

EN BANC

[A.C. No. 7075, January 21, 2020]

JOSELITO C. CABALLERO, COMPLAINANT, VS. ATTY. ARLENE G. PILAPIL, RESPONDENT.

DECISION

PER CURIAM:

Before us is a Verified Complaint^[1] dated September 20, 2005 filed by complainant Joselito C. Caballero charging respondent Atty. Arlene G. Pilapil for gross misconduct, in violation of the Code of Professional Responsibility (CPR).

In his complaint, complainant alleged: that sometime in June 2004, he engaged the services of respondent to prepare a Deed of Sale for the purchase of a 258-square-meter (sq. m.) lot with improvements, in Consolacion, Cebu, registered under Transfer Certificate of Title (TCT) No. 64507 in the names of the spouses Alexander Ardenete and Adelia Hermosa; that respondent did prepare the document but it had to be amended to include the names of his two sisters as vendees; that respondent agreed to amend the deed of sale and had also taken the original copy of TCT No. 64507 as well as the original sketch plan and tax declaration of the lot; and that respondent asked for and was given the total amount of P53,500.00 for the alleged payment of the capital gains tax, real estate tax and her legal fees for the transfer of title.

On November 5, 2004, while waiting for the processing of their first transaction, complainant again hired respondent for the preparation of a Deed of Sale for the 123-sq.-meter lot located in Liloan Cebu which complainant and his sisters purchased from the spouses Francisco dela Cuesta and Elena Sanguenza. Respondent prepared the Deed and notarized the same and convinced the complainant that she could facilitate the payment of the corresponding capital gains tax with the Bureau of Internal Revenue (BIR) and asked for and was given the amount of P69,000.00, inclusive of her service fees in the amount of P15,000.00.

Respondent, however, had not performed her obligation regarding the payment of the capital gains tax and the real estate tax for the transfer of titles to complainant and his sisters' names, thus, making them liable to pay the penalties thereof. She also failed to return all the documents she got from the complainant. She was not seen or heard from since her last meeting with complainant on February 25, 2005 where she promised to return the documents.^[2]

Complainant sought the help of the *Lupong Tagapamayapa* of Consolacion, Cebu, but respondent failed to attend the mediation. He then wrote a letter-complaint to the Integrated Bar of the Philippines (IBP) Cebu Chapter, which then sent a letter to respondent and scheduled a conference. Respondent requested for a resetting of the conference, but she still failed to attend.

Respondent then sent a letter-reply^[3] dated July 25, 2005 to the IBP Cebu Chapter, claiming that she had talked with complainant's sister, Rowena, who was a high school friend, regarding the latter's need for the transfer of properties; that she told Rowena that she could not make personal follow-ups on the transaction, but she could help her find a fixer and to prepare the documents; that she later informed Rowena that the expenses for the transfer of property would cost P40,000.00 to P45,000.00, excluding the documentation of the same; that Rowena, through complainant, gave her P40,000.00 for the taxes and P5,000.00 for her documentation; that she had prepared several documents for their properties; and that the money she got from the complainant, together with the documents, were all given to a fixer friend by the name of Wilmer Esmero, who later just left the documents to a common friend and disappeared. Rowena contacted her again for the preparation of documents for another property that she and her siblings bought; that she contacted another fixer friend, Raul Isoto, to facilitate the transfer of complainant and his sisters' two properties in their names and gave him the money and all the documents, however, the money and documents had not been returned to her despite several demands.

Respondent still failed to appear before the IBP Cebu Chapter. Complainant then brought his complaint with the Office of the Court Administrator (OCA) which referred the same to the Office of the Bar Confidant through a 1st Indorsement^[4] dated October 5, 2005.

In a Resolution^[5] dated March 13, 2006, we required the respondent to file her Comment on the verified complaint. However, respondent failed to file her comment; hence, we required respondent to show cause why she should not be disciplinarily dealt with or held in contempt and required the filing of Comment.^[6] Respondent still failed to comply with our resolution, and she was repeatedly fined^[7] in the total amount of P2,000.00 or imprisonment of five days and to file her Comment.^[8]

Respondent filed her motion for reconsideration and asked that she be furnished with the verified complaint and be allowed to file her Comment thereto.

In a Resolution^[9] dated August 10, 2009, We denied respondent's motion for reconsideration of our Resolutions imposing upon her a total fine of P2,000.00 and further ordered that she be furnished with a copy of the verified complaint and to file her Comment. Respondent paid the fines imposed upon her in the amount of P2,000.00 on October 7, 2009. Respondent again failed to file her Comment despite receipt of the notice and the copy of the complaint, so she was fined again in the amount of P1,000.00 or imprisonment of five days, and we reiterated the filing of her Comment.^[10]

In a Resolution^[11] dated June 8, 2011, we noted that a copy of the Resolution dated October 18, 2010 imposing a fine of P1,000.00 which was sent to her address on record was returned with a notation, "RTS-Addressee is no longer visiting her two known addresses in Consolacion, Cebu," and we required the IBP to inform the court of respondent's current address. In a letter^[12] dated July 22, 2011, the IBP stated respondent's office address in RTC Branch 55, Mandaue City, and her home address in Poblacion Occidental, Consolacion Cebu.

Despite the fact that the Resolutions requiring her to file Comment were later sent to the above-stated addresses, respondent still failed to comply therewith, thus, we directed the complainant to submit to the court the correct and current address of respondent,^[13] which the latter failed to do. Based on the certification issued by the Cashier's Division, respondent had not paid the amount of P1,000.00 imposed as court fine in our Resolution dated October 18, 2010.^[14]

Since a considerable time had already lapsed and respondent was given several opportunities to file her Comment to the complaint, which she failed to do, we deem it appropriate to resolve the case on the basis of the complaint and other documents attached thereto, instead of referring the same to the IBP for its investigation, report, and recommendation.

The issue for resolution is whether respondent should be held administratively liable for her failure to return the money given to her by complainant for the payment of capital gains tax and the documents she took from him.

Rules 16.01 and 16.03 of Canon 16, and Canon 17 of the Code of Professional Responsibility respectively provides:

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

RULE 16.01- A lawyer shall account for all money or property collected or received for or from the client.

x x x x

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith.^[15] The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client.^[16] A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality as well as of professional ethics.^[17]

In this case, complainant had sufficiently proved that respondent received from him the total amount of P53,500.00^[18] for the payment of capital gains tax and for the services rendered for the transfer of his and his siblings' property from the Spouses Arden; and that she also took the original copy of TCT No. 64507 covering the said property as well as the original copy of the sketch plan to facilitate the transfer of title.^[19] In fact, respondent, in her letter reply to the IBP Cebu Chapter, to which the complainant first referred his complaint before filing the same with us, did not deny receiving the said amount of P53,500.00 and the documents from complainant, but put up the defense that they were all given to a fixer who never returned the money and documents to her despite several demands.