

## SECOND DIVISION

[ A.C. No. 10684, January 24, 2018 ]

**ILUMINADA D. YUZON, COMPLAINANT, V. ATTY. ARNULFO M. AGLERON, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This administrative case arose from a Complaint<sup>[1]</sup> filed by Iluminada Yuzon Vda. de Rodriguez (*Iluminada*) before the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) seeking to disbar Atty. Arnulfo M. Agleron (*Atty. Agleron*), for misappropriating the amount of P582,000.00 which the respondent lawyer received in trust from the complainant.

#### ***Complainant's Position***

Iluminada alleged that sometime on December 23, 2008, she gave Atty. Agleron the amount of Php400,000.00, and on January 12, 2009, the amount of P600,000.00 in Managers Check, or the total amount of One Million Pesos (P1,000,000.00) meant for the purchase of a house and a lot of one Alexander Tenebroso (*Alexander*), situated at Mati, Davao Oriental. However, since the intended purchase did not materialize, Iluminada demanded the return of the aforesaid amounts that she entrusted to Atty. Agleron, which the latter failed to return. On February 24, 2009, Iluminada, through her lawyer Atty. Vivencio V. Jumamil (*Atty. Vivencio*), through a letter, demanded the return of the amount of P750,000.00. On March 2, 2009, Atty. Agleron replied through a letter and explained that he already returned the amount of P418,000.00, and that the remaining balance is only P582,000.00 which shall be paid upon payment of his client who borrowed the said amount for his emergency operation after an accident which took place on January 13, 2009.

Iluminada also alleged that she filed an Estafa case under Article 315, paragraph 1(B) of the Revised Penal Code against Atty. Agleron.

#### ***Respondent's Position***

Atty. Agleron, among others, claims that the amount of One Million Pesos (P1,000,000.00) was delivered to him at the Office of the Metropolitan Bank and Trust Co., Davao City upon the maturity of two (2) postdated checks issued by Reverend Pastor Apollo Quiboloy (*Rev. Quiboloy*); that the amount of P600,000.00 was delivered on December 15, 2008, and the other check which matured on January 15, 2009, in the amount of P400,000.00, were all deposited with the Philippine National Bank, Mati Branch for safekeeping, while awaiting for the finalization of the transaction with Alexander regarding the acquisition of the house subject of Civil Case No. 2287-7-2007, then pending in the Municipal Trial Court of Mati, Davao Oriental; and that the total amount of P438,000.00 was delivered to herein Iluminada on different occasions, as per her request, and that the balance of P582,000.00 was never misappropriated and/or converted to the personal use and

benefit of Atty. Agleron as the said amount was borrowed for the emergency operation of a client who, at that time has nobody to turn to for help. Thus, Atty. Agleron's infraction should not warrant the imposition of the supreme penalty of disbarment. Atty. Agleron prayed that, if he be found guilty, the lesser penalty of fine should be imposed considering he rendered almost fifty (50) years of service in the government, and he is also an Officer and Member of the IBP, Davao Oriental Chapter.

### ***Report and Recommendation***

After the mandatory conference on January 17, 2012 and upon a thorough evaluation of the evidence presented by the parties in their respective position papers, the IBP-CBD submitted its Report and Recommendation, dated March 30, 2012, finding Atty. Agleron to have violated Section 27,<sup>[2]</sup> Rule 138 of the Rules of Court. Thus, the IBP Investigating Commissioner found Atty. Agleron administratively liable and recommended that he be meted the penalty of suspension from the practice of law for one (1) year. This ruling is based on Atty. Agleron's admission that he is still in possession of the amount of P582,000.00.

Thus, the Investigating Commissioner is convinced that Atty. Agleron is guilty of Gross Misconduct under Section 27, Rule 138 for violating his duty to his client by converting and using his client's money. Accordingly, the penalty of suspension of one (1) year from the practice of law in any court was imposed on Atty. Agleron. The various mitigating factors: that Atty. Agleron has been a Member and Officer of the IBP Davao Oriental Chapter; that he has been in the practice of law, as Assistant and later on as Provincial Fiscal; and, that he was able to retire from the government service for a span of almost fifty (50) years *sans* any disciplinary records were taken into consideration. The Commissioner also recommended the return to Iluminada of the amount of P582,000.00 with legal interest of twelve percent (12%) from May 5, 2010, with warning that a repetition of similar act shall be dealt with more severely.

In a Resolution<sup>[3]</sup> dated August 31, 2013, the IBP Board of Governors adopted and approved the aforesaid Report and Recommendation. Atty. Agleron moved for reconsideration,<sup>[4]</sup> whereas Iluminada moved for a partial reconsideration<sup>[5]</sup> explaining that the penalty meted on Atty. Agleron dilutes the very essence of the offense charged. However, both were denied by the IBP Board of Governors through a Notice of Resolution No. XXI-2014-329<sup>[6]</sup> dated May 4, 2014.

Atty. Agleron filed with this Court an Urgent Motion for the Immediate Lifting of the Order of Suspension dated August 31, 2013,<sup>[7]</sup> and affirmed by Resolution No. XXI-2014-329<sup>[8]</sup> dated May 4, 2014, of the IBP Board of Governors. Thus, this Court issued a Resolution<sup>[9]</sup> dated January 18, 2016 referring to the Office of the Bar Confidant (OBC) Atty. Agleron's Urgent Motion for the Immediate Lifting of the Order of Suspension.

### ***The Obc's Report and Recommendation***

The OBC recommended that the merit of this case be finally resolved by this Court for the proper determination of the order of suspension imposed on Atty. Agleron. The OBC further recommended that Atty. Agleron's Urgent Motion for the Immediate Lifting of the Order of Suspension issued by the IBP on August 31, 2013, be denied.

### ***The Issue before the Court***

The basic issue, in this case, is the effectivity of the order of suspension imposed on Atty. Agleron.

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

The Court resolves to adopt the findings of fact of the IBP.

Here, there is no question as to whether or not the respondent lawyer misappropriated the amount of money the complainant entrusted to him, since Atty. Agleron already admitted the same, in clear violation of his fiduciary duty to his client. Jurisprudence is instructive that a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client.<sup>[10]</sup>

Proceeding from the premise that indeed Atty. Agleron merely wanted to help another client who is going through financial woes, he, nevertheless, acted in disregard of his duty as a lawyer with respect to Iluminada. Such act is a gross violation of general morality, as well as of professional ethics.<sup>[11]</sup>

It is of no moment as well that Atty. Agleron's property has been subjected to a levy;<sup>[12]</sup> thus, his claim in his Urgent Motion for the Immediate Lifting of the Order of Suspension<sup>[13]</sup> that with such levy he has even overpaid Iluminada, considering that the total value of his property is P2,912,000.00 is bereft of merit. Levy is defined as the act or acts by which an officer of the law and court sets apart or appropriates a part or the whole of the loser's (judgment debtor's) property for the purpose of eventually conducting an execution sale to the end that the writ of execution may be satisfied, and the judgment debt, paid.<sup>[14]</sup> Thus, there must be an execution sale first before he can claim that he already complied with his legal obligation.

Further, respondent also violated Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility (*CPR*) when he failed to return upon demand the amount Iluminada entrusted to him, *viz.*:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONIES 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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Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. x x x<sup>[15]</sup>

Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. 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.<sup>[16]</sup> Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case,