

VIVIAN VILLANUEVA, Complainant, vs. ATTY. CORNELIUS M. GONZALES, Respondent.

A.C. No. 7657. February 12, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a complaint Vivian Villanueva (complainant) filed against Atty. Cornelius M. Gonzales (respondent) for failure to render legal services and failure to return the money, Transfer Certificate of Title (TCT), and other documents he received from complainant.

The Facts

Sometime in 2000, complainant engaged the services of respondent for the purpose of transferring the title over a piece of property located in Talisay, Cebu. Complainant, as mortgagee, wanted to transfer the title to her name because the mortgagor failed to redeem the property within the redemption period and the sheriff had already issued a sheriff's definite deed of sale in complainant's favor. Complainant gave respondent P8,000 as acceptance fee, the property's TCT, and other pertinent documents.[1]

After receiving the money, TCT, and other documents, respondent began to avoid complainant. Whenever complainant went to respondent's office at BPI Building, Escario St., Cebu City, respondent's secretary would tell her that respondent could not be disturbed because he was either sleeping or doing something important.[2]

In a letter dated 2 July 2003,[3] complainant told respondent that she had lost her trust and confidence in him and asked him to return the P8,000, TCT, and other documents. Respondent refused to return the money, TCT, and other documents. After some time and after complainant's daughter confronted him, respondent finally returned the money. However, until now, respondent has not returned the TCT and other documents.[4] Thus, complainant filed a complaint[5] dated 10 September 2003 against respondent before the Integrated Bar of the Philippines (IBP).

In an Order[6] dated 7 October 2003, IBP Director for Bar Discipline Rogelio A. Vinluan ordered respondent to submit his answer to the complaint. Respondent did not submit an answer.[7] In an Order[8] dated 21 April 2004, IBP Commissioner for Bar Discipline Rebecca Villanueva-Maala ordered respondent to submit his answer to the complaint, and set the mandatory conference on 2 June 2004. Respondent did not submit an answer or attend the mandatory conference. The Commission on Bar Discipline considered the case submitted for resolution.[9]

The IBP's Report and Recommendations

In a Report[10] dated 27 October 2006, IBP Commissioner for Bar Discipline Caesar R. Dulay (Commissioner Dulay) found respondent guilty of misconduct and negligent behavior: (1) he failed to perform any legal service to his client, (2) he did not inform his client about the status of the case, (3) he returned the P8,000 acceptance fee

without any explanation, and (4) he was indifferent. Commissioner Dulay found that respondent violated Canons 16 and 18 of the Code of Professional Responsibility and recommended his suspension from the practice of law for one year.

In a Resolution^[11] dated 31 May 2007, the IBP Board of Governors (IBP Board) adopted and approved the Report dated 27 October 2006 with modification. The IBP Board suspended respondent from the practice of law for six months and ordered him to return to complainant the P2,000, TCT, and the other documents.

As provided in Section 12(b), Rule 139-B of the Rules of Court,^[12] the IBP Board forwarded the instant case to the Court for final action.

The Court's Ruling

The Court sustains the findings and recommendations of the IBP with modification. Respondent violated Canons 16, 17, and 18, and Rules 16.01, 16.03, 18.03, and 18.04 of the Code of Professional Responsibility.

Respondent Refused to Account for and Return His Client's Money

Canon 16 states that a lawyer shall hold in trust all moneys of his client that may come into his possession. Rule 16.01 of the Code states that a lawyer shall account for all money received from the client. Rule 16.03 of the Code states that a lawyer shall deliver the funds of his client when due or upon demand.

In *Meneses v. Macalino*,^[13] the Court held that "if [a] lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client." In the instant case, respondent demanded P10,000 and received P8,000 as acceptance fee. Since he did not render any legal service, he should have promptly accounted for and returned the money to complainant.^[14] He did not.

