

REYNARIA BARCENAS, COMPLAINANT, VS. ATTY. ANORLITO A. ALVERO, RESPONDENT.*A.C. No. 8159 (formerly CBD 05-1452). April 23, 2010*

Ponente: PERALTA, J.

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Before us is a Complaint[1] dated May 17, 2005 for disciplinary action against respondent Atty. Anorlito A. Alvero filed by Reynaria Barcenas with the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 05-1452, now Administrative Case (A.C.) No. 8159.

The facts as culled from the records are as follows:

On May 7, 2004, Barcenas, through her employee Rodolfo San Antonio (San Antonio), entrusted to Atty. Alvero the amount of P300,000.00, which the latter was supposed to give to a certain Amanda Gasta to redeem the rights of his deceased father as tenant of a ricefield located in Barangay San Benito, Victoria, Laguna. The receipt of the money was evidenced by an acknowledgment receipt[2] dated May 7, 2004. In the said receipt, Atty. Alvero said that he would deposit the money in court because Amanda Gasta refused to accept the same.[3]

Later, Barcenas found out that Atty. Alvero was losing a lot of money in cockfights. To check if the money they gave Atty. Alvero was still intact, Barcenas pretended to borrow P80,000.00 from the P300,000.00 and promised to return the amount when needed or as soon as the case was set for hearing. However, Atty. Alvero allegedly replied, "Akala nyo ba ay madali kunin ang pera pag nasa korte na?" Subsequently, Barcenas discovered that Atty. Alvero did not deposit the money in court, but instead converted and used the same for his personal needs.

In his letters dated August 18, 2004[4] and August 25, 2004,[5] Atty. Alvero admitted the receipt of the P300,000.00 and promised to return the money. The pertinent portions of said letters are quoted as follows:

Dahil sa kagustuhan ng iyong amo na maibalik ko ang perang tinanggap ko sa iyo, lumakad ako agad at pilit kong kinukuha kahit iyon man lang na hiniram sa akin na P80,000.00 pero hindi karakapraka ang lumikom ng gayong halaga. Pero tiniyak sa akin na sa Martes, ika-24 ng buwan ay ibibigay sa akin.

Bukas ay tutungo ako sa amin upang lumikom pa ng karagdagang halaga upang maisauli ko ang buong P300,000.00. Nakikiusap ako sa iyo dahil sa ikaw ang nagbigay sa akin ng pera na bigyan mo ako ng kaunting panahon upang malikom ko ang pera na ipinagkatiwala mo sa akin, hanggang ika-25 ng Agosto, 2004. x x x"[6]

Maya-mayang alas nuwebe (9:00) titingnan ang lupang aking ipinagbibili ng Dalawang Milyon. Gustong-gusto ng bibili gusto lang makita ang lupa dahil malayo, nasa Cavinti. Kung ok na sa bibili pinakamatagal na ang Friday ang bayaran.

Iyong aking sinisingil na isang P344,000.00 at isang P258,000.00 na utang ng taga-Liliw ay darating sa akin ngayong umaga bago mag alas otso. Kung maydala ng pambayad kahit magkano ay ibibigay ko sa iyo ngayong hapon.

x x x x

Lahat ng pagkakaperahan ko ay aking ginagawa, pati anak ko ay tinawagan ko na. Pakihintay muna lang ng kaunting panahon pa, hindi matatapos ang linggong ito, tapos ang problema ko sa iyo. Pasensiya ka na."[7]

However, as of the filing of the instant complaint, despite repeated demands, Atty. Alvero failed to return the same. Thus, Barcenas prayed that Atty. Alvero be disbarred for being a disgrace to the legal profession.

