

## SECOND DIVISION

[ A.C. No. 4762, June 28, 2004 ]

**LINDA VDA. DE ESPINO, COMPLAINANT, VS. ATTY. PEPITO C. PRESQUITO, RESPONDENT.**

### RESOLUTION

**PUNO, J.:**

On June 9, 1997, Linda Vda. de Espino wrote a letter-complaint<sup>[1]</sup> with the then Court Administrator Alfredo Benipayo, charging respondent Atty. Pepito C. Presquito, a member of the Integrated Bar of the Philippines (IBP), Misamis Oriental Chapter, for "having employed fraud, trickery and dishonest means in refusing to honor and pay [her] late husband Virgilio Espino, when he was still alive, the sum of P763,060.00." According to complainant, respondent's unlawful refusal and dilatory tactics partly triggered the death of her husband, who died "disillusioned and embittered."<sup>[2]</sup> The letter-complaint and affidavit also alleged that notwithstanding the numerous oral demands by Mr. Espino and complainant (after the death of Mr. Espino), respondent still refused to pay the amounts represented by the eight checks which had all been dishonored. Complainant surmised that Atty. Presquito's refusal to pay may be due to his reliance on the influence of his father-in-law, a former Executive Judge of the RTC (Cagayan de Oro), and of his uncle, an RTC judge (Cagayan de Oro).

The records show that sometime in September 1995, respondent was introduced to complainant's late husband, Mr. Virgilio M. Espino. Mr. Espino, a resident of Davao City, had sought the assistance of respondent, a resident of Cagayan de Oro, regarding the sale of his piece of land with an area of 11,057.59 sq.m. situated in Misamis Oriental. The discussion between Mr. Espino and the respondent resulted in the sale of the property to respondent.<sup>[3]</sup> Under the terms of the agreement between Mr. Espino and respondent,<sup>[4]</sup> the purchase price of the land was P1,437,410.00, payable on a staggered basis and by installments.<sup>[5]</sup> Pursuant to the terms of payment in the agreement, respondent issued eight post-dated checks, totaling P736,060.00.<sup>[6]</sup> Respondent then entered into a joint venture or partnership agreement with Mrs. Guadalupe Ares for the subdivision of the land into home-size lots and its development, with a portion of the land retained by respondent for his own use.<sup>[7]</sup> The land was eventually titled in the name of respondent and Mrs. Ares, and subdivided into 35 to 36 lots.

Meanwhile, the eight post-dated checks issued by respondent were all dishonored. Mr. Espino made repeated demands for payment from respondent but the latter refused. Mr. Espino died in December 1996. His widow, complainant, then tried to collect from respondent the value of the eight checks. When complainant's numerous pleas remained unheeded, she filed the complaint in June 1997.

In his comment dated September 22, 1997, respondent denied any wrongdoing, and said that the allegations that he had employed "fraud, trickery and dishonest means" with the late Mr. Espino were totally false and baseless. The complaint, according to respondent, stemmed from complainant's lack of knowledge as to "the real story" of the transaction between complainant's husband and respondent. He also vehemently took exception to the imputation that he was banking on the influence of his father-in-law and uncle-in-law.

Respondent does not deny the issuance of the eight checks. What respondent claims, however, is that the nonpayment was justified by the unresolved problems he and Mrs. Ares have with respect to the right-of-way of the land. He alleged that Mr. Espino had made assurances that the land had a right-of-way required for its development, but respondent later found out that such road-right-of-way required the consent of four other land owners, and the expense would be considerably more than he was made to believe. According to respondent, he and Mr. Espino had agreed that the latter would not encash the checks or demand the equivalent of the same until the right-of-way problem of the land had been resolved.<sup>[8]</sup> Respondent's position is that until the problem of obtaining a right-of-way to the land has been resolved, nothing has yet accrued against him or Mrs. Ares (his partner), as it would be "very unfair and unjust" for them to pay Mr. Espino when the land could not be developed and sold.<sup>[9]</sup>

Respondent also alleged that he was entitled to set-off against the amount he owes Mr. Espino or his heirs from the purchase of the land, the advances he made to Mr. Espino, and the cost he incurred when he defended Mr. Espino's son in a criminal case. He later on manifested that he has fully paid the portion of the land which had been titled in his name through the same advances and incurred expenses.<sup>[10]</sup>

In a resolution dated November 26, 1997,<sup>[11]</sup> the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation/decision, and assigned to the IBP-Commission on Bar Discipline (CBD).

