558 Phil. 403

EN BANC

[A.C. NO. 6483, August 31, 2007]

NICOLAS O. TAN, COMPLAINANT, VS. ATTY. AMADEO E. BALON, JR., RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

On July 13, 2004, Nicolas O. Tan filed a complaint against Atty. Amadeo E. Balon, Jr. for misappropriation of funds and issuance of bum checks.

Tan alleged that he engaged the services of Atty. Balon relative to the returned checks issued to the former by Jose G. Guisande. Atty. Balon sent demand letters to Guisande but thereafter failed to inform Tan about the status of the same. Tan alleged that as a fellow Rotarian, he regularly met Atty. Balon but the latter said nothing about the case.

Tan thus engaged the services of another lawyer, Atty. Romualdo Jubay, who filed an estafa case against Guisande. During the proceedings, Guisande's counsel informed Tan and Atty. Jubay that out of the P96,085.00 originally owed, P60,000.00 was already collected by Atty. Balon.

When confronted by Tan, Atty. Balon admitted that he collected the amount of P60,000.00 from Guisande. He then proposed to Tan that 20% of the P60,000.00 or P12,000.00 be applied as attorney's fees. He offered to pay the remaining balance of P48,000.00 with interest of 6% from September 29, 1999 to January 13, 2003 by issuing two postdated checks. However, the two checks issued by Atty. Balon bounced for reason "account closed" when presented for payment.

Upon being informed of the dishonor, Atty. Balon offered to settle his obligations by depositing cash in Tan's account. However, he was only able to deposit a total amount of P20,000.00. Despite several demands, Atty. Balon failed to fully settle his obligations. Thus, Tan filed the instant complaint.

In his Comment, Atty. Balon alleged that he had fully paid his obligations; that on several occasions, he rendered legal services to Tan for free; that the administrative complaint was intended to harass him and to stop him from filing a collection case for unpaid legal services against Tan.

On December 8, 2004, we referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation. The IBP held a mandatory conference and conducted a hearing on August 24, 2005. During the hearing, Atty. Balon admitted that he was not able to fully pay his obligations to Tan.[1] The parties were then directed to submit their respective position papers on or before September 12, 2005.

Complainant submitted his position paper. Respondent, however, submitted a "*Motion to Suspend the Period to File Position Paper and to Defer the Submission of the Case for Resolution and With Motion to Set Case for Trial and/or Reception of Evidence*." In the same Motion, particularly paragraph 6 thereof, respondent claimed that "the IBP has no jurisdiction over the complaint as it concerns a contract of loan, rather than a fiduciary transaction of lawyer-client relationship." The IBP granted the motion and scheduled the hearing on December 6, 2005.

Subsequently, however, the Investigating Commissioner learned that respondent had been disbarred by the Court in *Lemoine v. Balon, Jr.*[2] on October 28, 2003, or even prior to the institution of the instant complaint. Thus, the IBP deemed the proceedings closed and terminated for lack of disciplinary jurisdiction over respondent in view of his prior disbarment. At the same time, it ordered respondent to show cause why he should not be cited for contempt for failing to inform the IBP of his disbarment and for continuing to represent that he is still a member of the Bar.

In his explanation, respondent alleged that he assumed the IBP knew of his disbarment; that his disbarment attained finality only on April 12, 2005; and that he intended to discuss his disbarment in the position paper he is yet to submit to the IBP.

Unsatisfied with the explanation, the IBP recommended that respondent be cited for contempt for continuing to practice law despite his disbarment.

On March 7, 2007, we required the parties to manifest whether they are willing to submit the case for resolution. However, on May 4, 2007, complainant filed an Affidavit of Desistance claiming that the filing of the instant case was a product of misunderstanding and misapprehension of facts; and that he and the respondent had cleared their differences and reconciled their accounting records. Consequently, he is no longer interested in pursuing the complaint.

On the other hand, respondent filed on May 8, 2007 a Manifestation and Motion claiming that considering complainant's Affidavit of Desistance, it would be "prudent" for the Supreme Court to refer the matter back to the IBP.

In *Lemoine v. Balon, Jr.*, respondent was found unfit to remain as a member of the Bar after committing malpractice, deceit, and gross misconduct. He received the check corresponding to his client's insurance claim, falsified the check and made it payable to himself, encashed the same and appropriated the proceeds. The Court found his acts so appalling and his character grossly flawed that it ruled in this wise:

> Specifically with respect to above-quoted provision of Canon 16 of the Code of Professional Responsibility, the Filipino lawyer's principal source of ethical rules, which Canon 16 bears on the principal complaint of complainant, a lawyer must hold in trust all moneys and properties of his client that he may come to possess. This commandment entails certain specific acts to be done by a lawyer such as rendering an accounting of all money or property received for or from the client as well as delivery of the funds or property to the client when due or upon demand. Respondent breached this Canon when after he received the proceeds of

complainant's insurance claim, he did not report it to complainant, who had a given address in Makati, or to his co-attorney-in-fact Garcia who was his contact with respect to complainant.