On March 30, 2005, the IBP-CBD ordered Atty. Alvero to submit his Answer to the complaint.[8]

In compliance, in his Answer[9] dated April 18, 2005, Atty. Alvero claimed that he did not know Barcenas prior to the filing of the instant complaint nor did he know that San Antonio was an employee of Barcenas. He alleged that he came to know Barcenas only when the latter went to him to borrow P60,000.00 "from the amount entrusted to Rodolfo San Antonio" who entrusted to respondent. At that time, Atty. Alvero claimed that San Antonio was reluctant to grant the request because it might jeopardize the main and principal cause of action of the Department of Agrarian Reform Adjudication Board (DARAB) case. Atty. Alvero, however, admitted that he received an amount of P300,000.00 from San Antonio, though he claimed that said money was the principal cause of action in the reconveyance action.[10]

Atty. Alvero stressed that there was no lawyer-client relationship between him and Barcenas. He, however, insisted that the lawyer-client relationship between him and San Antonio still subsisted as his service was never severed by the latter. He further emphasized that he had not breached the trust of his client, since he had, in fact, manifested his willingness to return the said amount as long as his lawyer-client relationship with San Antonio subsisted. Finally, Atty. Alvero prayed that the instant complaint be dismissed.

On June 20, 2005, the IBP-CBD notified the parties to appear for the mandatory conference.[11]

Meanwhile, in a separate Affidavit[12] dated September 19, 2005, San Antonio narrated that he indeed sought Atty. Alvero's professional services concerning an agricultural land dispute. He claimed that Atty. Alvero made him believe that he needed to provide an amount of P300,000.00 in order to file his complaint, as the same would be deposited in court. San Antonio quoted Atty. Alvero as saying: "Hindi pwedeng hindi kasabay ang pera sa pagpa-file ng papel dahil tubusan yan, kung sakaling ipatubos ay nasa korte na ang pera." Believing that it was the truth, San Antonio was forced to borrow money from Barcenas in the amount of P300,000.00. Subsequently, San Antonio gave the said amount to Atty. Alvero, in addition to the professional fees, as shown by an acknowledgment receipt.[13]

San Antonio further corroborated Barcenas' allegation that they tried to borrow P80,000.00 from the P300,000.00 they gave to Atty. Alvero after they found out that the latter lost a big amount of money in cockfighting. He reiterated that Atty. Alvero declined and stated, "Akala nyo ba ay madali kunin ang pera pag nasa korte na." Later on, they found out that Atty. Alvero lied to them since the money was never deposited in court but was instead used for his personal needs. For several times, Atty. Alvero promised to return the money to them, but consistently failed to do so. San Antonio submitted Atty. Alvero's letters dated August 18, 2004[14] and August 25, 2004[15] showing the latter's promises to return the amount of P300,000.00.

During the mandatory conference, Atty. Alvero failed to attend despite notice. Thus, he was deemed to have waived his right to participate in the mandatory conference.

In its Report and Recommendation dated May 21, 2008, the IBP-CBD recommended that Atty. Alvero be suspended from the practice of law for a period of one (1) year for gross misconduct. Atty. Alvero was, likewise, ordered to immediately account for and return the amount of P300,000.00 to Barcenas and/or Rodolfo San Antonio. The pertinent portion thereof reads:

The record does not show and no evidence was presented by respondent to prove that the amount of P300,000 which was entrusted to him was already returned to complainant or Rodolfo San Antonio, by way of justifying his non-return of the money, respondent claims in his Answer that the P300,000 "was the source of the principal cause of action of the petitioner, Rodolfo San Antonio, in the above-cited DARAB Case No. R-0403-0011-04 as shown by a copy of the Amended Petition, copy of which is hereto attached as Annex "1" and made an integral part hereof.

A review of Annex 1, which in the Amended Petition dated October 31, 2004 and filed on November 3, 2004, will show that the Petitioner Rodolfo San Antonio is praying that he be allowed to cultivate the land after the P300,000 is consigned by Petitioner to the Honorable Adjudication Board. Up to the time of the filing of the instant complaint, no such deposit or consignment took place and no evidence was presented that respondent deposited the amount in court.

The fact is respondent promised to return the amount (Annex "B" and "C" of the Complaint), but he failed to do so. The failure therefore of respondent to account for and return the amount of P300,000 entrusted or given to him by his client constitute gross misconduct and would subject him to disciplinary action under the Code.[16]

In Notice of Resolution No. XVIII-2008-342 dated July 17, 2008, the IBP Board of Governors adopted and approved with modification as to penalty the Report and Recommendation of the IBP-CBD. Instead, it ordered that Atty. Alvero be suspended from the practice of law for two (2) years and, likewise, ordered him to account for and return the amount of P300,000.00 to complainants within thirty (30) days from receipt of notice.

