DAYAN STA. ANA CHRISTIAN NEIGHBORHOOD ASSOCIATION, INC. AND/OR ITS OFFICERS, MEMBERS, NAMELY: MINERVA A. GENATO, JULIETA P. BENEDICTO, PRAXEDES A. MORENO, PATRICIA DE GUZMAN, PA...

Adm. Case No. 5542. July 20, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant disbarment case was filed by the officers/members of the Dayan Sta. Ana Christian Neighborhood Association Inc., charging Atty. Napoleon A. Espiritu with "deceitful conduct, malpractice, gross misconduct in office, and/or violation of oath of office." The charges are contained in the Complaint-Affidavit[1] dated May 17, 2001.

Complainants sought the services of respondent sometime in November 1997 regarding a consolidated ejectment case where they were being sued in their respective capacities as officers and members of the association. The case, docketed as Civil Case Nos. 153905-90, was pending before the Municipal Trial Court of Manila, Branch 26. Complainants lost, however, and respondent advised them to file a supersedeas bond to stay their eviction.[2] Complainants then entrusted the following amounts to respondent as payment therefor:

> a.) On November 13, 1997 and November 28, 1997, he received the amount of P12,000.00 and P13,000.00 respectively from Minerva Genato. (Annexes "B" and "B-1")
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> b.) On March 31, 1998, he received the amount of P41,257.00 from Rico Ramirez. (Annex "C")
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> c.) On March 23, 1998, he received from us the amount of P116,605.00, which are imparted under the following circumstances:
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> c.1.) Ric De Guzman --------- P14,010.00
> c.2.) Patricia De Guzman --------- P15,784.00
> c.3.) Ben/Lita Benedicto --------- P37,870.00
> c.4.) Helena Resuello --------- P11,363.00
> c.5.) Praxedes Moreno --------- P12,040.00
> c.6.) Pacita Moquerio --------- P25,538.00
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> which he receipted erroneously in the amount of P86,666.72, but duly corrected by one of the members thereon. The aforesaid amount was accepted by him in the name of Dayan as shown by the receipt he issued thereto marked as Annex "D."
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> d.) Again for the same reason, on July 28, 1998 he received the amount of P8,930.00 from us the following:
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> d.1.) Ric De Guzman ---------- P1,250.00
> d.2.) Patricia De Guzman ---------- P1,125.00
> d.3.) Ben/Lita Benedicto ---------- P3,130.00

d.4.) Helena Resuello ---------- P 625.00
d.5.) Praxedes Moreno ---------- P 935.00
d.6.) Pacita Moquerio ---------- P1,865.00

which he again receipted under Dayan as evidenced by hereto attached copy of the receipt marked as Annex "E."

e.) On July 28, 1998, he received again from Rico/Erlinda Ramirez the amount of P3,370.00. (Annex "F")

f.) Also on July 28, 1998, he received from Minerva Genato the amount of P4,000.00. (Annex "H")

g.) On August 7, 1998, he received from Manuel Rivera/Myrna Sayson the amount of P2,000.00 (Annex "H") and Prima Fidel the amount of P4,000.00. (Annex "H-1")

h.) On August 27, 1998, he received from Minerva Genato the amount of P4,000.00. (Annex "I").[3]

According to complainants, respondent deposited only P48,000.00 before the Clerk of Court as evidenced by receipts furnished by respondent himself.[4] Association President Minerva Genato then made a verbal demand for respondent to return the remaining balance, upon which respondent delivered a personal check for P141,904.00 in the name of Atty. Leonardo Ocampo. The check bounced for insufficiency of funds. Consequently, Atty. Ocampo sent a demand letter[5] to Genato to make good the payment of the check. Genato continued to make verbal demands and later sent a letter[6] dated May 25, 2000 demanding the payment of the amount of the check, to no avail. The Association was thus constrained to seek the help of the Integrated Bar of the Philippines (IBP). Through Atty. Helengrace G. Cabasal, another demand letter[7] dated July 17, 2000 was sent for respondent to return the "remaining balance" of P206,497.00. An Information[8] charging respondent with estafa was likewise filed before the RTC of Manila.

In his Comment, [9] respondent admitted that he deposited to the clerk of court the amount of P48,481.00 as "partial supersedeas bond." In his desire to help complainants, he talked to the counsel of plaintiffs in Civil Case No. 153905-90. Respondent likewise admitted that he issued a postdated check to cover the balance (P141,904.00), and that he was unable to fund the same. He, however, made arrangements with Atty. Ocampo and his clients for the payment of the subject check, and requested the latter for complainants to stay in the subject property until December 1999, or even beyond. He pointed out that it was upon his representations that complainants were allowed to stay in the subject premises up to the present, and that the said amount (P141,904.00 and not P206,497.00 as falsely claimed by complainants), was meant as payment for supersedeas bond in Civil Case No. 153686-CV for the use and occupation of the complainants of the subject property from January 1991 to December 1996. Respondent likewise disclosed that complainants had lodged several complaints against him for estafa and/or theft in connection with the amount covered by the postdated check which he issued in favor of Atty. Ocampo, which, however, are all baseless. He insisted that complainants have no cause of action against him, and that the instant administrative complaint must be dismissed outright for the following reasons:

As stated earlier, the basis of this administrative case as well as the criminal complaints is the demand letter to Atty. Ocampo to make good the check issued by respondent, and in case of failure, Atty. Ocampo will insist on the issuance of the execution. It bears stressing, however, that because of the arrangement made by respondent with Atty. Ocampo, and as per their (Atty. Ocampo and the respondent) agreement, Atty. Ocampo no longer pursued the eviction f the complainants. UP TO THE PRESENT, complainants are still in the premises in question.

