

## EN BANC

[ A.C. No. 6972, October 17, 2008 ]

**JERRY T. WONG, COMPLAINANT, VS. ATTY. SALVADOR N. MOYA II, RESPONDENT.**

### DECISION

**LEONARDO-DE CASTRO, J.:**

Before us is a complaint<sup>[1]</sup> dated December 1, 2003 for the disbarment of respondent Atty. Salvador N. Moya II filed by complainant Jerry T. Wong with the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 03-1172 for violation of Batas Pambansa 22 (B.P. 22) and non-payment of debt.

Complainant avers that he is the owner of J & L Agro-vets, a company engaged in the business of selling agricultural and veterinary products and medicine. Sometime in 1997, he retained the services of respondent for the purpose of collecting due and demandable debts in favor of the company. Respondent also handled personal cases of complainant and his wife.

As their relationship prospered, respondent asked financial help from complainant for the construction of his house and purchase of a car. Complainant willingly helped him. Pursuant to their arrangement, complainant purchased a car on installment basis from Transfarm for respondent. He issued postdated checks to cover its payment to Transfarm. The respondent in turn issued checks in favor of the complainant to reimburse the latter.

The checks issued by complainant in favor of Transfarm were duly encashed upon presentment. However, the checks issued by respondent to reimburse complainant were dishonored for the reason "Account Closed." Respondent refused to comply with the repeated demands of the complainant to replace the dishonored checks.

Furthermore, complainant introduced respondent to Quirino Tomlin and to the owner of Unisia Merchandising Corporation, from whom respondent obtained construction materials for the construction of his house on credit in the amount of P164,000.00. Respondent also failed to pay this indebtedness, which remained unsettled and thus caused embarrassment to complainant.

Respondent as well handled another case of complainant against Berting Diwa, docketed as Civil Case No. 1482 before the Municipal Trial Court (MTC) of Sta. Maria, Bulacan. It was decided on September 21, 2000. After the decision became final and executory, complainant and his wife sought the execution of the judgment through respondent.

On August 15, 2001, Diwa paid the amount of P15,680.50 for the satisfaction of the

judgment. As complainant's counsel, respondent received the payment but he did not inform complainant about it. Complainant had knowledge of it only when he got hold of a copy of the *Manifestation with Prayer to Terminate Proceedings* filed by respondent before the MTC of Sta. Maria, Bulacan.

On December 1, 2003, the IBP-CBD ordered respondent to file his answer to the complaint for disbarment within 15 days from receipt of thereof. He filed three motions for extension of time to file his responsive pleading/answer. The first motion dated January 5, 2004 asked for a 15-day extension from January 5, 2004 or until January 20, 2004 within which to file his responsive pleading. He filed on January 20, 2004 his second motion for extension of time for another 15-day or until February 4, 2004.<sup>[2]</sup> On February 4, 2004, he filed a Manifestation/Explanation for Extension of Time to File Responsive Pleading/Answer/Motion to Dismiss, citing that as early as October 1, 2003, complainant's third cause of action pertaining to a debt with Unisia Merchandising was already filed in court.

Subsequently, he filed his Motion to Dismiss<sup>[3]</sup> dated February 27, 2004 on the following grounds:

That complainant is not the proper party in interest and has no cause of action.

That complainant has prematurely prejudged respondent relative to the latter's intention of not paying his debt as the former impresses the honorable body that respondent would not pay at all.

That complainant's action in the Berting Diwa case should be addressed to the Municipal Trial Court of Sta. Maria, Bulacan and not to the IBP."

In the aforesaid motion, respondent never denied and even acknowledged what he described as honest debts to Unisia Merchandising and Mr. Tomlin,<sup>[4]</sup> which he admitted he was unable to pay on time due to financial constraints. He added that the IBP, being not a collection agency, was not the proper forum to lodge the complaint against him that merely concerned the collection of his monetary obligations which were then subject of pending court suits. Similarly, respondent argued that the complaint against case should be addressed to the MTC of Sta. Maria, Bulacan.

On April 28, 2004, the IBP-CBD issued an Order<sup>[5]</sup> denying respondent's motion to dismiss as it is prohibited pleading under Rule 3, Section 2 of the Rules of Procedure of the Commission. Respondent was given a new period of fifteen (15) days within which to file his verified answer.