After receiving the money, respondent began to avoid complainant. He asked his secretary to lie to complainant and shoo her off. When complainant demanded for the return of the money after three years of not hearing from respondent, respondent opted to ignore the demand. Respondent only returned the money after complainant's daughter confronted him. If complainant's daughter had not persisted, respondent would not have returned the money. Respondent did not offer any explanation as to why he waited for three years to lapse before returning the money. In *Macarilay v. Serina*,^[15] the Court held that "[t]he unjustified withholding of funds belonging to the client warrants the imposition of disciplinary action against the lawyer."

Respondent's failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity^[16] and moral soundness,^[17] and warrants the imposition of disciplinary action.^[18] It gave rise to the presumption that he converted the money to his own use and constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession.^[19]

Respondent Refuses to Return His Client's TCT and Other Documents

Canon 16 of the Code of Professional Responsibility states that a lawyer shall hold in trust all properties of his client that may come into his possession. Rule 16.03 of the Code states that a lawyer shall deliver the property of his client when due or upon demand.

The TCT and other documents are the properties of complainant. Since respondent did not render any legal service to complainant, he should have returned complainant's properties to her. However, he refuses without any explanation to return them. Respondent has kept the TCT and other documents in his possession since 2000. He refuses to return them despite receiving a written demand and being confronted by complainant's daughter. In

Vda. De Enriquez v. San Jose,[20] the Court held that failure to return the documents to the client is reprehensible: “this Court finds reprehensible respondent’s failure to heed the request of his client for the return of the case documents. That respondent gave no reasonable explanation for that failure makes his neglect patent.”

Respondent Failed to Serve His Client with Fidelity, Competence, and Diligence

Canon 17 of the Code of Professional Responsibility states that a lawyer owes fidelity to the cause of his client. Canon 18 of the Code states that “[a] lawyer shall serve his client with competence and diligence.” Rule 18.03 of the Code states that “[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.”

Clearly, respondent did not serve complainant with fidelity, competence, or diligence. He totally neglected complainant’s cause. An attorney-client relationship between respondent and complainant was established when respondent accepted the acceptance fee. Since then, he should have exercised due diligence in furthering his client’s cause and given it his full attention.[21] Respondent did not render any service.

Once a lawyer agrees to handle a case, he is bound by the Canons of the Code of Professional Responsibility. In Emiliano Court Townhouses v. Atty. Dioneda,[22] the Court held that the act of receiving money as acceptance fee for legal services and subsequently failing to render such service is a clear violation of Canons 17 and 18.

Respondent Did Not Keep His Client Informed of the Status of Her Case and Refused to Respond to Her Requests for Information

Rule 18.04 of the Code of Professional Responsibility 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.”

Respondent avoided complainant for three years and kept her in the dark. He did not give her any information about the status of her case or respond to her request for information. After giving the money, complainant never heard from respondent again. Complainant went to respondent’s office several times to request for information. Every time, respondent avoided complainant and gave her the run-around. In her affidavit, complainant stated that:

I often visited him in his office to make a [follow up] of the progress of the transfer x x x only [to be] told by his secretary that he [was] sleeping and not to be disturbed or [was] doing something important;

x x x For three agonizing years, I x x x never received a feedback from Atty. Gonzales so much so that I was forced [to write him] a letter which up to present remain[s] unanswered[.][23] (Emphasis ours)

Respondent unjustifiably denied complainant of her right to be fully informed of the status of her case, and disregarded his duties as a lawyer.[24]

Respondent Did Not File an Answer or Attend the Mandatory Hearing Before the IBP

Respondent’s repeated failure to file an answer to the complaint and to appear at the 2 June 2004 mandatory conference aggravate his misconduct. These demonstrate his high degree of irresponsibility[25] and lack of respect for the IBP and its proceedings.[26] His attitude stains the nobility of the legal profession.[27]

On the Appropriate Penalty

The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the

surrounding facts.[28] The Court finds the recommended penalty inadequate. In Rollon,[29] the Court suspended a lawyer from the practice of law for two years for failing to render any legal service after receiving money and for failing to return the money and documents he received. In that case, the Court held that:

