

THIRD DIVISION

[A.C. No. 5082, February 17, 2004]

MILAGROS N. ALDOVINO, VIRGILIO NICODEMUS, ANGELA N. DELA CRUZ, JULITA N. SOCO, MAGDALENA N. TALENS AND TEODORO S. NICODEMUS, COMPLAINANTS, VS. ATTY. PEDRO C. PUJALTE, JR., RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

This is a complaint for disbarment and/or disciplinary action^[1] against Atty. Pedro C. Pujalte, Jr. filed by Milagros Nicodemus-Aldovino, Virgilio Nicodemus, Angela Nicodemus-dela Cruz, Julita Nicodemus-Soco, Magdalena Nicodemus-Talens and Teodoro S. Nicodemus for violation of Canon 16 of the Code of Professional Responsibility.

Complainants alleged in their complaint that they are brothers and sisters and heirs of Arcadia Nicodemus. Sometime in March, 1995, they hired the services of respondent Atty. Pujalte, Jr. as their counsel in Civil Case No. 95-46 filed with the Regional Trial Court, Branch 56, Lucena City. The suit was for specific performance with damages to compel their sister, Loreto Nicodemus Pulumbarit, to deliver to them their shares in the estate of their deceased mother.

On November 9, 1998 the trial court rendered its Decision, the dispositive portion of which reads:

“WHEREFORE, FROM THE FOREGOING, the court finds for the defendant Loreto Pulumbarit and accordingly orders the dismissal of the case with costs against plaintiffs and orders the Branch Clerk of Court of this branch, upon finality of this decision to withdraw from Savings Account No. 435-527745-9 at the Philippine National Bank and to deliver the proceeds to all the heirs of Arcadia Nicodemus upon proper receipt. Both counsels are directed to oversee the distribution and for them to jointly file their manifestation on the matter.”^[2]

Accordingly, on December 1, 1998, Branch Clerk of Court Angelo A. Serdon withdrew from the Philippine National Bank the sum of P1,335,109.68 under Savings Account No. 435-527745-9.

In the presence of defendant Mrs. Loreto N. Pulumbarit and respondent counsel, Branch Clerk of Court Serdon divided the withdrawn amount into eight shares of P166,888.71 each. He gave the defendant two shares. Then he handed the remaining amount of P1,001,332.26, corresponding to six shares, to respondent upon his representation that he is authorized to receive the money and to oversee the distribution to complainants of their respective shares.

However, complainants did not receive their shares from respondent despite repeated demands. Thus, they engaged the services of Atty. Francisco I. Chavez who, on December 17, 1998, sent a letter to respondent demanding that the amount of P1,001,332.26 entrusted to him by the Branch Clerk of Court be turned over to complainants.

On December 21, 1998, respondent wired Atty. Chavez that he will deliver to complainants their respective shares "tomorrow morning."

What respondent delivered to herein complainants was only **P751,332.26**, instead of **P1,001,332.26** because he deducted P250,000.00 therefrom. He claimed that this amount is his attorney's fees per his agreement with Milagros Aldovino, complainants' representative. On February 23, 1999, Atty. Chavez again wired respondent demanding that he return to complainants the amount of P236,000.00.

As explained by Atty. Chavez in his telegram, respondent could retain only P14,000.00 (not P250,000.00), which amount is in addition to the P86,000.00 initially paid to him by complainants as his attorney's fees. According to complainants, the sum of P100,000.00 (P86,000.00 plus P14,000.00) is more than the amount of attorney's fees agreed upon by the parties. Still, respondent failed to return to complainants the amount of P236,000.00, which is the balance after deducting P14,000.00 from P250,000.00.

In his comment dated September 3, 1999, respondent admitted that he received from the Branch Clerk of Court "P1,335,109.68" representing complainants' shares.

Thereafter, he waited for complainants Virgilio and Teodoro Nicodemus and Engr. Isidro Aureada at the Sangguniang Panlalawigan of Quezon where he had a hearing, but they did not come.

To disprove deceit on his part, he attached to his comment his letter dated December 2, 1998 to Engr. Isidro Aureada^[3] informing the latter that he waited for those complainants in order to give them the money.

Respondent claimed that there is a verbal agreement between him and Milagros Aldovino, representative of complainants, that they will pay him P250,000.00 as his attorney's fees. Consequently, he deducted and retained this amount from the money delivered to him by the Branch Clerk of Court. At any rate, he wrote complainants on December 23, 1998 regarding this matter.^[4]

In her Report dated March 10, 2003,^[5] IBP Commissioner Rebecca Villanueva-Maala made the following findings and recommendation:

"xxx. In the case at bar, after respondent got hold of the entire settlement amount, he did not immediately turn over the said amount to the complainants who had to look and search for him. It was only when respondent was threatened with a legal action (Estafa, docketed as Grim. Case No. 99-1017, RTC Br. 58, Lucena City) that he decided to return the balance of the settlement amount but after deducting P250,000.00 which he claims to be his attorney's fees. Complainants alleged that they have already paid respondent the amount of P86,000.00 which was more than double the agreed upon professional fees. Complainants even agreed to