

EN BANC

[A.C. No. 10675, May 31, 2016]

DATU ISMAEL MALANGAS, COMPLAINANT, VS. ATTY. PAUL C. ZAIDE, RESPONDENT.

R E S O L U T I O N

DEL CASTILLO, J.:

Before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), complainant Datu Ismael Malangas (complainant) instituted this verified complaint^[1] for disbarment against Atty. Paul C. Zaide (respondent lawyer),

Factual Antecedents

Complainant accused respondent lawyer of committing acts of dishonesty, breach of trust, and violation of the Canons of Judicial Ethics^[2] in relation to the complaint for damages (Civil Case No. 6380 of the Regional Trial Court [RTC] of Lanao del Norte at Iligan City) that he filed against Paul Alfeche (Alfeche) and the NEMA Electrical and Industrial Sales, Inc/Melanio Siao (NEMA). Complainant averred that on March 6, 2003, he figured in an accident while crossing Quezon Avenue, Iligan City, when two vehicles hit and pinned him in between them, causing him to lose consciousness; that he was then brought to a hospital where he was confined for four months; that he was later transferred to other hospitals where he underwent different major operations for which he spent more than P1.5 million; and that despite the operations, he remained crippled and bed ridden.

Because of these, he engaged respondent lawyer's professional services to prosecute his complaint for damages against therein defendants Alfeche and NEMA; that he gave respondent lawyer P20,000.00 as acceptance fee and P50,000.00 as filing fees; that respondent lawyer made him believe that the amount of P50,000.00 was needed as filing fees in order to commence a P5 million-damage suit covering the accrued and anticipated damages caused by the accident; that subsequently, respondent lawyer filed on his behalf a complaint for damages before the RTC of Iligan City, thereat docketed as Civil Case No. 6380; that respondent lawyer then furnished him (complainant) with a copy of said Complaint seeking to recover damages in the amount of P5 million; and that to assure him that the complaint had indeed been filed, this complaint was stamped "received" by the RTC.

According to complainant, he later discovered, however, that his Complaint had been dismissed by the RTC because of "failure to prosecute," for the reason that respondent lawyer did not attend two hearings in the case, and also because respondent lawyer did not submit an Opposition to the Motion to Dismiss filed therein by NEMA; that on account of this, he asked respondent lawyer to file a Motion for Reconsideration, only to find out later that respondent lawyer not only did not file a motion for reconsideration from the Order of dismissal issued by the RTC,

but worse, respondent lawyer instead filed a Withdrawal of Appearance as counsel effectivly leaving him without counsel to prosecute his case; and that after this, he sent a relative to the RTC, where he further discovered through this relative that the amount of damages sought in the Complaint filed by respondent lawyer was only P250,000.00, and not P5 million, as stated in the copy of the Complaint given to him by respondent lawyer.

Challenging complainant's allegations, respondent lawyer claimed that complainant was in fact a client of the Zaragoza-Macabangkit Law Offices, a law firm that he joined way back in 2002, right after he passed the Bar Examinations; and that as a junior associate in that law firm, he only received appearance fees in attending to complainant's civil case. Respondent lawyer specifically denied that he received an acceptance fee of P20,000.00, and explained that complainant was already an established client of the law office he was working for.

As regards the amount of damages, respondent lawyer claimed that in the Complaint he filed before the RTC, he was even reluctant to ask for P250,000.00 in damages, as complainant's hospital bills did not reach this amount; but that he nevertheless prayed for this amount because he was anticipating that complainant would incur additional expenses as a result of the accident. According to respondent lawyer, the complaint which embodied a prayer for P5 million in damages "was clearly maneuvered to create an impression that (he, respondent lawyer) defrauded the complainant."^[3]

Lastly, respondent lawyer contended that although he deliberately skipped attending the hearings set by the RTC in said Civil Case No. 6380, and that although he also intentionally filed no opposition to NEMA's Motion to Dismiss, these matters were initially agreed upon between him and complainant after he (respondent lawyer) discovered that NEMA's car did not in fact hit complainant, because NEMA's car was not illegally parked where it was at the time of the accident; that although complainant was aware of these facts, complainant suddenly changed his mind, and insisted on continuing with the case against NEMA, and pressing for the claim of P5 million in damages, because complainant believed that NEMA had more leviabile properties than the other defendant Alfeche. According to respondent lawyer, he also found out that despite the fact that Alfeche had already settled with complainant, the latter still persisted in pursuing the civil case against Alfeche;^[4] that at this point, he realized that complainant was acting under the compulsion of greed in pressing for the continuation of the case against his adversaries; and that because of these reasons, he decided to withdraw from the case as complainant's counsel.

