

EN BANC

[A.C. No. 9872, January 28, 2014]

**NATIVIDAD P. NAVARRO AND HILDA S. PRESBITERO,
COMPLAINANTS, VS. ATTY. IVAN M. SOLIDUM, JR.,
RESPONDENT.**

D E C I S I O N

PER CURIAM:

This case originated from a complaint for disbarment, dated 26 May 2008, filed by Natividad P. Navarro (Navarro) and Hilda S. Presbitero (Presbitero) against Atty. Ivan M. Solidum, Jr. (respondent) before the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD).

From the Report, dated 1 July 2009, of the IBP-CBD, we gathered the following facts of the case:

On 4 April 2006, respondent signed a retainer agreement with Presbitero to follow up the release of the payment for the latter's 2.7-hectare property located in Bacolod which was the subject of a Voluntary Offer to Sell (VOS) to the Department of Agrarian Reform (DAR). The agreement also included the payment of the debts of Presbitero's late husband to the Philippine National Bank (PNB), the sale of the retained areas of the property, and the collection of the rentals due for the retained areas from their occupants. It appeared that the DAR was supposed to pay P700,000 for the property but it was mortgaged by Presbitero and her late husband to PNB for P1,200,000. Presbitero alleged that PNB's claim had already prescribed, and she engaged the services of respondent to represent her in the matter. Respondent proposed the filing of a case for quieting of title against PNB. Respondent and Presbitero agreed to an attorney's fee of 10% of the proceeds from the VOS or the sale of the property, with the expenses to be advanced by Presbitero but deductible from respondent's fees. Respondent received P50,000 from Presbitero, supposedly for the expenses of the case, but nothing came out of it.

In May 2006, Presbitero's daughter, Ma. Theresa P. Yulo (Yulo), also engaged respondent's services to handle the registration of her 18.85-hectare lot located in Nasud-ong, Caradio-an, Himamaylan, Negros. Yulo convinced her sister, Navarro, to finance the expenses for the registration of the property. Respondent undertook to register the property in consideration of 30% of the value of the property once it is registered. Respondent obtained P200,000 from Navarro for the registration expenses. Navarro later learned that the registration decree over the property was already issued in the name of one Teodoro Yulo. Navarro alleged that she would not have spent for the registration of the property if respondent only apprised her of the real situation of the property.

On 25 May 2006, respondent obtained a loan of P1,000,000 from Navarro to

finance his sugar trading business. Respondent and Navarro executed a Memorandum of Agreement (MOA) and agreed that the loan (a) shall be for a period of one year; (b) shall earn interest at the rate of 10% per month; and (c) shall be secured by a real estate mortgage over a property located in Barangay Alijis, Bacolod City, covered by Transfer Certificate of Title No. 304688. They also agreed that respondent shall issue postdated checks to cover the principal amount of the loan as well as the interest thereon. Respondent delivered the checks to Navarro, drawn against an account in Metrobank, Bacolod City Branch, and signed them in the presence of Navarro.

In June 2006, respondent obtained an additional loan of P1,000,000 from Navarro, covered by a second MOA with the same terms and conditions as the first MOA. Respondent sent Navarro, through a messenger, postdated checks drawn against an account in Bank of Commerce, Bacolod City Branch. Respondent likewise discussed with Navarro about securing a "Tolling Agreement" with Victorias Milling Company, Inc. but no agreement was signed.

At the same time, respondent obtained a loan of P1,000,000 from Presbitero covered by a third MOA, except that the real estate mortgage was over a 263-square-meter property located in Barangay Taculing, Bacolod City. Respondent sent Presbitero postdated checks drawn against an account in Metrobank, Bacolod City Branch.

Presbitero was dissatisfied with the value of the 263-square-meter property mortgaged under the third MOA, and respondent promised to execute a real estate mortgage over a 1,000-square-meter parcel of land adjacent to the 4,000-square-meter property he mortgaged to Navarro. However, respondent did not execute a deed for the additional security.

Respondent paid the loan interest for the first few months. He was able to pay complainants a total of P900,000. Thereafter, he failed to pay either the principal amount or the interest thereon. In September 2006, the checks issued by respondent to complainants could no longer be negotiated because the accounts against which they were drawn were already closed. When complainants called respondent's attention, he promised to pay the agreed interest for September and October 2006 but asked for a reduction of the interest to 7% for the succeeding months.

In November 2006, respondent withdrew as counsel for Yulo. On the other hand, Presbitero terminated the services of respondent as counsel. Complainants then filed petitions for the judicial foreclosure of the mortgages executed by respondent in their favor. Respondent countered that the 10% monthly interest on the loan was usurious and illegal. Complainants also filed cases for estafa and violation of Batas Pambansa Blg. 22 against respondent.

Complainants alleged that respondent induced them to grant him loans by offering very high interest rates. He also prepared and signed the checks which turned out to be drawn against his son's accounts. Complainants further alleged that respondent deceived them regarding the identity and value of the property he mortgaged because he showed them a different property from that which he owned. Presbitero further alleged that respondent mortgaged his 263-square-meter property to her for P1,000,000 but he later sold it for only P150,000.