In the IBP-CBD report dated November 12, 2002,<sup>[12]</sup> Investigating Commissioner Caesar R. Dulay found that "the facts and credible evidence made available in this case indubitably establish respondent's failure to live up to the demands of the Lawyers Code of Professional Responsibility and the Canons of Professional Ethics." For having failed to act with candor and fairness toward complainant, Commissioner Dulay recommended that respondent be suspended from the practice of law for six (6) months, and ordered to immediately account with complainant regarding the sale of the piece of land which had been subdivided in the name of respondent and his business partner. On June 21, 2003, the Board of Governors of the IBP passed a Resolution adopting/approving the Report and Recommendation of Commissioner Dulay, finding that "respondent's lack of fairness and candor and honesty [was] in violation of Rule 1.01 of the Code of Professional Responsibility."

After a careful consideration of the record of the instant case, we agree that respondent was wanting in fairness, candor and honesty demanded of him by the Code of Professional Responsibility and the Canons of Professional Ethics. We find, however, the recommended penalty of six (6) months suspension too light considering respondent's gross misconduct.

Complainant's testimony and exhibits have clearly established that: (1) there was an agreement between respondent and complainant's late husband for the sale of the latter's land; (2) respondent had issued the eight checks in connection with said agreement; (3) these checks were dishonored and remain unpaid; and (4) the land sold had an existing road-right-of-way. Complainant's exhibits were formally offered as early as January 6, 1999,<sup>[13]</sup> and were admitted without objection from respondent.<sup>[14]</sup>

In the face of these uncontroverted facts, it was incumbent upon respondent to prove a legal excuse or defense for nonpayment of the eight checks.

Respondent utterly failed in this regard.

From the termination of complainant's presentation of evidence on December 1998 until Commissioner Dulay's report on November 12, 2002, the records show that respondent was unable to present evidence - either testimonial or documentary - to prove that he had legal cause to refuse payment, or that he was entitled to legal compensation. Even respondent's own statements - which, without corroborating evidence, remain mere self-serving allegations - fall short of testimony, as he failed to submit to cross-examination by opposing counsel or for clarificatory questions by the IBP-CBD. Worse, respondent attached eighteen documents to his comment, **but only went so far as to mark** (without a formal offer) the agreement between him and Mr. Espino (for the sale of the land), and the partnership agreement between him and Mrs. Ares. **Thus, respondent had no evidence other than his own allegations.**

Respondent's failure to present evidence is a breach of Rule 12.01 of the Code of Professional Responsibility,<sup>[15]</sup> especially in the light of the numerous postponements and resettings he requested for and was granted with, on the ground that he needed more time to prepare his evidence. We note that respondent was first scheduled to present his evidence on December 14, 1998. Two years - five resettings, and three orders submitting the case for resolution - later, respondent still had not proffered testimonial or documentary evidence.

Respondent claims that his failure to present evidence was due to his financial difficulties, *i.e.*, he could not afford to spend for travel expenses of his witnesses.<sup>[16]</sup> We are not persuaded. First, it boggles the mind how financial constraints could have prevented respondent from presenting the originals of the documents attached to his comment, proving, among others, the alleged advances and costs on Mr. Espino's behalf. The originals of these documents are presumably in his possession. Second, with respect to the absence of testimony, respondent could have submitted the affidavits of his witnesses - the taking of which he could have done himself in Cagayan de Oro to keep down the cost. The records are clear that he was allowed this option.<sup>[17]</sup> But he did neither.

All these circumstances lead us to the ineluctable conclusion that **respondent could not present evidence because there really was none to justify his nonpayment.**<sup>[18]</sup>

Even if we were to excuse respondent's procedural lapse and consider his written