Proceedings before the Integrated Bar of the Philippines

Following the investigation, Commissioner Oliver A. Cachapero of the IBP Commission on Bar Discipline submitted his Report and Recommendation^[5] dated January 29, 2013 finding respondent lawyer guilty of dishonesty and breach of trust, for which he recommended a penalty of two years suspension against respondent lawyer. Commissioner Cachapero found complainant's allegations more credible than respondent lawyer's explanations, thus -

Respondent further mentioned that he has been handling cases for or against Complainant since he embarked on law practice and has never received acceptance fee from Complainant. He pictured himself as giving out *pro bono* services to Complainant for two (2) years. However, he may have contradicted his declaration in this regard when in his Answer he mentioned that he received P7,000.00 for docket fee and the rest was paid as advance fees for his services and the usual visitation done by him at the hospital.^[6]

As regards the true amount of damages sought in said Civil Case No. 6380, Commissioner Cachapero had this to say:

The undersigned deems the complainant's tale plausible enough. The aforesaid page containing a statement of claim amounting to P5,000,000.00 shows impeccably that it was typed simultaneously with the rest of the pages of the complaint. There is no showing that it was merely inserted as a supplement or addition after taking out a genuine page of the same. It is a constituent part of the complaint which could only have been printed and/or typed by the respondent or his agent.

Respondent claimed that the insertion of the page (*page 8*) was 'maneuvered' by Complainant. If these were true, what would have motivated Complainant to do such a 'switching' act? None. In fact, following his discovery of the same, he conducted himself out like a man wronged. He wrote respondent twice in September 2004 (September 1 and 9, 2004) and castigated respondent for his switching act. Surprisingly, respondent did not care to take the matter up with complainant through letter or personal confrontation. To the undersigned, respondent's act of paying no heed to such claim from Complainant reveals a subtle affirmation of his fault in this regard.^[7]

Ultimately, Commissioner Cachapero found respondent lawyer negligent in the handling of complainant's case, citing the RTC's Order of July 1, 2004, to wit-

In this regard the record will show that as early as May 18, 2004, plaintiff's counsel was furnished a copy of said motion, but for reasons only known to him no comment or opposition was registered by plaintiff. In fact, if only to afford plaintiff [a chance] to countervail movant's motion, last May 24, 2004, as prayed for, plaintiff's counsel was given ten (10) days to file an Opposition, but sad to say, until now, notwithstanding the lapse of practically 37 days no opposition, neither a comment was filed by plaintiff. With this development the Court will have to confine its scrutiny solely on the motion to dismiss of movant.^[8]

Action of the IBP Board of Governors

Via Resolution No. XX-2013-91,^[9] the IBP Board of Governors adopted and

approved the Report and Recommendation of Commissioner Cachapero, viz.:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex 'A', and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent committed Dishonesty, Breach of Trust and Negligence to Complainant, Arty. Paul C. Zaide is hereby SUSPENDED from practice of law for two (2) years.

On January 11, 2014^[10] respondent lawyer moved for reconsideration of the foregoing Resolution. But in its Resolution^[11] of May 4, 2014, the IBP Board of Governors denied respondent lawyer's Motion for Reconsideration.

Our Ruling

After a careful review of the records, we find respondent lawyer guilty of professional misconduct and of violating Canons 1,^[12] 16,^[13] and 18^[14] of the Code of Professional Responsibility (CPR). Not only do we find complainant's version more credible but we also note the glaring inconsistencies in respondent lawyer's allegations.

Respondent lawyer claims that as a mere associate in the Zaragoza-Macabangkit Law offices, "he has NO participation whatsoever regarding the fees the complainant is giving to the office."^[15] But, as pointed out by Commissioner Cachapero, respondent lawyer himself admitted that he received "P7,000.00 for the docket fees and the rest [was paid] as advance fees for his services and the usual visitation done [by] him at the hospital."^[16] Because of this admission, it can be concluded that respondent lawyer received fees "for his services" from the complainant himself.

Further bolstering the fact that respondent lawyer did in fact receive fees for his professional services are complainant's demand letters^[17] - one received on September 1, 2004 and another delivered by registered mail on September 9, 2004 - asking respondent lawyer to return the amount of P20,000.00 acceptance fee and to account for the docket fees paid to the RTC of Iligan City. To these, respondent lawyer merely replied that he "was made to understand that the 'docket fee' in Alfeche case is part of [respondent's] claims"^[18] without denying that he had received such amount. The complainant was thus constrained to conduct his own investigation against his own lawyer, in the course of which he discovered that of the P50,000.00 alleged filing fees that he gave respondent lawyer, only P2,623.60 was paid by respondent lawyer to the RTC. As Commissioner Cachapero aptly stated in his Report and Recommendation,^[19] "[respondent's act of paying no heed to such claim from [c]omplainant reveals a subtle affirmation" that he, indeed, received the acceptance fee.

Finally, respondent lawyer's former law partners belied his claim that he did not receive, as in fact it was the law firm which received, the amounts paid by the