

# **FIRST DIVISION**

**[ A.C. No. 3989, December 10, 2019 ]**

**EDUARDO L. ALCANTARA, COMPLAINANT, VS. ATTY. SAMUEL M. SALAS, RESPONDENT.**

## **D E C I S I O N**

**REYES, J. JR., J.:**

### **The Case**

This is an administrative case against a lawyer for gross negligence in failing to file an appellant's brief and to update the Court of Appeals ( CA ) on his current mailing address.

### **The Facts**

On March 16, 1993, complainant Eduardo L. Alcantara ( Alcantara ) filed an amended sworn letter-complaint for unethical, unprofessional, and corrupt practices against his counsel, respondent Atty. Samuel M. Salas (Atty. Salas). Alcantara alleged that he hired the services of Atty. Salas in filing a civil action for specific performance with damages on May 19, 1980.

Having lost in the trial court, Atty. Salas appealed to the CA on April 26, 1990. Allegedly, that was the last time Alcantara heard from Atty. Salas.<sup>[1]</sup>

In July 1992, Alcantara received news that his appeal was dismissed. He went to the CA and discovered that the CA issued a Resolution dated March 11, 1991, dismissing his appeal due to non-filing of appellant's brief despite notice. The CA sent a notice to file brief twice and, in both instances, the notices were returned unclaimed because the addressee has moved. <sup>[2]</sup>

Alcantara informed Atty. Salas of the dismissal. However, Atty. Salas blamed Alcantara for not checking the status of the case and having lost communication with him. Alcantara denied Atty. Salas' allegation because on November 5, 1991, the latter sent a messenger to claim a check worth P5,000.00. Alcantara hired a new lawyer to continue his case to the Supreme Court, which rendered a final decision unfavourable to him. Alcantara attributed the loss to Atty. Salas. Disappointed with his previous counsel's actuations, Alcantara filed this complaint before the Court .<sup>[3]</sup>

For his defense, Atty. Salas averred that it should have been the duty of the CA to send the notices at his then current residential address as recorded in the two other cases that were consolidated with a third case. Admittedly, he did not notify the CA of the change of address in the third case .<sup>[4]</sup>

On August 25, 1993, the Court referred the matter to the Integrated Bar of the

Philippines (IBP) for investigation, report and recommendation .<sup>[5]</sup>

### **The IBP's Investigation, Report and Recommendation**

On July 28, 1994, the IBP conducted a hearing wherein the parties presented their respective cause of actions and defenses. The parties agreed that the issue to be resolved is **whether or not Atty. Salas committed gross negligence in failing to file the appellant's brief in the CA** .<sup>[6]</sup>

On October 18, 2011, the IBP Investigating Commissioner, Oliver A. Cachapero, issued a Report and Recommendation<sup>[7]</sup> finding Atty. Salas to have violated Rule 12.03<sup>[8]</sup> of the Code of Professional Responsibility ( CPR ). The CPR mandates a lawyer to submit a brief or memoranda when required by the court. A lawyer must also inform the court, where he had appeared, of the change in his address in order to maintain the line of communication with the court.<sup>[9]</sup>

In this case, Atty. Salas had his first office address at 7<sup>th</sup> Floor, BF Topman Building, Ayala Avenue, Makati City. He transferred to 10<sup>th</sup> Floor, PBCom Building, Ayala Avenue, Makati City. Then, he moved to Eleuterio de Leon Street, BF Executive Village, Parañaque City. The records do not show that Atty. Salas informed the CA of the change in his address.<sup>[10]</sup>

Therefore, Atty. Salas failed in his duty under the CPR, and it was crucial to his client's cause. The Investigating Commissioner recommended a penalty of suspension from the practice of law for four months.<sup>[11]</sup>

On February 13, 2013, the IBP Board of Governors issued Resolution No. XX-2013-175 adopting and approving with modification the Investigating Commissioner's Report and Recommendation. The IBP Board of Governors suspended Atty. Salas from the practice of law for two months, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.<sup>[12]</sup>

Atty. Salas moved for reconsideration, which the IBP Board of Governors denied on March 22, 2014 in its Resolution No. XXI-2014-160. In the same resolution, the IBP Board of Governors affirmed with modification its previous resolution, and suspended Atty. Salas for two years.<sup>[13]</sup>

### **The Sole Issue Presented**

Whether or not Atty. Salas committed gross negligence in failing to file the appellant's brief in the CA.

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

The Court affirms the IBP's ruling with modification as to penalty to conform with the jurisprudence.

In addition to the IBP's finding of violation of Rule 12.03 of the CPR, the Court finds other violations, such as Canons 17 and 18, and Rule 18.03 on a lawyer's duty to his/her client.

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.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

RULE 18.03 -A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Here, the transcript of stenographic notes dated July 28, 1994<sup>[14]</sup> reveals that Atty. Salas admitted to not filing the appellant's brief in the CA and not updating the appellate court of his then current mailing address, thus:

COMR. BRIONES: What is your defense, Atty. Salas?

A TTY. SALAS: While the records will show that in one case no brief was filed because the notices were not received due to the transfer of address, the main cases were handled through the home address of the respondent and all the way up to the Supreme Court.

x x x x

COMR. BRIONES: x x x What is the case where you failed to file the appellant's brief?

ATTY. SALAS: I will refer to the reply. It is CA-G.R. CV 26538.

x x x x

COMR. BRIONES: Since you had admitted, Atty. Salas, that you failed to file the appellant's brief in that particular case before the Court of Appeals despite receipt of notice ...

ATTY. SALAS: No notice was received. COMR. BRIONES: ... In your previous address.

ATTY. SALAS: Despite notice to the previous address but not received.

COMR. BRIONES: My question is did you file a notice of change of address before the Court of Appeals in that case?

ATTY. SALAS: We felt it unnecessary because this case was supposed to be officially consolidated with two other cases.

x x x x

COMR. BRIONES: Which is the case where you failed to file your appellant's brief, the third case?

ATTY. SALAS: It is the 21047.<sup>[15]</sup>