

CHAMELYN A. AGOT, COMPLAINANT, VS. ATTY. LUIS P. RIVERA, RESPONDENT.

A.C. No. 8000. August 05, 2014

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

For the Court's resolution is a Complaint-Affidavit[1] dated August 30, 2008 filed by complainant Chamelyn A. Agot (complainant) against respondent Atty. Luis P. Rivera (respondent), charging him of violating the Code of Professional Responsibility (CPR) and the lawyer's oath for misrepresentation, deceit, and failure to account for and return her money despite several demands.

The Facts

In her Complaint-Affidavit, complainant alleged that she was invited as maid of honor in her best friend's wedding on December 9, 2007 at the United States of America. To facilitate the issuance of her United States (US) visa, complainant sought the services of respondent who represented himself as an immigration lawyer. Thus, on November 17, 2007, they entered into a Contract of Legal Services (Contract),[2] whereby respondent undertook to facilitate and secure the release of a US immigrant visa in complainant's favor prior to the scheduled wedding. In consideration therefor, complainant paid respondent the amount of P350,000.00 as downpayment and undertook to pay the balance of P350,000.00 after the issuance of the US visa.[3] The parties likewise stipulated that should complainant's visa application be denied for any reason other than her absence on the day of the interview and/or for records of criminal conviction and/or any court-issued hold departure order, respondent is obligated to return the said downpayment.[4] However, respondent failed to perform his undertaking within the agreed period. Worse, complainant was not even scheduled for interview in the US Embassy. As the demand for refund of the downpayment was not heeded, complainant filed a criminal complaint for estafa and the instant administrative complaint against respondent.[5]

In his Comment[6] dated December 5, 2008, respondent claimed that his failure to comply with his obligation under the Contract was due to the false pretenses of a certain Rico Pineda (Pineda), who he had believed to be a consul for the US Embassy and to whom he delivered the amount given by the complainant. Respondent elaborated that he had a business relationship with Pineda on the matter of facilitating the issuance of US visas to his friends and family, including himself. He happened to disclose this to a certain Joseph Peralta, who in turn referred his friend, the complainant, whose previous US visa application had been denied, resulting in the execution of the Contract. Respondent claimed that Pineda reneged on his commitments and could no longer be located but, nonetheless, assumed the responsibility to return the said amount to complainant.[7] To buttress his claims, respondent attached pictures supposedly of his friends and family with Pineda as well as electronic mail messages (e-mails) purportedly coming from the latter.[8]

The IBP's Report and Recommendation

In a Report and Recommendation[9] dated April 17, 2010, the Integrated Bar of the Philippines (IBP)

Investigating Commissioner found respondent administratively liable, and accordingly, recommended that he be meted the penalty of suspension for a period of four (4) months, with a warning that a repetition of the same would invite a stiffer penalty.[10]

The Investigating Commissioner found respondent guilty of engaging in deceitful conduct for: (a) misrepresenting himself as an immigration lawyer; (b) failing to deliver the services he contracted; and (c) being remiss in returning complainant's downpayment of P350,000.00. The Investigating Commissioner did not lend credence to respondent's defense anent his purported transactions with Pineda considering that the latter's identity was not proven and in light of respondent's self-serving evidence, i.e., photographs and e-mails, which were bereft of any probative value.[11]

In a Resolution dated December 14, 2012, the IBP Board of Governors unanimously adopted and approved the aforesaid report and recommendation with the modification increasing the period of suspension to six (6) months and ordering respondent to return the amount of P350,000.00[12] to complainant within thirty (30) days from receipt of notice, with legal interest from the date of demand.[13]

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

After a judicious perusal of the records, the Court concurs with the IBP's findings, subject to the modification of the recommended penalty to be imposed upon respondent.

As officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[14] In this regard, Rule 1.01, Canon 1 of the CPR, provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

In the instant case, respondent misrepresented himself as an immigration lawyer, which resulted to complainant seeking his assistance to facilitate the issuance of her US visa and paying him the amount of P350,000.00 as downpayment for his legal services. In truth, however, respondent has no specialization in immigration law but merely had a contact allegedly with Pineda, a purported US consul, who supposedly processes US visa applications for him. However, respondent failed to prove Pineda's identity considering that the photographs and e-mails he submitted were all self-serving and thus, as correctly observed by the Investigating Commissioner, bereft of any probative value and consequently cannot be given any credence. Undoubtedly, respondent's deception is not only unacceptable, disgraceful, and dishonorable to the legal profession; it reveals a basic moral flaw that makes him unfit to practice law.[15]

Corollary to such deception, respondent likewise failed to perform his obligations under the Contract, which is to facilitate and secure the issuance of a US visa in favor of complainant. This constitutes a flagrant violation of Rule 18.03, Canon 18 of the CPR, to wit:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Under Rule 18.03, Canon 18 of the CPR, once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.[16] Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable,[17] as in this case.

