

EN BANC

[A.C. No. 10579, December 10, 2014]

**ERLINDA FOSTER, COMPLAINANT, VS. ATTY. JAIME V. AGTANG,
RESPONDENT.**

DECISION

PER CURIAM:

This refers to the Resolution^[1] of the Board of Governors (*BOG*), Integrated Bar of the Philippines (*IBP*), dated March 23, 2014, affirming with modification the findings of the Investigating Commissioner, who recommended the suspension of respondent Atty. Jaime V. Agtang (*respondent*) from the practice of law for one (1) year for ethical impropriety and ordered the payment of his unpaid obligations to complainant.

From the records, it appears that the IBP, thru its Commission on Bar Discipline (*CBD*), received a complaint^[2], dated May 31, 2011, filed by Erlinda Foster (*complainant*) against respondent for “unlawful, dishonest, immoral and deceitful”^[3] acts as a lawyer.

In its July 1, 2011 Order,^[4] the IBP-CBD directed respondent to file his Answer within 15 days from receipt of the order. Respondent failed to do so and complainant sent a query as to the status of her complaint. On October 10, 2011, the Investigating Commissioner issued the Order^[5] setting the case for mandatory conference/hearing on November 16, 2011. It was only on November 11, 2011, or five (5) days before the scheduled conference when respondent filed his verified Answer.^[6]

During the conference, only the complainant together with her husband appeared. She submitted a set of documents contained in a folder, copies of which were furnished the respondent. The Investigating Commissioner^[7] indicated that the said documents would be reviewed and the parties would be informed if there was a need for clarificatory questioning; otherwise, the case would be submitted for resolution based on the documents on file. The Minutes^[8] of the mandatory conference showed that respondent arrived at 11:10 o'clock in the morning or after the proceeding was terminated.

On December 12, 2011, the complainant filed her Reply to respondent's Answer.

On April 18, 2012, complainant submitted copies of the January 24, 2012 Decisions^[9] of the Municipal Trial Court in Small Claims Case Nos. 2011-0077 and 2011-0079, ordering respondent [defendant therein] to pay complainant and her husband the sum of P100,000.00 and P22,000.00, respectively, with interest at the

rate of 12% per annum from December 8, 2011 until fully paid, plus cost of suit.^[10]

Complainant's Position

From the records, it appears that complainant was referred to respondent in connection with her legal problem regarding a deed of absolute sale she entered into with Tierra Realty, which respondent had notarized. After their discussion, complainant agreed to engage his legal services for the filing of the appropriate case in court, for which they signed a contract. Complainant paid respondent P20,000.00 as acceptance fee and P5,000.00 for incidental expenses.^[11]

On September 28, 2009, respondent wrote a letter^[12] to Tropical Villas Subdivision in relation to the legal problem referred by complainant. He then visited the latter in her home and asked for a loan of P100,000.00, payable in sixty (60) days, for the repair of his car. Complainant, having trust and confidence on respondent being her lawyer, agreed to lend the amount without interest. A promissory note^[13] evidenced the loan.

In November 2009, complainant became aware that Tierra Realty was attempting to transfer to its name a lot she had previously purchased. She referred the matter to respondent who recommended the immediate filing of a case for reformation of contract with damages. On November 8, 2009, respondent requested and thereafter received from complainant the amount of P150,000.00, as filing fee.^[14] When asked about the exorbitant amount, respondent cited the high value of the land and the sheriffs' travel expenses and accommodations in Manila, for the service of the summons to the defendant corporation. Later, complainant confirmed that the fees paid for the filing of Civil Case No. 14791-65, entitled *Erlinda Foster v. Tierra Realty and Development Corporation*, only amounted to P22,410.00 per trial court records.^[15]

During a conversation with the Registrar of Deeds, complainant also discovered that respondent was the one who notarized the document being questioned in the civil case she filed. When asked about this, respondent merely replied that he would take a collaborating counsel to handle complainant's case. Upon reading a copy of the complaint filed by respondent with the trial court, complainant noticed that: 1] the major differences in the documents issued by Tierra Realty were not alleged; 2] the contract to buy and sell and the deed of conditional sale were not attached thereto; 3] the complaint discussed the method of payment which was not the point of contention in the case; and 4] the very anomalies she complained of were not mentioned. Respondent, however, assured her that those matters could be brought up during the hearings.