The circumstances of this case indubitably show that after receiving the amount of P8,000 as x x x partial service fee, respondent failed to render any legal service in relation to the case of complainant. His continuous inaction despite repeated follow-ups from her reveals his cavalier attitude and appalling indifference toward his client's cause, in brazen disregard of his duties as a lawyer. Not only that. Despite her repeated demands, he also unjustifiably failed to return to her the files of the case that had been entrusted to him. To top it all, he kept the money she had likewise entrusted to him.[30]

In Small,[31] the Court suspended a lawyer from the practice of law for two years for failing to render any legal service after receiving money, failing to inform his client of the status of the case, and failing to promptly account for and return the money he received.

The Court notes that respondent does not have to return any amount to complainant. Complainant gave respondent only P8,000, not P10,000, and respondent has returned the total amount he received. As stated in complainant's affidavit:

For the legal service[s] sought, Atty. Gonzales asked an acceptance fee of P10,000 to which I gave him P8,000 together with the pertinent [mortgage] documents needed by him for the transfer including the Transfer Certificate of Title;

x x x x

[D]ue to the persistence of my daughter, Lurina Villanueva, Atty. Gonzales returned the acceptance fee of P8,000 on August 5, 2003 but never returned the documents mentioned in my letter.[32] (Emphasis ours)

Lawyers are expected to always live up to the standards embodied in the Code of Professional Responsibility because an attorney-client relationship is highly fiduciary in nature and demands utmost fidelity and good faith. Those who violate the Code must be disciplined.[33] Respondent failed to live up to these standards.

WHEREFORE, the Court finds respondent Atty. Cornelius M. Gonzales GUILTY of violating Canons 16, 17, and 18, and Rules 16.01, 16.03, 18.03, and 18.04 of the Code of Professional Responsibility. Accordingly, the Court SUSPENDS him from the practice of law for two years effective upon finality of this Decision, ORDERS him to RETURN the TCT and all other documents to complainant within 15 days from notice of this Decision, and WARNS him that a repetition of the same or similar offense, including the failure to return the TCT and all other documents as required herein, shall be dealt with more severely.

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, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.

[1] Rollo, p. 9.

[2] Id.

[3] Id. at 2.

[4] Id. at 12.

[5] Id. at 9-10.

[6] Id. at 18.

[7] IBP Report and Recommendation, 27 October 2006, p. 1.

[8] Rollo, p. 23.

[9] Report and Recommendation, 27 October 2006, p. 2.

[10] Report and Recommendation, 27 October 2006.

[11] Notice of Resolution.

[12] 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 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.

[13] A.C. No. 6651, 27 February 2006, 483 SCRA 212, 219.

[14] *Small v. Banares*, A.C. No. 7021, 21 February 2007, 516 SCRA 323, 328.

[15] A.C. No. 6591, 4 May 2005, 458 SCRA 12, 25.

[16] Id.

[17] *Rollon v. Naraval*, A.C. No. 6424, 4 March 2005, 452 SCRA 675, 683.

[18] *Meneses v. Macalino*, supra note 13, at 220.

[19] *Rollon v. Naraval*, supra.

[20] A.C. No. 3569, 23 February 2007, 516 SCRA 486, 491.

[21] *Reyes v. Vitan*, A.C. No. 5835, 15 April 2005, 456 SCRA 87, 90.

[22] 447 Phil. 408, 413 (2003).

[23] Rollo, p. 11.

[24] *Small v. Banares*, supra note 14, at 327.

[25] *Meneses v. Macalino*, supra note 13, at 220.

[26] *Small v. Banares*, supra at 328.

[27] *Meneses v. Macalino*, supra.

[28] Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag, A.C. No. 5760, 30 September 2005, 471 SCRA 111, 127.

[29] Supra note 17, at 684.

[30] Id. at 682.

[31] Supra note 24, at 329.

[32] Rollo, p. 11.

[33] Igual v. Javier, 324 Phil. 698, 709 (1996).

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