

THIRD DIVISION

[G.R. NO. 169079, February 12, 2007]

FRANCISCO RAYOS, PETITIONER, VS. ATTY. PONCIANO G. HERNANDEZ, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review^[1] of the Resolution dated 12 March 2005 of the Integrated Bar of the Philippines (IBP), dismissing petitioner Francisco Rayos's complaint for disbarment against respondent Atty. Ponciano Hernandez.

Respondent was the counsel of petitioner in Civil Case No. SM-951 entitled, "*Francisco Rayos v. NAPOCOR*," filed before the Regional Trial Court (RTC), Malolos, Bulacan. The complaint alleged, among other things, that the National Power Corporation (NAPOCOR) recklessly, imprudently and negligently opened the three floodgates of the spillway of Angat Dam at midnight of 26 October 1978 until the early morning hours of 27 October 1978, during the occurrence of typhoon "Kading" causing the release of a great volume of stored water, the resultant swelling and flooding of Angat River, and the consequent loss of lives of some of petitioner's relatives and destruction of his family's properties, for which he sought damages.

Of the 10 members of petitioner's family who perished, only four bodies were recovered and only petitioner and one of his sons, German Rayos, survived.

On 21 December 1979, the complaint was dismissed^[2] on the ground that the State cannot be sued without its consent as the operation and management of Angat Dam, Norzagaray, were governmental functions. Said dismissal was questioned directly to this Court which set aside the RTC decision and ordered the reinstatement of the complaint.^[3]

On 30 April 1990, however, the complaint was dismissed again by the RTC for lack of sufficient and credible evidence.^[4]

The case was subsequently appealed to the Court of Appeals, which reversed the RTC decision and awarded damages in favor of petitioner, the dispositive portion of which reads:

CONFORMABLY TO THE FOREGOING, the joint decision appealed from is hereby REVERSED and SET ASIDE, and a new one is hereby rendered:

x x x x

2. In Civil Case No. SM-951, ordering defendants-appellees to pay jointly and severally, plaintiff-appellant, with legal interest from the date when

this decision shall have become final and executory, the following:

A. Actual damages of Five Hundred Twenty Thousand Pesos (P520,000.00);

B. Moral Damages of Five Hundred Thousand Pesos (P500,000.00);
and

C. Litigation Expenses of Ten Thousand Pesos (P10,000.00).

x x x x

In addition, in all the four (4) instant cases, ordering defendants-appellees to pay, jointly and severally, plaintiffs-appellants, attorney's fees in an amount equivalent to 15% of the total amount awarded.^[5]

The case was appealed to this Court, which affirmed the Court of Appeals Decision.^[6] The Decision of the Supreme Court became final and executory on 4 August 1993.

Thus, a Writ of Execution^[7] was issued by the RTC on 10 December 1993, upon motion filed by respondent. As a consequence, NAPOCOR issued Check No. 014710 dated 5 January 1994, in the amount of P1,060,800.00 payable to petitioner. Thereafter, the check was turned over to respondent as counsel of petitioner. Petitioner demanded the turn over of the check from respondent, but the latter refused.

On 24 January 1994, petitioner filed with the RTC a motion^[8] to direct respondent to deliver to him the check issued by NAPOCOR, corresponding to the damages awarded by the Court of Appeals. Petitioner sought to recover the check in the amount of P1,060,800.00 from respondent, claiming that respondent had no authority to receive the same as he was already dismissed by petitioner as his counsel on 21 November 1993.^[9] Respondent, on the other hand, justifies his retention as a means to ensure payment of his attorney's fees.

On 7 April 1994, the RTC issued an Order directing respondent to deliver the check to the Sheriff of the court who will subsequently deliver it to petitioner. A Writ of Execution was subsequently issued. Despite the Court Order, respondent refused to surrender the check.

However, on 4 July 1994, respondent deposited the amount of P502,838.79 with Farmers Savings and Loan Bank, Inc., Norzagaray, Bulacan, in the name of petitioner which was eventually received by the latter.

Thus, petitioner initiated this complaint for disbarment for the failure of respondent to return the rest of the award in the amount of P557,961.21.

In his comment,^[10] respondent alleged that he handled petitioner's case, in Civil Case No. SM-951, for 15 years, from the trial court up to the Supreme Court. On 21 November 1993, he received a letter from petitioner dismissing him as counsel. Simultaneous thereto, respondent received a letter dated 15 November 1993 from

Atty. Jose G. Bruno asking him to comment on the therein attached letter dated 19 November 1993 of petitioner addressed to NAPOCOR, requesting that the award of damages granted by the Court of Appeals and affirmed by the Supreme Court be paid to him.

Respondent also averred that petitioner had a verbal contract for attorney's fees on a contingent basis and that the said contract was only reduced in writing on 6 October 1991, duly signed by both of them. By virtue of the contract, petitioner and respondent supposedly agreed on a 40%-60% sharing, respectively, of the court award. Respondent was entitled to receive 60% of the award because petitioner agreed to pay him 40% of the award as attorney's fees and 20% of the award as litigation expenses.

Respondent further asseverated that because petitioner dismissed the respondent and refused to settle his obligation, he deposited the amount of P424,320.00 in a bank in petitioner's name under Account No. 381 (representing petitioner's share of 40% of the total award) on 10 May 1994^[11]; and the amount of P63,648.00 in petitioner's name under Account No. 389 (representing petitioner's share of 40% of the P159,120.00 awarded as attorney's fees by the Court of Appeals) on 19 May 1994.^[12] Petitioner already received the amount of P502,838.79 in accordance with the RTC Order dated 7 April 1994.

Respondent contended that the petitioner's complaint was without basis and was meant only to harass and put him to shame before the residents of Norzagaray, Bulacan.

