

## SECOND DIVISION

[ A.C. No. 12098, March 20, 2019 ]

**MARILYN PABALAN COMPLAINANT, VS. ATTY. ELISEO MAGNO C. SALVA RESPONDENT.**

### RESOLUTION

**CAGUIOA, J:**

On December 13, 2011, Marilyn Pabalan (Pabalan) filed before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD) a **Complaint for Disbarment**<sup>[1]</sup> against Atty. Eliseo Magno Salva (Salva) for unprofessional and immoral conduct, originally docketed as **CBD Case No. 11-3282**.

#### *Complaint*

Pabalan claimed that she and Salva were live-in partners for three years until 2008. She alleged that: 1) "with sweet words and promise of marriage," Salva deceived her into taking him in her condo unit and induced her to advance the funding for his proposed law office; 2) she and Salva entered into an agreement wherein she would solicit clients for Salva and they would evenly divide the attorney's fees paid by the clients, not knowing that a partnership between a lawyer and non-lawyer was illegal; 3) Salva is a womanizer with children from different women, and he faked a certificate of non-marriage (CENOMAR) in order to enter into a marriage for convenience with a U.S. citizen in 2008; 4) Salva was her counsel in a case before the National Labor Relations Commission (NLRC) and he failed to represent her with zeal, even withdrawing as counsel prior to his substitution; and 5) Salva neglected to return more than P1 million she incurred in putting up his law office, including payment of her shares in the solicitation of clients which she endorsed to him per their agreement.

Pabalan also stated that she was a witness in another disbarment case filed by a certain Daniel Benito (Benito) against Salva in **CBD Case No. 09-2382**. She claimed that she was emboldened to file a separate case and not just be a witness when a certain Cherry Reyes-Abastillas (Abastillas) filed another disbarment case against Salva in **CBD Case No. 11-3098**.<sup>[2]</sup>

#### *Answer*

In his *Answer*<sup>[3]</sup> dated March 12, 2012, Salva denied the allegations against him. He averred that Pabalan, Benito, and Abastillas are all close friends who have an axe to grind against him; hence, they fabricated the disbarment complaints.

As regards the instant case, Salva admitted that he and Pabalan were seeing each other but he decided not to see her anymore when she insisted that he change his religious affiliation and marry her abroad. Subsequently, Pabalan demanded P1

million from him, failure of which meant that she would do everything to destroy him. Salva claimed that it was actually Pabalan who owed him money for unpaid legal services when he represented her in an ejectment suit. He also denied inducing Pabalan to fund his law firm as he already had a law office at Salva Salva & Associates. Likewise, he denied entering into a partnership with Pabalan, and even assuming such agreement validly existed, it was Pabalan who insisted on entering the same. He averred that the agreement was never enforced nor implemented because Pabalan never referred any client to him.

Salva also denied that he falsified his CENOMAR. He countered that it was Pabalan and Benito who secured the CENOMAR on the basis of falsified information. Lastly, Salva claimed that he withdrew as counsel in the NLRC case upon instructions of Pabalan since according to her, she would just engage the services of another counsel. He alleged that Pabalan no longer participated in the case when he withdrew as counsel since she was not actually an employee of the party respondent in that case so her complaint had no basis. In fact, after the complaint was dismissed without prejudice by the NLRC due to non-attendance of Pabalan, the latter never refiled the same.

As an affirmative defense, Salva argued that the case should be dismissed for forum shopping because Pabalan already raised the same issues in the instant case in her *Sinumpaang Salaysay* in the earlier disbarment case filed by Benito against Salva.

Pabalan filed her **Reply**<sup>[4]</sup> on July 10, 2012, reiterating her allegations and denying Salva's assertions.

#### *Motion to Dismiss*

On September 17, 2012, Salva filed a **Motion to Dismiss**<sup>[5]</sup> (MTD) on the grounds of forum shopping, *res judicata*, and double jeopardy. He informed the IBP-CBD that it had already issued a Report and Recommendation in CBD Case No. 09-2382 which was adopted and approved by the IBP Board of Governors, wherein he was admonished for entering into an agreement with Pabalan for the solicitation of clients and division of attorney's fees.

Salva claimed that Pabalan is in effect a complainant in CBD Case No. 09-23 82 because her *Sinumpaang Salaysay*, which raised the same issues in the instant case, was incorporated therein, with the same annexes as those attached to her complaint in the instant case.

#### *IBP Report and Recommendation*

The records do not show any action by the IBP on the MTD. However, on November 20, 2012, the Investigating Commissioner issued a **Report and Recommendation**<sup>[6]</sup> finding Salva guilty of grossly immoral conduct and of violating his oath as a lawyer, thereby recommending that he be suspended from the practice of law for six months. The pertinent findings of the Investigating Commissioner are reproduced below:

We found that [c]omplainant and [respondent before July 2006 had been living together as shown by Annex "A"[.] Respondent calls [c]omplainant

[by her] nickname "Mayie". As proof of their relationship in July 2006[,] [Respondent wrote a letter greeting complainant happy anniversary and happy birthday, expressing his love and praying [for] God to bless them and to be part of everything they do[,] which letter is marked as Annex "B"[.] To show also that there was an agreement for the partnership between [Respondent and [c]omplainant[,] the same is marked as Annex C[.] Likewise, complainant submitted Annex C to show that [Respondent secured a certification that the name of [Respondent does not appear in the record of marriages in the NSO[,] marked as Annex D.

