

## EN BANC

[ A.C. No. 12452, February 18, 2020 ]

**MICHAEL M. LAPITAN, COMPLAINANT, VS. ATTY. ELPIDIO S. SALGADO, RESPONDENT.**

### DECISION

#### PER CURIAM:

##### The Facts

In a Complaint<sup>[1]</sup> dated 20 February 2013, Complainant Michael M. Lapitan (Lapitan), in his capacity as the general manager of the Tagaytay International Convention Center (TICC), charged Respondent Atty. Elpidio S. Salgado (Salgado) for violation of the Lawyer's Oath, Canon 1, Rule 1.01, 1.02, Canon 7 and Rule 7.03 of the Code of Professional Responsibility.

In his Complaint, Lapitan alleged that on June 2010, Salgado was the National Secretary General of the National and Real Estate Association, Inc. (NREA). During the said date, Salgado entered into a banquet event contract with TICC as venue for the NREA sector convention scheduled on 26 June 2010. The total contract amount was Two Hundred Thousand Pesos (P200,000.00). Under the TICC's existing policy, Salgado should have immediately made a down payment of fifty percent (50%) of the total contract price or at least One Hundred Thousand Pesos (P100,000.00) before the event. However, through deceit and malicious representation, and because Salgado was a lawyer, Salgado was able to convince Lapitan that he will, instead, pay the entire amount of P200,000.00 after the conclusion of the event.<sup>[2]</sup>

Upon the conclusion of the event on 26 June 2010, Lapitan attempted to collect the said amount from Salgado and the latter claimed that he forgot to bring cash and instead issued a post-dated Bank of Philippine Islands (BPI) Check No. 000364610 dated 29 June 2010 in the amount of Two Hundred Ten Thousand Two Hundred Fifty-Three Pesos and Ninety Centavos (P210,253.90) which represented the final accumulated cost after the NREA banquet event.<sup>[3]</sup> Lapitan, then, hesitantly accepted the post-dated check. When the said post-dated check was presented for payment on 2 July 2010, the post-dated check was dishonored for the reason "ACCOUNT CLOSED." Several verbal and written demands were made upon Salgado to pay and the latter promised to pay on 30 July 2010. However, Salgado requested to move the payment date. Thereafter, on 3 August 2010, Salgado again did not settle the amount and instead sent his representatives to meet with Lapitan.<sup>[4]</sup> Salgado then went in hiding and this prompted Lapitan to report the incident to the Tagaytay Component City Police Station on 29 September 2010. Notices of dishonor were made upon Salgado but Salgado still refused to pay. On 1 October 2010, a criminal complaint for Estafa under Article 315 of the Revised Penal Code and violation of Batas Pambansa Blg. 22 was then filed by Lapitan against Salgado in the Regional Trial Court and Municipal Trial Court of Tagaytay City respectively.<sup>[5]</sup>

On 19 March 2013, the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) acted on Lapitan's Complaint dated 20 February 2013 and issued an Order<sup>[6]</sup> to Salgado to file his answer on Lapitan's Complaint. On 9 December 2013, the Integrated Bar of the Philippines (IBP) received a Letter<sup>[7]</sup> from Federal Multi-Purpose Cooperative returning the Order of the IBP-CBD. The Cooperative informed the IBP-CBD that Salgado moved to another address in Mindanao. On 15 January 2015, Lapitan filed his Mandatory Conference Brief<sup>[8]</sup> with the IBP-CBD. On the same date, Lapitan also filed a Motion to Declare Respondent in Default.<sup>[9]</sup> On 16 January 2014, the IBP-CBD issued an Order<sup>[10]</sup> stating that Salgado did not appear in the mandatory conference and the IBP-CBD reset the hearing to 21 March 2014. On 21 March 2014, the IBP-CBD issued another Order<sup>[11]</sup> stating that Salgado did not appear at the mandatory conference and that, without objection from Lapitan, the case was again reset to 16 May 2014. The IBP-CBD then proceeded to send notices again to Salgado. On 16 May 2014, the IBP-CBD issued a third (3<sup>rd</sup>) Order<sup>[12]</sup> that Salgado again failed to appear and that the mandatory conference was again reset to 22 August 2014.<sup>[13]</sup>

On 29 October 2015, the IBP-CBD issued an Order<sup>[14]</sup> that the case was re-raffled to Investigating Commissioner Jose Villanueva Cabrera (Investigating Commissioner Cabrera) and that Salgado was again ordered to submit his answer to Lapitan's Complaint. The 29 October 2015 Order stated that if Salgado again failed to comply with the Order, the IBP-CBD would consider Salgado in default and the case would be heard *ex-parte*.<sup>[15]</sup> In an Order<sup>[16]</sup> dated 15 February 2016, the IBP-CBD considered the summons on Salgado as "deemed served" and that the parties were directed to submit their position papers within ten (10) days from receipt. The pertinent portion of the Order provides:

The records disclosed that the Summons served upon the Respondent was returned "UNSERVED" for the reason "RTS-MOVED OUT." Previous personal service upon said address by this Commission's process service indicated that Respondent was no longer residing at said address. In view thereof, this Commission has no other option but to consider the Summons as "DEEMED SERVED."

