

IN THE MATTER OF THE COMPLAINT AGAINST ATTORNEY EDUARDO MONTENEGRO. MELECIO SINGCO, COMPLAINANT, VS. EDUARDO MONTENEGRO, RESPONDENT.

. January 30, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

In this case, the respondent Eduardo Montenegro, who is a practising attorney in the Province of Oriental Negros, is charged with malpractice.

On or about November 24, 1931, the complainant herein, who is an old man 92 years of age, filed a motion for the reconsideration of a certain order directing the dismissal of civil case No. 794 of the Court of First Instance of Oriental Negros by reason of the withdrawal of the complaint filed therein. In said motion, he charged that the respondent and Tiburcio Chaves, together with the former's agent named Francisca Corpus, conspiring with one another and taking advantage of his illness and old age, withdrew said complaint without his knowledge or consent.

After the hearing of the motion in question during which not only the complainant but also his nephew Sergio G. Singco, who was a third party claimant in the aforesaid case, testified, the court issued an order denying said motion. However, in said order the court found that it had been proven by the testimony of the complainant that the motion filed in his name for the withdrawal of his complaint had been signed by him; that said complainant had admitted that the respondent was his attorney; that he had delivered all his papers to said attorney through Francisca Corpus and his nephew Tiburcio Chaves; that notwithstanding the fact that the respondent had received the amount of P2,000 delivered to him by the defendant Francisco Diaz in payment of the complainant's waiver of his right in favor of said Francisco Diaz, the former did not deliver said amount nor any part thereof to the said complainant. Inasmuch as the court had considered the allegations contained in the complainant's motion for reconsideration and the statements made by him during the trial as involving charges of malpractice against the respondent, said court ordered that the latter be required to appear before it in order to file his answer to said charges within the period of ten days. Copies of said motion for reconsideration of the complainant and of the court's order were sent to the respondent for his information. The court's findings and order in connection with the motion for reconsideration in question read as follows:

"It appearing that the signature 'Melecio Singco' on Exhibit A, which is a document entitled 'motion for withdrawal' and dated August 18, 1931, is the plaintiff's signature as he admitted in his testimony; and it appearing, likewise, that the defendant Francisco Diaz had paid the sum of P2,000 to Attorney Eduardo Montenegro in his capacity as counsel for said plaintiff, in consideration of the compromise arrived at between them, as evidenced by said attorney's letter Exhibit D and the promissory notes Exhibits H and H-1 signed by the said defendant, which promissory notes are already cancelled as paid, although the plaintiff alleges that he has not received even a part of the amount thereof, it is obvious that said motion for reconsideration is untenable on the ground that it is unjust that the defendant should make another payment after having done so.

Wherefore, said motion is hereby denied.

"It appearing further that the allegations contained in said motion for reconsideration and the testimony of the interested parties in this case constitute charges of malpractice or gross misconduct in the practice of his profession by Attorney Eduardo Montenegro, a member of the bar of this province, in view of the fact that he has an agent named Francisca Corpus, and that in spite of his having received from the defendant Francisco Diaz the sum of P2,000 in consideration of the compromise of said case, which sum was to be delivered to his client, the plaintiff herein, said attorney, has not so done, such conduct amounting to an open betrayal of the plaintiff's trust; the court hereby orders that administrative proceedings for malpractice be instituted against said Attorney Eduardo Montenegro. The clerk of this court is hereby ordered to send him a copy of this order as well as of Melecio Singco's motion for reconsideration dated November 24, 1931, and at the same time said attorney is ordered to file his answer to the charges against him within the period of ten (10) days, giving his reasons or explanation why he should not be suspended from the practice of his profession. Upon the filing of the required answer, let the case be set for hearing and for the presentation of evidence."

After the respondent had filed his answer and the corresponding investigation had been conducted, first by the clerk of the Court of First Instance of Oriental Negros by delegation of the judge thereof, and later by the provincial fiscal, said judge arrived at the following conclusions, to wit:

"1. That inasmuch as the complainant Melecio Singco had a claim against the Spaniard Francisco Diaz as to the latter's participation in the haciendas 'Odiongan' and 'Talaptap', he intrusted the negotiations for the enforcement thereof to his nephew Sergio Singco.

"2. That Francisca Corpus is an agent of the respondent Eduardo Montenegro.

"3. That Tiburcio Chaves, in whose house his father-in-law Melecio Singco, a weak old man of 92 years of age, then lived, took advantage of that occasion and conspired with the respondent and the latter's agent Francisca Corpus to have Melecio Singco execute a general power of attorney in his favor (Exhibits 3 and 3-A).

