

## EN BANC

**[ A.C. No. 7435, September 10, 2009 ]**

**REY C. SARMIENTO, ANGELITO C. SARMIENTO, WILLY C.  
SARMIENTO AND RAQUEL C. SARMIENTO-CO, COMPLAINANTS,  
VS. ATTY. EDELSON G. OLIVA, RESPONDENT.**

### RESOLUTION

#### **CORONA, J.:**

This is a complaint for disbarment<sup>[1]</sup> filed by complainants Rey, Angelito, Willy and Raquel<sup>[2]</sup> Sarmiento against respondent Atty. Edelson G. Oliva.

Complainants alleged that they received, as payment for the purchase<sup>[3]</sup> of a P13 million Makati City property,<sup>[4]</sup> five postdated checks from respondent.<sup>[5]</sup> When presented to the drawee bank, two checks were dishonored due to "closed account."<sup>[6]</sup> Consequently, complainants sent demand letters to respondent on June 21, 2003 and October 7, 2003.

On May 20, 2004, respondent requested complainants to reduce his obligation to P11 million. Complainants agreed. He gave a partial down payment of P200,000<sup>[7]</sup> and issued four postdated Premier Bank checks.<sup>[8]</sup> Upon presentment, the first check was dishonored again due to "closed account."<sup>[9]</sup> On October 7, 2004, complainants again demanded payment from respondent but the demand was ignored.<sup>10</sup> Hence, this complaint, which was originally filed with the Integrated Bar of the Philippines (IBP).

Respondent, in his answer, claimed that this complaint was instituted to harass him inasmuch as he had no outstanding financial obligation to the complainants. He maintained that complainants had a buyer for the property on installment. He issued the checks on the condition that these would only be presented on approval and release of proceeds of the loan as the buyer would issue his own checks to cover payment in respondent's name. Because the complainants deposited the checks for clearing without informing him, they actually violated their agreement.<sup>[11]</sup>

The complaint was set for mandatory conference/hearing<sup>[12]</sup> but respondent repeatedly failed to appear at the scheduled hearings despite due notice.<sup>[13]</sup> He was thus deemed to have waived his right to participate in further proceedings.<sup>[14]</sup>

In its January 23, 2006 report and recommendation,<sup>[15]</sup> the Commission on Bar Discipline (CBD) of the IBP found that respondent transferred the property to his name despite giving complainants only P200,000. He took advantage of complainants who trusted him and relied on his good faith. Furthermore, he never appeared in any of the scheduled hearings. The CBD thus recommended that

respondent be suspended from the practice of law for two years.

The IBP Board of Governors approved and adopted the report and recommendation of the CBD in toto and ordered respondent to restitute the amount of P11 million to complainants.<sup>[16]</sup>

We modify the recommendation of the IBP.

In a resolution dated October 7, 1994, respondent was disbarred in *Libit v. Attys. Edelson G. Oliva and Umali*<sup>[17]</sup> for grave misconduct.<sup>[18]</sup> Hence, not being a member of the bar, he cannot be suspended from the practice of law.

*Libit* was never mentioned in the records of this case. Complainants obviously had no knowledge of respondent's disbarment in 1994. Respondent must have represented himself to complainants as a *bona fide* member of the bar. Furthermore, he never informed the IBP of his prior disbarment. As a former lawyer, he knew that the jurisdiction of the IBP is limited to members of the bar.

Since respondent himself made a positive misrepresentation to complainants that he was still a lawyer and even submitted himself to the jurisdiction of the IBP, he is estopped from questioning the jurisdiction of the IBP over him. For this reason we find as proper the recommendation of the IBP that respondent be required to indemnify the complainants the amount of P11million.<sup>[19]</sup> Respondent does not dispute that complainants were the owners of the property before he had the title to the said property transferred in his name, He cannot unduly enrich himself and enjoy ownership of the property without compensating complainants.

Moreover, the Court has held that a disbarred lawyer, who continues to represent himself as a lawyer with the authority to practice law commits a contumacious act<sup>[20]</sup> and is liable for indirect contempt.<sup>[21]</sup>

**WHEREFORE**, respondent Edelson G. Oliva is hereby **ORDERED** to **SHOW CAUSE** within ten days from receipt of this resolution why he should not be cited for indirect contempt for misrepresenting himself to be an attorney, without prejudice to complainants' right to seek other legal remedies.

### **SO ORDERED**

*Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo and Abad, JJ., concur. Carpio Morales, and Brion, JJ., in the result.*

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<sup>[1]</sup> Letter-coimpaint daied December 10, 2004. *Rollo*, pp. 1-2.

<sup>[2]</sup> Surnamed Sarmienlo-Co in some parts of the records.

<sup>[3]</sup> Under Memorandum of Agreement, Deeds of Absolute Sale and Transfer Certificate of Title No. 218601, "Annex K" of answer. *Rollo*, pp. 6-8, 9-11 and 46.