

WALTER WILKIE, COMPLAINANT, VS. ATTY. SINAMAR E. LIMOS, RESPONDENT.

A.C. No. 7505. October 24, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This administrative case arose from a Complaint dated April 27, 2005[1] initially filed with the Integrated Bar of the Philippines (IBP), La Union Chapter, and forwarded to the IBP, National Office in Pasig City, by Mr. Walter Wilkie against Atty. Sinamar E. Limos. In the complaint, it was alleged that the respondent committed deceitful and dishonest conduct when she obtained a loan from the complainant and issued two (2) postdated checks in the latter's favor to pay the said loan despite knowledge of insufficiency of funds to cover the same.

The material averments of the Complaint are summarized by the IBP, Commission on Bar Discipline (CBD) in this wise:

Complainant alleged that on 2 April 2003, he engaged the services of respondent regarding his intention of adopting his wife's nephew, Reynal Alsaen Taltalen. Complainant has given his full trust and confidence on respondent. Notwithstanding their lawyer and client relationship, on March 30, 2003, respondent borrowed money from complainant in the amount of P250,000.00. The loan agreement was evidenced by a Contract of Loan with a stipulation of interest in the amount of 24% per annum and that respondent will issue two (2) post dated checks representing the principal amount of P250,000.00 and the interest in the amount of P60,000.00.

When the checks became due, complainant deposited the same to his account at Equitable PCI Bank but to his surprise and dismay, the checks were returned as they were drawn against insufficient funds. Despite demands made, respondent failed to pay her obligation.

Complainant decided to engage the services of a counsel who also made a formal demand to respondent but to no avail. Criminal complaints were filed against respondent before Branch 2, Municipal Trial Court of San Fernando City, La Union.

Complainant has also withdrawn the adoption case from respondent who did not do anything regarding the case despite the lapse of almost a year.[2]

In its Order[3] dated July 21, 2005, the CBD gave respondent a period of fifteen (15) days to submit her Answer to the Complaint. Through Investigating Commissioner Rebecca Villanueva-Maala, the CBD also sent a Notice of Mandatory Conference/Hearing[4] dated February 8, 2006 to the parties which required them to appear before the Commission on March 29, 2006. [5]

In response to the aforementioned Notice, a Manifestation and Motion[6] dated February 23, 2006 was filed by the respondent, requesting that she be furnished a copy of the complaint and be given a reasonable time after receipt of the complaint to submit a responsive pleading thereto. Respondent also moved for the cancellation and re-scheduling at a later date of the mandatory conference/hearing.

In her Order[7] dated March 1, 2006, Commissioner Villanueva-Maala rejected respondent's claim that she did not receive the complaint in view of the registry return receipt attached to the records showing that a certain JE Limos received the Order dated July 21, 2005. However, in the interest of justice, respondent was given a non-extendible period of ten (10) days to file an Answer but the mandatory conference/hearing set on March 29, 2006 was maintained.

At the scheduled March 29, 2006 mandatory conference/hearing, the complainant was present but the respondent failed to appear. Furthermore, respondent failed to file an answer. Thus, the Commissioner considered respondent in default and deemed the case submitted for report and recommendation in her Order[8] dated March 29, 2006.

Eventually, the Investigating Commissioner's Report and Recommendation,[9] dated July 28, 2006, was submitted to the IBP Board of Governors with the following conclusion and recommendation:

A lawyer who issued bouncing checks violates the law and is subject to disbarment or suspension. Violation of B.P. 22 is considered a crime involving moral turpitude as this mischief creates not only a wrong to the payee or holder, but also an injury to the public. Although it does not relate to the exercise of the profession of a lawyer, however, it certainly relates to and affects the good moral character of a person. The Court has stressed that the nature of the office of an attorney at law requires that she shall be a person of good moral character. This qualification is not only a condition precedent to the practice of law; its continued possession is also essential for remaining in the practice of law.

WHEREFORE, premises considered, we hereby recommend that respondent ATTY. SINAMAR E. LIMOS be suspended for a period of TWO (2) YEARS from receipt hereof from the practice of her profession and as a member of the Bar.

RESPECTFULLY SUBMITTED.