"4. That Tiburcio Chaves, acting in his capacity as the complainant's attorney in fact, entered into an agreement with the respondent and his agent Francisca Corpus to divide the money they might obtain from the defendant Francisco Diaz, and to that end they filed the complaint Exhibit E prepared by the respondent.

"5. That in consideration of the compromise of the case in question, the respondent received from the defendant Francisco Diaz the sum of P2,000, not P3,000 as the complainant claimed, which sum of P2,000 was divided between Tiburcio Chaves, on one side, and the respondent and his agent Francisca Corpus, on the other.

"6. That Tiburcio Chaves has not delivered to his father-in-law, the complainant Melecio Singco, even a cent of the latter's share of the amount paid in accordance with the compromise.

"7. That the respondent, failing to comply with his duty, as attorney, of safeguarding the interest of his client, the complainant Melecio Singco, did not heed Sergio Singco's warning in the latter's communication Exhibit 17. In that letter, Sergio Singco, among other things, forbade the respondent from delivering the complainant's share in the proceeds of the compromise to Tiburcio Chaves and suggested that said share be deposited in the Postal Savings Bank because he foresaw that it would only be misappropriated by said Tiburcio Chaves. Such state of affairs clearly reveals the conspiracy between the respondent and his agent Francisca Corpus, on the one hand, and Tiburcio Chaves, on the other, inasmuch as it was the respondent's duty to ascertain from the complainant himself the truth of Sergio Singco's accusation in order that his acts would be above suspicion. There is no question that the respondent then knew the complainant and the latter's place of residence, and his failure to make the necessary investigation in order to safeguard his client's interests has led this court to the conclusion that the respondent used Tiburcio Chaves as a tool in order to get other people's money."

After the record had been forwarded to this court, the respondent was required to file his answer after which said record was sent to the Solicitor-General so that he would conduct an investigation and submit his report and recommendation.

In his report, the Solicitor-General states that the charge that the respondent had employed Francisca Corpus as his agent has been established; that the complainant, through the intervention of Tiburcio Chaves and Francisca Corpus, had actually authorized the respondent to file a complaint in his name against Francisco Diaz; that the complainant really issued a power of attorney to Tiburcio Chaves authorizing him to appear before the ordinary courts of justice in the former's name, either as plaintiff or defendant and take the necessary steps for the prosecution, compromise, dismissal or appeal of his cases, and that the respondent committed an act of disloyalty to his client in delivering to Francisca Corpus or to Tiburcio Chaves, the complainant's share of the money paid by Francisco Diaz in utter disregard of Sergio G. Singco's warning not to do so but to deposit it instead in the Postal Savings Bank.

This court has considered the evidence adduced by both the complainant and the respondent and agrees with the conclusions arrived at by the Solicitor-General to the effect that the complainant intrusted the respondent with the enforcement of his claim against Francisco Diaz and that said complainant in fact issued a power of attorney, Exhibit 3, in favor of Tiburcio Chaves, authorizing the latter, among other things, to appear in his name before the courts either as plaintiff or defendant and to take the necessary steps for the prosecution, compromise, dismissal or appeal of cases to which he was a party. The only questions to be considered therefore are: (1) Whether or not Francisca Corpus ever acted as the respondent's agent, and (2) whether or not said respondent had acted in bad faith in delivering to Francisca Corpus or to Tiburcio Chaves the complainant's¹ share of the money collected by him from Francisco Diaz.

Before discussing these two points, a question which the respondent has raised time and again should first be considered. The question is whether or not this investigation should be dismissed and the charges brought against the respondent dropped, without proceeding any farther, on the alleged ground that he had not been given an opportunity to be informed of the true nature of said charges and to defend himself, in view of the fact that no formal written complaint specifying the concrete charges against him had been filed.

This court is of the opinion that the respondent's contention is without merit on the ground that section 24 of Act No. 190 provides that proceedings for the removal or suspension of a lawyer may be taken by the court of its own motion, or upon the complaint of another in writing.

In view of the complainant's statements made during the hearing of his motion for reconsideration, it certainly was the duty of the court, which took cognizance of said motion, to take action as it had done against the respondent, assuming of course, that it had no knowledge that the complainant's charges against the respondent were false. On the other hand, the court gave the respondent every opportunity to defend himself. In its order of January 13, 1932, it clearly instructed the clerk of court to send him, and in fact the clerk sent him, a copy of said order and of the complainant's motion for reconsideration in order that he might be fully informed of the charges against him and at the same time file the required answer for which he was given a period of ten (10) days. The action taken by the court is in accordance with the provisions of section 25 of the aforesaid Act No. 190.

