

EN BANC

[**A.C. No. 10574 (Formerly CBD Case No. 11-3047), September 20, 2016**]

PATRICK R. FABIE, COMPLAINANT, VS. ATTY. LEONARDO M. REAL, RESPONDENT.

RESOLUTION

DEL CASTILLO, J.:

In a Verified Petition,^[1] complainant Patrick R. Fabie claimed that he is the owner of a parcel of land located in Bo. Dela Paz, Antipolo City registered under Transfer Certificate of Title (TCT) No. R-1971. His sister Jaynie May R. Fabie (Jaynie May) donated the property to him in support of his intended application for immigration either to the United States of America or Canada. However, his plan to immigrate did not push through hence, he engaged the services of respondent Atty. Leonardo M. Real to facilitate the return of ownership of the said property to Jaynie May.

On August 24, 2009, complainant gave respondent the necessary documents for the purported transfer of ownership of the property as well as the amount of ₱40,000.00 to answer for the expenses to be incurred in connection therewith and for respondent's professional fees.^[2] This is evidenced by an acknowledgement receipt which complainant attached to his Petition indicating as follows:

ACKNOWLEDGEMENT RECEIPT

Received from PATRICK R. FABIE the following documents:

1. Deed of Absolute Sale and Deed of Donation between Patrick Fabie and Jaynie May Fabie
2. Tax Declaration of Real Property
3. Tax Clearance
4. [Official] Real Property tax [r]eceipt
5. Xerox and Original [Transfer Certificate of] Title No. [TCT]. **N-129303**
6. Cash-P40,000.00

Received by:
Signed 9/18/10
ATTY. LEONARDO M. REAL
Date: August 24, 2009
Place: Bermuda Subd.
Antipolo City

Conforme:
Signed
PATRICK R. FABIE^[3]

However, more than a year had passed without anything being accomplished. Hence, complainant sought for the return of the items received by respondent. While respondent gave back to complainant TCT No. R-1971, he did not return the P40,000.00 and the other documents. And since the demand letter^[4] for the return of the money was left unheeded, complainant was constrained to lodge with the Commission on Bar Discipline of the Integrated Bar of the Philippines (EBP) the said Verified Petition.

In his Answer,^[5] respondent admitted that he received the items enumerated in the afore-quoted acknowledgement receipt albeit on a different date and for a different purpose, ie, on September 18, 2010, for the purpose of settling the estate of complainant's late father, Esteban E. Fabie, Jr. (Esteban). Later, however, the heirs of Esteban had a change of heart and took back from respondent the documents and the money on November 28, 2010. Complainant allegedly acknowledged the return of the items by respondent as follows:^[6]

ACKNOWLEDGEMENT RECEIPT

Received from Atty. Leonardo M. Real the following documents:

1. Deed of Absolute Sale and Deed of Donation bet. Patrick Fabie and Jaynie
2. May Fabie
3. Tax Declaration of Real Property
4. Tax Clearance
5. [Official] Real Property Tax Receipt
6. Xerox and original Title No. N-129303
7. Cash-P40,000.00

Received by: Signed
PATRICK R. FABIE
Date: August 24, 2009
Place: Bermuda Subd.
Antipolo City

Conforme:
Signed 11/28/10
ATTY. LEONARDO M.
REAL^[7]

Further, respondent attached to his Answer a photocopy of TCT No. N-129303^[8] which he claimed to be a part of the estate of Esteban referred to him by the latter's heirs for settlement proceedings. But since there was a misunderstanding among the heirs, the settlement did not push through. To prove the unpleasant relationship of the heirs, respondent attached to his Answer a letter^[9] dated April 23, 2004 of complainant's mother Elsie R. Fabie (Elsie) indicating her intention to repudiate an amicable settlement that she earlier entered into with her children because the latter committed criminal acts against her. Respondent claimed that he got caught in the middle of this bitter spat of the heirs such that complainant filed this disbarment case against him. At any rate, respondent pointed out that complainant could not have delivered to him TCT No. N-129303 on August 24, 2009 since the same was

recorded lost on April 26,2004 and wasoply recovered on July 27,2010 per entries at the dorsal side of the said title. [10]

