

FIRST DIVISION

**[A.C. No. 9976 [Formerly CBD Case No. 09-2539],
June 25, 2014]**

**ALMIRA C. FORONDA, COMPLAINANT, VS. ATTY. JOSE L.
ALVAREZ, JR., RESPONDENT.**

D E C I S I O N

REYES, J.:

This refers to the complaint^[1] for disbarment filed before the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD) by Almira C. Foronda (complainant) against Atty. Jose L. Alvarez, Jr. (respondent) for the following alleged infractions:

- (1) Fraud and deceit in luring [the complainant] in transacting business with [the respondent];
- (2) Dishonesty and misrepresentation when [the respondent] misinformed [the complainant] that [her] annulment case was already filed when in fact it was not;
- (3) Issuing unfunded checks as payment for [the respondent's] obligations to [the complainant];
- (4) Violation of Canon 15.06 of the Code of Professional Responsibilities when [the respondent] represented to [the complainant] that he know[s] of court personnel who will help facilitate [the complainant's] annulment case;
- (5) Violation of Canons 16.01 and 16.03 for failure to return [the complainant's] money despite numerous demands; and
- (6) Violation of Canon 18.04 when [the respondent] misinformed [the complainant] regarding the status of [her] annulment case.^[2]

Facts

The complainant is an overseas Filipino worker in Dubai. In May 2008, she returned to the Philippines to institute a case for the nullification of her marriage. The respondent was referred to her and the complainant agreed to engage his services for a fee of P195,000.00 to be paid as follows: 50% or P100,000.00 upon the signing of the contract; 25% or P50,000.00 on or before June 10, 2008; and 25% or P45,000.00 before the filing of the case.^[3] The complainant paid the amounts as agreed. The amount of P45,000.00 was even paid on June 10, 2008,^[4] after being informed by the respondent that the petition for the annulment of marriage was ready for filing.

The complainant averred that the respondent promised to file the petition after he

received the full payment of his attorney's fee, or on June 11, 2008. In September 2008, the complainant inquired about the status of her case and was allegedly told by the respondent that her petition was pending in court; and in another time, she was told that a decision by the court was already forthcoming. However, when she came back to the country in May 2009, the respondent told her that her petition was still pending in court and apologized for the delay. Eventually, the complainant was able to get a copy of her petition and found out that it was filed only on July 16, 2009.^[5]

The complainant further alleged in her complaint that the week after she signed the contract of service with the respondent, the latter requested for a meeting. Thinking that they were going to discuss her case, she agreed. But during the meeting, the respondent invited her to be an investor in the lending business allegedly ran by the respondent's sister-in-law.^[6] The respondent encouraged her to invest P200,000.00 which he said can earn five percent (5%) interest per month.

The complainant finally agreed on the condition that the respondent shall issue personal and post-dated checks in her favor dated the 10th of each month starting July 2008 until June 10, 2009, representing the five percent (5%) interest that the complainant's money shall earn. Thus, the complainant gave P200,000.00 to the respondent upon the security of thirteen (13) United Coconut Planters Bank (UCPB) checks. Eleven (11) of said checks were for P8,000.00 each. The other two (2) checks dated June 8, 2009 and June 10, 2009 were for P100,000.00 and P108,000.00, respectively.^[7]

According to the complainant, upon presentment of these checks, the drawee-bank honored the first two (2) checks, but the rest were dishonored for being drawn against a closed account. When she brought the matter to the respondent, he promised to pay her in cash. He actually paid her certain amounts as interest through her representative. Nevertheless, the respondent failed to pay the entire obligation as promised. Thereafter, the respondent issued eight (8) Banco de Oro (BDO) checks as replacement for the dishonored UCPB checks. However, the BDO checks were likewise dishonored for being drawn against a closed account.^[8]

In his Answer,^[9] the respondent admitted that he filed the petition for annulment only in July 2009 but this was not due to his own fault. The delay was caused by the complainant herself who allegedly instructed him to hold the filing of the said petition as she and her husband were discussing a possible reconciliation.^[10] He further claimed that he filed the petition on July 16, 2009 after negotiations with the complainant's husband apparently failed.^[11]

The respondent also admitted that he invited the complainant to be a partner in a lending business and clarified that the said business was being managed by a friend. He further stated that he was also involved in the said business as a partner.^[12]

The respondent admitted that only the first two (2) of the checks he issued were honored by the drawee-bank. He stated that prior to the presentment and dishonor of the rest of the UCPB checks, he advised the complainant that the third check should not be deposited just yet due to losses in their lending business caused by the failure of some borrowers to settle their obligations.^[13] Apart from the

foregoing, the respondent denied most of the allegations in the complaint, including the dishonor of the BDO checks, for lack of sufficient information to form a belief as to the truth thereof.^[14]

By way of special and affirmative defense, the respondent asserted the following: that it was the complainant who owed him notarial fee amounting to P80,000.00 as he notarized a deed of conditional sale executed between her and a certain Rosalina A. Ruiz over a real property worth P4,000,000.00;^[15] and that the contract he executed with the complainant was a mere contract of loan. Being a contract of loan, he cannot be held guilty of violation of *Batas Pambansa Bilang 22* (B.P. Blg. 22) since the checks he issued were to serve only as security for it.^[16]

The parties were called to a mandatory conference before the IBP-CBD on January 18, 2010 by the Investigating Commissioner.^[17] Thereafter, the parties were required to submit their respective position paper.