In a Resolution dated 9 August 1995,^[13] the Court referred the case to the Commission on Bar Discipline of the IBP for investigation, report and recommendation.

A series of hearings were conducted by the Commission on Bar Discipline of the IBP at the IBP Building, Ortigas Center, Pasig City, from March to September 2001.

On 1 February 2005, Investigating Commissioner Lydia A. Navarro B. Funa submitted her Report and Recommendation,^[14] recommending the dismissal of the case.

Thereafter, the IBP issued its Resolution dated 12 March 2005, approving and adopting the recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it hereby ADOPTED and APPROVED, 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 that the case lacks merit, the same is hereby DISMISSED.^[15]

We do not agree in the recommendation of the IBP.

The threshold issue in this petition is: whether respondent is justified in retaining

the amount awarded to petitioner in Civil Case No. SM-951 to assure payment of his attorney's fees.

Moneys collected by an attorney on a judgment rendered in favor of his client constitute trust funds and must be immediately paid over to the client.^[16] Canon 16 of the Code of Professional Responsibility provides as follows:

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

In the case at bar, when respondent withheld and refused to deliver the NAPOCOR check representing the amount awarded by the court in Civil Case No. SM-951, which he received on behalf of his client (petitioner herein), he breached the trust reposed on him. It is only after an Order was issued by the RTC ordering the delivery of the check to petitioner that the respondent partially delivered the amount of P502,838.79 to the former, but still retaining for himself the amount of P557,961.21 as payment for his attorney's fees. The claim of the respondent that petitioner failed to pay his attorney's fees is not an excuse for respondent's failure to deliver the amount to the petitioner. A lawyer is not entitled to unilaterally appropriate his client's money for himself by the mere fact alone that the client owes him attorney's fees.^[17] The failure of an attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice and violation of the general morality, as well as of professional ethics; it also impairs public confidence in the legal profession and deserves punishment. In short, a lawyer's unjustified withholding of money belonging to his client, as in this case, warrants the imposition of disciplinary action.^[18]

It is true that under Canon 16.03 of the Code of Professional Responsibility, an attorney has the following rights;

Rule 16.03- A lawyer shall deliver the funds and property of his client when due or upon demand. However, **he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements**, giving notice promptly thereafter to his client. **He shall also have a lien to the same extent on all judgments and executions** he has secured for his client as provided for in the Rules of Court. (Emphases supplied.)

But the fact alone that a lawyer has a lien for fees on moneys in his hands collected for his client, as above-stated, does not relieve him of his duty to promptly account for the moneys received; his failure to do so constitutes professional misconduct.^[19]

Thus, what respondent should have properly done in the case at bar was to provide the petitioner with an accounting before deducting his attorney's fees and then to turn over the remaining balance of the award collected to petitioner. The Court notes that respondent represented petitioner from the time of filing of the complaint in Civil Case No. SM-951 before what is now the RTC and of the appeal of the same case to the Court of Appeals and Supreme Court. But respondent was not justified to hold on the entire amount of award collected by him until his fees had been paid

and received by him.

The relationship of attorney and client has always been rightly regarded as one of special trust and confidence. An attorney must exercise the utmost good faith and fairness in all his relationship *vis-à-vis* his client. Respondent fell far short of this standard when he failed to render an accounting for the amount actually received by him on behalf of his client and when he refused to turn over any portion of said amount to his client upon the pretext that his attorney's fees had not at all been paid. Respondent had, in fact, placed his private and personal interest above that of his client.

We have held that lawyering is not a moneymaking venture and lawyers are not merchants.^[20] Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered. It is a calling that, unlike mercantile pursuits which enjoy a greater deal of freedom from governmental interference, is impressed with a public interest, for which it is subject to State regulation.^[21]

A lawyer is not merely the defender of his client's cause and a trustee of his client's cause of action and assets; he is also, and first and foremost, an officer of the court and participates in the fundamental function of administering justice in society.^[22] It follows that a lawyer's compensation for professional services rendered is subject to the supervision of the court, not just to guarantee that the fees he charges and receives remain reasonable and commensurate with the services rendered, but also to maintain the dignity and integrity of the legal profession to which he belongs. Upon taking his attorney's oath as an officer of the court, a lawyer submits himself to the authority of the courts to regulate his right to charge professional fees.^[23]

There is another aspect to this case which the Court cannot just gloss over. Respondent claimed that he charged petitioner, his client, a contingent fee comprising of forty percent (40%) as attorney's fees and twenty percent (20%) as litigation expenses. The agreement provides:

UNAWAIN NG LAHAT SA PAMAMAGITAN NITO:

Ako, si Francisco Rayos, Sr., Pilipino, may sapat na gulang at ngayon ay naninirahan sa Pinagbarilan, Baliwag, Bulacan, sa pamamagitan ng kasulatang ito, ay nagpapatunay sa mga sumusunod:

Na, kaugnay sa aking usapin laban sa NPC at Benjamin Chavez (Rayos vs. NPC, et al.) na ngayon ay nakabinbin sa Court of Appeals, ako ay nakipagkasundo sa aking abogado, Atty. Ponciano G. Hernandez, gaya ng sumusunod:

1. Sakaling ipanalo ang aking usapin, ang ano mang aking makukuha ay hahatiin gaya ng sumusunod: 40% ang para sa akin; 40% ang para kay Atty. Ponciano G. Hernandez; 20% ay ilalabas bilang gastos sa kaso.
2. Kung matalo ako sa kaso ay wala akong sagutin sa aking abogado.

Sa katunayan ng lahat, ako ay lumagda sa kasunduang ito dito sa Norzagaray, Bulacan ngayong ika-6 ng Oktubre 1991.