

MARIA EVA DE MESA, COMPLAINANT, V. ATTY. OLIVER O. OLAYBAL, RESPONDENT.*A.C. No. 9129. January 31, 2018*

Ponente: BERSAMIN, J.

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We stress, yet again, the fidelity that the attorney owes towards the client. A violation of such fidelity warrants the sanction of the attorney with suspension from the practice of law.

Antecedents

The complainant charges respondent Atty. Oliver O. Olaybal with betrayal of trust and confidence, malpractice and gross misconduct as a lawyer.

The complainant avers that the respondent was her counsel in her criminal cases for violation of Batas Pambansa Blg. 22, specifically: Criminal Case No. 88229, filed in the Metropolitan Trial Court in Pasig City (Pasig Case), Br. 72, and Criminal Case Nos. 26685 to 26688, filed in the Municipal Circuit Trial Court (MCTC), Branch 2, in Legaspi City (Legaspi Case); that as regards the Pasig Case, he advised her to settle amicably for the amount of P78,640.00; that following his advice, she procured, through the help of Rowena Basco, her sister, Prudential Bank Manager's Checks No. 5574 and No. 5575 dated November 18, 2005 respectively for the amounts of P74,400.00 and P4,240.00; that both checks were crossed and payable to Asialink Finance Corporation (Asialink); that she handed the checks to the respondent for delivery to Asialink; that he did not deliver the checks to Asialink, but instead deposited them to his account through his son; that on February 28, 2006, he executed a compromise agreement with Asialink on her behalf as settlement of the Pasig Case; that under the compromise agreement, he undertook to pay Asialink the total sum of P83,328.00 through monthly installment payments of P6,110.75 from March 28, 2006 to February 28, 2007; that he also executed a deed of undertaking in Asialink's favor, whereby he guaranteed her monthly payment by issuing 12 post-dated checks in favor of Asialink; and that with respect to the Legaspi Cases, he failed to file her counter-affidavit on time, thereby jeopardizing her chances of testifying therein.[1]

In his answer and position paper, the respondent counters that the two manager's checks worth P78,640.00 were not in full settlement of the complainant's obligations because he still had to negotiate with Asialink on the final amount; that before he could negotiate with Asialink's representative, his son erroneously deposited the manager's checks to his account for safekeeping, without his knowledge and consent; that he nonetheless succeeded in settling her account with Asialink to her advantage by reducing her obligation from P115,770.00 to P83,328.00 through the elimination of surcharges and attorney's fees; that he was authorized to agree to the terms of the compromise agreement by her sister, Rowena Basco, and that she also agreed, through Atty. Romulo Ricafort, a friend of her mother-in-law, to implement the terms of the compromise agreement; that he prepared ahead of time the counter-affidavit to be submitted in the Legaspi Cases, but he was unable to file the same due to her fault and negligence and those of her witnesses; and that the matter already became moot and academic in any case

inasmuch as the Legaspi Cases were dismissed on October 26, 2006.[2]

Findings and Recommendation of the Integrated Bar of the Philippines (IBP)

In his Report and Recommendation dated February 22, 2008,[3] IBP Investigating Commissioner Randall C. Tabayoyong declared that the respondent had misappropriated the amounts of the manager's checks for his personal gain and benefit in violation of Canon 16, Rule 16.01[4] of the Code of Professional Responsibility;[5] that his depositing the checks to his account and commingling the proceeds thereof with his personal funds violated Rule 16.02[6] of the Code of Professional Responsibility;[7] and that his entering into the compromise settlement without authority placed the complainant at risk of undergoing criminal prosecution and conviction, thereby failing to safeguard her interest in violation of his ethical duty under Canon 18[8] of the Code of Professional Responsibility.

Anent the penalty to be imposed upon the respondent, IBP Investigating Commissioner Tabayoyong, taking into consideration the respondent's age and his efforts to rectify his wrongdoing, such as: (a) executing a deed of undertaking in favor of Asialink to guarantee the complainant's monthly installment payment under the compromise agreement; (b) issuing checks from his own checking account as the complainant's payment under the compromise agreement; and (c) bearing the P4,098.00 difference between the settlement amount and the amount given to him by the complainant,[9] recommended as follows:

WHEREFORE, it is therefore respectfully recommended that respondent be suspended for six (6) months for having violated Canons 16 and 18 and Rules 16.01 and 16.02 of the Code of Professional Responsibility.[10]

In its Resolution No. XVIII-2008-159 dated April 15, 2008, the IBP Board of Governors adopted and approved the report of IBP Investigating Commissioner Tabayoyong, but modified the recommended penalty by also requiring the return of the amount of P78,640.00 to the complainant within 30 days from notice, viz.:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violations of Canons 16 and 17 and Rule 16.01 and 16.02 of the Code of Professional Responsibility, Atty. Oliver O. Olaybal is hereby SUSPENDED from the practice of law for six (6) months and Ordered to Return the P78,640.00 to complainant within Thirty (30) days from receipt of notice.[11]

The respondent sought reconsideration,[12] but the IBP Board of Governors denied his motion via Resolution No. XIX-2011-390 dated June 26, 2011.[13]

Issues

Were the findings and recommendations of the IBP Board of Governors proper?

