

CATHERINE & HENRY YU, COMPLAINANTS, VS. ATTY. ANTONIUTTI K. PALAÑA, RESPONDENT.*A.C. No. 7747. July 14, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-7747/>**PER CURIAM:**

On November 16, 2006, complainants Henry and Catherine Yu filed a complaint[1] for disbarment against respondent Atty. Antoniutti K. Palaña for alleged acts of defraudation, before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP).[2] Complainants attached therewith their Consolidated Complaint-Affidavit[3] which they earlier filed before the City Prosecutor's Office of Makati, charging the respondent and his co-accused (in the criminal case), with syndicated estafa and violation of Batas Pambansa Blg. 22 (BP 22).

The facts, as found by the CBD, are as follows:

Sometime in 2004, complainants met a certain Mr. Mark Anthony U. Uy (Mr. Uy) who introduced himself as the Division Manager of Wealth Marketing and General Services Corporation (Wealth Marketing), a corporation engaged in spot currency trading.[4] Mr. Uy persuaded the complainants, together with other investors, to invest a minimum amount of P100,000.00 or its dollar equivalent with said company. They were made to believe that the said company had the so-called "stop-loss mechanism" that enabled it to stop trading once the maximum allowable loss fixed at 3%-9% of the total contributions, would be reached. If, on the other hand, the company would suffer loss, Wealth Marketing would return to the investors the principal amount including the monthly guaranteed interests. Further, Wealth Marketing promised to issue, as it had in fact issued, postdated checks covering the principal investments.[5]

It turned out, however, that Wealth Marketing's promises were false and fraudulent, and that the checks earlier issued were dishonored for the reason "account closed." The investors, including the complainants, thus went to Wealth Marketing's office. There, they discovered that Wealth Marketing had already ceased its operation and a new corporation was formed named Ur- Link Corporation (Ur-Link) which supposedly assumed the rights and obligations of the former. Complainants proceeded to Ur-Link office where they met the respondent. As Wealth Marketing's Chairman of the Board of Directors, respondent assured the complainants that Ur-Link would assume the obligations of the former company.[6] To put a semblance of validity to such representation, respondent signed an Agreement[7] to that effect which, again, turned out to be another ploy to further deceive the investors.[8] This prompted the complainants to send demand letters to Wealth Marketing's officers and directors which remained unheeded. They likewise lodged a criminal complaint for syndicated estafa against the respondent and his co-accused.[9]

Despite the standing warrant for his arrest, respondent went into hiding and has been successful in defying the law, to this date.

In an Order[10] dated November 17, 2006, Director for Bar Discipline Rogelio B. Vinluan required respondent to submit his Answer to the complaint but the latter failed to comply. Hence, the motion to declare him in default

filed by the complainants.[11] The case was thereafter referred to Commissioner Jose I. De la Rama, Jr. (the Commissioner) for investigation. In his continued defiance of the lawful orders of the Commission, respondent failed to attend the mandatory conference and to file his position paper. Respondent was thereafter declared in default and the case was heard ex parte.

In his report,[12] the Commissioner concluded that Wealth Marketing's executives (which included respondent herein) conspired with one another in defrauding the complainants by engaging in an unlawful network of recruiting innocent investors to invest in foreign currency trading business where, in fact, no such business existed, as Wealth Marketing was not duly licensed by the Securities and Exchange Commission (SEC) to engage in such undertaking. This was bolstered by the fact that Wealth Marketing's financial status could not support the investors' demands involving millions of pesos. It also appears, said the Commissioner, that Ur-Link was created only to perpetuate fraud and to avoid obligations. The Commissioner likewise found that respondent had been previously suspended by this Court for committing similar acts of defraudation.[13] Considering the gravity of the acts committed, as well as his previous administrative case and defiance of lawful orders, the Commissioner recommended that respondent be disbarred from the practice of law, the pertinent portion of which reads:

WHEREFORE, in view of the foregoing, after a careful evaluation of the documents presented, including the jurisprudence laid down by the complainants involving the same respondent, and said decision of the Supreme Court forms part of the law of the land, the undersigned commissioner is recommending that respondent Atty. Antoniutti K. Palaña be disbarred and his name be stricken off the Roll of Attorneys upon the approval of the Board of Governors and the Honorable Supreme Court.[14]

In its Resolution dated August 17, 2007, the IBP Board of Governors adopted and approved the Commissioner's report and recommendation.[15]

This Court agrees with the IBP Board of Governors.