The complainants were never prejudiced by the bounced check and the demand letter sent by Atty. Ocampo to the complainants. On the contrary, they have benefited by the representations made by respondent to Atty. Ocampo. Moreover, respondent had made representations with the City Council of Manila for the

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> expropriation of the premises in question, which is now under consideration by the said City Council.
>
> Hence, complainants have no cause to complain. In fact, they should be grateful to the respondent because without his representations with Atty. Ocampo and the plaintiff in CIVIL CASE NO. 153686-CV, and with the City Council of Manila, complainants have long been evicted from the said premises. To sanction complainants' administrative and criminal complaints against the respondent is a mockery of justice; respondent will be placed in an unjust situation where he has to answer severally a single offense, if at all. He will be made liable to Atty. Ocampo or to the plaintiff in CIVIL CASE NO. 153686-CV, to the herein complainants and to the Honorable Court.
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> Parenthetically, complainants have absolutely no personality to file or institute this action against the respondent. As it now clearly appears, the instant case is a persecution rather than a prosecution, where the aim or purpose of the complainants is to exact or extort money from the respondent. Complainants are well aware that they are not entitled to the money they sought to collect from the respondent which served as basis of their malicious and perjurious criminal and administrative complaints. The purpose of the money received by the respondent had greatly been served through the issuance of the check by respondent to Atty. Ocampo and respondent's representations with Atty. Ocampo and his client-plaintiff NOT TO EJECT complainants from the premises. Complainants have benefited too much from the representations of respondent with Atty. Ocampo, UNTIL NOW.
>
> To reiterate, it is the plaintiff in Civil Case No. 153686-CV which has a cause of action against the respondent - and not or never the herein complainants.[10]

Complainants refuted these allegations, insisting that the basis of the filing of the instant administrative case, as well as the criminal charges for estafa against respondent, is the misappropriation or conversion of the amounts which should have been deposited with the court or with the lessor in order to cover the required bond or arrears in rental over the property; the check was adduced in evidence to prove the fact of misappropriation or conversion, as respondent issued the same after he failed to deposit the complete amount entrusted to him by complainants; and due to respondent's unlawful acts, they were prejudiced and suffered damages, thus:

> b. The continuing failure of the respondent to transmit the subsequent amounts he further collected and received, is not further prejudicial to the enforcement and effective implementation of the rights of the complainants under the expropriation ordinance, enacted by the local government, because of the nonpayment of the backrental constituting the supersedeas bond, which up to the present, is being demanded by the lessor, as precondition for negotiating, for the expropriation compensation due to the lessor-owner.
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> c. It must be further noted and stressed, there was no representation at all made by respondent with the lessor through Atty. Ocampo; nor, with the local government in the enactment and enforcement of said ordinance. Contrary then, to the respondent's contention, it was through the coordinative efforts of the complainants through their President, which caused the passage of said expropriation law. Further, the continuing stay of complainants in the premises is but the due consequence of such enactment and not through any representation on the part of respondent, who failed to protect the interest of the complainant, as legal counsel of his clients, the herein complainants, in gross dereliction of his duty as such.[11]

The case was then referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[12] Investigating IBP Commissioner Milagros V. San Juan scheduled the case for hearing. Witnesses for complainants testified on November 6, 2003. On the hearing set for June 13, 2004, however, respondent failed to appear. A representative informed the Commission that respondent was suffering from "high sugar blood count." The hearing was reset to February 26, 2004, where respondent was ordered to present his medical certificate. On the last scheduled hearing of the case on August 26, 2004, respondent failed to appear despite due notice, hence, complainant's testimony was heard ex-parte. Complainant was then given 15 days to

make a formal offer of evidence, after which the case was submitted for resolution. The last notice sent to respondent was returned for being unclaimed.

In her Report and Recommendation dated May 26, 2005, Commissioner San Juan recommended that respondent be disbarred, considering the following findings:

> The claim of respondent that the complainants [have] no cause of action against him is without merit. He admitted receiving the funds from complainants and that he deposited only P48,481.00 with the Clerk of Court as partial supersedeas bond. The fact that Atty. Leonardo Ocampo counsel of the plaintiff in the ejectment case accommodated the respondent with his personal check does not relieve respondent from liability. On the contrary it is evident that the arrangement was resorted to in order that respondent could extricate himself from the situation he was in. By obtaining a loan from Atty. Ocampo in the form of a check is a clear admission that the money entrusted to respondent by complainants was misappropriated. Noted is the failure of respondent to make an accounting of the funds entrusted to him and the absence of an explanation why only a partial payment of the bond was made. The contention of respondent that complainants were never prejudiced by the bouncing check likewise must fail. Neither will the payment of the check and the funds entrusted to him "doubly prejudice" respondent.[13]

On January 28, 2006, the IBP Board of Governors passed Resolution No. XVII-2006-05, modifying the penalty meted on respondent, to wit:

> 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 duly supported by the evidence on record and the applicable laws and rules, and for obtaining a loan from Atty. Ocampo in the form of a check is a clear admission that the money entrusted to respondent by complainants was misappropriated, Atty. Napoleon A. Espiritu is hereby SUSPENDED from the practice of law for (1) year.

