

KELD STEMMERIK, REPRESENTED BY ATTYS. HERMINIO A. LIWANAG AND WINSTON P.L. ESGUERRA, COMPLAINANT, VS. ATTY. LEONUEL N. MAS, RESPONDENT.

A.C. No. 8010. June 16, 2009

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PER CURIAM:

Complainant Keld Stemmerik is a citizen and resident of Denmark. In one of his trips to the Philippines, he was introduced to respondent Atty. Leonuel N. Mas. That was his misfortune.

In one visit to the Philippines, complainant marveled at the beauty of the country and expressed his interest in acquiring real property in the Philippines. He consulted respondent who advised him that he could legally acquire and own real property in the Philippines. Respondent even suggested an 86,998 sq.m. property in Quarry, Agusuin, Cawag, Subic, Zambales with the assurance that the property was alienable.

Trusting respondent, complainant agreed to purchase the property through respondent as his representative or attorney-in-fact. Complainant also engaged the services of respondent for the preparation of the necessary documents. For this purpose, respondent demanded and received a P400,000 fee.

Confident that respondent would faithfully carry out his task, complainant returned to Denmark, entrusting the processing of the necessary paperwork to respondent.

Thereafter, respondent prepared a contract to sell the property between complainant, represented by respondent, and a certain Bonifacio de Mesa, the purported owner of the property.[1] Subsequently, respondent prepared and notarized a deed of sale in which de Mesa sold and conveyed the property to a certain Ailyn Gonzales for P3.8 million.[2] Respondent also drafted and notarized an agreement between complainant and Gonzales stating that it was complainant who provided the funds for the purchase of the property.[3] Complainant then gave respondent the full amount of the purchase price (P3.8 million) for which respondent issued an acknowledgment receipt.[4]

After the various contracts and agreements were executed, complainant tried to get in touch with respondent to inquire about when the property could be registered in his name. However, respondent suddenly became scarce and refused to answer complainant's calls and e-mail messages.

When complainant visited the Philippines again in January 2005, he engaged the services of the Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez Law Office to ascertain the status of the property he supposedly bought. He was devastated to learn that aliens could not own land under Philippine laws. Moreover, verification at the Community Environment & Natural Resources Office (CENRO) of the Department of Environment and Natural Resources in Olongapo City revealed that the property was inalienable as it was situated within the former US Military Reservation.[5] The CENRO also stated that the property was not subject to disposition or acquisition under Republic Act No. 141.[6]

Thereafter, complainant, through his attorneys-in-fact,[7] exerted diligent efforts to locate respondent for purposes of holding him accountable for his fraudulent acts. Inquiry with the Olongapo Chapter of the Integrated Bar of the

Philippines (IBP) disclosed that respondent was in arrears in his annual dues and that he had already abandoned his law office in Olongapo City.[8] Search of court records of cases handled by respondent only yielded his abandoned office address in Olongapo City.

Complainant filed a complaint for disbarment against respondent in the Commission on Bar Discipline (CBD) of the IBP.[9] He deplored respondent's acts of serious misconduct. In particular, he sought the expulsion of respondent from the legal profession for gravely misrepresenting that a foreigner could legally acquire land in the Philippines and for maliciously absconding with complainant's P3.8 million.[10]

Respondent failed to file his answer and position paper despite service of notice at his last known address. Neither did he appear in the scheduled mandatory conference. In this connection, the CBD found that respondent abandoned his law practice in Olongapo City after his transaction with complainant and that he did not see it fit to contest the charges against him.[11]

The CBD ruled that respondent used his position as a lawyer to mislead complainant on the matter of land ownership by a foreigner.[12] He even went through the motion of preparing falsified and fictitious contracts, deeds and agreements. And for all these shameless acts, he collected P400,000 from complainant. Worse, he pocketed the P3.8 million and absconded with it.[13]

The CBD found respondent to be "nothing more than an embezzler" who misused his professional status as an attorney as a tool for deceiving complainant and absconding with complainant's money.[14] Respondent was dishonest and deceitful. He abused the trust and confidence reposed by complainant in him. The CBD recommended the disbarment of respondent.[15]

The Board of Governors of the IBP adopted the findings and recommendation of the CBD with the modification that respondent was further required to return the amount of P4.2 million to respondent.[16]

We agree with the IBP.

