

THIRD DIVISION

**[A.C. No. 9537 [Formerly CBD Case No. 09-2489],
June 10, 2013]**

**DR. TERESITA LEE, COMPLAINANT, VS. ATTY. AMADOR L.
SIMANDO, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before us is a Petition for Disbarment^[1] dated July 21, 2009 filed by Dr. Teresita Lee (Dr. Lee) against respondent Atty. Amador L. Simando (Atty. Simando) before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 09-2489, now A.C. No. 9537, for violation of the Code of Judicial Ethics of Lawyers.

The facts of the case, as culled from the records, are as follows:

Atty. Simando was the retained counsel of complainant Dr. Lee from November 2004 until January 8, 2008, with a monthly retainer fee of Three Thousand Pesos (Php3,000.00).^[2]

Sometime during the above-mentioned period, Atty. Simando went to see Dr. Lee and asked if the latter could help a certain Felicito M. Meorado (Meorado) for his needed funds. He claimed that Meorado was then awaiting the release of his claim for informer's reward from the Bureau of Customs. Because Dr. Lee did not know Meorado personally and she claimed to be not in the business of lending money, the former initially refused to lend money. But Atty. Simando allegedly persisted and assured her that Meorado will pay his obligation and will issue postdated checks and sign promissory notes. He allegedly even offered to be the co-maker of Meorado and assured her that Meorado's obligation will be paid when due. Atty. Simando was quoted saying: "*Ipapahamak ba kita, kliyente kita*"; "*Sigurado ito, kung gusto mo, gagarantiyahan ko pa ito, at pipirma din ako*"; "*Isang buwan lang, at hindi hihigit sa dalawang buwan ito, bayad ka na.*"^[3]

Due to Atty. Simando's persistence, his daily calls and frequent visits to convince Dr. Lee, the latter gave in to her lawyer's demands, and finally agreed to give Meorado sizeable amounts of money. Respondent acted as co-maker with Meorado in various cash loans, to wit:^[4]

| Date: | Amount |
|-------------------|----------------|
| November 11, 2006 | Php 400,000.00 |
| November 24, 2006 | 200,000.00 |
| November 27, 2006 | 400,000.00 |
| December 7, 2006 | 200,000.00 |

December 13, 2006
Total:

200,000.00
Php1,400,000.00

When the said obligation became due, despite Dr. Lee's repeated demands, Mejorado failed and refused to comply with his obligation. Since Atty. Simando was still her lawyer then, Dr. Lee instructed him to initiate legal action against Mejorado. Atty. Simando said he would get in touch with Mejorado and ask him to pay his obligation without having to resort to legal action. However, even after several months, Mejorado still failed to pay Dr. Lee, so she again asked Atty. Simando why no payment has been made yet. Dr. Lee then reminded Atty. Simando that he was supposed to be the co-maker of the obligation of Mejorado, to which he replied: "*Di kasuhan din ninyo ako!*"^[5]

Despite complainant's repeated requests, respondent ignored her and failed to bring legal actions against Mejorado. Thus, in January 2008, complainant was forced to terminate her contract with Atty. Simando.

Subsequently, complainant's new lawyer, Atty. Gilbert Morandarte, sent a demand letter dated June 13, 2008 to Atty. Simando in his capacity as the co-maker of some of the loans of Mejorado.

In his Letter dated June 30, 2008, respondent denied his liability as a co-maker and claimed that novation had occurred because complainant had allegedly given additional loans to Mejorado without his knowledge.^[6]

Dr. Lee then accused Atty. Simando of violating the trust and confidence which she gave upon him as her lawyer, and even took advantage of their professional relationship in order to get a loan for his client. Worse, when the said obligation became due, respondent was unwilling to help her to favor Mejorado. Thus, the instant petition for disbarment against Atty. Simando.