On April 23, 2010, respondent wrote to complainant, requesting that the latter extend to him the amount of P70,000.00 or P50,000.00 "in the moment of urgency or emergency."^[16] Complainant obliged the request and gave respondent the sum of P22,000.00.

On August 31, 2010, respondent came to complainant's house and demanded the sum of P50,000.00, purportedly to be given to the judge in exchange for a favorable ruling. Complainant expressed her misgivings on this proposition but she eventually

gave the amount of P25,000.00 which was covered by a receipt,^[17] stating that “it is understood that the balance of P25,000.00 shall be paid later after favorable judgment for plaintiff Erlinda Foster.” On November 2, 2010, respondent insisted that the remaining amount be given by complainant prior to the next hearing of the case, because the judge was allegedly asking for the balance. Yet again, complainant handed to respondent the amount of P25,000.00.^[18]

On September 29, 2010, complainant’s case was dismissed. Not having been notified by respondent, complainant learned of the dismissal on December 14, 2010, when she personally checked the status of the case with the court. She went to the office of respondent, but he was not there. Instead, one of the office staff gave her a copy of the order of dismissal.

On December 15, 2010, respondent visited complainant and gave her a copy of the motion for reconsideration. On January 15, 2011, complainant went to see respondent and requested him to prepare a reply to the comment filed by Tierra Realty on the motion for reconsideration; to include additional facts because the Land Registration Authority would not accept the documents unless these were amended; and to make the additional averment that the defendant was using false documents.

On January 18, 2011, respondent’s driver delivered to complainant a copy of the reply with a message from him that the matters she requested to be included were mentioned therein. Upon reading the same, however, complainant discovered that these matters were not so included. On the same occasion, the driver also asked for P2,500.00 on respondent’s directive for the reimbursement of the value of a bottle of wine given to the judge as a present. Complainant was also told that oral arguments on the case had been set the following month.^[19]

On February 2, 2011, complainant decided to terminate the services of respondent as her counsel and wrote him a letter of termination,^[20] after her friend gave her copies of documents showing that respondent had been acquainted with Tierra Realty since December 2007. Subsequently, complainant wrote to respondent, requesting him to pay her the amounts he received from her less the contract fee and the actual cost of the filing fees. Respondent never replied.

Respondent’s Position

In his Answer,^[21] respondent alleged that he was 72 years old and had been engaged in the practice of law since March 1972, and was President of the IBP Ilocos Norte Chapter from 1998 to 1999. He admitted the fact that he notarized the Deed of Absolute Sale subject of complainant’s case, but he qualified that he was not paid his notarial fees therefor. He likewise admitted acting as counsel for complainant for which he claimed to have received P10,000.00 as acceptance fee and P5,000.00 for incidental fees. Anent the loan of P100,000.00, respondent averred that it was complainant, at the behest of her husband, who willingly offered the amount to him for his patience in visiting them at home and for his services. The transaction was declared as “no loan” and he was told not to worry about its payment. As regards the amount of P150,000.00 he received for filing fees, respondent claimed that the said amount was suggested by the complainant herself who was persistent in covering the incidental expenses in the handling of the case.

He denied having said that the sheriffs of the court would need the money for their hotel accommodations. Complainant's husband approved of the amount. In the same vein, respondent denied having asked for a loan of P50,000.00 and having received P22,000.00 from complainant. He also denied having told her that the case would be discussed with the judge who would rule in their favor at the very next hearing. Instead, it was complainant who was bothered by the possibility that the other party would befriend the judge. He never said that he would personally present a bottle of wine to the judge.

