

## EN BANC

**[ A.C. No. 11724 (Formerly CBD No. 14-4109),  
July 31, 2018 ]**

**HDI HOLDINGS PHILIPPINES, INC., COMPLAINANT, VS. ATTY.  
EMMANUEL N. CRUZ, RESPONDENT.**

### DECISION

#### PER CURIAM:

Before the Court is an administrative complaint filed by complainant HDI Holdings Philippines, Inc. (*HDI*), represented by Darmono N. Castillo,<sup>[1]</sup> against respondent Atty. Emmanuel N. Cruz (*Atty. Cruz*) for violations of Canons 16.01, 16.02, 16.03, 16.04 and 17 of the Code of Professional Responsibility (*CPR*).

The facts are as follows:

HDI is a domestic corporation duly organized and existing under the laws of the Philippines with office address at 4<sup>th</sup> Floor, Francisco Gold I Condominium, 784 Edsa, Quezon City, Philippines.

In its complaint, HDI alleged that on July 10, 2010, they retained the services of Atty. Cruz as its in-house corporate counsel and corporate secretary. In the beginning, HDI's directors and officers were pleased with Atty. Cruz's performance, thus, in time, he earned their trust and confidence that he was eventually tasked to handle the corporation's important and confidential matters. Ultimately, Atty. Cruz became a friend to most of HDI's directors, officers and staff members.

However, HDI lamented that Atty. Cruz's seeming friendliness was apparently a mere facade in order to gain the trust of HDI's officers and directors for his financial gain. HDI averred that through Atty. Cruz's deception and machinations, he managed to misappropriate a total of Forty-One Million Three Hundred Seventeen Thousand One Hundred Sixty-Seven and Eighteen Centavos (P41,317,167.18), in the following manner, to wit:

#### ***The cash bid and the unpaid personal loans***

On September 21, 2011, HDI released Three Million Pesos (P3,000,000.00) in cash to Atty. Cruz to be used as cash bid for the purchase of a parcel of land located at E. Rodriguez Sr. Avenue. Atty. Cruz signed a cash voucher dated September 21, 2011 evidencing the receipt of the said amount.<sup>[2]</sup>

However, after HDI lost in the bid, Atty. Cruz failed to promptly return the money to the company. HDI made several demands to Atty. Cruz for the return of the money but it was only after four (4) months, or on January 18, 2012, when Atty. Cruz finally returned the said amount. Because Atty. Cruz eventually returned the P3

million, HDI gave him the benefit of the doubt and continued to trust him.

A few months later, sometime in April 2012, Atty. Cruz approached HDI's officers and asked for a Four Million Peso (P4,000,000.00) personal loan allegedly to be used in purchasing his house. Based on his promises and his position with the company, HDI's officers loaned him the said amount. A Contract of Loan<sup>[3]</sup> was executed on April 30, 2012 between Atty. Cruz and Chia Tzu Chern, one of HDI's officers, where the former agreed to pay his loan in the amount of Four Million Pesos (P4,000,000.00) by June 15, 2012.

Thereafter, on May 3, 2012, Atty. Cruz informed the management of HDI that there was going to be another bidding for the E. Rodriguez property. On May 9, 2012, he sent an e-mail<sup>[4]</sup> to Conchita G. Nicolas, the Corporate Treasurer, asking for Three Million Pesos (P3,000,000.00) for the bid deposit. Banking on his assurances to HDI that the same amount was fully refundable and/or convertible as earnest money for the sale, HDI again gave Three Million Pesos (P3,000,000.00) to Atty. Cruz, who signed a check voucher<sup>[5]</sup> dated May 10, 2012 evidencing receipt of the said amount.

Few days later, Atty. Cruz asked for an additional Three Million Pesos (P3,000,000.00) for the bid deposit, claiming that it will be added to their earlier bid deposit of P3,000,000.00, and that the same was likewise refundable and/or convertible as earnest money for the sale. On May 14, 2012, Atty. Cruz signed the check voucher<sup>[6]</sup> acknowledging receipt of the additional P3 million as cash bid bond.

On July 18 and 19, 2012, Atty. Cruz sent e-mails<sup>[7]</sup> to HDI's Chairman, Brandon Chia and begged for another Four Million Pesos (P4,000,000.00) as personal loan. He alleged that his brother has a serious gambling problem, and that their family had been threatened by several loan sharks because of his brother's debts. The additional P4,000,000.00 personal loan was supposedly to pay off his brother's debts and keep his family out of harm. Feeling sorry for Atty. Cruz, Mr. Chia agreed to give him a loan out of his own pocket.

Thereafter, HDI learned that it did not win the rebidding on the E. Rodriguez property. Thus, HDI demanded for the immediate return of the Six Million Pesos (P6,000,000.00) bid bond. However, despite several and repeated demands, Atty. Cruz did not heed the same.