Lawyers are instruments in the administration of justice. As 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. In so doing, the people's faith and confidence in the judicial system is ensured. Lawyers may be disciplined - whether in their professional or in their private capacity - for any conduct that is wanting in morality, honesty, probity and good demeanor.[16]

In the present case, two corporations were created where the respondent played a vital role, being Wealth Marketing's Chairman of the Board and Ur-Link's representative. We quote with approval the Commissioner's findings, thus:

As correctly pointed out by the City Prosecutor's Office of Makati, it appears that the executive officers of Wealth Marketing Corporation conspired with each (sic) other to defraud the investors by engaging in unlawful network of recruiting innocent investors to invest in foreign currency trading business. The truth of the matter is that there was no actual foreign currency trading since said corporation is not duly licensed or authorized by the Securities and Exchange Commission to perform such task.

In the General Information Sheet (Annex "I") of Wealth Marketing and General Services Corporation, the authorized capital stock is only P9,680,000.00 and the paid up capital, at the time of [in]corporation is (sic) only P605,000.00. Said corporation, as the records will show, has been dealing with investors with millions of pesos on hand, with the hope that their money would earn interests as promised. However, their company resources and financial status will show that they are not in the position to meet these demands if a situation such as this would arise.

x x x x

Furthermore, in order to evade the investors who were then asking for the return of their investments, said respondent even formed and made him part of a new company, Ur-Link Corporation, which according to the complainants, when they met the respondent, would assume the obligations of the defunct Wealth Marketing Corporation. It is also evident that respondent is frolicking with the Securities and Exchange Commission for the purpose of employing fraud.[17]

To be sure, respondent's conduct falls short of the exacting standards expected of him as a vanguard of the legal profession.

The fact that the criminal case against the respondent involving the same set of facts is still pending in court is of no moment. Respondent, being a member of the bar, should note that administrative cases against lawyers belong to a class of their own. They are distinct from and they may proceed independently of criminal cases. A criminal prosecution will not constitute a prejudicial question even if the same facts and circumstances are attendant in the administrative proceedings.[18] Besides, it is not sound judicial policy to await the final resolution of a criminal case before a complaint against a lawyer may be acted upon; otherwise, this Court will be rendered helpless to apply the rules on admission to, and continuing membership in, the legal profession during the whole period that the criminal case is pending final disposition, when the objectives of the two proceedings are vastly disparate.[19] Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and for preserving courts of justice from the official ministration of persons unfit to practice law.[20] The attorney is called to answer to the court for his conduct as an officer of the court.[21]

As to the recommended penalty of disbarment, we find the same to be in order.

Section 27, Rule 138 of the Rules of Court provides:

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. x x x.

Time and again, we have stated that disbarment is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution for only the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar.[22]

The Court notes that this is not the first time that respondent is facing an administrative case, for he had been previously suspended from the practice of law in *Samala v. Palaña*[23] and *Sps. Amador and Rosita Tejada v. Palaña*. [24] In *Samala*, respondent also played an important role in a corporation known as First Imperial Resources Incorporated (FIRI), being its legal officer. As in this case, respondent committed the same offense by making himself part of the money trading business when, in fact, said business was not among the purposes for which FIRI was created. Respondent was thus meted the penalty of suspension for three (3) years with a warning that a repetition of the same or similar acts would be dealt with more severely.[25] Likewise, in *Tejada*, he was suspended for six (6) months for his continued refusal to settle his loan obligations.[26]

The fact that respondent went into hiding in order to avoid service upon him of the warrant of arrest issued by the court (where his criminal case is pending) exacerbates his offense.[27]

