

REY C. SARMIENTO, ANGELITO C. SARMIENTO, WILLY C. SARMIENTO AND RAQUEL C. SARMIENTO-CO, COMPLAINANTS, VS. ATTY. EDELSON G. OLIVA, RESPONDENT.

A.C. No. 7435. September 10, 2009

Ponente: CORONA, J.

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CORONA, J.:

This is a complaint for disbarment[1] filed by complainants Rey, Angelito, Willy and Raquel[2] Sarmiento against respondent Atty. Edelson G. Oliva.

Complainants alleged that they received, as payment for the purchase[3] of a P13 million Makati City property,[4] five postdated checks from respondent.[5] When presented to the drawee bank, two checks were dishonored due to "closed account." [6] Consequently, complainants sent demand letters to respondent on June 21, 2003 and October 7, 2003.

On May 20, 2004, respondent requested complainants to reduce his obligation to P11 million. Complainants agreed. He gave a partial down payment of P200,000[7] and issued four postdated Premier Bank checks.[8] Upon presentment, the first check was dishonored again due to "closed account." [9] On October 7, 2004, complainants again demanded payment from respondent but the demand was ignored. i° Hence, this complaint, which was originally filed with the Integrated Bar of the Philippines (IBP).

Respondent, in his answer, claimed that this complaint was instituted to harass him inasmuch as he had no outstanding financial obligation to the complainants. He maintained that complainants had a buyer for the property on installment. He issued the checks on the condition that these would only be presented on approval and release of proceeds of the loan as the buyer would issue his own checks to cover payment in respondent's name. Because the complainants deposited the checks for clearing without informing him, they actually violated their agreement.[11]

The complaint was set for mandatory conference/hearing[12] but respondent repeatedly failed to appear at the scheduled hearings despite due notice.[13] He was thus deemed to have waived his right to participate in further proceedings.[14]

In its January 23, 2006 report and recommendation,[15] the Commission on Bar Discipline (CBD) of the IBP found that respondent transferred the property to his name despite giving complainants only P200,000. He took advantage of complainants who trusted him and relied on his good faith. Furthermore, he never appeared in any of the scheduled hearings. The CBD thus recommended that respondent be suspended from the practice of law for two years.

The IBP Board of Governors approved and adopted the report and recommendation of the CBD in toto and ordered respondent to restitute the amount of P11 million to complainants.[16]

We modify the recommendation of the IBP.

In a resolution dated October 7, 1994, respondent was disbarred in *Libit v. Attys. Edelson G. Oliva and Umali*[17] for grave misconduct.[18] Hence, not being a member of the bar, he cannot be suspended from the practice of law.

Libit was never mentioned in the records of this case. Complainants obviously had no knowledge of respondent's disbarment in 1994. Respondent must have represented himself to complainants as a bona fide member of the bar. Furthermore, he never informed the IBP of his prior disbarment. As a former lawyer, he knew that the jurisdiction of the IBP is limited to members of the bar.

Since respondent himself made a positive misrepresentation to complainants that he was still a lawyer and even submitted himself to the jurisdiction of the IBP, he is estopped from questioning the jurisdiction of the IBP over him. For this reason we find as proper the recommendation of the IBP that respondent be required to indemnify the complainants the amount of P11million.[19] Respondent does not dispute that complainants were the owners of the property before he had the title to the said property transferred in his name. He cannot unduly enrich himself and enjoy ownership of the property without compensating complainants.

Moreover, the Court has held that a disbarred lawyer, who continues to represent himself as a lawyer with the authority to practice law commits a contumacious act[20] and is liable for indirect contempt.[21]

WHEREFORE, respondent Edelson G. Oliva is hereby ORDERED to SHOW CAUSE within ten days from receipt of this resolution why he should not be cited for indirect contempt for misrepresenting himself to be an attorney, without prejudice to complainants' right to seek other legal remedies.

SO ORDERED

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo and Abad, JJ., concur.
Carpio Morales, and Brion, JJ., in the result.

[1] Letter-coimpaint daied December 10, 2004. Rollo, pp. 1-2.

[2] Surnamed Sarmienlo-Co in some parts of the records.

[3] Under Memorandum of Agreement, Deeds of Absolute Sale and Transfer Certificate of Title No. 218601, "Annex K" of answer. Rollo, pp. 6-8, 9-11 and 46.

[4] Lot is covered by TCI1 No. 66772.

[5] Rollo, pp. 15-17.

Serial No.

Amount

Date

0005470026

P 475,000

December 10, 2002

0005470027

3,000,000

March 10,2003

0005470028

3,000,000

June 10,2003

0005470029

3,000,000

September 10, 2003

0005470029

2,000,000

December 10,2003

P11,475,000

[6] Id., p. 15.

[7] Receipt, id., p. 21.

[8] Id., p. 22.

Serial No.

Amount

Date

009117

P 2,625,000

August 30, 2004

009118

2,625,000

November 30, 2004

009119

2,625,000

February 25, 2005

009120

2,625,000

May 30, 2005

P10,500,000

[9] Id., p. 22.

[10] Id., p. 23.

[11] Id., pp. 33-35.

[12] Order dated April 13, 2005. Id., p. 48.

[13] May 18, 2005, June 22, 2005, July 6, 2005. Id., pp. 51, 69, 71.

[14] Order dated September 21, 2005. Id., p. 77.

[15] Penned by Commissioner Rebecca Villamieva-Maala. Id., pp. 80-86.

[16] Resolution dated November 18, 2006. Id., p. 79.

[17] A.C. No. 2837, 7 October 1994, 237 SCRA 375.

[18] Respondent was found to have falsified the Sheriff's Return on Summons in Civil Case No. 8-1-24144.

[19] This is, of course, subject to the presumption that complainants have not sought to enforce their right to collect on the amount of the check either by a criminal action for violation of BP 22 or estafa or by civil action for a sum of money.

[20] Tan v. Baton, Jr., A.C. No. 6483, 31 August 2007, 531 SCUA 645.

[21] RULES OF COURT, Rule 71, Section 3(c) provides:

Indirect contempt to be punished after charge and hearing. — After charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

xxx

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

xxx

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

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