

## EN BANC

[ A.C. No. 10178, June 19, 2018 ]

**KIMELDES GONZALES, COMPLAINANT, V. ATTY. PRISCO B. SANTOS, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

This resolves the petition<sup>[1]</sup> filed by Kimeldes Gonzales (complainant) against Atty. Prisco B. Santos (respondent) before the Integrated Bar of the Philippines (IBP) for dishonesty and abuse of trust and confidence of his client.

On November 5, 2001, complainant bought a parcel of land in Tumaga, Zamboanga City. As she was then living in Quezon City, complainant appointed her sister, Josephine Gonzales (Josephine), to act as her representative in matters concerning said property. Josephine thereafter engaged the services of respondent to: (1) register the title in complainant's name; and (2) commence an ejectment suit against the occupants of the property. Josephine gave respondent a total of P60,000.00—P40,000.00 as fee for the transfer of title and the remaining P20,000.00 as filing fee for the ejectment case.<sup>[2]</sup> Respondent signed two receipts acknowledging complainant's payments: (1) on June 12, 2007 for P15,000.00 as partial payment for the transfer of title; and (2) on June 22, 2007 for P25,000.00 as full payment for the transfer of title, and P20,000.00 as partial payment, the purpose of which was not indicated.<sup>[3]</sup>

Complainant then entrusted the owner's duplicate copy of the Transfer Certificate of Title (TCT) to respondent for its cancellation. On August 2, 2007, a new title was issued in complainant's name. This, however, was never surrendered to Josephine, despite her efforts to claim it.<sup>[4]</sup>

Later, complainant discovered that her property had been mortgaged to A88 Credit Corporation by one Norena F. Bagui (Norena), who turned out to be respondent's relative. It appears that Norena used a forged special power of attorney to effect said mortgage.<sup>[5]</sup>

Moreover, complainant learned that respondent never filed an ejectment case against the occupants of her property despite receipt of the corresponding filing fees.<sup>[6]</sup>

Respondent, in his answer,<sup>[7]</sup> denied having any participation in Norena's act. He narrated that after obtaining the new title to the property, he instructed his niece, Nemalyn Falcasantos, to deliver it to Josephine. He was surprised to learn that the title had not been delivered to Josephine and worse, that Norena had used it to mortgage the property. He claimed that when he confronted Norena about it, the latter assured him that she did so upon complainant's instruction. According to

Norena, complainant is her close friend in Manila, and that she made similar transactions for complainant whenever the latter needed cash.<sup>[8]</sup>

Respondent also denied having been engaged to file an ejectment suit against the occupants of complainant's property. According to respondent, he was shocked to discover an additional P20,000.00 in his bank account. Nevertheless, he insisted that he never agreed to file an ejectment suit, citing the fact that some of the occupants are his friends.<sup>[9]</sup>

Acting on the complaint, Investigating Commissioner Oliver A. Cachapero (Investigating Commissioner Cachapero) found that respondent was complicit in the constitution of a real estate mortgage over complainant's property. The mortgage was executed only five days after complainant's title over the parcel of land had been issued. Hence, respondent's failure to deliver the title to complainant's sister, Josephine, despite repeated follow-ups, tends to no other conclusion—that respondent participated in the fraudulent transaction.<sup>[10]</sup>

Investigating Commissioner Cachapero also found it suspicious that respondent would readily accept Norena's alleged narrative of the events. According to the Investigating Commissioner, it is unthinkable that respondent's nieces, who are from Zamboanga City, would be able to secure complainant's signature within five days. Commissioner Cachapero added that the fact that complainant had not seen the title—and that Josephine had been repeatedly demanding for its surrender—is inconsistent with respondent's claim that complainant authorized the mortgage.<sup>[11]</sup>

In any case, even if it were true that respondent's nieces solely authored the fraudulent transaction, Investigating Commissioner Cachapero finds that it was still respondent's duty to hold his client's property in trust. He should have been more prudent in ensuring that the title would be safely delivered to Josephine. <sup>[12]</sup>

As regards the second charge, thy Investigating Commissioner rejected respondent's argument that he was not contracted to file an ejectment case against the occupants of complainant's property. According to Investigating Commissioner Cachapero, it would seem incredible that respondent would receive P20,000.00 from complainant for no reason at all. Indeed, respondent even acknowledged receipt of the same through a handwritten receipt.<sup>[13]</sup>

Considering these circumstances, Investigating Commissioner Cachapero recommended that respondent be found guilty as charged and suspended from the practice of law for three years.<sup>[14]</sup>

Finding the report and recommendation of Investigating Commissioner Cachapero to be fully supported by the evidence on record and the applicable laws and rules, the IBP Board of Governors, in its Resolution No. XX-2013-390<sup>[15]</sup> dated March 22, 2013, resolved to approve and adopt the same.

We concur with the report and recommendation of the IBP.

Regarding the first charge, we find respondent administratively liable for failing to deliver within reasonable time the title to complainant or to her sister, Josephine, who acted as her representative. The relationship between a lawyer and his client is highly fiduciary; it demands great fidelity and good faith on the part of the lawyer.<sup>[16]</sup> Rule 16.01 of the Code of Professional Responsibility (CPR) requires lawyers to