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SECOND DIVISION

[ADM. CASE NO. 5134, December 14, 2005]

TIRSO UYTENGSU III, COMPLAINANT, VS. ATTY. JOSEPH M. BADUEL, RESPONDENT.

R E S O L U T I O N

TINGA, J.:

A sworn letter-complaint[1] dated 1 July 1999[2] was filed by Tirso Uytengsu III (complainant) against Atty. Joseph M. Baduel (respondent) for violation of Rule 1.01[3] of the Code of Professional Responsibility.

Complainant is one of the heirs of Tirso Uytengsu, Jr. He and his co-heirs had a pending patent application. He alleges that sometime in December 1998 respondent requested him to sign a special power of attorney (SPA) authorizing Luis Wee (Wee) and/or Thomas Jacobo (Jacobo) to claim, demand, acknowledge and receive on his behalf the certificates of title from the Register of Deeds, General Santos City, Department of Environment and Natural Resources and from any government office or agency due to complainant and his co-heirs by reason of their application for Homestead Patent II.A. No. 37 142 (E 37 124) over Lot 924-A Cad. II-013120-D with an area of 5.3876 hectares and II.A. No. 116303 over Lot No. 924-B Cad. II-013120-D with an area of 5,1526 hectares, both situated in Lagao, General Santos City.

Complainant refused to sign the SPA as he wanted to obtain the documents personally. Subsequently though, before he could get the title and other documents, complainant learned that respondent caused to have the SPA signed by Connie U. Kokseng (Kokseng), the former guardian of the heirs of Tirso Uytengsu, Jr. Complainant maintains that the document signed by Kokseng was the same SPA which was presented to him for signature by respondent in December 1998. As a result, the titles and other documents were received and taken by other persons without his or his co-heirs' knowledge and consent.

Complainant contends that the said SPA was prepared and notarized by the law office of respondent and the latter stood as a witness to the public instrument. Complainant further avers that respondent used to do some legal work for him and knew fully well that Kokseng has already ceased to be his and his co-heirs' guardian when the Regional Trial Court, Branch 19 of Cebu City terminated the letters of guardianship over her youngest sibling on 30 August 1985 in the case entitled "In the Matter of Guardianship of Tirso M. Uytengsu III, Kathleen Anne M. Uytengsu, and Barbara Anne M. Uytengsu," docketed as SP Proc. No. 3039-R.

In essence, complainant asserts that respondent caused Kokseng to execute an SPA in favor of Wee and/or Jacobo to the damage and prejudice of the heirs of Tirso Uytengsu, Jr. even if he knew that Kokseng had no authority to do so.

Respondent in his comment,[4] argues that the allegations of complainant are purely hearsay. He stresses that complaint was instituted to harass him because he was the counsel of an opposing litigant against complainant's corporation in an ejectment case entitled "General Milling Corporation v. Cebu Autometic Motors, Inc. and Tirso Uytengsu III."

On 9 August 2000, this Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[5]

Notices of hearing were sent to both parties between 11 January 2001 and 8 May 2001. However, no actual hearings were conducted then due to the unavailability of either or both parties. Finally, on 26 June 2001, both parties appeared before the investigating commissioner. They were then directed to file their position papers and their respective replies thereto.

Investigating Commissioner Tyrone Cimafranca submitted his Report and Recommendation dated 2 April 2002, recommending the dismissal of the case. The Commissioner characterized the evidence against respondent as hearsay. Moreover, the Commissioner concluded that Kokseng had legal basis to execute the SPA in favor of a substitute, the records showing that complainant and his co-heirs have constituted Kokseng as their attorney-in-fact for the purpose of filing the homestead application.[6]

Thereafter, the IBP submitted their resolution dated 29 June 2002 approving and adopting the report and recommendation of the investigating commissioner, dismissing the complaint against respondent.[7] Complainant filed his motion for reconsideration[8] but was denied by the IBP in its resolution dated 19 October 2002 on the ground that the IBP no longer had jurisdiction to consider and resolve a matter already endorsed to this Court.[9] This notwithstanding, the Court remanded[10] the administrative case for immediate resolution of the motion for reconsideration on the merits to the IBP in the Court's resolution dated 20 January 2003.[11]

On 27 February 2004, the IBP filed its resolution adopting and approving the investigating commissioner's report and recommendation denying complainant's motion for reconsideration.[12]

Subsequently, on 1 July 2004,[13] complainant filed a petition for review on certiorari[14] assailing the resolution of the IBP dated 27 February 2004.

In his petition for review, complainant questions the findings of the IBP that complainant's allegations were based on hearsay and in finding that Kokseng had the authority to execute the special power of attorney in favor of Wee and/or Jacobo.