Later, in an e-mail<sup>[8]</sup> dated September 27, 2012, Atty. Cruz confessed that he converted the allotted cash bid bond in the total amount of P6,000,000.00 for his personal use, to wit:

x x x It was at this time sir that my brother told us that he still had some obligations with some other financiers and that he was getting death threats already. My mom said that she really doesn't know how to pay for all of it immediately because of the staggering amount (14M including the first 4M). During that time sir I was supposed to get the bid bond for the second bid for the property beside our newly-acquired Petron property. We followed the same cash bid procedure sir in our first attempt to acquire the property. However, instead of remitting back the

bond money after the bid just like in our first attempt, out of desperation and for fear of the life of my family, ***I unilaterally decided to use that money sir instead of returning it. I thought of using it first to settle with the financiers and thereafter seek the help of other friends so I can immediately return the money to which failed to do sir.***

Sir, in relaying to you this, I am not justifying or trying to rationalize out what I've done. I just wanted to relay what really happened. Bottom line sir, I know what I did was wrong sir and I deeply apologize for my act. I know I have affected a lot of things by my acts. I have not only placed myself at risk but also the company. My personal concerns got in the way of my work and for that I'm truly sorry.

Believing Atty. Cruz's sincerity in his apology and that he truly acted out of concern for his family, HDI forgave him and agreed to just convert the misappropriated Six Million Pesos (P6,000,000.00) into another loan. Thus, another Contract of Loan<sup>[9]</sup> was executed, this time for the amount of Ten Million Pesos (P10,000,000.00), representing the second Four Million Pesos (P4,000,000.00) loan made in July, plus the missing Six Million Pesos (P6,000,000.00). On September 15, 2012, Atty. Cruz also executed an acknowledgment, admitting his Ten Million Peso (P10,000,000.00) outstanding debt to Mr. Chia.<sup>[10]</sup>

### ***Transaction concerning the property covered by TCT No. 75276***

Sometime in the last quarter of 2011, Capital Growth Inc. (CGI), a corporation wholly-owned by HDI Holdings, Inc., through Atty. Cruz, arranged and facilitated the purchase of a parcel of land covered by Transfer Certificate of Title (TCT) No. 75276<sup>[11]</sup> which was co-owned by Francisco G. Castillo, Francisco Castillo, and Cristina C. Castillo.

On December 21, 2011, Atty. Cruz sent an e-mail to Mr. Chia, informing him that CGI intended to make payment of the purchase price of the property and thus requested Mr. Chia, being the Chairman of HDI, for an amount of Twenty-Six Million Nine Hundred Eighty-Seven Thousand Five Hundred Pesos (P26,987,500.00). The said amount was released by CGI, upon Atty. Cruz's instructions to one Atty. Mauro Anthony Cabading III (Atty. Cabading), the alleged attorney-in-fact of the Castillo family, who duly acknowledged receipt of the payment.<sup>[12]</sup>

Thereafter, CGI asked Atty. Cruz several times about the transfer of the title of the property to the company's name but the latter gave no definite answers. Consequently, on July 16, 2013, or more than a year later, a representative of CGI met with Francisco C. Castillo, the seller. It was then that HDI discovered that the purchase price of the property was only Twenty-Five Million Two Hundred Ninety-Eight Thousand Four Hundred Pesos (P25,298,400.00) and that they only received the said amount, and not the P26,987,500.00 as Atty. Cruz's claimed. Further, the Castillo family informed them that they never authorized Atty. Cabading to be their attorney-in-fact.

After discovering the discrepancy of P1,689,100.00 from the true purchase price of the property, CGI demanded from Atty. Cruz and Atty. Cabading the return of the

difference in the overpriced amount. However, despite numerous verbal demands made by HDI, Atty. Cruz failed to return the P1,689,100.00.

***The fictitious sale of a certain Quezon City property covered by TCT no. N-308973***

On May 10, 2012, Atty. Cruz sent an e-mail<sup>[13]</sup> to Mr. Chia, informing him of a 500 square meter property for sale located in Quezon City, covered by TCT No. N-308973. They were told that the owner of the Quezon City property died, and the heirs who now owned the same were already entertaining buyers. Atty. Cruz further stated in his e mail that:

As advised by their lawyer, the family is really intending to sell it already so sir we might need to firm up in paper with them already as [there] are other interested parties, I would like to ask for your advise regarding the offer that I will be making tom sir.<sup>[14]</sup>

On May 12, 2012, Atty. Cruz sent another e-mail<sup>[15]</sup> to Mr. Chia confirming the meeting with the sellers and their lawyer and alleged that he offered P42,500.00 per square meter, as advised, which price the heirs found acceptable. Thereafter, Atty. Cruz advised Mr. Chia that the heirs required an earnest money of P5,000,000.00 but the full payment of the purchase price of P21,250,000.00 should immediately follow. He added that it was subject to full reimbursement in the event the heirs defaulted in the contract.