On December 15, 2006, the Board of Governors of the IBP passed Resolution No. XVII-2006-591[10] in CBD Case No. 05-1534 adopting and approving, with modification, the afore-quoted report and recommendation of the commissioner, to wit:

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 for respondent's deceitful and dishonest conduct, Atty. Sinamar E. Limos is hereby REPRIMANDED with STERN WARNING that a repetition of similar conduct will be dealt with more severely.

On March 21, 2007, the CBD transmitted the Notice of Resolution pertaining to Resolution No. XVII-2006-591 together with the records of CBD Case No. 05-1534, [11] which this Court noted in its Resolution[12] dated June 27, 2007.

On October 16, 2007, the additional records of the case were transmitted to the Court by the IBP Commission on Bar Discipline, through the Office of the Bar Confidant. Notably, the transmittal included the letter[13] dated December 11, 2006 of the respondent explaining her failure to attend the hearing of CBD Case No. 05-1534 and pleading for the consideration of the members of the IBP Board of Governors. According to respondent, she was not able to attend the mandatory conference/hearing because she was physically unfit at that time. Her office staff whom she relied upon to receive communications for the office went on leave without her knowledge and she was made to believe that the administrative complaint would be withdrawn in view of the Affidavit of Desistance[14] dated August 24, 2005 executed by complainant. Respondent claimed that her loan from complainant was actually an accommodation she extended in behalf of a client, Hilario Inocencio. She issued the postdated checks on the

belief that Inocencio will send her the funds to cover the said checks pursuant to their agreement. To this day, however, Inocencio had not complied with his promise in spite of the loan having been fully paid by respondent on August 21, 2005 to the complainant who had filed cases against her for violation of Batas Pambansa Blg. 22 (BP 22). Inocencio's demise had left her without any recourse. To support her allegations, respondent attached to her letter the Affidavit of Desistance and the Order^[15] of the MTC, San Fernando, La Union, dated August 31, 2005 dismissing the criminal cases for violation of BP 22 against her (respondent).

We find the records sufficient to support the IBP's findings.

In *Barrientos v. Libiran-Meteoro*,^[16] we held that:

x x x [the] deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflect the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Canon 1 and Rule 1.01 of which explicitly states:

CANON 1-- A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

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

Respondent did not deny that she obtained a loan in the amount of P250,000.00 with interest from the complainant. Respondent's bare claim that the loan was, in fact, only an accommodation for a former client who according to respondent had already died cannot be given credence and, indeed, too specious to be believed. Besides, she did not file any answer to the complaint nor even appeared personally before the CBD despite being duly notified, to allege such claim. Added to this observation is the fact that in her Manifestation and Motion dated February 23, 2006, no mention was made with regard to the complainant's August 24, 2005 Affidavit of Desistance. It was only mentioned in her letter to the IBP dated December 14, 2006 which was received in the IBP-CBD on January 3, 2007. By then, the Report and Recommendation dated July 28, 2006 of the Commissioner was already submitted to the Board of Governors which resolved to affirm said Report in its Resolution dated December 15, 2006.

At any rate, the excuses given by respondent cannot exculpate her from an administrative sanction considering her acknowledgement that worthless checks were issued by her in payment of the loan.

We have held 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 her.^[17] It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order.^[18] It also manifests a lawyer's low regard to her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image of the profession she should hold in high esteem.^[19]

Respondent, however, to secure her exoneration from the consequence of her act in issuing worthless checks, heavily relies on the complainant's Affidavit of Desistance dated August 24, 2005. But such reliance is misplaced because while the complainant filed his affidavit with the trial court, he did not do the same thing in this case. Notably, at the time of the mandatory conference/hearing before the CBD on March 29, 2006, complainant did

not even inform the Commissioner that he already desisted in prosecuting the criminal cases he filed with the MTC against the respondent and that such desistance resulted in the dismissal of said cases. In any event, the Court has consistently frowned upon the desistance of complainants because of legal and jurisprudential injunction.

