

LOLITA R. MARTIN, COMPLAINANT, V. ATTY. JESUS M. DELA CRUZ, RESPONDENT.

A.C. No. 9832. October 03, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

In 2013, complainant Lolita R. Martin (complainant) filed a letter-complaint[1] against respondent Atty. Jesus M. Dela Cruz (respondent) for the latter's failure to return, despite several demands, the acceptance fee in the amount of P60,000.00 that he received from complainant.

In a Resolution[2] dated September 4, 2017, the Court found respondent administratively liable for violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility, and accordingly, suspended him from the practice of law for six (6) months effective from the finality of the said Resolution. On the matter of restitution, the Court held that the order for respondent to return the P60,000.00 acceptance fee is proper,[3] to wit:

As regards restitution, the Court has, in several cases, allowed the return of acceptance fees when a lawyer completely fails to render legal service. As applied to this case, the order for respondent to return the P60,000.00 is, therefore, proper. Indeed, an acceptance fee is generally non-refundable, but such rule presupposes that the lawyer has rendered legal service to his client. In the absence of such service, the lawyer has no basis for retaining complainant's payment, as in this case.[4]

Notably, however, the dispositive portion of the Resolution did not contain a directive for respondent to restitute the aforementioned amount to complainant, but only decreed respondent's suspension from the practice of law. The dispositive portion thereof reads:

WHEREFORE, respondent Atty. Jesus M. Dela Cruz (respondent) is found GUILTY of violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is SUSPENDED from the practice of law for a period of six (6) months effective from the finality of this Resolution, and is STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is DIRECTED to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal record as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.[5]

When complainant filed a Motion for Execution[6] dated October 24, 2017, praying that a writ of execution be issued in her favor, the requested writ, which would enable her to retrieve the P60,000.00 acceptance fee she

previously paid, could not be issued since no such directive to restitute appears in the dispositive portion of the Resolution, keeping in mind the general rule that it is the fallo of a decision which is controlling.[7] As such, the Office of the Second Division Clerk of Court submitted a query to the Court, to wit:

Considering that the Resolution dated 4 September 2017 expressly warrants the restitution of the P60,000.00 acceptance fee to complainant, may the dispositive portion of the said Resolution be AMENDED to include a directive to respondent to return to complainant the amount of P60,000.00 which the latter paid as acceptance fee?[8] (*Italics in the original*)

This query is the matter now before the Court. Accordingly, the Court deems it proper to make the necessary clarification.

It is true that when there is a conflict between the fallo, or the dispositive portion, and the body of the decision or order, the fallo prevails on the theory that the fallo is the final order, which becomes the subject of execution, while the body of the decision or order merely contains the reasons or conclusions of the court ordering nothing.[9] However, as an exception, "[when] one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail." [10]

In the present case, a perusal of the body of the Resolution unquestionably shows complainant's entitlement to the restitution of the P60,000.00 acceptance fee. Unfortunately, the dispositive portion of the said Resolution did not reflect an order for respondent to restitute such amount, not because of any substantial consideration but merely because of an unwitting clerical omission. In *Tuatis v. Spouses Escol*, [11] the Court reiterated the rule that "[when] there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final," [12] as in this case. [13] Certainly, "this Court cannot be precluded from making the necessary amendment thereof, so that the fallo will conform to the body of the said decision." [14] In this light, the Court therefore deems it proper to amend the dispositive portion of the Resolution to reflect complainant's entitlement to the restitution of the P60,000.00 acceptance fee.

It bears stressing that the Court's original Resolution dated September 4, 2017 had already settled the issue of whether or not complainant is entitled to restitution, and no further discussion is needed to that effect. However, the amendment of the dispositive portion thereof must be made for complainant to effectively execute the Court's judgment on that aspect; hence, this Resolution. Moreover, so as to avoid any confusion, the Court is prompted to note that respondent's six (6)-month suspension shall begin not from the date he would receive this Resolution but the date of his receipt of the original Resolution dated September 4, 2017, which date shall be indicated in the Manifestation that he is required to file before this Court signifying the start of his suspension from the practice of law.

WHEREFORE, the dispositive portion of the Court's Resolution dated September 4, 2017 is hereby AMENDED to read as follows:

WHEREFORE, respondent Atty. Jesus M. Dela Cruz (respondent) is found GUILTY of violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is SUSPENDED from the practice of law for a period of six (6) months effective from the finality of this Resolution, and is STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is DIRECTED to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Further, respondent is ORDERED to return to complainant Lolita R. Martin the acceptance fee he received

from the latter in the amount of P60,000.00 within ninety (90) days from the finality of this Resolution. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let copies of this Resolution be furnished to the Office of the Bar Confidant to be entered in respondent's personal record as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts throughout the country.

SO ORDERED.

Carpio (Chairperson), Peralta, and A. Reyes, Jr., JJ., concur.
Caguioa, J., on leave.

[1] Rollo, p. 1. The letter was dated February 10, 2013 and addressed to Ombudsman Conchita Carpio Morales. In a letter dated February 26, 2013, the Office of the Ombudsman indorsed complainant's letter to the Court for appropriate action (id. at 7). On July 1, 2013, complainant also sent a handwritten letter-complaint to the Office of the President regarding the same matter (id. at 14). On even date, the Presidential Action Center of the Office of the President indorsed complainant's letter to the Office of the Bar Confidant (id. at 13).

[2] Id. at 301-306. See also *Martin v. Dela Cruz*, A.C. No. 9832, September 4, 2017.

[3] Id. at 305.

[4] See *Martin v. Dela Cruz*, supra note 2.

[5] Id. See also rollo, p. 306.

[6] Rollo, pp. 309-310.

[7] See *People v. Lacbayan*, 393 Phil. 800, 810 (2000).

[8] See Second Division Agenda dated July 2, 2018, Item Number 189.

[9] *Cobarrubias v. People*, 612 Phil. 984,996 (2009).

[10] Id. *People v. Cilot*, GR. No. 208410, October 19, 2016, 806 SCRA 575, 593; emphasis supplied. See also *People v. Lacbayan*, supra note 7, at 809; and *Spouses Rebulde v. Intermediate Appellate Court*, 239 Phil. 487, 494 (1987).

[11] 619 Phil. 465 (2009).

[12] Id. at 485.

[13] Records show that respondent received his copy of the Resolution on October 18, 2018 (see LBC Tracking, rollo, p. 312) and has not filed any motion for reconsideration within the reglementary period (see 1[st] Indorsement from the Office of the Bar Confidant dated March 23, 2018; id. at 307).

[14] Supra note 11, at 485. See also *So v. Food Fest Land, Inc.*, 657 Phil. 604, 606 (2011).

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