SECOND DIVISION

[A.C. No. 12713, September 23, 2020]

JIMMY N. GOW, COMPLAINANT, VS. ATTYS. GERTRUDO A. DE LEON AND FELIX B. DESIDERIO, JR., RESPONDENTS.

R E S O L U T I O N

INTING, J.:

This is an administrative Complaint[1] for Disbarment filed by Jimmy N. Gow (complainant) against Atty. Gertrudo A. De Leon (Atty. De Leon) and Atty. Felix B. Desiderio, Jr. (collectively, respondents) for violation of Rule 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (CPR) and Grave Misconduct.

The Antecedents

Complainant was the Chairman of the Uniwide Holdings, Inc., Uniwide Sales, Inc., Naic Resources & Development Corporation, Uniwide Sales Realty and Resources Corp., First Paragon Corporation, and Uniwide Sales Warehouse Club, Inc. (collectively known as the Uniwide Group of Companies).[2]

In the complaint, complainant alleged the following:

Sometime in December 2014, complainant engaged the services of the De Leon and Desiderio Law Firm (respondents' law firm) to handle cases involving the Uniwide Group of Companies.[3] Pursuant to the engagement, complainant personally delivered P3,000,000.00 to Atty. De Leon to cover, among others, the acceptance fee of P500,000.00 and for the cost of the operations, research, leg work, preparation of pleadings, filing of complaints, and media coverage. Respondents, however, did not draw up a formal agreement for the engagement, nor did they issue any acknowledgment or official receipt.[4]

After the lapse of three months, respondents did not perform any significant work regarding the Uniwide Group of Companies. This prompted complainant to ask Atty. Salvador B. Hababag (Atty. Hababag), then President of the Uniwide Group of Companies, to demand from respondents the return of the amount of P2,000,000.00. At the time, he was willing to forego the P1,000,000.00 in the hope that respondents would return the remaining P2,000,000.00.[5]

On June 1, 2015, respondents issued to complainant three postdated checks[6] each with a face value of P350,000.00, or a total of only P1,050,000.00. Thereafter, no further amount was returned by respondents.[7]

A year later, or sometime in July 2016, complainant asked Mr. Medardo C. Deacosta, Jr. (Deacosta), Chief Finance Officer (CFO) of Uniwide Holdings, Inc., to audit the

engagement of respondents' law firm. In an Affidavit[8] dated July 22, 2016, CFO Deacosta noted that respondents failed to deliver the output agreed upon.[9] In the process, CFO Deacosta reminded complainant of respondents' failure to turn over the remaining balance of P1,950,000.00 less the discounted amount of P1,000,000.00. Thus, complainant wrote respondents a Letter[10] dated July 7, 2016 demanding the return of the amount of P950,000.00.

However, complainant received no reply from respondents.[11]

Hence, the instant complaint charging respondents for failing to account and return the amount of P1,950,000.00, which is no longer discounted.[12]

Respondents' Comment

In their Comment,[13] respondents averred the following:

First, respondents submitted to the complainant a Retainership Agreement[14] dated December 1, 2014 which complainant refused to sign and document, albeit the fact of his conformity thereto, on his own excuse that he, at the time, was already being haunted by several creditors.[15]

Second, complainant, in several installments, delivered to respondents the total amount of only P2,000,000.00 and not P3,000,000.00.[16]

Third, complainant maliciously opted not to disclose the following: (1) the fact that when he tendered the Demand Letter dated July 7, 2016, respondents aptly answered it through a Reply Letter[17] dated July 28, 2016 which clarified the actual amount received by respondents;[18] and (2) aside from the three checks with the total of P1,050,000.00, respondents likewise returned the amount of P300,000.00 on March 4, 2015 which complainant himself personally acknowledged and another P300,000.00 on July 3, 2015 which was acknowledged by CFO Deacosta.[19]

Lastly, the Affidavit dated March 22, 2016 allegedly executed by CFO Deacosta to support the claim that respondents failed to deliver the output agreed upon is dubious, spurious, and downright forged. Even more, the Notarial Office of Parañaque City certified that the purported Affidavit is not on file with them which sufficiently casts doubt on its authenticity.[20]

The Issue

Whether respondents violated Rule 16.01 and Rule 16.03, Canon 16 of the CPR.

Our Ruling

Disbarment, being the most severe form of disciplinary sanction, is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court.[21] In disbarment proceedings, the rule is that lawyers enjoy the presumption of innocence until proven otherwise,[22] and the complainant must satisfactorily establish the allegations of his complaint through

substantial evidence.[23] Stated otherwise, in order to warrant the imposition of such a harsh penalty, complainant must show by preponderance of evidence that the respondent lawyer was remiss of his or her duties, and has violated the provisions of the CPR.[24]

Regrettably, complainant failed to discharge the burden.