In his Reply,[11] complainant clarified that the title which was the subject of his engagement of respondent was TCT No. R-1971 as alleged in his Petition and not TCT No. N-129303. While, indeed, the acknowledgement receipt he appended to his Petition indicates that the TCT number of the title received by respondent is TCT No. N-129303, this was a mere typographical error committed by respondent's secretary who prepared the said acknowledgement receipt. As to how respondent came into possession of a photocopy of TCT No. N-129303, complainant recounted that at one time, he and his mother met with respondent. Respondent thereupon made representations that he could have TCT No. N-129303, which was under the names of complainant's parents, transferred in the sole name of complainant's mother. Upon respondent's further cajoling, complainant's mother gave the former a photocopy of TCT No. N-129303. The purported transfer, however, remained to be a mere plan since complainant's family had no money to defray for the expenses. Unfortunately, respondent was using his possession of a photocopy of TCT No. N-129303 in this case to negate his clear deviation from the conduct expected of a lawyer.

In his Rejoinder,[12] respondent pointed out that the discrepancy between the TCT numbers of the title alluded to by complainant in his Petition (TCT No. R-1971) and of the title indicated in the acknowledgement receipt appended thereto (TCT No. N~129303) was not a mere typographical error considering that the alphanumeric characters of the two TCT numbers were so different from each other. Respondent reiterated his denial that he dealt with complainant with respect to TCT No. R-1971 and asserted that the latter, in filing this complaint for disbarment, was just sour-graping because of the aborted settlement of his father's estate.

Mandatory Conference was set on September 30, 2011.[13] Although respondent filed a Mandatory Conference Brief,[14] he did not appear thereat. Hence, the mandatory conference was terminated and the parties were required to file their respective position papers.[15] Complainant filed his Position Paper[16] attaching thereto an Affidavit[17] executed by his mother Elsie. In the said affidavit, Elsie corroborated the allegations of her son and denied that she or any of her children engaged respondent for the settlement of the estate of Esteban. She farther averred that the said estate was, in fact, already extra-judicially settled through the assistance of a different lawyer as shown by an Extrajudicial Settlement of Estate with Waiver of Rights.[18] On respondent's end, he attached to his Position Paper[19] a draft[20] of the Complaint for Partition and Accounting which he claimed to have prepare in accordance with his engagement by the heirs of Esteban.

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation[21] dated November 9, 2011, Investigating Commissioner Oliver A. Cachapero (Commissioner Cachapero) held that the evidence tended to support complainant's allegations. For one, the items received by respondent included a Deed of Absolute Sale and a Deed of Donation executed by and between complainant and Jaynie May - documents which are significant to

the purported transfer of ownership of property between the said siblings. For another, he found complainant as quite sure of the details of respondent's return to him of TCT No. R-1971 only as complainant even vividly recalled that the same took place in Starbucks, Edsa Central, Mandaluyong City. On the other hand, Commissioner Cachapero did not find credible respondent's claim that he was engaged by the heirs of Esteban for the settlement of estate.

As to the respective acknowledgment receipts submitted by the parties, Commissioner Cachapero made this observation:

The undersigned likewise notes that the [Respondent had apparently perpetrated the odious act of riding on the mistake of his secretary. There apparently was an error in his secretary's typing of the acknowledgment receipt. This can be gleaned from the indication of one and the same date (August 24, 2009) below the printed name of [c]omplainant and [Respondent in the two (2) Acknowledgment Receipts. Significantly, only the name of the recipient (Respondent) was changed in the latter receipt and this gave way for him to use the original one (with Complainant as recipient) which is erroneous [since the said copy indicated complainant as the recipient when it should have been the respondent] to support his claim that he had already returned to Complainant the sum of P40,000.00 that was earlier paid to him the said amount being indicated in the acknowledgment receipt.^[22]