The Office of the Bar Confidant redocketed the instant case as a regular administrative complaint against Atty. Alvero and, subsequently, recommended that this Court issue an extended resolution for the final disposition of the case.

We sustain the findings and recommendations of the IBP-CBD.

Undoubtedly, Atty. Alvero breached Rule 1.01 of Canon 1 and Rules 16.01, 16.02 and 16.03 of Canon 16 of the Code of Professional Responsibility, which read:

CANON 1.

A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESS.

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

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.

Rule 16.02. A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03. A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his unlawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

In the instant case, Atty. Alvero admitted to having received the amount of P300,000.00 from San Antonio,

specifically for the purpose of depositing it in court. However, as found by the IBP-CBD, Atty. Alvero presented no evidence that he had indeed deposited the amount in or consigned it to the court. Neither was there any evidence that he had returned the amount to Barcenas or San Antonio.

From the records of the case, there is likewise a clear breach of lawyer-client relations. When a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client.[17] These, Atty. Alvero failed to do.

Jurisprudence dictates that a lawyer who obtains possession of the funds and properties of his client in the course of his professional employment shall deliver the same to his client (a) when they become due, or (b) upon demand. In the instant case, respondent failed to account for and return the P300,000.00 despite complainant's repeated demands.[18]

Atty. Alvero cannot take refuge in his claim that there existed no attorney-client relationship between him and Barcenas. Even if it were true that no attorney-client relationship existed between them, case law has it that an attorney may be removed, or otherwise disciplined, not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.[19]

Atty. Alvero'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 and moral soundness, and warranted the imposition of disciplinary action. It gave rise to the presumption that he converted the money for his own use, and this act constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession.[20] They constitute gross misconduct and gross unethical behavior for which he may be suspended, following Section 27, Rule 138 of the Rules of Court, which provides:

Sec. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor. - 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 the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

We come to the penalty imposable in this case.

In *Small v. Banares*,[21] the respondent was suspended for two years for violating Canon 16 of the Code of Professional Responsibility, particularly for failing to file a case for which the amount of P80,000.00 was given him by the client, and for failing to return the said amount upon demand. Considering that similar circumstances are attendant in this case, the Court finds the Resolution of the IBP imposing on respondent a two-year suspension to be in order.

As a final note, we reiterate: the practice of law is not a right, but a privilege. It is granted only to those of good moral character. The Bar must maintain a high standard of honesty and fair dealing.[22] For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. Those who are unable or unwilling to comply with the responsibilities and meet the standards of the profession are unworthy of the privilege to practice law.[23]

WHEREFORE, Notice of Resolution No. XVIII-2008-342 dated July 17, 2008 of the IBP-CBD Board of Governors, which found respondent Atty. Anorlito A. Alvero GUILTY of gross misconduct, is AFFIRMED. He is hereby SUSPENDED for a period of two (2) years from the practice of law, effective upon the receipt of this

Decision. He is warned that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Alvero as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Perez, and Mendoza, JJ., concur.

[1] Rollo, pp. 1-4.

[2] Id. at 5.

[3] Id.

[4] Id. at 6.

[5] Id. at 7.

[6] Letter dated August 18, 2004; rollo, p. 6. (Emphasis ours.)

[7] Letter dated August 25, 2004; id. at 7. (Emphasis ours.)

[8] Rollo, p. 8.

[9] Id. at 9-10.

[10] Id. at 10.

[11] Id. at 33.

[12] Id. at 35-36.

[13] Id. at 3.

[14] Id. at 6.

[15] Id. at 7.

[16] Emphasis ours.

[17] Celaje v. Soriano, A.C. No. 7418, October 9, 2007, 535 SCRA 217, 222.

[18] See Garcia v. Atty. Manuel, 443 Phil. 479, 487 (2003).

[19] Barnachea v. Atty. Quiocho, 447 Phil. 67, 73-74 (2003).

[20] Villanueva v. Gonzales, A.C. No. 7657, February 12, 2008, 544 SCRA 410, 416.

[21] A.C. No. 7021, February 21, 2007, 516 SCRA 323, 329.

[22] Overgaard v. Valdez, A.C. No. 7902, September 30, 2008, 567 SCRA 118, 131.

[23] Id. at 131-132.

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