We dismiss the complaint.

At the outset, the Court finds that herein respondent was in fact the counsel in the homestead patent application of the heirs of Tirso Uytengsu, Jr. This can be deduced

from the letters[15] dated 9 October 1991 and 15 January 1993, addressed to respondent by Victoria Villasor-Inong (Villasor-Inong), Accounts Liquidation Officer III of the Board of Liquidators of General Santos City.

In said letters, Villasor-Inong communicated to respondent the requirements for the grant of the homestead patent to herein complainant and his co-heirs. From the tenor of the letters, it would seem that respondent actively participated in representing complainant and his co-heirs in their patent application for the subject land. Apparently, he stood as counsel for the heirs of Tirso Uytengsu, Jr.

With that ostensible representation and without any evidence to show that complainant or his co-heirs withdrew such authority from respondent, the latter himself can even claim the certificates of titles and other documents with regard to the homestead patents.

It should be remembered that the first letter of Villasor-Inong addressed to respondent was on 9 October 1991.[16] The addressees of the said letter were "The Heirs of Tirso Uytengsu, Jr., Rep. by Connie Uytengsu Kokseng, c/o Atty. Joseph Baduel."

Complainant also presented a letter[17] dated 23 September 1992 addressed to Villasor-Inong by the general manager of the Board of Liquidators, directing the former to personally contact the heirs of Tirso Uytengsu, Jr. to ascertain who among the persons giving conflicting directives as to the course of the patent application is the true authorized representative of the heirs of Tirso Uytengsu, Jr.

After four (4) months, respondent received from Villasor Inong another letter,[18] dated 15 January 1993, also attached to complainant's position paper and petition for review, furnishing respondent the requirements needed for the homestead patent application of complainant and his co-heirs.

Complainant himself submitted all the aforementioned letters clearly showing that respondent was indeed the counsel or representative of complainant in the application for patent.

The relation of attorney and client is in many respects one of agency and the general rules of ordinary agency apply to such relation.[19] The extent of authority of a lawyer, when acting on behalf of his client outside of court, is measured by the same test as that which is applied to an ordinary agent.[20]

Such being the case, even respondent himself can acquire the certificates of title and other documents without need of an SPA from complainant and his co-heirs.

In addition, the Court agrees with the investigating commissioner that the allegations of complainant constitutes mere hearsay evidence and may not be admissible in any proceeding.

In *Marcelo v. Javier,*[21] it was held that:

> In all cases the determination whether an attorney should be disbarred or merely suspended for a period involves the exercise of a sound judicial

> discretion, mindful always of the fact that disbarment is the most severe form of disciplinary action and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. In cases of lighter offenses or of first delinquency, an order of suspension, which is correctional in nature, should be inflicted. In view of the nature and consequences of a disciplinary proceedings, observance of due process, as in other judicial determination, is imperative along with presumption of innocence in favor of the lawyer. Consequently, the burden of proof is on the complainant to overcome such presumption and establish his charges by clear preponderance of evidence.[22]

Procedural due process demands that respondent lawyer should be given an opportunity to cross-examine the witnesses against him. He enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. The case must be established by clear, convincing and satisfactory proof.[23]

In the case at bar, other than the bare assertions of complainant, the evidence presented by the latter does not suffice to tip the scale of justice to his side.

It should be stressed that in administrative proceedings, complainant has the burden of proving the allegations in the complaint. We cannot depend on mere conjectures and speculations. There must be substantial evidence to support respondent's guilt.[24]

Complainant averred that: (1) the SPA which the respondent asked him to sign was the same document that Kokseng executed; (2) the document was notarized by a notary public from the office of the respondent; and (3) the respondent was a witness in the SPA.

As correctly observed by the investigating commissioner, all the aforementioned charges are not based on his personal knowledge of the acts complained of but acquired from other sources.

> Complainant charges that respondent committed an act meriting disbarment when the latter caused to have a special power of attorney, which the former reused to sign earlier, executed by Mrs. Connie Kokseng, former guardian of complainant and his co-heirs, authorizing certain individuals to secure the release from the Register of Deeds and other government offices in General Santos City, titles and other documents pertaining to complainant's and his co-heirs' homestead application. However, this charge is not based on his own personal knowledge of the acts complained of but acquired from another source. In other words, what he offered in evidence to prove his charge is a second-hand version. Complainant identified his source but failed to present any sworn statement or affidavit of said witness. In other words, what he presented in evidence to prove his charge is hearsay.[25]

The hearsay rule provides that no assertion offered as testimony can be received unless it is or has been open to test by cross-examination or an opportunity for cross-examination, except as provided otherwise by the rules on evidence, by rules of court, or by statute. The chief reasons for the rule are that out-of-court