SUFFICIENCY OF NOTICE OF THE DISBARMENT PROCEEDINGS

We shall first address a threshold issue: was respondent properly given notice of the disbarment proceedings against him? Yes.

The respondent did not file any answer or position paper, nor did he appear during the scheduled mandatory conference. Respondent in fact abandoned his last known address, his law office in Olongapo City, after he committed the embezzlement.

Respondent should not be allowed to benefit from his disappearing act. He can neither defeat this Court's jurisdiction over him as a member of the bar nor evade administrative liability by the mere ruse of concealing his whereabouts. Thus, service of the complaint and other orders and processes on respondent's office was sufficient notice to him.

Indeed, since he himself rendered the service of notice on him impossible, the notice requirement cannot apply to him and he is thus considered to have waived it. The law does not require that the impossible be done. *Nemo tenetur ad impossibile*. [17] The law obliges no one to perform an impossibility. Laws and rules must be interpreted in a way that they are in accordance with logic, common sense, reason and practicality.[18]

In this connection, lawyers must update their records with the IBP by informing the IBP National Office or their respective chapters[19] of any change in office or residential address and other contact details.[20] In case such change is not duly updated, service of notice on the office or residential address appearing in the records of the

IBP National Office shall constitute sufficient notice to a lawyer for purposes of administrative proceedings against him.

RESPONDENT'S ADMINISTRATIVE INFRACTIONS AND HIS LIABILITY THEREFOR

Lawyers, as members of a noble profession, have the duty to promote respect for the law and uphold the integrity of the bar. As men and women entrusted with the law, they must ensure that the law functions to protect liberty and not as an instrument of oppression or deception.

Respondent has been weighed by the exacting standards of the legal profession and has been found wanting.

Respondent committed a serious breach of his oath as a lawyer. He is also guilty of culpable violation of the Code of Professional Responsibility, the code of ethics of the legal profession.

All lawyers take an oath to support the Constitution, to obey the laws and to do no falsehood.[21] That oath is neither mere formal ceremony nor hollow words. It is a sacred trust that should be upheld and kept inviolable at all times.[22]

Lawyers are servants of the law[23] and the law is their master. They should not simply obey the laws, they should also inspire respect for and obedience thereto by serving as exemplars worthy of emulation. Indeed, that is the first precept of the Code of Professional Responsibility:

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

Section 7, Article XII of the Constitution provides:

SEC. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

This Court has interpreted this provision, as early as the 1947 case *Krivenko v. Register of Deeds*,[24] to mean that "under the Constitution, aliens may not acquire private or agricultural lands, including residential lands." The provision is a declaration of imperative constitutional policy.[25]

Respondent, in giving advice that directly contradicted a fundamental constitutional policy, showed disrespect for the Constitution and gross ignorance of basic law. Worse, he prepared spurious documents that he knew were void and illegal.

By making it appear that de Mesa undertook to sell the property to complainant and that de Mesa thereafter sold the property to Gonzales who made the purchase for and in behalf of complainant, he falsified public documents and knowingly violated the Anti-Dummy Law.[26]

Respondent's misconduct did not end there. By advising complainant that a foreigner could legally and validly acquire real estate in the Philippines and by assuring complainant that the property was alienable, respondent deliberately foisted a falsehood on his client. He did not give due regard to the trust and confidence reposed in him by complainant. Instead, he deceived complainant and misled him into parting with P400,000 for services that were both illegal and unprofessional. Moreover, by pocketing and misappropriating the P3.8 million given by complainant for the purchase of the property, respondent committed a fraudulent act that was criminal in nature.

Respondent spun an intricate web of lies. In the process, he committed unethical act after unethical act, wantonly violating laws and professional standards.