Section 5, Rule 139-B of the Rules of Court provides in part:

Sec. 5. Service or dismissal. -

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No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

Pertinently in *Rangwani v. Dino*,^[20] citing *Bolivar v. Simbol*,^[21] the Court ruled that the discipline of lawyers cannot be cut short by a compromise or withdrawal of charges. We ratiocinated, thus:

It is contended on the part of the plaintiff in error that this settlement operated as an absolution and remission of his offense. This view of the case ignores the fact that the exercise of the power is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession. He had acted in clear disregard of his duty as an attorney at the bar, and without "good fidelity" to his client. The public had rights which Mrs. Curtis could not thus settle or destroy. The unworthy act had been fully consummated.^[22]

Accordingly, an administrative sanction on the respondent is warranted. We disagree, however, with the recommended sanction of reprimand by the IBP Board of Governors for being not commensurate to the gravity of the wrong committed by respondent.

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.

The rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court.^[23] While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end.^[24]

In *Barrios v. Martinez*,^[25] we disbarred the respondent who issued worthless checks for which he was convicted in the criminal case filed against him.

In *Lao v. Medel*,^[26] 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. The same sanction was imposed on the respondent-lawyer in *Rangwani v. Dino*^[27] having been found guilty of gross misconduct for issuing bad checks in payment of a piece of property the title of which was only entrusted to him by the complainant.

But in *Barrientos v. Libiran-Meteoro*,^[28] we meted out only a six-month suspension to Atty. Elerizza Libiran-Meteoro for having issued several checks to the complainants in payment of a pre-existing debt without sufficient funds, justifying the imposition of a lighter penalty on the ground of the respondent's payment of a

portion of her debt to the complainant, unlike in the aforementioned Lao and Rangwani cases where there was no showing of any restitution on the part of the respondents.

In this case, the respondent has fully paid her obligation to the complainant which according to the receipts dated July 21, 2005 and August 24, 2005,[29] amounted to P400,000.00. The criminal cases filed by the complainant have been dismissed and this is the first time a complaint of such nature has been filed against the respondent. Under these circumstances, the Court rules and so holds that a suspension of three months from the practice of law would be sufficient sanction on the respondent.

On a final note, we reiterate that membership in the legal profession is a privilege demanding a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law.[30] Sadly, herein respondent fell short of the exacting standards expected of her as a vanguard of the legal profession.

WHEREFORE, respondent Atty. Sinamar E. Limos is **SUSPENDED FOR THREE MONTHS** from the practice of law with warning that repetition of the same or similar acts will merit a more severe penalty. Let a copy of this Decision be entered in the respondent's record as a member of the Bar, and notice of the same be served on the Integrated Bar of the Philippines, and on the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio,[**] (Acting Chairperson), Corona, Azcuna, and Brion,[***] JJ., concur.

[*] On Official Leave.

[**] Acting Chairperson of the First Division as per Special Order No. 527.

[***] Additional Member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 528.

[1] Rollo, pp. 3-8; docketed as CBD Case No. 05-1534.

[2] Id., p. 27.

[3] Id., p. 16.

[4] Id., p. 17; mistakenly dated 2005 in the Order.

[5] Id. ; id.

[6] Id., pp. 18-19.

[7] Id., p. 21; mistakenly dated as 2005 in the Order.

[8] Id., p. 23;id.

[9] Id., pp. 26-28.

[10] Id., p. 25.

[11] Id., p. 24.

[12] Id., p. 29.

[13] Id., pp. 31-32.

- [14] *Id.*, p. 33.
- [15] *Id.*, p. 37.
- [16] Adm. Case No. 6408, August 31, 2004, 437 SCRA 209, 216.
- [17] *Id.*, p. 218.
- [18] *Id.*
- [19] *Id.*
- [20] A.C. No. 5454, November 23, 2004, 443 SCRA 408.
- [21] A.C. No. 377, April 29, 1966, 16 SCRA 623.
- [22] *Supra* at note 20, p. 417.
- [23] *Id.*, p. 420.
- [24] *Id.*
- [25] A.C. No. 4585, November 12, 2004, 442 SCRA 324.
- [26] A.C. No. 5916, July 1, 2003, 405 SCRA 227, 228.
- [27] *Supra* at note 20.
- [28] *Supra* at note 16.
- [29] Rollo, pp. 35 & 36.
- [30] *Supra* at note 16, p. 219.

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