

IN RE: ATTY. FELIZARDO M. DE GUZMAN, RESPONDENT.

A.C. No. 838. January 21, 1974

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This is an administrative case involving a member of the Bar, Atty. Felizardo M. de Guzman.

In Civil Case No. 71648 of the Court of First Instance of Manila, entitled: "Lagrimas Lapatha, et al. vs. Vicente Floro, et al.," the Hon. Jesus de Veyra rendered on July 23, 1968, a decision the dispositive portion of which reads:[1]

"Judgment is, therefore, rendered setting aside the judgment of the City Court in Civil Case No. 165187 entitled Floro vs. Lapatha as well as the writ of execution issued pursuant thereto, and remanding this case to the City Court of Manila in order to give Petitioner her day in Court. Defendant Floro shall pay the costs. Let copy of this decision be furnished the Supreme Court to take whatever disciplinary action it may deem fit against Atty. Felizardo de Guzman for his manner of behavior in the proceedings before the City Court of Manila." (Italics supplied)

Upon receipt of copy of the above-mentioned decision, this Court in its Resolution of August 16, 1968, required Atty. Felizardo de Guzman to answer,[2] and the latter complied on August 30, 1968.[3] On September 10, 1968 the matter was referred to the Solicitor General for investigation, report and recommendation.[4] On November 20, 1973, We received the Report and Recommendation of the Solicitor General.[5]

At the hearing conducted by the Office of the Solicitor General during which none of the parties, with the exception of respondent, Atty. Felizardo de Guzman, appeared despite due notice, the following incidents were brought out:

Sometime on October 12, 1967, a complaint for ejectment was filed with the City Court of Manila by Vicente Floro against Lagrimas Lapatha which was docketed as Civil Case No. 165187 of said court.[6] On November 2, 1967, a decision was rendered by the City Court, Branch VIII, presided by Judge Roman Cansino, Jr., to this effect:[7]

"BY CONFESSION, judgment is hereby rendered ordering the defendant and all persons claiming under her to vacate the premises described in the complaint and surrender the possession thereof to the plaintiff; to pay unto the plaintiff the unpaid rentals in the sum of P795.00, with interest thereon at the legal rate from October 12, 1967 until fully paid; the sum of P150.00 as attorney's fees plus the costs of the suit."

On December 29, 1967, Lagrimas Lapatha filed with the Court of First Instance of Manila a "Petition for Relief from Judgment, Orders & other Proceedings in the Inferior Court with a Writ of Preliminary Injunction", naming therein Vicente Floro and the Sheriff of Manila as party-respondents.[8] In the Petition it was alleged by petitioner Lagrimas Lapatha that at the initial hearing of Civil Case No. 165187 in the City Court of Manila held at 8:30 o'clock in the morning of November 2, 1967, she appeared without counsel; she approached Atty. Felizardo de Guzman, the lawyer of Vicente Floro, and begged for a five-day postponement of the trial to which Atty. de

Guzman verbally agreed; Atty. de Guzman then asked her to affix her signature on the court's "expediente" which she did, and after signing she left the courtroom; on November 16, 1967, she gave to Atty. Felizardo de Guzman a check for P350.00 in partial payment of her arrears in the rentals; on November 20, 1967, she was surprised to receive copy of a decision from the City Court dated November 2, 1967, wherein it appeared that she confessed judgment when in truth and in fact she asked for postponement of that initial hearing with the conformity of Atty. Felizardo de Guzman; upon verification of the "expediente" of the case, she discovered that below the signature which she affixed at the request of Atty. de Guzman, the latter had written "CONFESS JUDGMENT", without her knowledge and consent; hence her petition for relief from the judgment rendered by the City Court.

Vicente Floro filed his Answer to the above-mentioned Petition for relief and he alleged that the decision of the City Court was based on an admission made in open court by petitioner Lagrimas Lapatha on the basis of which the words "Confession of judgment" were written on the "expediente" of the case and underneath were affixed the signature of said petitioner and that of Atty. Felizardo de Guzman; that the alleged payments of Lagrimas Lapatha were made after the rendition of the decision to forestall immediate execution of the judgment; that when petitioner filed with the City Court a motion for reconsideration of the decision alleging fraud, the true circumstances attending the hearing of November 2, 1967, were brought out to the satisfaction of petitioner's counsel, for which reason the City Court denied the motion for reconsideration; that during the hearing on petitioner's motion for reconsideration Atty. de Guzman agreed not to press for the execution of the judgment on the assurance of petitioner that she would vacate the premises by January 15, 1968, however, petitioner did not comply with her promise and instead filed the Petition for Relief.[9]

On July 23, 1968, His Honor, Judge Jesus de Veyra, rendered his decision[10] in the above-mentioned Petition for Relief favorable to petitioner Lapatha, the dispositive portion of which We quoted in page two of this Resolution.