To begin with, complainant's allegation that he personally delivered, in one occasion, the entire amount of P3,000,000.00 to Atty. De Leon was not substantiated with credible proof. In an effort to lend credence to his claim, complainant presented his own handwritten notes which purportedly show the "purpose of giving [respondents] the P3,000,000.00."[25] The Court notes, however, that complainant's personal notes are devoid of any evidentiary weight for being essentially self-serving. Basic is the rule that, mere allegations without proof are disregarded and that charges based on mere speculation cannot be given credence.[26] Undoubtedly, complainant's bare allegations must be disregarded for being manifestly self-serving and undeserving of any weight in law. Moreover, a perusal of the purported notes clearly indicates that they are simply a "breakdown" of the proposed/estimated cost of expenses provided by Atty. De Leon for the various legal action which complainant wanted to implement at the time.[27] By no stretch of imagination can the Court construe the purported notes to be an acknowledgment by respondents that the alleged amount was indeed paid or delivered to respondents.

Complainant then implies that respondents intended not to account for whatever money they received because respondents failed to draw up a formal agreement, and that they failed to issue an acknowledgment or official receipt.[28]

The Court, however, finds complainant's argument specious.

For one, a formal agreement is not necessary to establish attorney-client relationship.[29] Thus, its absence does not affect the standing attorney-client relationship between complainant and the respondents.

For another, considering that the absence of a formal agreement between them does not affect their standing attorney-client relationship, it is with all the more reason that such absence cannot be belatedly used by complainant to support his inordinate claim that respondents "did not want to account for the P3,000,000.00 [that complainant] personally handed to [respondents]."[30] Besides, the Court finds it difficult to believe that complainant, after giving the gargantuan amount of P3,000,000.00, in cash, to Atty. De Leon, did not insist for the issuance of any receipt that would evidence his payment.

On this note, the Court senses a veneer of truth in respondents' allegations that complainant refused to sign and document the Retainership Agreement, albeit his conformity thereto, and that complainant preferred cash transactions in all his dealings with respondents in order to avoid leaving document trails for his creditors, because at the time, complainant was being haunted by several creditors and that several cases were already filed against him and his companies.[31]

It is settled that the Court may deny a litigant relief if his conduct has been

inequitable, unfair, and dishonest as to the controversy in issue.[32]

To be sure, complainant could have easily asked for an acknowledgment or an official receipt from respondents, but it was his intention not to. Thus, complainant has only himself to blame. Furthermore, it has not escaped the attention of the Court that complainant did not disclose the fact: (1) that aside from the three postdated checks,[33] respondents likewise returned the additional amount of P600,000.00;[34] and (2) that respondents submitted to complainant a Reply Letter[35] dated July 28, 2016 clarifying the actual amount they received; complainant tendered no protest and is thereby deemed to have acquiesced thereto.

Instead, complainant filed the instant complaint on December 12, 2019, or more than three years from the alleged failure to account and return the alleged amount to him.[36] While the ordinary statute of limitations have no bearing in a disbarment proceeding,[37] it is well-entrenched in jurisprudence that an unexplained delay in the filing of the instant complaint creates suspicion on the motive of complainants.[38] In this case, no explanation was given by complainant for the unusual delay in the institution of the instant complaint. Worse, complainant submitted a dubious affidavit to support his claim that respondents "failed to deliver the output agreed upon."[39]

Even a side glance at CFO Deacosta's signature on the purported affidavit[40] as against his signatures appearing in the acknowledgment receipts of the turn-over of files dated March 3, 2015[41] and March 5, 2015[42] will reveal that it is not his signature. Moreover, the Notarial Office of Parañaque City issued a Certification[43] which states that per available records, the Affidavit dated July 22, 2016, purportedly made by CFO Deacosta does not exist, *viz.*:

> THIS IS TO CERTIFY that as per available records of this office, there is no document denominated as AFFIDAVIT dated July 22, 2016 with Document No. 355, Page No. 72, Book No. XXXIII, Series of 2016 allegedly notarized by Atty. Josef Cea Maganduga.[44]

This casts doubt as to the affidavit's existence and due execution.[45]

The highly fiduciary nature of an attorney-client relationship imposes upon the lawyer the duty to account for the money received from his client; and that his failure to return upon demand the money he received from his client gives rise to the presumption that he has appropriated the same for his own use.[46]

In this case, the records overwhelmingly show that respondents did not violate Rule 16.01 and Rule 16.03, Canon 16 of the CPR, to wit:

> 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.

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