Finally, we note that respondent's case is further highlighted by his lack of regard for the charges brought against him. As in *Tejada*, instead of meeting the charges head on, respondent did not bother to file an answer and

verified position paper, nor did he participate in the proceedings to offer a valid explanation for his conduct.[28] The Court has emphatically stated that when the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him; he must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.[29] Verily, respondent's failure to comply with the orders of the IBP without justifiable reason manifests his disrespect of judicial authorities.[30] As a lawyer, he ought to know that the compulsory bar organization was merely deputized by this Court to undertake the investigation of complaints against lawyers. In short, his disobedience to the IBP is in reality a gross and blatant disrespect of the Court.[31] By his repeated cavalier conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court.[32]

Considering the serious nature of the instant offense and in light of his prior misconduct herein-before mentioned for which he was penalized with a three- year suspension with a warning that a repetition of the same or similar acts would be dealt with more severely; and another six-month suspension thereafter, the contumacious behavior of respondent in the instant case which grossly degrades the legal profession indeed warrants the imposition of a much graver penalty --- disbarment.[33] Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them underfoot and to ignore the very bonds of society, argues recreancy to his position and office, and sets a pernicious example to the insubordinate and dangerous elements of the body politic.[34]

WHEREFORE, respondent Antoniutti K. Palaña is hereby DISBARRED, and his name is ORDERED STRICKEN from the Roll of Attorneys. Let a copy of this Decision be entered in his record as a member of the Bar; and let 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.

Puno, (Chief justice), Quisumbing , Ynares-santiago, Carpio, Austria-Martinez, Corona, Carpio-morales, Azcuna, Tinga, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro and Brion,. JJ., concur.
Chico-Nazario , J., on leave.

* On leave.

[1] Rollo, pp. 1-3.

[2] The complaint was docketed as CBD Case No. 06-1871.

[3] Rollo, pp. 5-11.

[4] Id. at 5.

[5] Id. at 5-8.

[6] Commissioner's Report, pp. 2-3.

[7] Rollo, pp. 48-50.

[8] Id. at 31.

[9] Id. at 5-11.

[10] Id. at 20.

[11] Id. at 21.

[12] Commissioner's Report, pp. 1-9.

[13] *Samala v. Palana*, A.C. No. 6595, April 15, 2005, 456 SCRA 100.

[14] Commissioner's Report, p. 9.

[15] The pertinent portion of the Resolution reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED 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 violation of Batas Pambansa Blg. (P.D.) (sic) 22, for being a recidivist and for showing no "modicum of compassion," Atty. Antoniutti K. Palaña is hereby DISBARRED from the practice of law and that his name be stricken off the Roll of Attorneys.

[16] *Tomlin II v. Moya II*, A.C. No. 6971, February 23, 2006, 483 SCRA 154, 159.

[17] Commissioner's Report, pp. 4-5.

[18] *Tomlin II v. Moya*, supra note 16, at 161; *Gatchalian Promotions Talents Pool, Inc. v. Atty. Naldoza*, 374 Phil 1, 10 (1999).

[19] *Tomlin II v. Moya II*, id.

[20] *Soriano v. Reyes*, A.C. No. 4676, May 4, 2006, 489 SCRA 328, 339; *Barrios v. Martinez*, A.C. No. 4585, November 12, 2004, 442 SCRA 324, 335.

[21] *Soriano v. Reyes*, id.

[22] Id. at 343.

[23] A.C. No. 6595, April 15, 2005, 456 SCRA 100.

[24] A.C. No. 7434, August 23, 2007, 530 SCRA 771.

[25] *Samala v. Palaña*, supra note 23, at 106.

[26] *Sps. Amador and Rosita Tejada v. Palaña*, supra note 24.

[27] *Cuizon v. Macalino*, A.C. No. 4334, July 7, 2004, 433 SCRA 479, 484.

[28] *Sps. Amador and Rosita Tejada v. Palaña*, supra note 24.

[29] Id.

[30] *Tomlin II v. Moya II*, supra note 16, at 161-162.

[31] *Sps. Amador and Rosita Tejada v. Palaña*, supra note 24.

[32] *Cuizon v. Macalino*, supra note 27, at 484.

[33] *Maligsa v. Atty. Cabanting*, 338 Phil. 913, 917-918 (1997).

[34] *Barrios v. Martinez*, supra note 20, at 341.

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