Furthermore, respondent violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to refund the amount of P350,000.00 that complainant paid him, viz.:

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

x x x x

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith.[18] The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client.[19] Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics.[20]

Anent the proper penalty for respondent's acts, jurisprudence provides that in similar cases where lawyers neglected their client's affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin*, [21] the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainer agreement with his client and to return the money given to him by the latter. Also, in *Jinon v. Jiz*, [22] the Court suspended the lawyer for a period of two (2) years for his failure to return the amount his client gave him for his legal services which he never performed. In this case, not only did respondent fail to facilitate the issuance of complainant's US visa and return her money, he likewise committed deceitful acts in misrepresenting himself as an immigration lawyer, resulting in undue prejudice to his client. Under these circumstances, a graver penalty should be imposed upon him. In view of the foregoing, the Court deems it appropriate to increase the period of suspension from the practice of law of respondent from six (6) months, as recommended by the IBP, to two (2) years.

Finally, the Court sustains the IBP's recommendation ordering respondent to return the amount of P350,000.00 he received from complainant as downpayment. It is well to note that "while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct [from] and not intrinsically linked to his professional engagement." [23] Hence, since respondent received the aforesaid amount as part of his legal fees, the Court finds the return thereof to be in order.

WHEREFORE, respondent Atty. Luis P. Rivera (respondent) is found guilty of violating Rule 1.01 of Canon 1, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of two (2) years, effective upon the

finality of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Furthermore, respondent is ORDERED to return to complainant Chamelyn A. Agot the legal fees he received from the latter in the amount of P350,000.00 within ninety (90) days from the finality of this Decision. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let a copy of this Decision be attached to respondent's record in this Court as attorney. Further, let copies of this Decision be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

Carpio, [**] Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.
Sereno, C.J., on leave.

[**] Acting Chief Justice per Special Order No. 1743 dated August 4, 2014.

[1] Rollo, pp. 1-3.

[2] Id. at 4-5.

[3] Id. at 4.

[4] Id. at 5.

[5] See id. at 2-3 and 98-99.

[6] Id. at 15-24.

[7] See id. at 16-21 and 99.

[8] Id. at 36-37, 46, and 47-50.

[9] Id. at 98-102. Penned by Commissioner Oliver A. Cachapero.

[10] Id. at 102.

[11] See id. at 100-101.

[12] Please take note that in a Resolution dated November 20, 2013, the Court noted the Notice of Resolution No. XX-2012-536 dated December 14, 2012 (erroneously dated as December 14, 2014) of the IBP Board of Governors (see id. at 103-104). However, the indicated amount of P300,000.00 to be returned to complainant, as mentioned in the said Resolution, was a pure typographical/clerical error, as it is clearly shown in the said IBP Board of Governor's Notice of Resolution that the recommended amount is P350,000.00 (see id. at 97).

[13] See Notice of Resolution; id. at 97.

[14] Tabang v. Gacott, A.C. No. 6490, July 9, 2013, 700 SCRA 788, 804.

[15] See Sps. Olbes v. Atty. Diciembre, 496 Phil. 799, 809-813; citations omitted.

[16] Lad Vda. de Dominguez v. Agleron, Sr., A.C. No. 5359, March 10, 2014; citations omitted.

[17] See *Figueras v. Jimenez*, A.C. No. 9116, March 12, 2014 and *Nebreja v. Reonal*, A.C. No. 9896, March 19, 2014. See also *Abiero v. Juanino*, 492 Phil. 149 (2005).

[18] *Bayonla v. Reyes*, A.C. No. 4808, November 22, 2011, 660 SCRA 490, 499.

[19] See *Navarro v. Solidum*, A.C. No. 9872, January 28, 2014, citing *Belleza v. Atty. Macasa*, 611 Phil. 179, 190 (2009).

[20] *Adrimisin v. Atty. Javier*, 532 Phil. 639, 645-646 (2006).

[21] A.C. No. 7965, November 13, 2013.

[22] A.C. No. 9615, March 5, 2013, 692 SCRA 348.

[23] See *Pitcher v. Gagete*, A.C. No. 9532, October 8, 2013.

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