

EN BANC

[A.C. No. 9603, June 16, 2015]

DOMINIC PAUL D. LAZARETO, COMPLAINANT, VS. ATTY. DENNIS N. ACORDA, RESPONDENT.

DECISION

PER CURIAM:

Before the Court is the present administrative case which arose from the affidavit-complaint for disbarment^[1] filed with the Integrated Bar of the Philippines (*IBP*) on July 7, 2006, by Dominic Paul D. Lazareto (*Lazareto*) against Atty. Dennis N. Acorda (*respondent*), for violation of the **Code of Professional Responsibility**.^[2]

The Antecedents

Lazareto, eldest son of the late Damaso R. Lazareto, for himself and on behalf of his co-heirs (*family*), specifically charged respondent with violating the following provisions of the Code of Professional Responsibility:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

x x x x

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY OF THE LEGAL PROFESSION, AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

x x x x

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

In January 2004, Lazareto and his family engaged the respondent's services (the respondent was a member of the law office *Jaromay Baylon Acorda Landrito &*

Associates^[3]) to handle the extrajudicial settlement of the estate of Lazareto's father who died intestate. They agreed to set the deadline for the filing of the extrajudicial settlement action on May 26, 2004, to enable the family to avail of a P100,000.00 deduction in estate taxes.^[4] They also agreed that titles to a parcel of conjugal land (Lots B & E) at Tomas Mapua St., Sta. Cruz, Manila, left by the deceased, be transferred to Lazareto's mother, Cleotilde D. Lazareto.

Lazareto gave the respondent the original duplicate copies of TCT No. 206006 for Lot B and TCT No. 206008 for Lot E, together with cash^[5] representing the respondent's acceptance fee (P50,000.00), and initial deposit to answer for extrajudicial transactions which include transfer taxes and cost of publication (P70,000.00) for a total of P120,000.00. Since then, Lazareto had followed up the developments with the respondent by phone, but he could not be contacted until he received a fax message from him asking for an additional P88,000.00,^[6] which Lazareto gave in installments of P66,000.00^[7] and P20,000.00.^[8]

May 2004 passed without the papers for extrajudicial settlement being filed. Lazareto had not heard from the respondent all this time, although the lawyer sent a certain Manny Pacheco (*Pacheco*), allegedly the liaison officer of the law firm, to get the second installment of P20,000.00. The family received a liquidation report from the respondent on August 24, 2004.^[9]

On several occasions after August 24, 2004, Lazareto gave additional funds to respondent consisting of P150,000.00 for property taxes and issuance of new titles; P15,000.00 for additional transfer expenses; and another P10,330.00 for additional property taxes. Since then, Lazareto had not heard from the respondent, until he wrote the family on April 8, 2005, saying that Pacheco had not given an accounting of the monies the family had given him (respondent).

Meantime, Lazareto and his family entered into negotiations to sell Lot B with a certain Mrs. Nel Manzano. They asked the respondent to prepare the deed of sale for the transaction; however, even if the respondent promised to give the matter priority, he failed to attend to it. On August 15, 2005, the family wrote him a letter reminding him of his promise, as well as of his failure to act on the filing of the extrajudicial settlement action which had expired a year ago.^[10]

On October 8, 2005, Lazareto and respondent agreed that the deed of sale and tax declaration for Lot B would be forwarded to the family on or before November 1, 2005, and in a week's time, they would discuss the extrajudicial settlement question.^[11]

After more than a week without hearing from the respondent, Lazareto was constrained to write the respondent another letter on April 3, 2006, and one more on May 21, 2006, demanding the return of the title to Lot E.^[12] Thereafter, Lazareto made several follow-ups with the respondent — through his (respondent's) relative Ma. Teresa Puntero and his mother, as well as through text messages — to no avail, until the respondent admitted that he had lost TCT No. 206008 covering Lot E.^[13]

With this admission, Lazareto requested the respondent to execute an affidavit of loss so that the family could secure a duplicate copy of the TCT. The respondent did

send a copy of the affidavit of loss, but it was unsigned.^[14] Exasperated with the difficulties he was having with the respondent's nonchalant and negligent attitude and his refusal to provide his family a signed affidavit of loss, Lazareto filed the present complaint.