We agree with the foregoing recommendation. It is clear that respondent misappropriated the money which his clients, herein complainants, had entrusted to him for a specific purpose, and such an act cannot be countenanced.

Rule 16.01 of Canon 16 of the Code of Professional Responsibility provides that a lawyer shall account for all money or property collected or received for or from his client. A lawyer should be scrupulously careful in handling money entrusted to him in his professional capacity, because a high degree of fidelity and good faith on his part is exacted.[14] In Pariñas v. Paguinto,[15] the Court had the occasion to state that "money entrusted to a lawyer for a specific purpose, such as for filing fee, but not used for failure to file the case must immediately be returned to the client on demand."[16] Indeed, a lawyer has no right to unilaterally appropriate his or her client's money.[17]

We note that respondent failed to appear before the IBP Investigating Commissioner to explain his actions, much less present his defense. In Rangwani v. Diño,[18] we ruled that it is not enough for a member of the bar to deny the charges:

> Quite conspicuously, despite the opportunities accorded to respondent to refute the charges against him, he failed to do so or even offer a valid explanation. The record is bereft of any evidence to show that respondent has presented any countervailing evidence to meet the charges against him. His nonchalance does not speak well of him as it reflects his utter lack of respect towards the public officers who were assigned to investigate the cases. On the contrary, respondent's comments only markedly admitted complainant's accusations. When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him. He must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him. These, respondent miserably failed to do.[19]

The fiduciary duty of a lawyer and advocate is what places the law profession in a unique position of trust and confidence, and distinguishes it from any other calling. Once this trust and confidence is betrayed, the faith of the people not only in the individual lawyer but also in the legal profession as a whole is eroded. To this end, all members of the bar are strictly required to at all times maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession.[20] The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a condition precedent to admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession.[21] Law is a noble profession, and the privilege to practice it is bestowed only upon individuals who are competent intellectually, academically, and, equally important, morally. Because they are vanguards of the law and the legal system, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach.[22]

Section 27, Rule 138 of the Rules of Court provides:

> SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefore. - 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 admission to the practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

However, the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of a lawyer as an officer of the Court and member of the bar. It should never be decreed where any lesser penalty, such as temporary suspension, would accomplish the end desired.[23] In this case, the Court finds that one-year suspension from the practice of law will suffice as penalty against respondent.

WHEREFORE, Atty. Napoleon A. Espiritu is guilty of violating the Code of Professional Responsibility. Accordingly, he is penalized with SUSPENSION from the practice of law for One (1) Year effective immediately. Respondent is DIRECTED to return the funds entrusted to him by complainants, and to inform the Court of the date of his receipt of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal records; the Integrated Bar of the Philippines; and all courts in the country for their information and guidance.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 6-8.

[2] Id. at 33.

[3] Id. at 6-7.

[4] Id. at 19-20.

[5] Id. at 21.

[6] Id. at 22.

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[7] Id. at 23.

[8] Id. at 25-26.

[9] Id. at 33-39.

[10] Id. at 37-38.

[11] Reply to Comment dated February 22, 2003, p. 3.

[12] Rollo, p. 14.

[13] Report and Recommendation, p. 5.

[14] Navarro v. Meneses III, 349 Phil. 520, 527 (1998).

[15] A.C. No. 6297, July 13, 2004, 434 SCRA 179.

[16] Id. at 183, citing Barnachea v. Quiocho, A.C. No. 5925, March 11, 2003, 399 SCRA 1.

[17] See Quilban v. Robinol, A.C. No. 2144, April 10, 1989, 171 SCRA 768.

[18] A.C. No. 5454, November 23, 2004, 443 SCRA 408.

[19] Id. at 415.

[20] Id. at 419.
The Canons of Judicial Ethics also provides:
The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances

[21] Rayos-Ombac v. Rayos, 349 Phil. 7, 14-15 (1998).

[22] Resurreccion v. Sayson, A.M. No. 1037, December 14, 1998, 300 SCRA 129.

[23] Id. at 136-137. In this case, the Court cited Castillo v. Taguines, 254 SCRA 554, March 11, 1996, where the respondent who was accused of estafa by his client was suspended for one year from the practice of law; and Igual v. Javier, 254 SCRA 416, March 7, 1996), where the respondent was likewise suspended for one year for having unlawfully withheld and misappropriated the complainant's money in the amount of P7,000.00, allegedly paid as acceptance fee for a matter on which respondent never performed any work.

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