

EN BANC

[A.C. No. 10050, December 03, 2013]

VICTORIA C. HEENAN, COMPLAINANT, VS. ATTY. ERLINDA ESPEJO, RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

This resolves the administrative complaint filed by Victoria Heenan (Victoria) against Atty. Erlinda Espejo (Atty. Espejo) before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) for violation of lawyer's oath, docketed as CBD Case No. 10-2631.

The Facts

Sometime in January 2009, Victoria met Atty. Espejo through her godmother, Corazon Eusebio (Corazon). Following the introduction, Corazon told Victoria that Atty. Espejo was her lawyer in need of money and wanted to borrow two hundred fifty thousand pesos (PhP 250,000) from her (Victoria). Shortly thereafter, Victoria went to the house of Corazon for a meeting with Atty. Espejo where they discussed the terms of the loan. Since Atty. Espejo was introduced to her as her godmother's lawyer, Victoria found no reason to distrust the former. Hence, during the same meeting, Victoria agreed to accommodate Atty. Espejo and there and then handed to the latter the amount of PhP 250,000. To secure the payment of the loan, Atty. Espejo simultaneously issued and turned over to Victoria a check^[1] dated February 2, 2009 for two hundred seventy-five thousand pesos (PhP 275,000) covering the loan amount and agreed interest.

On due date, Atty. Espejo requested Victoria to delay the deposit of the check for the reason that she was still waiting for the release of the proceeds of a bank loan to fund the check. However, after a couple of months of waiting, Victoria received no word from Atty. Espejo as to whether or not the check was already funded enough.

In July 2009, Victoria received an Espejo-issued check dated July 10, 2009 in the amount of fifty thousand pesos (PhP 50,000)^[2] representing the interest which accrued due to the late payment of the principal obligation. Victoria deposited the said check but, to her dismay, the check bounced due to insufficiency of funds. Atty. Espejo failed to pay despite Victoria's repeated demands.

Worried that she would not be able to recover the amount thus lent, Victoria decided to deposit to her account the first check in the amount of PhP 275,000, but without notifying Atty. Espejo of the fact. However, the said check was also dishonored due to insufficiency of funds.

Victoria thereafter became more aggressive in her efforts to recover her money.

She, for instance, personally handed to Atty. Espejo a demand letter dated August 3, 2009.^[3] When Atty. Espejo still refused to pay, Victoria filed a criminal complaint against Atty. Espejo on August 18, 2009 for violation of *Batas Pambansa Blg. 22* and *Estafa* under Article 315 of the Revised Penal Code, as amended, before the Quezon City Prosecutor's Office.^[4]

Atty. Espejo disregarded the notices and subpoenas issued by the Quezon City Prosecutor's Office which she personally received and continued to ignore Victoria's demands. She attended only one (1) scheduled preliminary investigation where she promised to pay her loan obligation.^[5]

In November 2009, Atty. Espejo issued another check dated December 8, 2009 in the amount of two hundred seventy five thousand pesos (PhP 275,000.). However, to Victoria's chagrin, the said check was again dishonored due to insufficiency of funds.^[6]

Atty. Espejo did not file any counter-affidavit or pleading to answer the charges against her. On November 17, 2009, the case was submitted for resolution without Atty. Espejo's participation.^[7]

Victoria thereafter filed the instant administrative case against Atty. Espejo before the CBD.

On March 1, 2010, the CBD, through Director for Bar Discipline Alicia A. Risos-Vidal, issued an Order^[8] directing Atty. Espejo to submit her Answer to Victoria's administrative complaint failing which would render her in default. The warning, notwithstanding, Atty. Espejo did not submit any Answer.

On May 5, 2010, IBP Commissioner Rebecca Villanueva-Malala (Commissioner Villanueva-Malala) notified the parties to appear for a mandatory conference set on June 2, 2010. The notice stated that non-appearance of either of the parties shall be deemed a waiver of her right to participate in further proceedings.^[9]

At the mandatory conference, only Victoria appeared.^[10] Thus, Commissioner Villanueva-Malala issued an Order^[11] noting Atty. Espejo's failure to appear during the mandatory conference and her failure to file an Answer. Accordingly, Atty. Espejo was declared in default. Victoria, on the other hand, was directed to file her verified position paper, which she filed on June 11, 2010.^[12]

Findings and Recommendation of the IBP

In its Report and Recommendation^[13] dated July 15, 2010, the CBD recommended the suspension of Atty. Espejo from the practice of law and as a member of the Bar for a period of five (5) years. The CBD reasoned:

The failure of a lawyer to answer the complaint for disbarment despite due notice and to appear on the scheduled hearings set, shows his flouting resistance to lawful orders of the court and illustrates his deficiency for his oath of office as a lawyer, which deserves disciplinary sanction.

Moreover, respondent[’s] acts of issuing checks with insufficient funds and despite repeated demands [she] failed to comply with her obligation and her disregard and failure to appear for preliminary investigation and to submit her counter-affidavit to answer the charges against her for Estafa and Violation of BP 22, constitute grave misconduct that also warrant disciplinary action against respondent.

On December 14, 2012, the Board of Governors passed a Resolution^[14] adopting the Report and Recommendation of the CBD with the modification lowering Atty. Espejo’s suspension from five (5) years to two (2) years. Atty. Espejo was also ordered to return to Victoria the amount of PhP 250,000 within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made. The Resolution reads:

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 applicable laws and rules, and considering respondent’s grave misconduct, Atty. Erlinda Espejo is hereby **SUSPENDED from the practice of law for two (2) years** and Ordered to Return to complainant the amount of Two Hundred Fifty Thousand (P250,000.00) Pesos within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made.

On August 8, 2013, the CBD transmitted to this Court the Notice of the Resolution pertaining to Resolution No. XX-2012-419 along with the records of this case.^[15]

The Court’s Ruling

We sustain the findings of the IBP and adopt its recommendation in part.

Atty. Espejo did not deny obtaining a loan from Victoria or traverse allegations that she issued unfunded checks to pay her obligation. It has already been settled that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned.^[16] Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. In *Tomlin II v. Moya II*, We explained that the prompt payment of financial obligations is one of the duties of a lawyer, thus:

In the present case, respondent admitted his monetary obligations to the complaint but offered no justifiable reason for his continued refusal to pay. Complainant made several demands, both verbal and written, but respondent just ignored them and even made himself scarce. Although he acknowledged his financial obligations to complainant, respondent never offered nor made arrangements to pay his debt. On the contrary, he refused to recognize any wrong doing nor shown remorse for issuing worthless checks, an act constituting gross misconduct. Respondent must be reminded that it is his duty as a lawyer to faithfully perform at all