

43 Phil. 191

[. March 17, 1922]

IN RE ATTORNEY EUSEBIO TIONKO.

D E C I S I O N

MALCOLM, J.:

These proceedings, involving the suspension from practice of attorney Eusebio Tionko, are before the court pursuant to the provisions of sections 22 and 23 of the Code of Civil Procedure. It appears that, on a letter addressed to attorney Tionko by his former clients, Gertrudes Alvarado and Numeriano Casion, coming to the attention of the Judge of First Instance of Surigao, at the instance of the latter, charges of professional misconduct were filed against attorney Tionko, and that after due hearing an order was issued by the trial judge on October 25, 1921, suspending the respondent Tionko from the exercise of his profession until the further order of the Supreme Court.

The charges preferred against the respondent, to follow somewhat the plan of his counsel in this court, are two, namely: (1) The neglect by a attorney Tionko of the interests of his clients Alvarado and Casion; and (2) the failure of attorney Tionko to turn over the fees advanced to him by his clients to their new attorney, Hilarion Z. Elumba, in March, 1920, and his deceit in formulating the receipt for this money with a wrong date. We find the first charge to be proved, and the second charge not to be proved.

About May 14, 1918, attorney Tionko agreed to obtain for Gertrudes Alvarado and Numeriano Casion the registration of two parcels of land. Shortly thereafter, Mr. Tionko receive his fees of P114. More than a year having elapsed without word from their attorney, the clients addressed a letter to him dated July 22, 1919, calling his attention to the period allowed for the presentation of their claims. They received no answer. Six months later, on February 23, 1920, another letter was sent to Mr. Tionko by registered mail telling him that they feared the period provided by law would expire and that they themselves had already secured the necessary plans from the Bureau of Lands. They received no answer to this

letter. Alvarado and Casion then engaged another attorney, Hilarion Z. Elumba. This decision was communicated by them to Mr. Tionko in a letter dated March 20, 1920, in which they further required of him the delivery to attorney Elumba of the P114 previously tendered as professional fees. This communication, likewise, failed to bring results. Thereupon, the letter dated April 1, 1921, which gave rise to the proceedings against attorney Tionko was prepared and transmitted *por conducto del Hon. Juez del Juzgado de Primera Instancia, Surigao, Surigao*. (Through the Hon. Judge of the Court of First Instance, Surigao, Surigao.)

In the meantime, it is only fair to say that attorney Tionko had been quite diligent in taking the necessary steps to obtain the plans he desired from the Bureau of Lands. Thus, in April, 1918, he wrote the Bureau of Lands asking that the plans for the lands of Alvarado and Casion be forwarded to him. Later, on June 27, 1918, he paid the Bureau of Lands the sum of P12.12, in order to expedite the issuance of the plans. Still later, on November 21, 1919, he received the necessary plans after the payment of an additional

Respondent's intercession with the officials of the Bureau of Lands does not relieve him of all responsibility. In the first place, he was content to wait complacently for nearly two years for copies of two plans. In the second place, he was guilty of a violation of the ordinary rules of professional courtesy in repeatedly disdainingly to answer the communications of his clients, whereas for all they knew, the time for the reclaiming of title to their lands might expire and they might lose all rights in their property through the negligence of their counsel. In reality, while the interests of the clients were not prejudiced, this was not because of any great activity on the part of attorney Tionko, but rather through the fortunate circumstances of delay in the hearing of the case and through the securing of new counsel. The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. (Code of Ethics, adopted by the American Bar Association and the Philippine Bar Association, No. 15; *In re Filart* [1919], 40 Phil., 205.)

The second charge narrows down to a question of veracity between attorneys Tionko and Elumba. As the contested receipt signed by attorney Elumba contains the date April 15, 1920, and as this bears out the claim of attorney Tionko, we are content to let the point rest here without further elaboration. The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has

performed his duty as an officer of the court in accordance with his oath. (*Re Reily* [1919], 7 A. L. R., 89.)

Counsel insinuates that attorney Tionko has been high-handedly suspended from the exercise of his profession through the machinations of one of his personal and political enemies, who is no other than the judge who decreed his indefinite suspension. The record does disclose that the Judge of First Instance who pressed the charges, against Mr. Tionko did fail to retain that equanimity which is to be expected of judicial officers. However, this is all beside the point, for the person at bar is not Judge Andres Borromeo but attorney Eusebio Tionko.

It will be recalled that respondent Tionko was suspended from the practice of the law on October 25, 1921. Inasmuch, therefore, as the respondent has lost the emoluments of his profession for nearly five months, we feel that this period is amply sufficient, and, consequently, refrain from further disciplining him. Accordingly, it is ordered that, as of this date, the respondent Eusebio Tionko be reinstated as a member of the bar of the Philippine Islands. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.