In an undated Report,^[18] the Investigating Commissioner made the following factual findings:

From the foregoing, it appears that the following facts are not disputed. The complainant is an overseas Filipino worker based in Dubai. During her vacation in the Philippines in May 2008, she contracted the services of respondent to file a petition for the annulment of her marriage for an agreed packaged fee of [P]195,000.00 which she paid in full by June 2008. Respondent, however, filed the petition for the annulment of her marriage only in July 2009. In the meantime, more specifically in June 2008, respondent obtained [P]200,000.00 from complainant with the promise to pay the same with interest at 4% per month starting July 2008 until June 2009. Respondent issued complainant eleven (11) checks for [P]8,000.00 each postdated checks monthly from 10 July 2008 until 10 May 2009 plus a check for [P]108,000.00 payable on 10 June 2009 and another check for [P]100,000.00 payable on 8 June 2009. When presented for payment, the first two (2) checks were good but the rest of the checks were dishonored for being drawn against a closed account. When complainant demanded payment, respondent issued to her eight (8) new replacement postdated checks dated 25th of every month from June 2009 to January 2010. All of the replacement checks, however, were likewise dishonored for being drawn against a closed account. When respondent was unable to pay respondent, complainant filed a criminal complaint against him for violation of BP 22 before the Office of the City Prosecutor of Muntinlupa. The criminal complaint was eventually dismissed after complainant executed an affidavit of desistance after she was paid a certain amount by respondent.^[19]

The Investigating Commissioner found that there was basis to hold the respondent liable, to wit:

1. Respondent Atty. Alvarez, Jr. is guilty of delay in the filing of the petition for annulment of the marriage of complainant for almost a year. Initially, in his Answer, he claims that the delay was due to the instruction of complainant to hold in abeyance the filing of the petition as she and her husband discussed possible reconciliation. In his Position Paper, he claims that the delay was due to the failure of the complainant to submit to an interview by the psychologist and the time it took him to research on the guidelines on the matter. Finally, in his Supplemental Affidavit, he admits the delay and apologizes for it. For delaying in filing the petition for complainant, respondent should be deemed guilty of violating Canons 17 and 18 of the Code of Professional Responsibility which pertinent read:

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

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

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

x x x x

2. Respondent lied about the delay. The allegations of complainant about how respondent lied to her about the delay in the filing of the petition are very detailed. While denying he misrepresented to complainant that the petition has been filed when it was not, respondent did not care to refute also in detail the allegations of complainant. In his Answer, he simply denied the same for the reason [that] he has no sufficient information to form a belief as to the truth thereof. It should be noted, however, that the allegations pertains [sic] to things respondent said and did[,] and are therefore[,] matters which he knew or should have known. His denial is therefore tantamount to an admission. In doing so, respondent is guilty of violating not only Canon 15 but also Rule 18.04 of the Code of Professional Responsibility, which read:

CANON 15. – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

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

x x x x

3. Respondent induced complainant to lend him money at 5% interest per month but failed to pay the same. This is admitted by respondent.

Rule 16.04 provides that a lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Obviously, respondent borrowed money from his client and his client's interest was not fully protected. In fact, respondent repeatedly failed to comply with his promise to pay complainant. The fact that he subsequently paid complainant more than the amount due from him as part of the settlement of the criminal complaint filed by her against him hardly serves to mitigate his liability. x x x.

4. He issued two sets of checks which were dishonored when presented for payment. This is admitted by respondent. x x x.^[20]

The Investigating Commissioner, thereby, recommended the penalty of two years suspension from the practice of law with a warning that a repetition of the offenses shall merit a heavier penalty.^[21]

In a Resolution dated December 14, 2012, the Board of Governors of the IBP adopted and approved with modification the findings of the Investigating Commissioner. It directed the suspension of the respondent from the practice of law for one year with warning that repetition of the similar conduct shall be dealt with more severely.^[22]

The Court's Ruling

At the outset, it must be stressed that "[a] lawyer, by taking the lawyer's oath, becomes a guardian of the law and an indispensable instrument for the orderly administration of justice."^[23] He can be disciplined for any conduct, in his professional or private capacity, which renders him unfit to continue to be an officer of the court.^[24] For of all classes and professions, it is the lawyer who is most sacredly bound to uphold the laws, for he is their sworn servant.^[25]

"Disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession."^[26] Therefore, it is incumbent upon this Court to determine the full extent of the respondent's liability, and to impose the proper penalty therefor.

It was established that the complainant engaged the professional services of the respondent. She expected the immediate filing of the petition for the nullity of her marriage after the full payment of attorney's fees on June 10, 2008. However, the respondent filed the said petition only on July 16, 2009. The respondent gave out different reasons for the delay in an attempt to exculpate himself. At the end, the respondent admitted the delay and apologized for it. It cannot be gainsaid that the complainant through her agent was diligent in following up the petition. The different excuses proffered by the respondent also show his lack of candor in his dealings with the complainant.

"Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him."