For all this, respondent violated not only the lawyer's oath and Canon 1 of the Code of Professional Responsibility. He also transgressed the following provisions of the Code of Professional Responsibility:

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

Rule 1.02. - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

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

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM. (emphasis supplied)

A lawyer who resorts to nefarious schemes to circumvent the law and uses his legal knowledge to further his selfish ends to the great prejudice of others, poses a clear and present danger to the rule of law and to the legal system. He does not only tarnish the image of the bar and degrade the integrity and dignity of the legal profession, he also betrays everything that the legal profession stands for.

It is respondent and his kind that give lawyering a bad name and make laymen support Dick the Butcher's call, "Kill all lawyers!"[27] A disgrace to their professional brethren, they must be purged from the bar.

WHEREFORE, respondent Atty. Leonuel N. Mas is hereby DISBARRED. The Clerk of Court is directed to immediately strike out the name of respondent from the Roll of Attorneys.

Respondent is hereby ORDERED to return to complainant Keld Stemmerik the total amount of P4.2 million with interest at 12% per annum from the date of promulgation of this resolution until full payment. Respondent is further DIRECTED to submit to the Court proof of payment of the amount within ten days from payment.

The National Bureau of Investigation (NBI) is ORDERED to locate Atty. Mas and file the appropriate criminal charges against him. The NBI is further DIRECTED to regularly report the progress of its action in this case to this Court through the Bar Confidant.

Let copies of this resolution be furnished the Bar Confidant who shall forthwith record it in the personal file of respondent, the Court Administrator who shall inform all courts of the Philippines, the Integrated Bar of the Philippines which shall disseminate copies to all its chapters and members and all administrative and quasi-judicial agencies of the Republic of the Philippines.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona,Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, and Bersamin, JJ., concur.
Carpio Morales, J., on official leave.

[1] Rollo, pp. 16-17.

[2] Id., pp. 18-20. The circumstance of the fictitious sale to Gonzales was never adequately discussed by the

complainant. However, coupled with the fact that respondent prepared and notarized another agreement (this time between Gonzales and complainant) whereby Gonzales recognized complainant as the source of funds, this showed that the sale to Gonzales was a link in the chain of acts committed by respondent to defraud complainant.

[3] Id., pp. 22-23.

[4] Id., p. 21.

[5] Certification dated February 7, 2005. Id., p. 24.

[6] Id.

[7] Attys. Herminio A. Liwanag and Winston P.L. Esguerra.

[8] At the 3rd Floor of the Mely Rose Building at 34-23rd Street, WBB, Olongapo City.

[9] Rollo, pp. 1-8.

[10] Id.

[11] Report and Recommendation dated March 31, 2008 penned by Investigating Commissioner Rico A. Limpingco. Id., pp. 45-47.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Resolution No. XVIII-2008-423 dated May 22, 2008. Id., pp. 43-44.

[17] Santos, Jr. v. PNOC Exploration Corporation, G.R. No. 170943, 23 September 2008.

[18] Id.

[19] In case the update is done in one's chapter, the said chapter shall promptly notify the IBP National Office about the matter.

[20] In this connection, the relevant portion of Section 19, Article II of the By-Laws of the IBP provides:

Every change after registration in respect to any of the matters above specified [including office and residence addresses] shall be reported within sixty (60) days to the Chapter Secretary, who shall in turn promptly report the change to the National Office.

[21] The Lawyer's Oath which is taken by all members of the bar as a prerequisite for their admission to the legal profession states:

I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good faith and fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligations without any mental reservation or purpose of evasion. So help me God.

[22] *Ting-Dumali v. Torres*, A.C. No. 5161, 14 April 2004, 427 SCRA 108.

[23] *Catu v. Rellosa*, A.C. No. 5738, 19 February 2008, 546 SCRA 209.

[24] 79 Phil. 461 (1947).

[25] *Godinez v. Pak Luen*, 205 Phil. 176 (1983).

[26] Commonwealth Act No. 108, as amended by Presidential Decree No. 715.

[27] Shakespeare, W., *Henry the VI, Part II*, Act IV, Scene 2, Line 72.

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