Respondent, for his defense, alleged that he was engaged in sugar and realty business and that it was Yulo who convinced Presbitero and Navarro to extend him loans. Yulo also assured him that Presbitero would help him with the refining of raw sugar through Victorias Milling Company, Inc. Respondent alleged that Navarro fixed the interest rate and he agreed because he needed the money. He alleged that their business transactions were secured by real estate mortgages and covered by postdated checks. Respondent denied that the property he mortgaged to Presbitero was less than the value of the loan. He also denied that he sold the property because the sale was actually rescinded. Respondent claimed that the property he mortgaged to Navarro was valuable and it was actually worth more than P8,000,000.

Respondent alleged that he was able to pay complainants when business was good but he was unable to continue paying when the price of sugar went down and when the business with Victorias Milling Company, Inc. did not push through because Presbitero did not help him. Respondent also denied that he was hiding from complainants.

Respondent further alleged that it was Yulo who owed him P530,000 as interest due for September to December 2005. He denied making any false representations. He claimed that complainants were aware that he could no longer open a current account and they were the ones who proposed that his wife and son issue the checks. Respondent further alleged that he already started with the titling of Yulo's lot but his services were terminated before it could be completed.

A supplemental complaint was filed charging respondent with accepting cases while under suspension. In response, respondent alleged that he accepted Presbitero's case in February 2006 and learned of his suspension only in May 2006.

After conducting a hearing and considering the position papers submitted by the parties, the IBP-CBD found that respondent violated the Code of Professional Responsibility.

The IBP-CBD found that respondent borrowed P2,000,000 from Navarro and P1,000,000 from Presbitero which he failed to pay in accordance with the MOAs he executed. The IBP-CBD found that based on the documents presented by the parties, respondent did not act in good faith in obtaining the loans. The IBP-CBD found that respondent either promised or agreed to pay the very high interest rates of the loans although he knew them to be exorbitant in accordance with jurisprudence. Respondent likewise failed to deny that he misled Navarro and her husband regarding the identity of the property mortgaged to them. Respondent also mortgaged a property to Presbitero for P1,000,000 but documents showed that its value was only P300,000. Documents also showed that he sold that property for only P150,000. Respondent conspired with Yulo to secure loans by promising her a 10% commission and later claimed that they agreed that Yulo would "ride" on the loan by borrowing P300,000 from the amount he obtained from Navarro and Presbitero. Respondent could not explain how he lost all the money he borrowed in three months except for his claim that the price of sugar went down.

The IBP-CBD found that respondent misled Navarro and Presbitero regarding the issuance of the postdated checks, and there was nothing in the records that would

show that he informed them that it would be his wife or son who would issue the checks. The IBP-CBD also found that respondent had not been transparent in liquidating the money he received in connection with Presbitero's VOS with DAR. He was also negligent in his accounting regarding the registration of Yulo's property which was financed by Navarro.

The IBP-CBD found that respondent was guilty of violating Rule 1.01 of the Code of Professional Responsibility for committing the following acts:

- (1) signing drawn checks against the account of his son as if they were from his own account;
- (2) misrepresenting to Navarro the identity of the lot he mortgaged to her;
- (3) misrepresenting to Presbitero the true value of the 263-square-meter lot he mortgaged to her;
- (4) conspiring with Yulo to obtain the loans from complainants;
- (5) agreeing or promising to pay 10% interest on his loans although he knew that it was exorbitant; and
- (6) failing to pay his loans because the checks he issued were dishonored as the accounts were already closed.

The IBP-CBD also found that respondent violated Canon 16 and Rule 16.01 of the Code of Professional Responsibility when he failed to properly account for the various funds he received from complainants.

In addition, the IBP-CBD found that respondent violated Rule 16.04 of the Code of Professional Responsibility which prohibits borrowing money from a client unless the client's interest is fully protected or the client is given independent advice.

On the matter of practicing law while under suspension, the IBP-CBD found that the records were not clear whether the notice of suspension respondent received on 29 May 2006 was the report and recommendation of the IBP-CBD or the final decision of this Court. The IBP-CBD likewise found that there was insufficient evidence to prove that respondent mishandled his cases.

The IBP-CBD recommended that respondent be meted the penalty of disbarment.

In Resolution No. XIX-2011-267 dated 14 May 2011, the IBP Board of Governors adopted and approved the recommendation of the IBP-CBD with modification by reducing the recommended penalty from disbarment to suspension from the practice of law for two years. The IBP Board of Governors likewise ordered respondent to return the amount of his unpaid obligation to complainants.

Complainants filed a motion for reconsideration, praying that the penalty of disbarment be instead imposed upon respondent.

The only issue in this case is whether respondent violated the Code of Professional Responsibility.

The records show that respondent violated at least four provisions of the Code of Professional Responsibility.