

ANDRES G. MALABED, JR., COMPLAINANT, VS. ATTY. BENEDICTO L. NANCA, RESPONDENT.*Adm. Case No. 892. October 23, 1974*

Ponente: FERNANDO, J.

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What transpired in this administrative case between lawyer and client is not too unusual. Such a relationship, usually started with a feeling of goodwill on both sides, could deteriorate at times into a situation where the former would be resentful of his services not being fully appreciated, or, what is more, not compensated, and the latter disappointed in the performance of counsel. That would seem to be the explanation for the charges of unprofessional conduct and dishonesty being filed against respondent Benedicto L. Nanca, a member of the Philippine Bar. The complainant is one Andres G. Malabed, Jr., a victim of a vehicular accident, who alleged that while confined in the National Orthopedic Hospital he was approached by respondent, then unknown to him, offering his services as a lawyer and asking the amount of Four Hundred Pesos presumably for the payment of court fees the sum of which was added another Three Hundred Pesos. The first advance was made on August 19, 1968. Complainant became suspicious as after a lapse of several months, or on February of 1969, when he was already out of the hospital, respondent had not even informed him as to the progress of his case. He took steps to verify the matter but he found out that no suit against the bus company was filed. He had to have recourse then to another lawyer. It is on the basis of the above allegations that he would hold respondent liable not only for unprofessional conduct but also for dishonesty in failing to return the money.[1] Respondent, in his answer, denied the above allegations asserting that it was at the instance of the father of complainant that he accepted the case. Thereafter, he cited his appearance as private prosecutor on behalf of complainant in a criminal case pending in the municipal court of Aringay, La Union. Likewise, he had filed an administrative complaint against the Philippine Rabbit Bus Company before the Public Service Commission. While he took the preparatory steps to file a civil action for damages against such firm, there were overtures for amicable settlement, thus delaying the filing thereof. With reference to the administrative charge, however, before the Public Service Commission, it did not reach the final step as there was also fresh talk of amicable settlement between the bus company and complainant who instructed respondent to defer the filing of the civil complaint for damages. There came what for him was a surprising turn of events when in February, 1968 his services were unceremoniously terminated. He denied that he received the additional sum of Three Hundred Pesos and he likewise claimed that for his professional services in the criminal complaint he had not been paid at all. His prayer is for the dismissal of this administrative charge for being devoid of merit.[2]

The matter was, thereafter, referred to the Solicitor General for investigation, report and recommendation, according to a resolution of this Court dated June 23, 1970. On October 1, 1974, an extensive and thorough report of thirty-six pages was submitted by Solicitor General Estelito P. Mendoza, assisted by Assistant Solicitor General Guillermo C. Nakar, Jr. The conclusion reached in such report is that based on what was considered credible evidence, both oral and documentary, coming from the parties: "The charge of 'unprofessional conduct in the circumstances under which' [respondent was hired by complainant as his lawyer] has no basis." [3] The charge

of dishonesty was likewise held to be not proved. Respondent was, however, required to return the sum not of Four Hundred Pesos but of Four Hundred Forty Pesos to complainant. Why it should be the case is explained in the report thus: "It would seem, "therefore, that the respondent was minded to extend his services for free and this attitude was apparently not unknown to the complainant when the latter sent the respondent a telegram (Exh. "D") and a written demand for the return of the P400 in February, 1969 (See Exh. "C"). The respondent confirmed the arrangement (for free legal services) when he replied in writing that everything will be refunded' (Exh. "D")."[4] Further on this point, Solicitor General Mendoza stated in his report: "While we do not abet or commend the manner in which respondent's services was summarily terminated, for his inability to institute the civil action required of him by his client, the fact remains that since the P400.00 (and the P40.00) was given in relation to such contemplated action, his inaction or omission whether through negligence or not calls for the return of the amounts advanced. There having been neither agreement for attorney's fees nor a bill for legal services rendered, respondent had no lawful cause to retain complainant's money after its return was demanded. (Sec. 25, Rule 138, New Rules of Court). Respondent's act, albeit censurable, is however, not essentially one of dishonesty, x x x His having accepted the case was more for accommodation of a friend than just an impersonal undertaking. His reaction in retaining complainant's money clearly stemmed from a hurt feeling because of the apparent display of ingratitude, on the part of the complainant."[5] The recommendation, therefore, was for dismissing the charge for unprofessional conduct and for holding respondent accountable for the return of the full amount of Four Hundred and Forty Pesos to complainant, although he was not to be held liable for dishonesty.

This Court, after going over the records of the case, accept such report and recommendation as to respondent being cleared of the charges.

WHEREFORE, the charges of unprofessional conduct and dishonesty against respondent Benedicto L. Nanca are dismissed, reserving to the complainant the right to file an ordinary civil action for the recovery of the sum of Four Hundred Forty Pesos. Let a copy of this resolution be entered in the record of respondent.

Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Letter complaint under oath of Andres C. Malabed Jr., filed on March 27, 1969.

[2] Answer, 1-3.

[3] Report, 28.

[4] Ibid, 33.

[5] Ibid, 34-35.

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