

SECOND DIVISION

[A.C. No. 5116, April 13, 2015]

**DAVAO IMPORT DISTRIBUTORS, INC., COMPLAINANT, VS. ATTY.
JOHNNY LANDERO, RESPONDENT.**

R E S O L U T I O N

DEL CASTILLO, J.:

This is a Complaint^[1] for Disbarment filed against Atty. Johnny P. Landero (respondent) on the grounds of professional misconduct and violation of Canon 12 of the Code of Professional Responsibility (CPR).

Factual Antecedents

Sometime in August 1997, complainant Davao Import Distributors, Inc. (complainant), through its representative and branch manager, Jimmy Pandili (Pandili), engaged the services of respondent to file a Complaint^[2] against Angelita Librando and Juanito Du (Librando and Du, respectively) for the recovery of one split type air-conditioner with replevin and damages. This case was docketed as Civil Case No. 3854 (civil case) before Branch 3 of the Municipal Trial Court in Cities (MTCC) of General Santos City.

Apparently, Librando purchased on installment basis a split-type floor-mounted air-conditioner from complainant in the amount of P86,740.00 which the former installed in her beauty salon located in a commercial building owned by Du. When Librando failed to pay, Pandili went to her salon only to find out that the same had already closed down. Left in the premises, however, was the air-conditioning unit Librando purchased from complainant. Claiming that Du refused to release the unit to complainant as he allegedly intended to retain the same as a lien for Librando's unpaid rentals, complainant filed the said case.

On the scheduled date of pre-trial on November 10, 1997, respondent failed to appear. And since he also failed to inform complainant or Pandili of the scheduled pre-trial, they too were unable to attend. As a result, the case was dismissed for non-suit through an Order^[3] of even date and Du was allowed to present his evidence *ex-parte* in support of his counterclaim. On December 9, 1997, the MTCC issued a Decision^[4] ordering complainant to pay Du the amounts of P70,000.00 as moral damages, P5,000.00 as attorney's fees and P5,000.00 as litigation expenses.

Without filing a Motion for Reconsideration, complainant appealed the MTCC Decision to the Regional Trial Court (RTC). On July 31, 1998, the RTC issued its Decision^[5] affirming the MTCC Decision.

Complainant then disbursed to respondent the amount of P1,900.00 so that he may

file a petition for review before the Court of Appeals (CA). Initially, respondent filed a motion for extension of time to file said petition. However, he failed to file the same such that on January 22, 1999 the CA issued a Resolution^[6] dismissing the appeal.

Hence, this Complaint for Disbarment where complainant asserts that respondent's actuations of (1) not appearing in the pre-trial of the case, (2) not availing of the legal remedies against the dismissal of the Complaint due to non-suit, and (3) failing to file a petition for review, constitute unprofessional behavior or misconduct and violations of Canon 12 of the CPR, which merit disciplinary action, if not, disbarment.

Respondent's Defense

In response to the allegations hurled against him, respondent explained that upon receiving Du's Answer with Counterclaims, he was alarmed to find out that the property in question was already in the custody of the sheriff. This was allegedly by reason of an attachment in an another civil action filed by a different person against Librando. Respondent thus conferred with the counsel of Du and requested him to withdraw the counterclaim but was turned down as Du wanted to pursue his claim for damages. He then informed Pandili of the seizure of the property by the sheriff and of Du's decision not to withdraw the counterclaim. The two of them allegedly thereafter agreed to just abandon the case. But when he discussed to Pandili that it is possible that complainant may be assessed for damages, Pandili allegedly panicked and requested him to delay the execution of the judgment on the counterclaim for fear that he would be terminated from his job. Acceding, respondent appealed the judgment on Du's counterclaim but the RTC dismissed the appeal and affirmed the MTCC Decision. When informed about this, Pandili allegedly took from respondent the case folder despite the latter's warning that they only have 15 days to file a Petition for Review with the CA. It was only after 30 days that Pandili returned to him and begged that he file an appeal, again, for fear that he would be terminated by complainant. Out of pity, and despite knowledge of the expiration of the period for filing an appeal, respondent still filed a Motion for Extension of Time to File Petition for Review. Du's counsel opposed the motion pointing out that respondent misled the CA as to the date of his receipt of the assailed RTC Decision so as to make it appear that the said motion was timely filed. The CA thus ordered respondent to explain. It was at his juncture that respondent opted not to file the intended petition anymore allegedly because he would not want to waste the time of the court in resolving a petition which is baseless and admittedly filed out of time.

Proceedings before the Integrated Bar of the Philippines

On May 24, 2008, the Investigating Commissioner, Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) Commissioner Rebecca Villanueva-Maala (Commissioner Villanueva-Maala) recommended that respondent be suspended from the practice of law for three months.^[7] This was after she found respondent negligent in the performance of his duty as counsel for complainant and as an officer of the Court. As counsel for complainant, it was respondent's duty to attend the pre-trial, justify the filing of the complaint, and oppose Du's counterclaim. Respondent, however, was remiss in his duty by deliberately failing to attend the pre-trial, which

caused prejudice to complainant in that it was declared in default and was assessed for damages. Moreover, while respondent claimed that he did not proceed with the filing of the petition for review with the CA because it was already out of time, the records, on the contrary, show that he was actually granted by the CA an extension of 15 days to file the intended petition. Only that he did not file the same on purpose notwithstanding his receipt from complainant of the amount of P1,900.00 as payment for docket fees.

In a Resolution^[8] dated July 17, 2008, the EBP Board of Governors adopted and approved the recommendation of Commissioner Villanueva-Maala but modified the period of suspension by increasing it from three months to six months. Respondent then filed a Motion for Reconsideration,^[9] which the IBP Board of Governors denied in a Resolution^[10] dated March 21, 2014.

Hence, the transmission of the whole record of the case to this Court for its final action.

Our Ruling

We agree with complainant that respondent displayed unprofessional behavior and misconduct and violated the CPR.

Respondent himself admitted that he deliberately did not appear at the scheduled pre-trial conference in Civil Case No. 3854 despite notice and that he did not file a petition for review after receiving from his client the payment for docket fees and after being granted by the CA an extension of time to file the same. From these facts alone, it cannot be denied that respondent's acts constitute misconduct which at the same time amount to violations of the CPR.

The Court has already held in *People v. Sevileno*^[11] and reiterated in *Consolidated Farms, Inc. v. Atty. Alpon, Jr.*^[12] that Canon 18^[13] of the CPR requires every lawyer to serve his client with utmost dedication, competence and diligence. He must not neglect a legal matter entrusted to him and his negligence in this regard renders him administratively liable.

As complainant's counsel in Civil Case No. 3854, respondent is duty-bound to handle the same with zeal and all due diligence. Hence, even assuming that there is truth to his allegation that he and Pandili already agreed to abandon the case, he should have still attended the scheduled pre-trial to formally move for its withdrawal. However, despite his awareness that his absence in the pre-trial would result to a dismissal of the case with prejudice and to a declaration of his client's default with respect to Du's counterclaim, respondent still deliberately did not appear thereat. It is worth noting that at that time, Du had already filed an Answer with Counterclaim. If respondent was indeed concerned about his client's cause, he should have, under the circumstances, observed the mandate of Section Rule 17 of the Rules of Court. It provides:

RULE 17 Dismissal of Actions