

FIRST DIVISION

[A.C. No. 6183, March 23, 2004]

EDISON G. CHENG, COMPLAINANT, VS. ATTY. ALEXANDER M. AGRAVANTE, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

This is an administrative case for disbarment filed with the Integrated Bar of Philippines' (IBP) Commission on Bar Discipline.

The following facts have been established by the evidence.

Respondent Atty. Alexander M. Agravante served as counsel for The Rogemson Co., Inc. (hereinafter, Rogemson) in a case filed against it before the National Labor Relations Commission's (NLRC) Regional Arbitration Branch No. XI in Davao City by its former employee, a certain Beaver Martin B. Barril. On June 18, 1998, Labor Arbiter Newton R. Sancho rendered a decision in favor of the complainant, and ordered Rogemson to pay Barril separation pay and backwages.^[1] A copy of said decision was received by respondent's law office on September 8, 1998. However, respondent filed a Memorandum of Appeal with the NLRC only on September 22, 1998. Consequently, the NLRC dismissed Rogemson's appeal in a Resolution dated May 27, 1999, and made the following incisive observation:

In the case at bar, respondents through counsel were duly served with a copy of the decision (Vol. 1, pp. 67-70) of Labor Arbiter Newton R. Sancho, dated 18 June 1998, declaring complainant illegally dismissed from employment and awarding him with separation pay and backwages in the total sum of P130,000.00 on September 8, 1998, Tuesday, said date being indicated in the mailed decision's registry return receipt which is attached to the records (Vol. 1, p. 75). Consequently, respondents had ten (10) calendar days but not later than September 18, 1998, Friday to perfect their appeal therefrom. However, the records similarly bear that this present appeal was filed belatedly by way of mail on 22 September 1998. It is necessary to state these facts candidly given the inaccurate certification by respondent's counsel that he received the decision being assailed on September 10, 1998. (Vol. 2, p. 7)

The complainants terminated the services of Atty. Agravante. Through their new lawyers, complainants wrote Atty. Agravante, demanding that they be compensated for the pecuniary damages they had suffered as a result of his negligence.^[2]

When it appeared that Atty. Agravante had no intention of responding to their letter, Edison G. Cheng, General Manager of Rogemson, filed an affidavit-complaint with the IBP Commission on Bar Discipline.^[3] The case was then assigned to Commissioner Caesar R. Dulay for investigation.

Allan P. Abelgas, Rogemson's Regional Sales Manager for Cebu, testified that he only learned of the decision of the Labor Arbiter when a secretary of Atty. Agravante informed him that a bond was required in filing an appeal to the NLRC. Abelgas was then about to take an emergency leave of absence, so he delegated the task of securing the bond to his sister Sheila A. Balandra, another Rogemson employee.^[4]

Balandra testified that on September 18, 1998, she called up Cheng in Manila by phone, who then authorized her to procure the bond. Balandra then called the office of Atty. Agravante to ask if she can submit the bond on Monday, September 21, 1998. She was told to stay on the line while the secretary consulted with one of the other lawyers in the office. When the secretary came back, she informed Balandra that she could submit the bond on Monday, September 21, 1998 as long as it reached the law office before 5:00 p.m.^[5]

On September 21, 1998, Balandra arrived at the office of Atty. Agravante with the bond at 4:00 p.m. She learned that Atty. Agravante had just returned from out of town and had just opened the envelope containing the adverse decision.^[6]

Not surprisingly, Agravante tells a different story. He neither admitted nor denied receiving the decision of the Labor Arbiter on September 8, 1998. Instead, he alleges that he was out of town on said date and only returned to his office on September 10, 1998. Upon arriving at the office, his secretary handed to him all the correspondence addressed to him, including the envelope containing the Labor Arbiter's decision. He alleges that there were several markings on this particular envelope, one of which was the date "September 10, 1998," and he allegedly assumed that this was the date of receipt by his office.^[7] He then informed Abelgas of the result of the case and the period within which to file a Memorandum of Appeal.^[8] The instruction for Rogemson to proceed with the appeal came a full six (6) days later. He offered the services of his law office for procuring the appeal bond, but he was informed that Rogemson would take care of it. He alleges that Rogemson furnished them with the bond only in the morning of September 22, 1998, although the bond documents were notarized on September 21, 1998.^[9]

On July 23, 2003, Commissioner Dulay submitted his Report recommending that respondent be suspended from the practice of law for two (2) months with an admonition that a similar offense would be dealt with more severely.^[10]

On August 30, 2003, the Board of Governors of the IBP passed Resolution No. XVI-2003-97, approving the Report and Recommendation of the Investigating Commissioner.

The investigating commissioner found that Balandra's testimony that she furnished Agravante's law office with the appeal bond on September 21, 1998 and not on September 22, 1998, was *not* sufficiently rebutted by Agravante, who did not even cross-examine her. More importantly, the fact that the Memorandum of Appeal was filed four (4) days beyond the reglementary period for filing the same, which resulted in its dismissal by the NLRC, shows that Agravante was guilty of negligence.^[11]

With regard to the date of receipt of the Labor Arbiter's decision, the registry return card indicated that respondent received the same on September 8, 1998.^[12] Thus, Commissioner Dulay concluded that Agravante misled the NLRC when he certified in