Respondent should know that **it is a violation of Canon 33 to form a partnership between a lawyer and non-lawyer. As there is no clear evidence to show how much [c]omplainant spent [for his] law office, [if] there was such really, we cannot grant her the reimbursement claimed.**<sup>[7]</sup> (Emphasis supplied)

In a **Resolution**<sup>[8]</sup> dated June 21, 2013, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner with modification of the penalty, increasing the admonition to one-year suspension from the practice of law.

On October 2, 2013, Salva filed a motion for reconsideration<sup>[9]</sup> (MR) before the IBP, citing among others the grounds of *res judicata* and double jeopardy. He cited the earlier ruling of the IBP Board of Governors in CBD Case No. 09-2382<sup>[10]</sup> which already admonished him for the same acts being raised in the instant case. On May 11, 2015, Salva filed a supplemental MR<sup>[11]</sup> where he informed the IBP that its ruling in CBD Case No. 09-2382 had already been affirmed by the Supreme Court in a Resolution<sup>[12]</sup> dated September 11, 2013 in **A.C. No. 9809 (Daniel V. Benito v. Atty. Eliseo Magno C. Salva)**, the dispositive portion of which is quoted below:

**WHEREFORE**, respondent Atty. Eliseo Magno C. Salva is found **GUILTY** of violating Rule 9.02 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for six (6) months effective from notice and **STERNLY WARNED** that any similar infraction will be dealt with more severely.<sup>[13]</sup>

In a Resolution<sup>[14]</sup> dated April 20, 2017, the IBP Board of Governors denied the MR. Hence, this case before the Court.

#### *The Court's Ruling*

The Court disagrees with the IBP. The disbarment complaint should be dismissed in view of the ruling in A.C. No. 9809.

At the outset, the Court notes that in the instant disbarment complaint filed by Pabalan in CBD Case No. 11-3282, she manifested that she had been a witness in the disbarment complaint filed by Benito against Salva in CBD Case No. 09-2382:

3. When **CBD Case No. 09-2382** was filed by Mr. Benito against the Respondent herein, **Complainant and her "SINUMPAANG SALAYSAY" was integrated therein as one of the witnesses**

**(WITNESS L) and her information therein were marked as Annex-A thru Annex-H[.]** Complainant could have remained only as a witness had it not been for Ms[.] CHERRY REYES-ABASTILLAS who filed a Disbarment Case (CBD Case No. 11-3098) against this same Respondent for the maltreatment and mental anguish she suffered from him; that this Complainant had come to realize how she was gravely abused by Respondent that it is only warranted that she file her Claims and Complaint directly herself like her other co-victims.<sup>[15]</sup> (Emphasis and underscoring supplied)

The Court also notes that Pabalan issued an "Appointment Paper"<sup>[16]</sup> where she designated Benito as her attorney-in-fact to represent her in the cases she filed before the IBP, RTC, and MTC against Salva, which include the instant disbarment complaint.

In his Answer in the instant case, Salva raised forum shopping as an affirmative defense. This, along with Pabalan's manifestation, should have been enough to alert the IBP. Indeed, the IBP should have already dismissed the instant disbarment complaint because the same grounds raised by Pabalan were already contained in her *Sinumpaang Salaysay*<sup>[17]</sup> as a witness in CBD Case No. 09-2382. The instant complaint even contains the same annexes as those attached to her *Sinumpaang Salaysay*. While Pabalan's allegations were only part of the many other allegations raised by Benito in CBD Case No. 09-2382, Salva was able to address Pabalan's allegations in his Answer<sup>[18]</sup> therein. In fact, he even devoted the last few pages of said Answer as a Reply to Pabalan's *Sinumpaang Salaysay*.<sup>[19]</sup>

Further, before the Investigating Commissioner issued his Report and Recommendation on November 20, 2012, Salva filed a Motion to Dismiss on September 17, 2012 where he informed the IBP that a Report and Recommendation<sup>[20]</sup> on CBD Case No. 09-2382 was already issued on April 11, 2011, which was adopted and approved by the IBP Board of Governors on June 28, 2012.<sup>[21]</sup> The relevant portions of the IBP Report in CBD Case No. 09-2382 are quoted below:

Complainant also accuses respondent of immoral conduct, x x x Complainant accuses respondent of an "(a)greement with Ms. Marilyn Pabalan, a non-lawyer, on a 50-50 scheme as indicated on her Annex-C for her to solicit clients or acting as agent or touter" knowing that Ms. Pabalan is a non-lawyer x x x. Complainant also accuses respondent of "withdrawal as counsel of Ms. Marilyn Pabalan x x x out of malice and ill will" x x x.

Complainant also accuses respondent of irregularities in the entries pertaining to respondent's marriage appearing in the records of the [NSO]. x x x.

x x x x

Respondent denies committing any unprofessional conduct with respect to Marilyn Pabalan. x x x Respondent likewise denies having an agreement with Pabalan for a 50-50 sharing scheme in the solicitation of