

MANUEL C. YUHICO, COMPLAINANT, VS. ATTY. FRED L. GUTIERREZ, RESPONDENT.

A.C. No. 8391 [Formerly CBD Case No. 06-1631]. November 23, 2010

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PER CURIAM:

Before us is a Complaint^[1] dated January 10, 2006 for disciplinary action against respondent Atty. Fred L. Gutierrez (Gutierrez) filed by Manuel C. Yuhico (Yuhico) for violation of Rule 1.01 of the Code of Professional Responsibility.

The antecedent facts of the case are as follows:

Complainant Yuhico alleged that he met Gutierrez at the Office of the City Prosecutor in Pasig City on May 4, 2005. Yuhico was there to testify at the preliminary investigation of a Complaint for Estafa against one Jose S. Chicharro, who was then being represented by Gutierrez. He claimed that they eventually became acquainted as they frequently saw each other during the hearings of the case.

On June 24, 2005, Yuhico averred that Gutierrez phoned him and asked for a cash loan of P30,000.00. Gutierrez then claimed that he needed money to pay for the medical expenses of his mother who was seriously ill. Yuhico immediately handed the money. In turn, Gutierrez promised to pay the loan very soon, since he was expecting to collect his attorney's fees from a Japanese client.

On June 28, 2005, Gutierrez again asked Yuhico for a loan, this time in the amount of P60,000.00, allegedly to pay the medical expenses of his wife who was also hospitalized. Again, Yuhico readily issued to Atty. Gutierrez an Equitable PCI Bank check amounting to P60,000.00.^[2] Again, Gutierrez promised to pay his two loans totalling to P90,000.00 "within a short time."

On July 12, 2005, Yuhico asked Gutierrez to pay his loans. Atty. Gutierrez failed to pay. In a text message on July 12, 2005 at 2:47 p.m., Atty. Gutierrez stated:

I really don't know how to say this as I don't want to think that I may be taking advantage of our friendship. You see i've long expected as substantial attorney's fees since last week from my client Ogami from japan. It's more or less more than 5m and its release is delayed due to tax and the law on money laundering. From my estimate it wud be collected by me on or b4 august 5. N the meantime I am quite in a financial difficulty as everyone is.

Later, Yuhico alleged that Gutierrez attempted to borrow money from him again. He said Gutierrez claimed that his daughter needed P70,000.00 to pay the fees required to take the licensure examination in the U.S. Medical Board. Gutierrez assured him that he will pay all his debts on or before August 10, 2005. In his text message on July 12, 2005 at 3:05 p.m., Atty. Gutierrez said:

As you are aware of these past few days were really great trials 4 me. My mother died, my wife got sick and now my bro in law died. These events led me to struggling finances. To get me going I tried to sel my car but my buyer backed out. Now my immediate problem is the amt of 70thousand which my daughter needs for her

payment sa US medical board. I dnt want her to miss this opportunity. Can u help me again? I will pay all my debts on or b4 Aug.10 pls. Thanks.

However, this time, Yuhico refused to lend Gutierrez any amount of money. Instead, he demanded from Gutierrez the payment of his debts. Gutierrez then sent another text message to Yuhico on July 12, 2005 and requested him to give him another week to pay his debts. Gutierrez failed to make the payment.

Yuhico repeatedly requested the payment of loans from Gutierrez from August to December 2005. Gutierrez, on the other hand, for numerous times promised to pay, but always failed to do so. At one point, Gutierrez even asked Yuhico's account number and promised to deposit his payment there, but he never deposited the payment.

On December 5, 2005, Yuhico's counsel sent a demand letter[3] to Gutierrez to pay his debts, but to no avail.

Thus, Yuhico filed the instant complaint against Gutierrez before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD).

On January 12, 2006, the IBP-CBD directed Gutierrez to submit his Answer on the complaint against him.[4]

In his Answer,[5] Gutierrez claimed that Yuhico was the one who offered to lend him money in gratitude for the assistance he extended to the latter when he was under threat by his clients. He, however, admitted that he accepted the loan due to compelling circumstances. Gutierrez added that he has no intention of evading his obligation to pay his debts, but he is currently in financial distress, thus, he cannot pay his debts yet. He claimed he will pay his debts when his financial condition improves.

