

SPECIAL SECOND DIVISION

[A.C. No. 9832, October 03, 2018]

LOLITA R. MARTIN, COMPLAINANT, V. ATTY. JESUS M. DELA CRUZ, RESPONDENT.

R E S O L U T I O N

PERLAS-BERNABE, J.:

In 2013, complainant Lolita R. Martin (complainant) filed a letter-complaint^[1] against respondent Atty. Jesus M. Dela Cruz (respondent) for the latter's failure to return, despite several demands, the acceptance fee in the amount of P60,000.00 that he received from complainant.

In a Resolution^[2] dated September 4, 2017, the Court found respondent administratively liable for violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility, and accordingly, suspended him from the practice of law for six (6) months effective from the finality of the said Resolution. On the matter of restitution, the Court held that the order for respondent to return the P60,000.00 acceptance fee is proper,^[3] to wit:

As regards restitution, the Court has, in several cases, allowed the return of acceptance fees when a lawyer completely fails to render legal service. As applied to this case, the order for respondent to return the P60,000.00 is, therefore, proper. Indeed, an acceptance fee is generally non-refundable, but such rule presupposes that the lawyer has rendered legal service to his client. In the absence of such service, the lawyer has no basis for retaining complainant's payment, as in this case.^[4]

Notably, however, the dispositive portion of the Resolution did not contain a directive for respondent to restitute the aforementioned amount to complainant, but only decreed respondent's suspension from the practice of law. The dispositive portion thereof reads:

WHEREFORE, respondent Atty. Jesus M. Dela Cruz (respondent) is found **GUILTY** of violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months effective from the finality of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon receipt by respondent. Respondent is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal record as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.^[5]

When complainant filed a Motion for Execution^[6] dated October 24, 2017, praying that a writ of execution be issued in her favor, the requested writ, which would enable her to retrieve the P60,000.00 acceptance fee she previously paid, could not be issued since no such directive to reconstitute appears in the dispositive portion of the Resolution, keeping in mind the general rule that it is the *fallo* of a decision which is controlling.^[7] As such, the Office of the Second Division Clerk of Court submitted a query to the Court, to wit:

Considering that the Resolution dated 4 September 2017 expressly warrants the restitution of the P60,000.00 acceptance fee to complainant, may the dispositive portion of the said Resolution be AMENDED to include a directive to respondent to return to complainant the amount of P60,000.00 which the latter paid as acceptance fee?^[8]
(Italics in the original)

This query is the matter now before the Court. Accordingly, the Court deems it proper to make the necessary clarification.

It is true that when there is a conflict between the *fallo*, or the dispositive portion, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order, which becomes the subject of execution, while the body of the decision or order merely contains the reasons or conclusions of the court ordering nothing.^[9] However, as an exception, **"[when] one can clearly and unquestionably conclude from the body of the decision that there was a mistake in the dispositive portion, the body of the decision will prevail."**^[10]

In the present case, a perusal of the body of the Resolution unquestionably shows complainant's entitlement to the restitution of the P60,000.00 acceptance fee. Unfortunately, the dispositive portion of the said Resolution did not reflect an order for respondent to reconstitute such amount, not because of any substantial consideration but merely because of an unwitting clerical omission. In *Tuatis v. Spouses Escol*,^[11] the Court reiterated the rule that "[when] there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final,"^[12] as in this case.^[13] Certainly, "this Court cannot be precluded from making the necessary amendment thereof, so that the *fallo* will conform to the body of the said decision."^[14] In this light, the Court therefore deems it proper to amend the dispositive portion of the Resolution to reflect complainant's entitlement to the restitution of the P60,000.00 acceptance fee.

It bears stressing that the Court's original Resolution dated September 4, 2017 had already settled the issue of whether or not complainant is entitled to restitution, and no further discussion is needed to that effect. However, the amendment of the dispositive portion thereof must be made for complainant to effectively execute the