; that the respondent and Palacios used her affidavit in the cases they filed against Fernandez; that this violated their agreement that the affidavit would only be used in their negotiations to get more money for the property; that Palacios admitted to her that he executed a Deed of Absolute Sale with Fernandez; that the execution of the Deed of Donation was his idea; that Palacios had Fernandez' signature in the Deed of Donation forged and was regretting having done so because Fernandez filed various charges, including perjury, against him; that she executed the affidavit of retraction in the interest of justice, to tell the truth about the circumstances surrounding the affidavit of December 11, 2005, to clear her name, to show that she is not part of the lies concocted by Atty. Villalon and Palacios, and to correct the wrong that was done by the affidavit of December 11, 2005 to the persons of Conrado Fernandez, Romeo Castro, and Atty. Augusto Jimenez, Jr.

In the Mandatory Conference and Hearing held on July 4, 2007, Commissioner Funa asked the respondent, through counsel, whether she wanted to cross-examine Heredia regarding her affidavit of retraction.[21] The respondent passed up the chance for a direct confrontation and opted to adopt her comment as her position paper. In the position paper she submitted on January 14, 2008, she attacked the credibility of Heredia's affidavit of retraction. She posited that Heredia contradicted herself when she said that she rejected the pre-prepared contents of the first affidavit outright but still signed it; that Heredia's claim that she had been hoodwinked into signing the first affidavit because she was assured that it was a mere scrap of paper, was unbelievable; and that Heredia failed to rebut her earlier statement that she regretted having referred Fernandez' group to Palacios because she herself

fell victim to the group.

In disbarment proceedings, the burden of proof rests on the complainant.[22] Considering the gravity of the penalty of disbarment or suspension as a member of the Bar, a lawyer may only be disbarred or suspended if there is clear, convincing, and satisfactory proof that he or she committed transgressions defined by the rules as grounds to strip him or her of his professional license.[23]

In this case, we find no clear evidence we can satisfactorily accept showing that the respondent improperly induced Heredia to sign the affidavit of December 11, 2005, as alleged in Heredia's affidavit of retraction.

First, the original affidavit and the retraction stand uncorroborated by any other evidence and, in our view, stand on the same footing. Neither affidavit provides clear, convincing and satisfactory proof of what they allege. They cannot therefore stand as meritorious basis for an accusation against the respondent.

Second, the allegations in both sworn statements are so contradictory that we can only conclude that Heredia had grossly lied in either or even in both instruments. We find it incredible that Heredia, as stated in her affidavit of retraction, vehemently rejected the statements in the first affidavit, but nevertheless agreed to sign it because it would only be used to aid Palacios in his negotiations with Fernandez. Effectively, she admitted in her retraction that she had lied under oath and entered into a conspiracy to extract additional funds from Fernandez who would not have accepted the demand if they were falsely made. Why she did what she said she did is not at all clear from her retraction, which itself was not convincingly clear on why she was retracting. For this Court to accept a retraction that raises more questions than answers, made by a witness of doubtful credibility allegedly for the sake of truth, is beyond the limits of what this Court can accept.

In these lights, the retraction has no particular relevance so that the Commissioner's failure to consider it would matter.

WHEREFORE, the complaint for Disbarment is hereby ordered DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr. , and Nachura,[*] JJ., concur.

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[*] Designated additional member of the Second Division per Special Order No. 571 dated February 12, 2009.

[1] Rollo, pp. 41-42.

[2] Petition for Review, p. 2.

[3] Rollo, pp. 9-21.

[4] Rollo, p. 11.

[5] Rollo, supra note 2, pp. 9-21.

[6] Rollo, pp. 22-40.

[7] Rollo, pp. 48-54.

[8] Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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

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[10] Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[11] Rule 10.02 - A lawyer shall not knowingly misquote or mispresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

[12] Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

[13] Rollo, pp. 1-8

[14] See generally, Petition for Review, pp. 6-7.

[15] Rollo, pp. 241-249.

[16] Marcelo v. Javier, A.C. No. 3248. September 18, 1992, 214 SCRA 1.

[17] Rollo, pp. 120-121.

[18] People v. Navarro, G.R. No. 129566, October 7, 1998, 297 SCRA 331.

[19] Ibid., citing People v. Peralta, 237 SCRA 219 (1994); People v. Mindac, 216 SCRA 558 (1992); People v. Clamor, 198 SCRA 642 (1991).

[20] Rollo, pp. 117-119.

[21] Rollo, pp. 20-21.

[22] Berbano v. Barcelona, A.C. No. 6084, September 3, 2003, 410 SCRA 258.

[23] Concepcion v. Fandiño, Jr., A.C. No. 3677, June 21, 2000, 334 SCRA 137.

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