On May 28, 2004, respondent filed his Motion for Reconsideration<sup>[6]</sup> which was denied in an Order dated June 16, 2004.<sup>[7]</sup>

On June 28, 2004, respondent filed a *Manifestation with Motion to Give Respondent Extension of Time to File His Answer/or Responsive Pleadings*,<sup>[8]</sup> requesting for a fresh period of fifteen (15) days or until July 13, 2004 to file his answer. In the Order dated June 30, 2004, respondent's motion was granted with warning that no further request for extension shall be entertained.<sup>[9]</sup>

On July 13, 2004, respondent filed another *Very Urgent Motion for Extension to File Answer*,<sup>[10]</sup> seeking another period of ten (10) days within which to file his answer or responsive pleading. On July 21, 2004, the IBP-CBD issued an Order finding the ground for extension not justifiable. Respondent was also declared in default and complainant was directed to file his verified position paper within ten (10) days from receipt of the Order, after which, the case shall be considered submitted for report and recommendation, with or without the position paper.

On July 23, 2004, respondent filed a *Manifestation with Motion to Terminate Proceedings on the Ground of Prescription*, considering that six (6) months had already passed from the date of discovery of the offense.<sup>[11]</sup>

On August 10, 2004, respondent filed an *Omnibus Motion to Recall Order Dated July 21, 2004*<sup>[12]</sup> in the interest of higher justice and fair play.

On January 3, 2005, the IBP-CBD issued an Order giving both parties a period of ten (10) days to file their respective verified position paper, as follows:

"Respondent should be informed that a "complaint for disbarment, suspension or discipline of attorneys prescribes in two (2) years from the date of the professional misconduct." (Section 1, Rule VIII, Rules of Procedure of the Commission on Bar Discipline). And records show that the acts complained of took place in 2002.

In the interest of justice, both parties are given ten (10) days from receipt of this Order to file their respective verified position papers. After the expiration of the said period, with or without the position paper, the case shall be considered submitted for report and recommendation."

Respondent did not file any responsive pleading at all.

Thus, on April 27, 2005, the Investigating IBP Commissioner Rebecca Villanueva-Maala submitted her Report and Recommendation.<sup>[13]</sup> She recommended that respondent be suspended from the practice of law for one (1) year. The pertinent portions of the said Report and Recommendation read as follows:

After a careful study and consideration of the facts and evidence presented, we find merit to warrant disciplinary action against respondent. His failure to answer the complaint for disbarment despite due notice on several occasions and to appear on the scheduled hearings set, shows his flouting resistance to lawful orders of the court and illustrates his despicency for his oath of office as a lawyer, which deserves disciplinary sanction. (*Ngayan v. Tugade*, 193 SCRA 779).

Respondent's contention that there were cases already filed in court against him is of no moment. The pendency of a criminal action against a respondent from the facts of which the disciplinary proceedings is predicated, does not pose a prejudicial question to the resolution of the issues in the disbarment case (*In re Brillantes*, 76 SCRA 1; *Calo v. Degamo*, 20 SCRA 447).

PREMISES CONSIDERED, it is hereby recommended that respondent ATTY. SALVADOR N. MOYA II be SUSPENDED for a period of ONE YEAR from receipt hereof from the practice of his profession as a lawyer and as a member of the Bar.

RESPECTFULLY SUBMITTED.<sup>[14]</sup>

On October 22, 2005, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Commissioner Maala in its Resolution No. XVII-2005-113.<sup>[15]</sup> Respondent was ordered suspended from the practice of law for two (2) years with a notification that this suspension of two (2) years must be served in succession to the initial recommendation of the IBP Board of Suspension of two (2) years in CBD Case No. 03-1171, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of 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 considering respondent's violation of B.P. 22 and for failure and refusal to comply with his obligations, Atty. Salvador N. Moya is hereby SUSPENDED from the practice of law for two (2) years, with a notification that this suspension of two years must be served in succession to the initial recommendation of the IBP Board of Suspension of two years in CBD Case No. 03-1171.<sup>[16]</sup>

On January 12, 2006, respondent through counsel filed with the Office of the Bar Confidant (OBC) a notice informing it that respondent is filing an Appeal Memorandum. On the same date, respondent filed his Appeal Memorandum with the following assignment of errors:

I

THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ERRED IN RECOMMENDING RESPONDENT'S SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS FOR HAVING ALLEGEDLY FAILED TO FILE HIS ANSWER ON THE COMPLAINT FOR DISBARMENT DESPITE DUE NOTICE.

II

THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ERRED IN RECOMMENDING RESPONDENT'S SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS FOR HAVING ALLEGEDLY VIOLATED BATAS PAMBANSA BLG. 22, OTHERWISE KNOWN AS THE BOUNCING CHECKS LAW.

III

THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ERRED IN RECOMMENDING RESPONDENT'S SUSPENSION