On March 24, 2006, both parties were directed to appear at the mandatory conference before the IBP-CBD. Gutierrez failed to attend on two occasions.

On June 9, 2006, the IBP-CBD directed both parties to submit their respective position papers.

Likewise, during the clarificatory hearing before the IBP-CBD, only the complainant's counsel attended. There was no appearance on the part of Gutierrez.

In his Position Paper, Yuhico manifested that the Supreme Court, in *Huyssen v. Atty. Gutierrez*,^[6] had already disbarred Gutierrez from the practice of law for gross misconduct, in view of his failure to pay his debts and his issuance of worthless checks.

Subsequently, in a Resolution dated December 11, 2008, the IBP-CBD found Gutierrez guilty of non-payment of just debts and ordered him to return the amount of Ninety Thousand Pesos (P90,000.00) to Yuhico, with interest until full payment.

In view of the previous disbarment of Gutierrez, the IBP-CBD recommended to the Court that, instead of rendering the instant case moot, Gutierrez should be disbarred anew effective upon the expiration of the sanction pursuant to the March 26, 2004 Supreme Court Decision. The IBP-CBD explained that while we do not have jurisprudence on the issue of double or multiple disbarment, the American jurisprudence, however, recognizes double or multiple disbarments as well as the minimum requirement of five (5) years for readmission to the Bar.

On December 11, 2008, the IBP Board of Governors, in Resolution No. XVIII-2008-649, resolved to adopt the report and recommendation of the IBP-CBD and approve it with modification as to the payment of the amount of Ninety Thousand Pesos (P90,000.00), this time, without interest.

We sustain the findings of the IBP, but with modification as to its recommendations.

We have held that deliberate failure to pay just debts constitute gross misconduct, for which a lawyer may be

sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and 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 so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility.[7]

In the instant case, there is no question as to Gutierrez's guilt. His admission of the loan he contracted and his failure to pay the same leaves no room for interpretation. Neither can he justify his act of non-payment of debt by his dire financial condition. Gutierrez should not have contracted loans which are beyond his financial capacity to pay.

Likewise, we cannot overlook Gutierrez's propensity of employing deceit and misrepresentations for the purpose of obtaining debts without the intention of paying them. Records show Gutierrez's pattern of habitually making promises of paying his debts, yet repeatedly failing to deliver. The series of text messages he sent to Yuhico promising to pay his loans, while simultaneously giving excuses without actually making good of his promises, is clearly reprehensible. Undoubtedly, his acts demonstrate lack of moral character to satisfy the responsibilities and duties imposed on lawyers as professionals and as officers of the court.

We also note that in *Huyssen v. Atty. Gutierrez*,^[8] the Court had already disbarred Gutierrez from the practice of law for gross misconduct due to non-payment of just debts and issuance of bouncing checks.

In view of the foregoing, while we agree with the findings of the IBP, we cannot, however, adopt its recommendation to disbar Gutierrez for the second time, considering that Gutierrez had already been previously disbarred. Indeed, as the IBP pointed out, we do not have double or multiple disbarment in our laws or jurisprudence. Neither do we have a law mandating a minimum 5-year requirement for readmission, as cited by the IBP. Thus, while Gutierrez's infraction calls for the penalty of disbarment, we cannot disbar him anew.

WHEREFORE, Resolution No. XVIII-2008-649 dated December 11, 2008, of the IBP, which found FRED L. GUTIERREZ guilty of GROSS MISCONDUCT, is AFFIRMED. He is ORDERED to PAY the amount of Ninety Thousand Pesos (P90,000.00) to the complainant immediately from receipt of this decision with interest.

Let a copy of this Decision be furnished and properly recorded in the Office of the Bar Confidant, to be appended to the personal record of Gutierrez; 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.

Corona, C.J., Carpio, Carpio-Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and Sereno JJ., concur.
Del Castillo, J., on official leave.

[1] Rollo, pp. 1-5.

[2] *Id.* at 7.

[3] *Id.* at 11.

[4] *Id.* at 13.

[5] Id. at 18-21.

[6] A.C. No. 6707, March 24, 2006, 485 SCRA 244.

[7] A-1 Financial Services, Inc. v. Atty. Laarni N. Valerio, A.C. No. 8390, July 2, 2010, citing Barrientos v. Libiran-Meteoro, 480 Phil. 661, 671 (2004).

[8] Supra note 6.

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