Furthermore, the copy of the order and that of the abovementioned motion for reconsideration, which had been sent to the respondent by the clerk of court, constituted in themselves the written complaint required in section 24 of the afore-cited Act. That the court did not deprive the respondent of his right to defend himself, is clearly shown by the fact that after filing his answer, said respondent also presented his witnesses and other evidence, and he himself testified in his own behalf.

With respect to the allegation that the respondent employed Francisca Corpus as his agent, the evidence of record shows that the only case, which he handled in which Francisca Corpus intervened, is that wherein the complainant filed a complaint against Francisco Diaz. It likewise appears that he did not approach said woman in order to have her solicit cases for him, but that she sought him in view of her failure, when she approached Francisco Diaz in the name of the complainant and of his nephew Tiburcio Chaves, in an attempt to persuade him to pay to said complainant more than P1,000 in settlement of the question between the two.

Exhibit A, which is Francisca Corpus' letter dated October 31, 1931, and addressed to Jose Baena. stating that the latter could interview the respondent, who was then in Cebu, in connection with the complaint to be filed against Francisco Diaz, does not indicate any relation of principal and agent between the respondent and said Francisca Corpus ; and this is all the more true inasmuch as, according to the evidence of the complainant, not to mention the respondent's testimony, the latter never accepted the case from said Jose Baena, for which reason the interested party sought Attorney Medina's services.

Exhibit B reveals nothing because all that Francisca Corpus says therein to Jose Baena, to whom it is addressed, is that the latter should send a certain typewriter to the house of Atong, and that she be informed about the "matter now under consideration".

Exhibit C reveals even less because it is merely a letter wherein Francisca Corpus thanks Jose Baena for promptly sending the typewriter mentioned in her former letter. The only thing disclosed by the aforesaid three letters, if any, is the friendship existing between Jose Baena and Francisca Corpus.

This isolated instance wherein the respondent accepted the complainant's case because it had been intrusted to him by Francisca Corpus and Tiburcio Chaves, upon stipulation of the amount of his fees, does not prove the charge that Francisca Corpus was the respondent's agent, particularly when it is borne in mind, and it should be borne in mind, that said woman, as proven by the evidence, is a duly licensed commission broker with offices in Dumaguete, Oriental Negros, and Cebu.

Passing now to the question whether or not the respondent acted in bad faith in not depositing in the Postal Savings Bank the complainant's share of the sum of P2,000 which he received from Francisco Diaz in consideration of the compromise between the latter and said complainant, the evidence shows that when Sergio G. Singco requested the respondent to deposit it in said bank he had already delivered a great part thereof to the complainant's attorney in fact Tiburcio Chaves (Exhibit 7). Furthermore, the respondent did not deal directly with the complainant relative to the enforcement of the latter's claim against Francisco Diaz but merely acted through the intervention of Francisca Corpus and Tiburcio Chaves. The respondent's understanding with the aforesaid two persons was that the complainant's share should be paid to the latter through Francisca Corpus, no doubt in order that she might collect her commission. At any rate, in so delivering the money to Francisca Corpus or to Tiburcio Chaves, the herein respondent merely acted in compliance with his agreement with them, of which agreement the complainant was fully aware, and not at all for the purpose of defrauding the latter. Knowing that Tiburcio Chaves was the complainant's attorney in fact, the respondent had no reason to doubt that said Tiburcio Chaves would act faithfully as such and that upon receipt of the sum of money due to his principal he would deliver it to the latter. The respondent was justified in believing that Melecio Singco was careful in selecting a person in whom he had the utmost confidence, as his attorney in fact. There was nothing improper in such conduct of the respondent, it appearing, in the absence of proof to the contrary, that he was not aware of the discord among the complainant and Sergio G. Singco and Tiburcio Chaves. Perhaps it would have been better had the respondent delivered the money to Sergio G. Singco or deposited it in the Postal Savings Bank or consulted the complainant before delivering the money in question to Francisca Corpus or to Tiburcio Chaves, but his failure to do so does not necessarily imply that he acted in bad faith inasmuch as he merely complied with his agreement with Tiburcio

Chaves and Francisca Corpus, to which the complainant gave his consent. In addition to the foregoing it must be stated that Sergio G. Singco was not a party to the agreement entered into between the respondent and the complainant through Francisca Corpus and Tiburcio Chaves. If there was anything worthy of note in the respondent's conduct, it is at most a mere error, for which he should not be held liable, arising from the complainant's failure to cancel or revoke the power of attorney which the latter had issued to Tiburcio Chaves.

Wherefore, this court hereby acquits the respondent of the charges brought against him, without costs. So ordered.

Street, Malcolm, Villar-Real, Abad Santos, Hull, Imperial, Butte, and Goddard, JJ., concur.

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