Ultimately, Commissioner Cachapero found respondent to have (1) breached his duties to his client when he failed to exercise due diligence in his undertaking to cause the transfer of ownership of property from complainant to Jaynie May and instead abandoned his client's cause; (2) converted his client's fund of P40,000.00 to his personal use when he failed to return the same to complainant; and, (3) committed dishonesty when he claimed that he had been engaged to settle the estate of Esteban when in truth he was not. And since the above transgressions did not only show bad faith on the part of respondent but also caused material damage to complainant, Commissioner Cachapero recommended that respondent be suspended from the practice of law for two years.

Ruling of the IBP Board of Governors

In Resolution No. XX-2013-406 dated April 15, 2013, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner Cachapero with modification that respondent be suspended for a shorter period of six months.^[23]

Respondent filed a Motion for Reconsideration^[24] insisting that there was no clear, convincing, and satisfactory evidence adduced to establish that he breached his duties to complainant as to warrant his suspension. The IBP Board of Governors, however, issued Resolution No. XXI-2014-115 on March 21, 2014 denying respondent's Motion for Reconsideration.^[25] It further resolved to modify its earlier resolution (Resolution No. XX-2013-406) by suspending respondent from the practice of law for a period of two years in accordance with the recommendation of Commissioner Cachapero.

Our Ruling

"The Court has emphatically stated that when the integrity of a member of the bar is challenged, it is not enough that [he] denies the charges against him; [he] must meet the issue and overcome the evidence against [him]. [He] must show proof that [he] still maintains that degree of morality and integrity which at all times is expected of [him]."^[26] Respondent failed in this regard.

It is undisputed that respondent received documents and money from complainant. What is at issue, however, are the circumstances surrounding such receipt. To recap, complainant asserts that respondent received the items because he engaged the latter to cause the transfer of ownership of a land from him to his sister Jaynie May. Respondent, however, denies this and instead avers that he received the documents and the money in connection with the settlement of the estate of complainant's father Esteban for which he was employed by the latter's heirs. Unfortunately, none of the parties was able to present a written contract which would have been the best evidence of their respective claims of professional engagement. Be that as it may, the Court has carefully scrutinized the evidence presented by both parties and finds that as held by Commissioner Cachapero, the weight of evidence favors the complainant.

First, the documents received by respondent support the transaction for which complainant claims to have engaged his services. Plainly, the Deed of Absolute Sale and Deed of Donation by and between complainant and Jaynie May are the primary documents necessary to facilitate the transfer of ownership of property between them. On the other hand, these documents have no significance to the purported settlement of estate of Esteban. Moreover, if respondent indeed received the documents for purposes of settlement proceedings, why were such documents, which notably relate to just a single property, the only ones given to him when respondent himself alleges in his Answer^[27] that the estate of Esteban comprises of prime properties located in Mandaluyong, Quezon City, and Antipolo? Why were titles and documents pertaining to such other properties not among those received by him?

To further negate the allegations against him, respondent capitalizes on the discrepancy between the title number of the TCT of the property supposed to be the subject of the transfer of ownership between complainant and Jaynie May (TCT No. R-1971) and the title number of the TCT received by him as indicated in the parties' respective acknowledgement receipts (TCT No. N-129303). The Court notes that complainant offered an explanation for this, i.e., that the said discrepancy was brought about by a mistake on the part of respondent's secretary who typed the acknowledgement receipt, that is, instead of typing TCT No. R-1971 in the acknowledgment receipt, the secretary typed TCT No. N-129303. Complainant further explains that he did not anymore endeavor to correct the mistake since respondent allegedly told him that both of them understood anyway that the same was a mere typographical error. Respondent, however, argues that the commission of such a mistake is highly improbable.

The Court finds otherwise.

The possibility of the respondent's secretary committing such a mistake cannot just be discounted considering complainant's narration, which significantly was not refuted by respondent, that the latter was also in possession of a photocopy of TCT