

FIRST DIVISION

[ADM. CASE NO. 9612, March 13, 2013]

**JOHNNY M. PESTO, COMPLAINANT, VS. MARCELITO M. MILLO,
RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

An attorney who conceals his inefficiency and lack of diligence by giving wrong information to his client regarding the matter subject of their professional relationship is guilty of conduct unbecoming an officer of the Court. He thereby violates his Lawyer's Oath to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his client. He also thereby violates Rule 18.03, Canon 18 of the Code of Professional Responsibility, by which he is called upon to serve his client with competence and diligence.

Antecedents

In this administrative case, Johnny Pesto (Johnny), a Canadian national, charged Atty. Marcelito M. Millo with conduct unbecoming an officer of the Court, misleading his client, bungling the transfer of title, and incompetence and negligence in the performance of his duty as a lawyer.

Johnny averred that in May 1990, his wife Abella Pesto (Abella) retained the services of Atty. Millo to handle the transfer of title over a parcel of land to her name, and the adoption of her niece, Arvi Jane Dizon;^[1] that Johnny and Abella gave to Atty. Millo the amounts of P14,000.00 for the transfer of title^[2] and P10,000.00 for the adoption case;^[3] that Atty. Millo thereafter repeatedly gave them false information and numerous excuses to explain his inability to complete the transfer of title; that Atty. Millo likewise made them believe that the capital gains tax for the property had been paid way back in 1991, but they found out upon their return to the country in February 1995 that he had not yet paid the tax; that when they confronted him, Atty. Millo insisted that he had already paid the same, but he could not produce any receipt for the supposed payment; that Atty. Millo reluctantly returned to Abella the amount of P14,000.00 only after he stormed out of Atty. Millo's office in exasperation over his stalling tactics; and that Atty. Millo then further promised in writing to assume the liability for the accrued penalties.^[4]

Likewise, Johnny blamed Atty. Millo for letting the adoption case be considered closed by the Tarlac office of the Department of Social Welfare and Development (Tarlac DSWD) due to two years of inaction. He stated that Atty. Millo made him and his wife believe that an interview with the Tarlac DSWD had been scheduled on February 14, 1995, but when they arrived at the Tarlac DSWD they were dismayed to be told that no such interview had been scheduled; that adding to their dismay,

Atty. Millo could not be reached at all; that it was only upon reaching home in Quezon City when he received word from Atty. Millo that a hearing had again been scheduled on February 23, 1995 at 10:00 a.m.; that when they went to the hearing, Atty. Millo could not be found; and that they learned after an hour of waiting in the courthouse in Tarlac that Atty. Millo had requested the hearing to be moved to the afternoon without their knowledge.^[5]

Exasperated by Atty. Millo's neglect and ineptitude, Johnny brought this administrative complaint in the Integrated Bar of the Philippines (IBP) on March 14, 1995, praying for disciplinary action to be taken against Atty. Millo, and seeking the refund of P15,643.75 representing the penalties for the non-payment of the capital gains tax, and of the P10,000.00 given for the adoption case. Being a resident of Canada, he constituted one Tita Lomotan as his attorney-in-fact to represent him during his and his wife's absence from the country.

On July 10, 1995, the IBP ordered Atty. Millo to file his answer.^[6] Although an extension of the period to file was granted at his instance,^[7] he filed no answer in the end.^[8] He did not also appear at the hearings despite due notice.^[9]

In the meantime, the IBP required Johnny through Lomotan to engage a counsel. The proceedings were held in abeyance to await the appropriate motion from Johnny's counsel.^[10]

The administrative matter did not move for several years. The long delay prompted Johnny to write to the President of the IBP on October 28, 1998.^[11] It was only on April 2, 2001, however, that the IBP Commission on Bar Discipline (IBP-CBD) scheduled another hearing on June 29, 2001.^[12] At that hearing, Atty. Millo appeared through a representative, and presented a manifestation/motion,^[13] whereby he claimed that Johnny had meanwhile died, and that Abella would be withdrawing the complaint against him.

On October 11, 2001, the IBP-CBD, through Commissioner Victoria Gonzalez-De los Reyes, deemed the case submitted for resolution.^[14]

On October 4, 2010, Investigating Commissioner Victor C. Fernandez, to whom the case had been meanwhile transferred, submitted a report and recommendation, whereby he found Atty. Millo liable for violating Canon 18 of the Code of Professional Responsibility, and recommended his suspension from the practice of law for six months.^[15]

In Resolution No. XX-2011-235 adopted on November 19, 2011,^[16] the IBP Board of Governors affirmed the findings of Investigating Commissioner Fernandez, but lowered the suspension to two months; and ordered Atty. Millo to return the amount of P16,000.00, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the

recommendation fully supported by the evidence on record and the applicable laws and rules, and finding respondent guilty of the charges level(led) against him, Atty. Marcelito Millo is hereby SUSPENDED from the practice of law for a period of two (2) months and is ordered to return the amount of P16,000.00 to complainant.

On March 27, 2012, Atty. Millo moved for a reconsideration, stating that he had honestly believed that Abella had already caused the withdrawal of the complaint prior to her own death; that he had already caused the preparation of the documents necessary for the transfer of the certificate of title, and had also returned the P14,000.00 paid by Johnny; that the adoption case had been finally granted by the trial court; that he had lost contact with Johnny and Abella who resided in Canada; that Juan Daquis, Abella's brother, could have confirmed that the charge had arisen from a simple misunderstanding, and that Abella would cause the withdrawal of the complaint, except that Daquis had meanwhile died in November 2011.^[17]

On June 9, 2012, the IBP Board of Governors denied Atty. Millo's motion for reconsideration.^[18]

Ruling

We affirm Resolution No. XX-2011-235, but modify the penalty.

Every attorney owes fidelity to the causes and concerns of his clients. He must be ever mindful of the trust and confidence reposed in him by the clients. His duty to safeguard the clients' interests commences from his engagement as such, and lasts until his effective release by the clients. In that time, he is expected to take every reasonable step and exercise ordinary care as his clients' interests may require.^[19]

Atty. Millo's acceptance of the sums of money from Johnny and Abella to enable him to attend to the transfer of title and to complete the adoption case initiated the lawyer-client relationship between them. From that moment on, Atty. Millo assumed the duty to render competent and efficient professional service to them as his clients. Yet, he failed to discharge his duty. He was inefficient and negligent in going about what the professional service he had assumed required him to do. He concealed his inefficiency and neglect by giving false information to his clients about having already paid the capital gains tax. In reality, he did not pay the capital gains tax, rendering the clients liable for a substantial financial liability in the form of penalties.

Without doubt, Atty. Millo had the obligation to serve his clients with competence and diligence. Rule 18.03, Canon 18 of the Code of Professional Responsibility, expressly so demanded of him, to wit:

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

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