Because Atty. Cruz emphasized the urgency of the sale, HDI immediately started processing the earnest money of P5,000,000.00 to be given to the heirs. Atty. Cruz then informed HDI that the check should be payable again to Atty. Cabading, the alleged family lawyer of the heirs.

On May 15, 2012, HDI gave a Planters Bank Cashier's Check No. 578376<sup>[16]</sup> in the amount of Five Million Pesos (P5,000,000.00) to Atty. Cruz as earnest money for the QC property. In return, copies of the contract to sell and deed of absolute sale signed by a certain Federico Castillo II as the seller were given to HDI.<sup>[17]</sup>

On May 23, 2012, HDI released to Atty. Cruz another cashier's check<sup>[18]</sup> in the amount of Sixteen Million Two Hundred Fifty Thousand Pesos (P16,250,000.00) representing the balance on the full purchase price of the Q.C. property, payable to Atty. Cabading. The two manager's checks were deposited into the Banco De Oro Account No. 2138009864 of Cabading.

Thereafter, HDI followed up with Atty. Cruz the transfer of the title of the QC property in its name but nothing happened. Consequently, HDI directly communicated with one of the heirs, Mr. Jose Castillo. To HDI's surprise, it turned out that the QC property was never sold to HDI, and the owners of the QC property was not at all interested in selling the property. Further, HDI found out that the alleged heirs did not have a family lawyer by the name of Atty. Cabading. The signed copies of the contract to sell and deed of absolute sale turned out to be mere forgeries as there was also no person in the name of Federico Castillo II, the supposed named seller in the documents.

Due to this discovery, HDI demanded from Atty. Cruz the return of the total amount of Twenty One Million Two Hundred Fifty Thousand Pesos (P21,250,000.00), which was released to him for the purchase of the Q.C. property. To date, Atty. Cruz has ignored HDI's demands, and there has been no attempt on his part to return the P21,250,000.00 he pocketed.

### ***The unremitted rentals***

CGI owned two (2) parcels of land located at E. Rodriguez Sr. Avenue covered by TCT Nos. 104620 and 104621 which were being leased to Petron Corporation until March 6, 2018.

Since 2011, HDI, through CGI, has not received rental payments from Petron. Consequently, in the afternoon of July 2, 2013, the Executive Assistant to the Chairman of HDI, Ms. Wilhelmina Liwanag, called Petron to inquire and/or follow up on the unpaid rentals from 2011 to 2012 due to HDI as the new owner of CGI. She was then informed that two (2) checks were already released to Atty. Cruz after he presented a Secretary's Certificate<sup>[19]</sup> authorizing himself to receive the rental payments.

The next day, Ms. Liwanag, together with the Chairman of HDI and a director of CGI, went to the office of Petron at SMC Head Office complex to verify the truth of Petron's officer's claims. They went presented the following documents:

- a. The unauthorized Secretary's Certificate dated January 10, 2013<sup>[20]</sup> which purportedly authorized Atty. Cruz and a certain Adolph Ilas to collect the rental payments for the subject property;
- b. Acknowledgment receipts for the rental payments signed by Atty. Cruz;<sup>[21]</sup>
- c. Photocopies of the checks received by Atty. Cruz, *i.e.*, the first check received on January 18, 2013 in the amount of Two Million One Hundred Fifty Thousand Two Hundred Eighty-Two Pesos and Twenty-Five Centavos (P2,150,282.25);<sup>[22]</sup> and the second check, in the form of manager's check received on March 12, 2013 in the amount of Two Million Two Hundred Fifty-Seven Thousand Seven Hundred EightyFour Pesos and Ninety-Three Centavos (P2,257,784.93);<sup>[23]</sup> and
- d. Two Bureau of Internal Revenue Forms No. 2307 with Atty. Cruz as the named payee.<sup>[24]</sup>

Upon discovery, HDI immediately demanded from Atty. Cruz the rental payments in the total amount of Four Million Four Hundred Eight Thousand Sixty-Seven Pesos and Eighteen Centavos (P4,408,067.18)<sup>[25]</sup> which he failed to turn over.

Later, HDI finally decided to confront him about his actions. On July 4, 2013, Atty. Cruz went to HDI's office where he broke down and admitted to everything. After writing his confession,<sup>[26]</sup> Atty. Cruz likewise tendered his resignation from HDI. On the same occasion, Atty. Cruz's relatives were present and also expressed their commitment to help pay Atty. Cruz's debts with HDI.<sup>[27]</sup>