

FIRST DIVISION

[A.C. No. 5819, February 01, 2017]

**HEIRS OF SIXTO L. TAN, SR., REPRESENTED BY RECTO A. TAN,
COMPLAINANTS, VS. ATTY. NESTOR B. BELTRAN, RESPONDENT.**

R E S O L U T I O N

SERENO, C.J.:

Before this Court is an administrative complaint against respondent, Atty. Nestor B. Beltran. His derelictions allegedly consisted of his belated filing of an appeal in a criminal case and failure to relay a court directive for the payment of docket fees in a civil case to his clients complainants Heirs of Sixto L. Tan, Sr. represented by Recto A. Tan. The latter also accused him of unduly receiving P200,000 as payment for legal services.

FACTS OF THE CASE

After agreeing to pay attorney's fees of P200,000, complainants engaged the services of respondent counsel for the filing of cases to recover their commercial properties valued at approximately P30 million.

On July 2001, complainants filed a criminal action for falsification of public documents and use of falsified documents against Spouses Melanio and Nancy Fernando and Sixto Tan, Jr. Docketed as I.S. No. 2001-037,^[1] this case was dismissed by the provincial prosecutor of Albay.

Respondent was notified of the order of dismissal on 18 October 2001.^[2] On 6 November 2001, he filed an appeal via a Petition for Review before the Secretary of the Department of Justice (SOJ). It was, however, filed beyond the 15-day reglementary period to perfect an appeal.^[3] Consequently, in his Resolution promulgated on 5 March 2002,^[4] the SOJ dismissed the belated Petition for Review. Respondent no longer filed a motion for reconsideration to remedy the ruling.

On 11 September 2001, complainants instituted a related civil suit to annul the sale of their commercial properties before the Regional Trial Court (RTC) of Naga City, docketed as Civil Case No. 2001-0329.^[5] After being given P7,000 by his clients, respondent tasked his secretary to pay the docket fees computed at P1,722.

Unfortunately, the Clerk of Court erred in the assessment of the docket fees. To correct the error, the RTC required the payment of additional docket fees through an Order dated 20 May 2002,^[6] which respondent received on 29 May 2002.^[7] However, two weeks earlier, on 13 May 2002, he had moved to withdraw as counsel with the conformity of his clients.^[8] No separate copy of the Order dated 20 May 2002 was sent to any of the complainants.^[9]

The balance of the docket fees remained unpaid. Subsequently, the RTC dismissed the civil case, citing the nonpayment of docket fees as one of its bases.^[10]

Aggrieved by their defeat, complainants wrote this Court a letter-complaint^[11] asking that disciplinary actions be meted out to respondent. They likewise contended that he had unduly received P200,000 as attorney's fees, despite his failure to render effective legal services for them.

Respondent claimed^[12] that he could no longer move for the reconsideration of the SOJ's dismissal of his belated Petition for Review as he had only learned of the dismissal after the period to file a motion for reconsideration had lapsed. He argued that while he prepared the Petition for Review, his clients themselves, through Nilo Tan and Recto Tan, signed and filed the same. Thus, he imputed to complainants the belated filing of the appeal.

As for the dismissal of the civil action for nonpayment of docket fees, respondent disclaimed any fault on his part, since he had already withdrawn as counsel in that case.

Anent his receipt of P200,000 as attorney's fees, respondent denied collecting that amount. He only admitted that he had received P30,000 to cover expenses for "the preparation of the complaints, docket fee, affidavits, and other papers needed for the filing of the said cases."^[13] He did not deny his receipt of P7,000 for fees and other sundry expenses, of which P1,722 had already been paid to the Clerk of Court for docket fees. In any event, Atty. Beltran argued that P200,000 as attorney's fees was inadequate, considering that the property under dispute was worth P30 million.

FINDINGS OF THE IBP

In a Resolution dated 12 March 2003,^[14] this Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The Investigating Commissioner of the IBP, in a Report dated 24 July 2006,^[15] found respondent guilty of neglect in handling the criminal case and recommended his suspension from the practice of law for three months. The gist of the report reads:^[16]

The Respondent admits that the Petition for Review in this case was not filed. This key detail leads the Commissioner to conclude that **the Respondent was negligent in failing to seasonably file the Petition for Review in I.S. No. 2001 037.**

The Respondent's bare defense is that he allegedly left the filing of this petition to the Complainants, who filed it out of time. Even assuming this is true, the Respondent cannot disclaim negligence, being the lawyer and knowing that the case related to the Complainants' claims on properties the Respondent himself states are worth about PHP30 million. x x x.

