

## THIRD DIVISION

[ A.C. No. 9094, August 15, 2012 ]

**SANTOS VENTURA HOCORMA FOUNDATION, INC., REPRESENTED  
BY GABRIEL H. ABAD, COMPLAINANT, VS. ATTY. RICHARD V.  
FUNK, RESPONDENT.**

### DECISION

#### **ABAD, J.:**

This is a disbarment case against a lawyer who sued a former client in representation of a new one.

#### **The Facts and the Case**

Complainant Santos Ventura Hocorma Foundation, Inc. (Hocorma Foundation) filed a complaint for disbarment against respondent Atty. Richard Funk. It alleged that Atty. Funk used to work as corporate secretary, counsel, chief executive officer, and trustee of the foundation from 1983 to 1985.<sup>[1]</sup> He also served as its counsel in several criminal and civil cases.

Hocorma Foundation further alleged that on November 25, 2006 Atty. Funk filed an action for quieting of title and damages against Hocorma Foundation on behalf of Mabalacat Institute, Inc. (Mabalacat Institute). Atty. Funk did so, according to the foundation, using information that he acquired while serving as its counsel in violation of the Code of Professional Responsibility (CPR) and in breach of attorney-client relationship.<sup>[2]</sup>

In his answer, Atty. Funk averred that Don Teodoro V. Santos (Santos) organized Mabalacat Institute in 1950 and Hocorma Foundation in 1979. Santos hired him in January 1982 to assist Santos and the organizations he established, including the Mabalacat Institute, in its legal problems. In 1983 the Mabalacat Institute made Atty. Funk serve as a director and legal counsel.<sup>[3]</sup>

Subsequently, according to Atty. Funk, when Santos got involved in various litigations, he sold or donated substantial portions of his real and personal properties to the Hocorma Foundation. Santos hired Atty. Funk for this purpose. The latter emphasized that, in all these, the attorney-client relationship was always between Santos and him. He was more of Santos' personal lawyer than the lawyer of Hocorma Foundation.<sup>[4]</sup>

Atty. Funk claimed that before Santos left for America in August 1983 for medical treatment, he entered into a retainer agreement with him. They agreed that Atty. Funk would be paid for his legal services out of the properties that he donated or sold to the Hocorma Foundation. The foundation approved that compensation agreement on December 13, 1983. But it reneged and would not pay Atty. Funk's

legal fees.<sup>[5]</sup>

Atty. Funk also claimed that Santos executed a Special Power of Attorney (SPA) in his favor on August 13, 1983. The SPA authorized him to advise Hocorma Foundation and follow up with it Santos' sale or donation of a 5-hectare land in Pampanga to Mabalacat Institute, covered by TCT 19989-R. Out of these, two hectares already comprised its school site. The remaining three hectares were for campus expansion.

Atty. Funk was to collect all expenses for the property transfer from Hocorma Foundation out of funds that Santos provided. It was Santos' intention since 1950 to give the land to Mabalacat Institute free of rent and expenses. The SPA also authorized Atty. Funk to register the 5-hectare land in the name of Mabalacat Institute so a new title could be issued to it, separate from the properties of Hocorma Foundation.<sup>[6]</sup> When Santos issued the SPA, Atty. Funk was Mabalacat Institute's director and counsel. He was not yet Hocorma Foundation's counsel.<sup>[7]</sup> When Santos executed the deeds of conveyances, Atty. Funk's clients were only Santos and Mabalacat Institute.<sup>[8]</sup>

According to Atty. Funk, on August 15, 1983 Santos suggested to Hocorma Foundation's Board of Trustees the inclusion of Atty. Funk in that board, a suggestion that the foundation followed.<sup>[9]</sup> After Santos died on September 14, 1983, Atty. Funk was elected President of Mabalacat Institute, a position he had since held.<sup>[10]</sup>

Atty. Funk claims that in 1985 when Hocorma Foundation refused to pay his attorney's fees, he severed his professional relationship with it. On November 9, 1989, four years later, he filed a complaint against the foundation for collection of his attorney's fees. The trial court, the Court of Appeals (CA), and the Supreme Court decided the claim in his favor.<sup>[11]</sup>

After hearing, the Committee on Bar Discipline (CBD) found Atty. Funk to have violated Canon 15, Rule 15.03<sup>[12]</sup> of the Code of Professional Responsibility (CPR) with the aggravating circumstance of a pattern of misconduct consisting of four court appearances against his former client, the Hocorma Foundation. The CBD recommended Atty. Funk's suspension from the practice of law for one year.<sup>[13]</sup> On April 16, 2010 the IBP Board of Governors adopted and approved the CBD's report and recommendation.<sup>[14]</sup> Atty. Funk moved for reconsideration but the IBP Board of Governors denied it on June 26, 2011.

### **The Issue Presented**

The issue here is whether or not Atty. Funk betrayed the trust and confidence of a former client in violation of the CPR when he filed several actions against such client on behalf of a new one.

### **The Court's Ruling**

Canon 15, Rule 15.03 of the CPR provides that a lawyer cannot represent conflicting interests except by written consent of all concerned given after a full disclosure of