Ruling of the Court

We sustain the findings and recommendation of the IBP Board of Governors.

The records show that the respondent received from the complainant crossed manager's checks payable to Asialink worth P78,640.00 representing the settlement amount for her criminal cases; that instead of immediately transmitting the checks to Asialink, he managed to deposit the same to his personal account for collection; and that he asserted as explanation for the deposit of the checks in his personal account that the deposit was due to the honest mistake of his son in order to prevent the checks from becoming stale.

We agree with the findings of the IBP Investigating Commissioner and IBP Board of Governors that the explanation of the respondent was improbable for being contrary to human experience. We reiterate the IBP Investigating Commissioner's observations on the matter:

x x x It bears stressing that the subject checks were not only payable to Asialink, but were duly crossed. Hence, under existing banking rules and regulations and common commercial practice, these checks can only be deposited to the account of Asialink and to no other. It is quite perplexing to believe that respondent's son would even think that these checks belonged to his father and would, without even asking him, "mistakenly" deposit these checks to his account, for the faces of both checks unmistakably show that these should be given to Asialink. This Office is similarly unconvinced of the claim that the checks were deposited so that these would not become stale. As shown by the faces of these checks, these were issued in November 18, 2005 and would become stale, six (6) months thereafter. Yet, after the lapse of about two (2) weeks, or on December 1, 2005, the said checks were already deposited to respondent's account. Thus, at the time of their deposit, the subject checks were clearly far from being stale. Accordingly, respondent's explanation is devoid of any probative value not only because it is uncorroborated, but also because it is contrary to human experience.[14]

The respondent's failure to deliver the checks to Asialink and instead depositing the checks in his account and thereafter misappropriating the funds thereof for his personal benefit constituted a serious breach by him of Canon 16, Rule 16.01; and Rule 16.02 of the Code of Professional Responsibility, which state as follows:

Canon 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME TO 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.

The respondent flagrantly violated these canons of ethical conduct and professionalism, and should be held responsible. We can never understate that the relationship between a lawyer and his client is highly fiduciary, and imposes on the former a great degree of fidelity and good faith.[15] Thus, any money or property received by him from his client for delivery to another in the context of the relationship is merely held by him in trust and should not be appropriated for his own benefit. For him to do otherwise is a violation of his oath as an attorney and officer of the Court.

Also, the respondent's act of binding the complainant to the terms of the compromise agreement even if he had not been expressly and properly authorized to do so reflected his disregard of the duty of fidelity that he owed at all times towards her as the client. He thereby violated Canon 17 of the Code of Professional Responsibility, viz.:

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.

The IBP Board of Governors recommended that the respondent be suspended from the practice of law for six months after taking due consideration of the various circumstances attendant to his case. The recommendation is well taken. Any breach of the fidelity towards the client that an attorney commits justifies the penalty of his suspension from the practice of law for a period of time.

WHEREFORE, the Court SUSPENDS respondent ATTY. OLIVER O. OLAYBAL from the practice of law for a period of six months effective upon receipt hereof; ORDERS him to return to the complainant the amount of P78,640.00 within 30 days from receipt hereof; and WARNS him that a stiffer penalty will be imposed on him should he commit a similar offense hereafter.

Let copies of this decision be attached to the personal records of ATTY. OLIVER O. OLAYBAL as a member of the Philippine Bar, and be furnished to the Office of the Court Administrator for proper dissemination to all courts throughout the country. Copies shall further be furnished to the Office of the Bar Confidant and the Integrated Bar of the Philippines.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonen, and Gesmundo, JJ., concur.
Martires, J., on official business.

[1] Rollo, p. 116.

[2] Id. at 117.

[3] Id. at 114-127.

[4] Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

[5] Rollo, p. 121.

[6] 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.

[7] Rollo, p. 119.

[8] Canon 18 - A lawyer shall serve his client with competent and diligence.

[9] Rollo, p. 126.

[10] Id. at 127.

[11] Id. at 113.

[12] Id. at 128-139.

[13] Id. at 149.

[14] Id. at 120-121.

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

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