In fact, long after respondent received the December 23, 1998 check for P525,000.00 he, by his letter of March 26, 1999 to Garcia, had even the temerity to state that the claim was still pending and recommend "acceptance of the 50% offer . . . which is P350,000.00 pesos." His explanation that he prepared and sent this letter on Garcia's express request is nauseating. A lawyer, like respondent, would not and should not commit prevarication, documented at that, on the mere request of a friend.

By respondent's failure to promptly account for the funds he received and held for the benefit of his client, he committed professional misconduct. Such misconduct is reprehensible at a greater degree, for it was obviously done on purpose through the employment of deceit to the prejudice of complainant who was kept in the dark about the release of the check, until he himself discovered the same, and has to date been deprived of the use of the proceeds thereof.

A lawyer who practices or utilizes deceit in his dealings with his client not only violates his duty of fidelity, loyalty and devotion to the client's cause but also degrades himself and besmirches the fair name of an honorable profession.

That respondent had a lien on complainant's funds for his attorney's fees did not relieve him of his duty to account for it. The lawyer's continuing exercise of his retaining lien presupposes that the client agrees with the amount of attorney's fees to be charged. In case of disagreement or when the client contests that amount for being unconscionable, however, the lawyer must not arbitrarily apply the funds in his possession to the payment of his fees. He can file, if he still deems it desirable, the necessary action or proper motion with the proper court to fix the amount of such fees.

In respondent's case, he never had the slightest attempt to bring the matter of his compensation for judicial determination so that his and complainant's sharp disagreement thereon could have been put to an end. Instead, respondent stubbornly and in bad faith held on to complainant's funds with the obvious aim of forcing complainant to agree to the amount of attorney's fees sought. This is an appalling abuse by respondent of the exercise of an attorney's retaining lien which by no means is an absolute right and cannot at all justify inordinate delay in the delivery of money and property to his client when due or upon demand.

Respondent was, before receiving the check, proposing a 25% attorney's fees. After he received the check and after complainant had discovered its release to him, he was already asking for 50%, objection to which complainant communicated to him. Why respondent had to doubly increase his fees after the lapse of about one year when all the while he has been in custody of the proceeds of the check defies comprehension.

At any rate, it smacks of opportunism, to say the least.

As for respondent's claim in his June 2001 Supplement to his Counter-Affidavit that he had on several occasions from May 1999 to October 1999 already delivered a total of P233,000.00 out of the insurance proceeds to Garcia in trust for complainant, this does not persuade, for it is bereft of any written memorandum thereof. It is difficult to believe that a lawyer like respondent could have entrusted such total amount of money to Garcia without documenting it, especially at a time when, as respondent alleged, he and Garcia were not in good terms. Not only that. As stated earlier, respondent's Counter-Affidavit of February 18, 2000 and his December 7, 1999 letter to complainant unequivocally contained his express admission that the total amount of P525,000.00 was in his custody. Such illogical, futile attempt to exculpate himself only aggravates his misconduct. Respondent's claim discredited, the affidavits of Leonardo and Roxas who, acting allegedly for him, purportedly gave Garcia some amounts forming part of the P233,000.00 are thus highly suspect and merit no consideration.

The proven ancillary charges against respondent reinforce the gravity of his professional misconduct.

The intercalation of respondent's name to the Chinabank check that was issued payable solely in favor of complainant as **twice certified** by Metropolitan Insurance is clearly a brazen act of falsification of a commercial document which respondent resorted to in order to encash the check.

Respondent's threat in his December 7, 1999 letter to expose complainant to possible sanctions from certain government agencies with which he bragged to have a "good network" reflects lack of character, self-respect, and justness.

It bears noting that for close to five long years respondent has been in possession of complainant's funds in the amount of over half a million pesos. The deceptions and lies that he peddled to conceal, until its discovery by complainant after about a year, his receipt of the funds and his tenacious custody thereof in a grossly oppressive manner point to his lack of good moral character. Worse, by respondent's turnaround in his Supplement to his Counter-Affidavit that he already delivered to complainant's friend Garcia the amount of P233,000.00 which, so respondent claims, is all that complainant is entitled to, he in effect has declared that he has nothing more to turn over to complainant. Such incredible position is tantamount to a refusal to remit complainant's funds, and gives rise to the conclusion that he has misappropriated them.

In fine, by respondent's questioned acts, he has shown that he is no longer fit to remain a member of the noble profession that is the law.

WHEREFORE, respondent Atty. Amadeo E. Balon, Jr., is found GUILTY of malpractice, deceit and gross misconduct in the practice of his profession as a lawyer and he is hereby DISBARRED. The Office of the Clerk of Court