Thereafter, Atty. Rufino I. Policarpio, III (Atty. Policarpio), the respondent's lawyer, proposed an amicable settlement with Lazareto. As proposed, part of the money given to the respondent for legal services would be returned to the family and they would be given the document "extrajudicial settlement with deed of sale," as well as the official receipts for land taxes and other expenses. Lazareto agreed to the proposal and submitted a manifestation on the matter to the **IBP Investigating Commissioner, Gerely Rico** (*Comm. Rico*).^[15]

Once again, Lazareto was greatly disappointed. The respondent failed to deliver on his commitments: there was no return of part of the money given to respondent, no copy of "extrajudicial settlement with deed of sale," and no receipts of payments for transactions the respondent had entered into in representation of the Lazareto family. **With this development, Lazareto had no choice but to agree to just accept an affidavit of loss for the receipts and to rely on the word of respondent's counsel that he was assured by his client that he (respondent) had filed the extrajudicial settlement papers with the Register of Deeds of Manila.**

Consequently, Lazareto consented to the compromise offer, in exchange for his affidavit of desistance. His "family decided to work on the extrajudicial settlement themselves, to shorten their agony"^[16] and in doing so, they discovered that:

(1) no "Extrajudicial Settlement" was on file with the Manila Register of Deeds, nor was there an "Affidavit of Publication;"

(2) what was on file with the Register of Deeds was only a "Deed of Absolute Sale"^[17] of Lot B dated September 20, 2005, where the signature D. Lazareto appeared above the name of his father, Damaso R. Lazareto, who had been dead since November 26, 2003; and

(3) three copies of the tabloid *Balitang Detalye*,^[18] given to the family by the respondent, where the lawyer claimed the "extrajudicial settlement" was published, were one and the same issue — VOLUME VIII-NO. 31 MAY 24-30, 2004; 3.a, the published notice was merely ONE DETACHED SEPARATE PAGE appearing on a mere insert (page 6) titled *Extrajudicial Settlement of Estate of Damaso Lazareto with Deed of Sale*; 3.b. below it was the statement: *Publisher: Balitang Detalye; Dates: May 24, 31 and June 7, 2004.*

Alarmed and shocked at his discovery, Lazareto moved for the admission of newly discovered evidence,^[19] but the motion was denied by Comm. Rico, as well as his subsequent motion for reconsideration.

His affidavit of desistance and respondent's apology notwithstanding, Lazareto expressed grave concern over respondent's misrepresentations in performing his tasks as the family lawyer in the settlement of his father's estate. Nonetheless, he

left it to Comm. Rico to resolve the case in the light of his affidavit of desistance and the circumstances of the case.

The Case for the Respondent

In his position paper,^[20] dated March 21, 2007, the respondent alleged that upon his engagement as counsel by Lazareto's family, he advised them that he could not determine the exact date of completion or termination of his assigned task, considering that he did not have full control over the processing of documents by the concerned agencies.

He denied Lazareto's submission that he had been negligent in the performance of his duties as lawyer for the settlement of the estate of Lazareto's deceased father. He claimed that he performed the tasks assigned to him with honesty and diligence and that he intended, in good faith, to complete his tasks at the soonest possible time.