In view thereof, the parties are DIRECTED to submit their respective verified position paper within ten (10) days from receipt hereof, and with or without said position paper, this case shall be deemed submitted for resolution, unless upon submission thereof, this Commission finds the necessity of conducting clarificatory hearing(s).<sup>[17]</sup>

On 11 March 2016, Lapitan submitted his Position Paper<sup>[18]</sup> to the IBPCBD. The records show that Salgado did not submit his position paper. In an Order<sup>[19]</sup> dated 2 May 2017, the IBP-CBD noted the non-appearance of Salgado and ordered both parties to submit their respective supplemental position papers within ten (10) days. On 18 May 2017, Lapitan submitted his Supplemental Position Paper.<sup>[20]</sup> In Lapitan's Supplemental Position Paper, Lapitan attached copies of the Information<sup>[21]</sup> dated 11 March 2011 against Salgado for Estafa and an Information<sup>[22]</sup> dated 11 March 2011 for Violation of Batas Pambansa Blg. 22.<sup>[23]</sup> Lapitan also attached a copy of the Alias Warrant of Arrest<sup>[24]</sup> dated 30 June 2011 issued by the Regional Trial Court

and Bench Warrant of Arrest<sup>[25]</sup> dated 24 January 2012 issued by the Municipal Trial Court in Cities of Tagaytay City.

### **The Report and Recommendation of the IBP-CBD**

In a Report and Recommendation<sup>[26]</sup> dated 7 August 2017 by Investigating Commissioner Cabrera of the IBP-CBD, the IBP-CBD recommended the disbarment of Salgado. According to the IBP-CBD, the records show that Salgado has evaded the processes of the IBP-CBD. The IBP-CBD held that all opportunities were given to Salgado to answer the allegations of Lapitan against him and yet he refused to participate in the proceedings by either being out of the country or moving to other addresses. Accordingly, the IBP-CBD also noted the change of address of Salgado and sent several notices to Salgado's new address. However, Salgado refused to participate in the IBP-CBD proceedings.<sup>[27]</sup>

The IBP-CBD ruled that Lapitan has proven his case by overwhelming evidence that Salgado committed the crimes of Estafa and violation of Batas Pambansa Blg. 22. Salgado committed deceit and fraud by making it appear that he forgot to bring cash during the NREA event when truly Salgado had no intention to pay the contracted amount.<sup>[28]</sup> The IBP-CBD held that because Salgado remained a fugitive of justice and disregarded the notices of the IBP-CBD, Salgado did not present any evidence to refute any of the allegations of Lapitan. Moreover, Salgado's absence clearly shows Salgado's lack of respect for the legal processes of courts.<sup>[29]</sup>

The IBP-CBD held that good moral character is not only a condition precedent to enter the legal profession but it must also remain extant in order to maintain one's good standing in the exercise of the duties of a lawyer. In the case, Salgado engaged in grossly dishonest conduct and disrespected all rules in respect to judicial processes. The IBP-CBD ruled that irrespective of the final outcome of the criminal cases against Salgado, Salgado's violation of the code of professional responsibility has been proven by overwhelming evidence.<sup>[30]</sup> The IBP-CBD recommended the disbarment of Salgado and that Salgado's name be stricken from the Roll of Attorneys.

The IBP-CBD Report and Recommendation provides:

WHEREFORE, It is hereby recommended that Respondent ATTY. ELPIDIO S. SALGADO be DISBARRED and that his name stricken from the Roll of Attorneys.

RESPECTFULLY SUBMITTED.<sup>[31]</sup>

### **The Ruling of the IBP Board of Governors**

In a Resolution<sup>[32]</sup> dated 19 May 2018, the IBP Board of Governors adopted the Report and Recommendation of the IBP-CBD in imposing the penalty of disbarment against Salgado.

The Resolution provides:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner imposing the penalty of DISBARMENT upon

the Respondent Atty. Elpidio S. Salgado, and that his name be stricken off from the Roll of Attorneys.<sup>[33]</sup>

On 31 January 2019, the IBP-CBD transmitted the records of the case to the Court.<sup>[34]</sup>

### **Issue**

Whether Salgado is guilty of violating the Code of Professional Responsibility.

### **The Court's Ruling**

The Court resolves to adopt the recommendation of the IBP Board of Governors. The Court imposes the penalty of disbarment on Salgado.

In his Complaint, Lapitan alleged that Salgado engaged in unlawful and deceitful conduct and violated Canon 1, Rule 1.01, 1.02, Canon 7 and Rule 7.03 of the Code of Professional Responsibility, to wit:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

**RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.**

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

RULE 7.03 A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. (Emphasis supplied)

Lapitan alleged that Salgado employed deceit on him in securing the banquet event contract for the NREA convention when Salgado really had no intention to pay the contract amount. Accordingly, the full payment for the banquet event contract was payable upon the completion of the event. However, Salgado, through deceit and bad faith, claimed that he had left his cash. Salgado refused to pay and instead promised to pay through a postdated check. When Lapitan presented the post-dated check for payment, the said check was dishonored for the reason "ACCOUNT CLOSED."

The Court finds Salgado guilty of deceit. From the evidence presented by Lapitan, which was not refuted by Salgado after due notice, it is clear that Salgado had no intention to pay the contracted amount for the 26 June 2010 event. In fact, the records show that the contract amount has not been settled by Salgado to this date. Salgado committed deceit by making it appear that he forgot to bring with him the necessary cash to pay for the contracted amount when the terms of the banquet event contract clearly indicate that the fifty percent (50%) down payment should have been made as early as upon signing the contract. Instead, Salgado employed deceit in convincing Lapitan that he would pay the total contracted amount upon the