On August 12, 2009, the IBP-CBD ordered respondent to submit his Answer on the complaint against him.^[7]

In his Answer^[8] dated September 17, 2009, Atty. Simando claimed that complainant, who is engaged in lending money at a high interest rate, was the one who initiated the financial transaction between her and Mejorado. He narrated that complainant asked him if it is true that Mejorado is his client as she found out that Mejorado has a pending claim for informer's reward with the Bureau of Customs. When he affirmed that Mejorado is his client, complainant signified that she is willing to give money for Mejorado's financial needs while awaiting for the release of the informer's reward. Eventually, parties agreed that Mejorado will pay double the amount and that payment shall be made upon receipt by Mejorado of the payment of his claim for informer's reward.^[9]

Meanwhile, Atty. Simando stressed that Dr. Lee gave Mejorado a total of Php700,000.00 as an investment but he signed as co-maker in all the receipts showing double the amount or Php1,400,000.00.^[10]

Respondent claimed that complainant is a money-lender exacting high interest rates

from borrowers.^[11] He narrated several instances and civil cases where complainant was engaged in money-lending where he divulged that even after defendants had already paid their loan, complainant still persists in collecting from them.^[12] Respondent asserted that he knew of these transactions, because he was among the four lawyers who handled complainant's case.^[13]

Respondent averred that from the time that Mejorado and Dr. Lee had become close to each other, the latter had given Mejorado additional investments and one (1) Silverado Pick-up at the price of P500,000.00 and fifty (50) sacks of old clothings. He claimed that the additional investments made by Dr. Lee to Mejorado were given without his knowledge.

Atty. Simando further alleged that with Dr. Lee's investment of around P2 Million which included the Silverado Pick-up and the fifty (50) sacks of old clothings, the latter required Mejorado to issue five (5) checks with a total value of P7,033,500.00, an amount more than the actual value which Mejorado received.^[14]

Atty. Simando added that while Dr. Lee and Mejorado agreed that the issued checks shall be presented to the bank only upon payment of his informer's reward, Dr. Lee presented the checks to the bank despite being aware that Mejorado's account had no funds for said checks. Atty. Simando further denied that he refused to take legal action against Mejorado. He claimed that complainant never instructed him to file legal action, since the latter knew that Mejorado is obligated to pay only upon receipt of his informer's reward.

Finally, Atty. Simando insisted that he did not violate their lawyer- client relationship, since Dr. Lee voluntarily made the financial investment with Mejorado and that he merely introduced complainant to Mejorado. He further claimed that there is no conflict of interest because he is Mejorado's lawyer relative to the latter's claim for informer's reward, and not Mejorado's lawyer against Dr. Lee. He reiterated that there is no conflicting interest as there was no case between Mejorado and Dr. Lee that he is handling for both of them.^[15]

In her Reply dated October 30, 2009, Dr. Lee denied that what she entered into was a mere investment. She insisted that she lent the money to Mejorado and respondent, in his capacity as co-maker and the transaction was actually a loan.^[16] To prove her claim, Dr. Lee submitted the written loan agreements/receipts which categorically stated that the money received was a loan with due dates, signed by Mejorado and respondent as co-maker.^[17] She further claimed that she did not know Mejorado and it was respondent who brought him to her and requested her to assist Mejorado by lending him money as, in fact, respondent even vouched for Mejorado and agreed to sign as co-maker.

Complainant further emphasized that what she was collecting is the payment only of the loan amounting to One Million Four Hundred Thousand Pesos (Php1,400,000.00) which respondent had signed as co-maker. Thus, respondent's claim that his obligation was already extinguished by novation holds no water, since what was being collected is merely his obligation pertaining to the loan amounting to Php1,400,000.00 only, and nothing more.

Finally, complainant lamented that respondent, in his comments, even divulged confidential informations he had acquired while he was still her lawyer and even used it against her in the present case, thus, committing another unethical conduct. She, therefore, maintained that respondent is guilty of violating the lawyer-client confidentiality rule.

Both parties failed to appear during the mandatory conference on January 15, 2010. Both parties requested for resetting of the mandatory conference, however, both failed to agree on a certain date. Hence, the IBP, so as not to delay the disposition of the complaint, terminated the mandatory conference and instead required the parties to submit their respective position papers.^[18]

On March 18, 2010, the IBP-CBD found Atty. Simando guilty of violating the Code of Professional Responsibility. It recommended that respondent be suspended from the practice of law for six (6) months.

On December 29, 2010, the IBP Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD to suspend Atty. Simando from the practice of law for a period of six (6) months.

Respondent moved for reconsideration.

On March 10, 2012, the IBP Board of Governors granted respondent's motion for reconsideration for lack of sufficient evidence to warrant the penalty of suspension. The Resolution dated December 29, 2010 was reversed and the case against respondent was dismissed.

RULING

We reverse the ruling of the IBP Board of Governors.

Jurisprudence has provided three tests in determining whether a lawyer is guilty of representing conflicting interest:

One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.

Another test of inconsistency of interests is **whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

^[19]

In the instant case, we find substantial evidence to support respondent's violation of