Additionally, the respondent alleged that Pacheco stole a substantial amount of money from the firm, as well as several original documents, and that Pacheco could not be found despite efforts to locate him.^[21] Lazareto, however, alleged that the documents were returned to the respondent.^[22] The respondent claimed that he had to borrow money from his relatives, friends, and even from informal lenders to enable him to continue performing his work for Lazareto and his family. He stressed that despite the losses he suffered, "he was able to finalize all documents and transactions and to deliver the certificate of title covering Lot B."^[23]

The respondent further claimed that he was determined to complete the task assigned to him despite the fact that Lazareto, his mother Clotilde, and Ramon Lazareto became "impatient" and "intrusive" in their language and dealings with him.^[24]

He insisted that he was not negligent in handling the task entrusted to him by the Lazareto family and that he was entitled to the presumption of diligence as the Court held in *Adarne v. Aldaba*.^[25] He stressed that Lazareto had executed an affidavit of desistance and had, in fact, agreed to let him continue as the family lawyer. This being the case, he maintained, Lazareto should be deemed to have abandoned his cause of action against him. He thus prayed that the complaint be dismissed.

The Investigating Commissioner's Report and Recommendation

Commissioner Angelito C. Inocencio (*Comm. Inocencio*), who took over the investigation from Comm. Rico, rendered a report dated May 14, 2008,^[26] recommending that disciplinary action be taken against respondent. He resolved the case based on the following issues: (1) whether respondent was negligent in handling the legal matter entrusted to him; and (2) whether respondent acted in bad faith in dealing with complainant Lazareto and his family.

Comm. Inocencio found respondent liable in regard to the first issue. He was convinced that respondent committed a breach of Rule 18.03 of the Code of

Professional Responsibility by his negligence in handling the legal matter entrusted to him by Lazareto. Comm. Inocencio believed that had the respondent been conscientious, diligent, and efficient in rendering legal services to Lazareto and his family, the complaint could have been avoided. He faulted the respondent for making excuses — Pacheco absconding with the funds of the law firm and the negative attitude of the Lazareto family in dealing with him — for his failure to fulfill his contractual obligation to them rather than what he had accomplished.

With respect to the second issue, however, Comm. Inocencio believed the respondent's dealings with Lazareto and his family were not attended with bad faith. He explained that while the respondent's efforts did not produce the desired results "as fast as they should have, a modicum of living up to expectations could be discerned. He succeeded, though belatedly, in finalizing all documents and transactions and delivering the certificate of title covering Lot B."^[27]

Notwithstanding Lazareto's affidavit of desistance, Comm. Inocencio recommended that the respondent be severely censured for his "malfeasance" as lawyer for the Lazareto family.^[28] Although the family gave the respondent the opportunity to make amends for his negligence in the handling of the legal matter entrusted to him, Comm. Inocencio pointed out, the affidavit of desistance did not completely exculpate him from liability for "what has occurred."^[29]

The IBP Resolution and Related Incidents

On July 17, 2008, the IBP Board of Governors passed Resolution No. XVIII-2008-347,^[30] approving, **with modification**, Comm. Inocencio's recommendation. The board **suspended** respondent from the practice of law for one month, for his failure to comply with his obligation towards Lazareto and his family.

The respondent moved for reconsideration^[31] of the IBP resolution, praying that the case be dismissed on the grounds of supervening events which occurred after the case was submitted for resolution. He claimed that the very reason why the complaint was filed — his failure to return to Lazareto the TCT for Lot E of the estate of his deceased father — was non-existent as the document was found among the records of his former law office and was returned to Lazareto on June 9, 2007.^[32]

The respondent argued that in the light of Comm. Inocencio's finding that he did not act in bad faith in dealing with Lazareto and the fact that he had returned the TCT of Lot E and substantially all of the amounts paid to him, substantial justice, fairness and equity demand that the case be dismissed.

Lazareto opposed^[33] the respondent's bid to have the case dismissed. He strongly argued that while he and his family had accepted the respondent's personal apology for the grievous betrayal of their trust and confidence and the wanton disregard of their interest in the extrajudicial settlement of his father's property, it did not mean that the respondent did not commit a violation of the Code of Professional Responsibility.

Lazareto bewailed the fact that he was not given the opportunity to present to Comm. Rico the "full facts and issues" of the case, as the IBP investigator denied his