

EN BANC

[A.C. No. 8854, July 03, 2018]

JULIETA DIMAYUGA, COMPLAINANT, VS. ATTY. VIVIAN G. RUBIA, RESPONDENT.

DECISION

TIJAM, J.:

For Our resolution is a Complaint^[1] for disciplinary action, charging Atty. Vivian G. Rubia (respondent) with gross negligence, misrepresentation, and violation of the lawyer's oath.

Julieta Dimayuga (complainant) averred in her Complaint that sometime in June 2002, she and her family engaged respondent's legal services to effect the transfer of their deceased father's property to them, which services were supposed to include preparation, notarization, and processing of the transfer document and payment of taxes and other fees for such transfer. Respondent prepared a document denominated as Amended Extrajudicial Settlement of Estate with Waiver of Rights,^[2] which they signed on June 17, 2002.^[3] However, the transfer did not happen soon thereafter. Upon inquiry, her family learned that respondent paid the transfer tax only on October 25, 2007;^[4] the donor's tax was paid on April 2, 2007;^[5] and contrary to her representations with the complainant's family, respondent only entered the Amended Extrajudicial Settlement of Estate with Waiver of Rights with the Register of Deeds of Davao del Sur only on November 28, 2007 and re-entered on December 1, 2008. It is complainant's theory that respondent may have misappropriated the money that the family paid for her services on June 17, 2002 for her personal use, hence, the belated payment of the required taxes and fees.^[6]

Complainant also alleged that in June 2003, she also sought respondent's legal services for the purchase of a real property in Digos City. However, contrary to her representation that the property shall be registered in their names after one month, the title was not transferred to them.^[7] Moreover, the Deed of Absolute Sale^[8] dated June 27, 2003 for the purchase of a 600-square meter parcel of land prepared by respondent, was covered by Transfer Certificate of Title (TCT) No. CARP-03000,^[9] coming from Certificate of Land Ownership Award (CLOA) No. 00394433. The title was issued on February 5, 1997 and registered with the Registry of Deeds of Davao del Sur on February 6, 1997. Being a land covered by CLOA, the following limitation was stated on the face of the TCT, viz.:

[S]ubject to the condition that it shall not be sold, transferred or conveyed except through hereditary succession, or to the Government, or to the Land Bank of the Philippines, or to other qualified beneficiaries for a period of ten (10) years, x x x.^[10]

Thus, on June 27, 2003, the sale of the property was still prohibited. Complainant averred that they merely relied on the ability and knowledge of respondent as lawyer, who should not have assented to the sale of the said property due to the prohibition.^[11]

Hence, complainant prayed that respondent be administratively disciplined for her actions.

In a Resolution^[12] dated January 31, 2011, the Court required the respondent to comment on the complaint within ten days from notice.

Respondent moved for an extension of time to file her comment,^[13] which was granted by the Court in its Resolution^[14] dated August 15, 2012.

However, within the period of the granted extension, respondent still failed to file the required comment. Hence, in a Resolution^[15] dated July 14, 2014, the Court imposed upon respondent a fine of P2,000 and reiterated its order requiring respondent to file her comment.

Respondent neither paid the fine nor filed a comment. Hence, in a Resolution^[16] dated January 13, 2016, the Court imposed upon respondent an increased fine of P4,000 and again, required respondent to file comment.

On April 7, 2016, respondent paid the imposed increased fine and explained that her failure to pay the original fine was because the first notice was lost. Respondent also informed the Court of her transfer of office.^[17]

On June 29, 2016, the Court noted respondent's compliance. However, We reiterated Our order in the January 13, 2016 Resolution, considering that per Office of the Bar Confidant' (OBC), no postal money orders were enclosed in the aforesaid compliance.^[18]

In its September 19, 2016 Resolution,^[19] the Court noted the OBC's Letter^[20] dated July 26, 2016, stating the return to respondent of the two postal money orders for being received by the Court's cashier beyond the 90-day period from its validity. The Court also resolved to await respondent's compliance with the June 29, 2016 Resolution.

On November 14, 2016 Resolution,^[21] the Court noted respondent's remittance of two postal money orders as replacement for the expired ones. Respondent still failed to file her comment, thus, the Court also required her to show cause why she should not be disciplinarily dealt with or held in contempt for such failure and, again ordered her to comply with the January 31, 2016 Resolution.

On December 27, 2016, respondent complied with the show cause order, explaining that she suffered from trauma and stress due to the previous cases filed against her and also that she had undergone lifethreatening situations due to some high-profile cases that she handled, hence, her failure to file her comment.^[22]

However, respondent still failed to file her comment to the Complaint. Thus, on June

28, 2017 Resolution,^[23] while the Court noted her explanation, the Court again required her to file a comment in compliance with the January 31, 2011 Resolution. Despite receipt of the June 28, 2017 Resolution, respondent still failed to file the required comment.^[24]

Necessarily, this Court will now act on the resolution of the Complaint.

Preliminarily, We shall address respondent's apathetic attitude towards this case, to which this Court has been very tolerant. We have given respondent several opportunities to file her comment and explain her side on the accusations against her since 2011 but, up to present, respondent has yet to file the required comment. This Court cannot, anymore, accept respondent's excuses for such defiance, *i.e.*, trauma, stress, and life-threatening situations, considering that she was able to file pleadings stating such explanation but still failed to file the required comment. Nothing can be concluded therefrom but that respondent's acts or inaction for that matter, were deliberate and manipulating, which unreasonably delay this Court's action on the case. These acts constitute willful disobedience of the lawful orders of this Court, which, not only works against her case as she is now deemed to have waived the filing of her comment, but more importantly is in itself a sufficient cause for suspension or disbarment pursuant to Section 27,^[25] Rule 138 of the Rules of Court. Such attitude constitutes utter disrespect to the judicial institution. "A Court's Resolution is not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively."^[26]

In *Sebastian v. Atty. Bajar*,^[27] the Court, considered the failure to comply with the court's order, resolution, or directive as constitutive of gross misconduct and insubordination.^[28]

Proceeding to the merits of the Complaint, We find that the allegations of delay in the performance of duty and misappropriation of funds were not sufficiently substantiated. "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion."^[29] Corollary to this is the established rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. "The complainant has the burden of proving by substantial evidence the allegations in the complaint."^[30]

In this case, complainant alleged that she and her family gave respondent P150,000 on June 17, 2002, inclusive of respondent's attorneys fees and the legal fees necessary for the transfer of the property. Despite that, respondent did not pay the transfer tax and donor's tax until 2007. However, there is nothing on the records, except for complainant's bare allegation, which proves that such amount was indeed given to respondent on the claimed date. Hence, We cannot judiciously rule on the alleged delay and misappropriation without relying upon assumptions, surmises, and conjectures.

What is apparent in the Complaint, however, is the fact that respondent prepared and notarized a deed of sale, covering a parcel of land, which was evidently prohibited to be sold, transferred, or conveyed under Republic Act (R.A.) No. 6657.