Some of the Respondents pleadings instead focus to the Motion for

Reconsideration regarding the late Petition for Review's dismissal, which the Respondent explains by stating that the Complainants informed him of this when the period to file a Motion for Reconsideration had already lapsed. Even assuming this is true, it is irrelevant since it is clear that the Petition for Review itself was not seasonably filed. x x x. (Emphasis in the original)

With respect to dismissal of the civil case, the Investigating Commissioner cleared respondent of any liability. The former gave credence to the fact that by the time respondent received the directive of the RTC requiring the payment of the balance of the docket fees, the latter had already filed his withdrawal from the case.

Finally, as regards the factual claim of complainants that they paid respondent attorney's fees amounting to P200,000, the Investigating Commissioner determined that their allegation was unfounded, as none of them produced receipts evidencing payment. At most, what the Investigating Commissioner found was that respondent only admitted to receiving P30,000 for expenses, aside from P5,278.^[17] The former recommended that respondent be ordered to reconstitute these sums to complainants.

In its Resolution dated 1 February 2007,^[18] the Board of Governors of the IBP resolved to fully dismiss the administrative case against respondent without any explanation. Neither party has filed a motion for reconsideration or petition for review thereafter.^[19]

ISSUES OF THE CASE

- I. Whether respondent neglected legal matters entrusted to him when he belatedly filed an appeal before the SOJ, resulting in the dismissal of I.S. No. 2001-037
- II. Whether respondent is guilty of violation of the Code of Professional Responsibility and other ethical standards for failing to inform complainants of the RTC Order to pay the balance of the docket fees in Civil Case No. 2001-0329
- III. Whether respondent unduly received P200,000 as attorney's fees

RULING OF THE COURT

We set aside the unsubstantiated recommendation of the IBP Board of Governors. Its resolutions are only recommendatory and always subject to this Court's review.^[20]

Respondent filed a belated appeal before the SOJ.

In *Reontoy v. Ibadlit*,^[21] we ruled that failure of the counsel to appeal within the prescribed period constitutes negligence and malpractice. The Court elucidated that per Rule 18.03, Canon 18 of the Code of Professional Responsibility, "a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable."

In the case at bar, respondent similarly admits that he failed to timely file the

Petition for Review before the SOJ. As a result of his delayed action, his clients lost the criminal case. Straightforwardly, this Court sanctions him for belatedly filing an appeal.

The excuse forwarded by respondent that he delegated the filing of the Petition for Review to complainants - will not exculpate him from administrative liability. As correctly explained by the Investigating Commissioner of the IBP, respondent cannot disclaim negligence, since he was the lawyer tasked to pursue the legal remedies available to his clients.

Lawyers are expected to be acquainted with the rudiments of law and legal procedure. A client who deals with counsel has the right to expect not just a good amount of professional learning and competence, but also a wholehearted fealty to the client's cause.^[22] Thus, we find that passing the blame to persons not trained in remedial law is not just wrong; it is reflective of the want of care on the part of lawyers handling the legal matters entrusted to them by their clients.^[23]

After surveying related jurisprudence,^[24] the Investigating Commissioner recommended the suspension of respondent from the practice of law for three months given his infraction of filing a belated appeal before the SOJ. Yet, without explanation, the Board of Governors resolved to ignore the recommendation of the Investigating Commissioner.

Accordingly, this Court will not adopt an unsubstantiated resolution of the Board of Governors, especially when jurisprudence shows that we have penalized lawyers for filing belated motions and pleadings. In the resolution of this Court in *Reontoy*,^[25] we suspended the counsel therein from the practice of law for two months, given that his belated filing of an appeal caused his client to lose the case. In *Fernandez v. Novero, Jr.*,^[26] we likewise suspended the respondent counsel for a month after he filed a motion for reconsideration outside the reglementary period. In *Barbuco v. Beltran*,^[27] this Court imposed a six-month suspension on the lawyer, who had belatedly filed a pleading, among other derelictions. We stressed in that case that the failure to file a brief within the reglementary period certainly constituted inexcusable negligence, more so if the delay of 43 days resulted in the dismissal of the appeal.

Respondent failed to inform complainants of the RTC Order requiring the payment of full docket fees.

Respondent argues that he was no longer bound to inform complainants of the RTC Order requiring the payment of full docket fees, given that he had already moved to withdraw as counsel with the conformity of the latter. We find that argument unjustified.

Mercado v. Commission on Higher Education^[28] is instructive on the effect of the withdrawal of counsel with the conformity of the client:

As a rule, the withdrawal of a counsel from a case made *with* the written conformity of the client takes effect once the same is filed with the court. The leading case of *Arambulo v. Court of Appeals* laid out the rule that, in general, such kind of a withdrawal does not require any further action or