Judge de Veyra stated in his decision that due to the "machinations unworthy of an attorney" committed by respondent herein, Lagrimas Lapatha was deprived of her day in court, said lawyer having agreed to a postponement of the hearing and even accepted partial payment so that the case would not proceed, but behind her back wrote the words "confessed judgment" over her signature and prevailed upon the City Court to render judgment.[11] Judge de Veyra based his findings on the alleged testimonies of Lagrimas Lapatha and one Atty. Vargas given during the trial of the Petition for Relief.

We are constrained, however, to agree with the Solicitor General that the above-mentioned findings of Judge de Veyra were not only left unsubstantiated at the investigation conducted by the Solicitor General's Office for failure of said witnesses to appear notwithstanding due notice, but that they were satisfactorily controverted by the evidence submitted by respondent at said hearing.

Thus: 1. The records of Civil Case No. 71648 (Petition for Relief) show that the clerk of the City Court of Manila testified that when the ejectment case was called for hearing on November 2, 1967, both Lagrimas Lapatha and Atty. de Guzman made their appearances, and when the trial Judge asked Lapatha if she admitted the indebtedness alleged in the complaint, she answered in the affirmative and forthwith the words "confessed judgment" were written on the "expediente" of the case after which Atty. de Guzman and Lapatha affixed their signatures.[12] As aptly observed in the Report of the Solicitor General, the aforementioned testimony of the clerk of court deserves credit because the clerk was present at the hearing of November 2 and his testimony is substantiated by the decision of the City Judge[13] who, We state, is presumed, sans evidence to the contrary, to have regularly performed his official duty[14] and passed upon the matters before him in the manner stated in his decision.[15] On the other hand, Atty. Vargas on whom Judge de Veyra relied, was not in Court on the date of the hearing so that his testimony was simply based on the supposed statement to him of his secretary that the latter asked Atty. de Guzman for a postponement of the trial.[16]

2. The check for P350.00 was given by either Atty. Vargas or Lagrimas Lapatha to Atty. de Guzman not for the purpose of securing a postponement, for said check was paid on November 16 several days after the hearing, but in partial payment of the arrears in the rentals to which Lapatha "confessed judgment" and in order to forestall the immediate execution of the City Court's decision.[17] As a matter of fact, during the hearing of Lapatha's motion for reconsideration of the decision of the City Court, Lapatha agreed to vacate the premises by January 15, 1968, and Atty. de Guzman in turn waived the collection of the rentals for the months of November, 1967, up to January 15, 1968.[18]

3. The only objective of Lagrimas Lapatha in filing her Petition for Relief before Judge de Veyra was to gain more time to stay in the leased premises notwithstanding her commitment to vacate as of January 15, 1968, and in fact, she accomplished her purpose as shown by the "Compromise Agreement" entered into between her and the lessor, Vicente Floro, before Judge de Veyra in Civil Case No. 71648 which reads:

"Plaintiff agrees to vacate the premises at 821 Second Floor, Isabel Street, Manila, on or before October 31, 1968 and in turn Defendant V. Floro agrees to condone all rentals past up to October 31, 1968 plus attorney's fees and costs.

"Manila, Philippines, October 22, 1968

"(Sgd.) LAGRIMAS LAPATHA

(Sgd.) VICENTE FLORO"

(See Exh. "B" page 53, rollo)

We agree with the Solicitor General that in the instant case "the evidence is wanting" to sustain a finding that respondent committed any deceit or misconduct in Civil Case No. 165187 of the City Court of Manila.

In *Go vs. Candoy*[19], this Court said: "It is quite elementary that in disbarment proceedings, the burden of proof rests upon the complainant. To be made the basis for suspension or disbarment of a lawyer, the charge against him must be established by convincing proof. The record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers. The dubious character of the act done as well as of the motivation thereof must be clearly demonstrated."

"An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved, and as an officer of the court, that he has performed his duty in accordance with his oath. Thus, the serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against a respondent attorney." (Moran, Revised Rules of Court, 1970 Ed., vol. 6, p. 243, citing *In re Tionko*, 43 Phil. 191)

WHEREFORE, this administrative complaint is dismissed and respondent, Atty. Felizardo M. de Guzman, is exonerated of the charge.

Makalintal, C.J., Teehankee, Makasiar, and Esguerra, JJ., concur.
Ruiz Castro, J., concurs in the result.

[1] Page 4, rollo

[2] Page 5, rollo

[3] Pages 6-7, rollo

[4] Page 46, rollo

- [5] Pages 79-87, rollo
- [6] Page 8, rollo
- [7] Page 11, rollo
- [8] Civil Case No. 71648, pp. 12-19, rollo
- [9] Pages 27-33, rollo
- [10] Pages 2-4, rollo
- [11] Page 3, rollo
- [12] Page 35, rollo
- [13] Page 86, rollo
- [14] Rule 131, Sec. 5 (m)
- [15] Id. Sec. 5 (n)
- [16] Page 86, rollo
- [17] Page 52, rollo
- [18] Page 36, rollo
- [19] Adm. Case No. 736, Oct. 23, 1967, 21 SCRA 439, 442.

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