Further, respondent belied the Registrar's comment as to his representation of Tierra Realty in the past. Respondent saw nothing wrong in this situation since complainant was fully aware that another counsel was assisting him in the handling of cases. Having been fully informed of the nature of her cause of action and the consequences of the suit, complainant was aware of the applicable law on reformation of contracts. Finally, by way of counterclaim, respondent demanded just compensation for the services he had rendered in other cases for the complainant.

Reply of Complainant

In her Reply,^[22] complainant mainly countered respondent's defenses by making reference to the receipts in her possession, all evidencing that respondent accepted the amounts mentioned in the complaint. Complainant also emphasized that respondent and Tierra Realty had relations long before she met him. While respondent was employed as Provincial Legal Officer of the Provincial Government of Ilocos Norte, he was involved in the preparation of several documents involving Flying V, an oil company owned by Ernest Villavicencio, who likewise owned Tierra Realty. Complainant insisted that the amount of P100,000.00 she extended to respondent was never considered as "no loan."

On June 26, 2012, complainant furnished the Investigating Commissioner copies of the Resolution, dated June 20, 2012, issued by the Office of the City Prosecutor of Laoag City, finding probable cause against respondent for estafa.^[23]

Findings and Recommendation of the IBP

In its July 3, 2012 Report and Recommendation,^[24] the Investigating Commissioner found respondent guilty of ethical impropriety and recommended his suspension from the practice of law for one (1) year.

In its September 28, 2013 Resolution, the IBP-BOG adopted and approved with modification the recommendation of suspension by the Investigating Commissioner and ordered respondent to return to complainant: 1) his loan of P122,000.00; and 2) the balance of the filing fee amounting to P127,590.00.

Respondent received a copy of the said resolution on January 16, 2014 to which he filed a motion for reconsideration.^[25] Complainant filed her opposition thereto, informing the IBP-BOG that an information charging respondent for estafa had already been filed in court and that a corresponding order for his arrest had been issued.^[26]

In its March 23, 2014 Resolution, the IBP-BOG denied respondent's motion for

reconsideration but modified the penalty of his suspension from the practice of law by reducing it from one (1) year to three (3) months. Respondent was likewise ordered to return the balance of the filing fee received from complainant amounting to P127,590.00.

No petition for review was filed with the Court.

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

The Court's Ruling

The Court sustains the findings and recommendation of the Investigating Commissioner with respect to respondent's violation of Rules 1 and 16 of the *CPR*. The Court, however, modifies the conclusion on his alleged violation of Rule 15, on representing conflicting interests. The Court also differs on the penalty.

Rule 1.0, Canon 1 of the *CPR*, provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is well-established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court."^[27]

In this case, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional and private capacity. As a lawyer, he clearly misled complainant into believing that the filing fees for her case were worth more than the prescribed amount in the rules, due to feigned reasons such as the high value of the land involved and the extra expenses to be incurred by court employees. In other words, he resorted to overpricing, an act customarily related to depravity and dishonesty. He demanded the amount of P150,000.00 as filing fee, when in truth, the same amounted only to P22,410.00. His defense that it was complainant who suggested that amount deserves no iota of credence. For one, it is highly improbable that complainant, who was then plagued with the rigors of litigation, would propose such amount that would further burden her financial resources. Assuming that the complainant was more than willing to shell out an exorbitant amount just to initiate her complaint with the trial court, still, respondent should not have accepted the excessive amount. As a lawyer, he is not only expected to be knowledgeable in the matter of filing fees, but he is likewise duty-bound to disclose to his client the actual amount due, consistent with the values of honesty and good faith expected of all members of the legal profession.

Moreover, the "fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client."^[28] Money entrusted to a lawyer for a specific purpose but not used for the purpose should be immediately returned. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal