

EN BANC

[A.C. No. 4904, August 12, 2004]

**ANA A. CHUA AND MARCELINA HSIA, COMPLAINANTS, VS. ATTY.
SIMEON M. MESINA, JR., RESPONDENT.**

DECISION

PER CURIAM:

By a verified complaint^[1] received by the Office of the Bar Confidant on May 5, 1998,^[2] Ana Alvaran Chua and Marcelina Hsia administratively charged Atty. Simeon M. Mesina, Jr., for breach of professional ethics, gross professional misconduct, and culpable malpractice.

As related by complainants, the following facts gave rise to the filing of the complaint.

Respondent was, for years, Ana Alvaran Chua and her now deceased husband Chua Yap An's legal counsel and adviser upon whom they reposed trust and confidence. They were in fact lessees of a building situated at Burgos Street, Cabanatuan City (Burgos property) owned by respondent's family, and another property containing an area of 854 sq. m., situated at Melencio Street, Cabanatuan City (Melencio property), also owned by respondent's family whereon they (spouses Chua) constructed their house. These two properties were mortgaged by the registered owner, respondent's mother Felicisima Melencio vda. de Mesina (Mrs. Mesina), in favor of the Planters Development Bank to secure a loan she obtained.

As Mrs. Mesina failed to meet her obligation to the bank, respondent convinced complainant Ana Chua and her husband to help Mrs. Mesina by way of settling her obligation in consideration for which the Melencio property would be sold to them at P850.00/sq. m.

Accommodating respondent's request, the spouses Chua and their business partner, herein co-complainant Marcelina Hsia, settled Mrs. Mesina's bank obligation in the amount of P983,125.40.

A Deed of Absolute Sale dated January 19, 1985^[3] conveying the Melencio property for P85,400.00 was thereafter executed by Mrs. Mesina, whose name appears therein as "Felicisima M. Melencio," in favor of complainants.

As complainants were later apprised of the amount of capital gains tax they were to pay, they consulted respondent about it. Respondent thus suggested to them that another Deed of Absolute Sale should be executed, antedated to 1979 before the effectivity of the law mandating the payment of capital gains tax. As suggested by respondent, another Deed of Absolute Sale antedated February 9, 1979^[4] was executed by Mrs. Mesina, whose name again appears therein as "Felicisima M.

Melencio," in favor of complainants wherein the purchase price was also indicated to be P85,400.00.

After liquidating the advances made by the Chua spouses "in the redemption of the MESINA properties," Mrs. Mesina was found to have "an existing balance" due the spouses in the amount of P400,000.00, on account of which they advised respondent about it. Respondent, by Affidavit of February 18, 1986, "acknowledged such obligation" to be his and undertook to settle it within two years.

Complainants were subsequently issued on January 21, 1986 a title over the Melencio property.

Not long after the execution of the February 9, 1979 Deed of Absolute Sale or in February 1986, one Juanito Tecson (Tecson) filed an Affidavit^[5] dated February 20, 1986 before the Cabanatuan City Prosecutor's Office charging respondent's mother, the spouses Chua, Marcelina Hsia and the two witnesses to the said Deed of Absolute Sale, for Falsification of Public Document and violation of the Internal Revenue Code. In his complaint affidavit, Tecson alleged that he was also a lessee of the Melencio property and was, along with the Chua spouses, supposed to purchase it but that contrary to their agreement, the property was sold only to complainant and her co-complainant, to his exclusion. Tecson went on to relate that the February 9, 1979 Deed of Absolute Sale did not reflect the true value of the Melencio property and was antedated "to evade payment of capital gains tax."

Tecson submitted documents showing that indeed the July 9, 1979 Deed of Absolute Sale was antedated.

Respondent thereupon hatched a plan to dodge the falsification charge against Mrs. Mesina et al. He proposed to complainants that they would simulate a deed of sale of the Melencio property wherein complainants would resell it to Mrs. Mesina.

Heeding the proposal of respondent, complainants executed a Deed of Absolute Sale dated April 1, 1986^[6] conveying to "Felicisima M. Melencio" the Melencio property for P85,400.00.

A new title was accordingly issued on April 4, 1986 in the name of "Felicisima M. Melencio," the owner's copy of which was entrusted to complainants.

Tecson subsequently filed before the Cabanatuan City Prosecutor's Office an Affidavit of Desistance dated September 5, 1986^[7] alleging that his filing of the criminal complaint "arose out of mere misunderstanding and difference" with herein complainants and their co-respondents and he had no sufficient evidence against them.

Some years later or on May 2, 1990, respondent approached complainants and told them that he would borrow the owner's copy of Mrs. Mesina's title with the undertaking that he would, in four months, let Mrs. Mesina execute a deed of sale over the Melencio property in complainants' favor. In fact, respondent gave complainants a written undertaking^[8] dated May 2, 1990 reading:

Received the owner's duplicate copy of TCT No. 4383 issued by the Register of Deeds, Cabanatuan City registered in the name of Felicisima Mesina, widow, consisting of about 854 square meters more or less located at calle Melencio, Cabanatuan City from Mrs. Ana Chua and Marcelina Hsia.

I promise to and undertake to have the Deed of Sale of the above-mentioned property in favor of Ana Chua and Marcelina Hsia to be signed by Mrs. Felicisima Mesina, within four (4) months from date hereof so that the above-mentioned property and title maybe transferred in the name of Ana Chua and Macelina Hsia. (Underscoring supplied)

In the meantime, Mrs. Mesina died "in the early part of 1991."

Despite respondent's repeated promises "to effect" the transfer of title in complainants' name, he failed to do so. Complainants were later informed that the Melencio property was being offered for sale to the public.

The spouses Chua and complainant Marcelina Hsia thus filed on August 24, 1992 a Complaint^[9] against respondent and his two siblings before the Regional Trial Court (RTC) of Nueva Ecija in Cabanatuan City, for "Declaration of Nullity of Sale and Reconveyance of Real Property."

As of the time of the filing of the present administrative complaint in 1998, the civil case against the Mesina siblings was still pending.

This Court, by Resolution of July 13, 1998,^[10] directed respondent to file Comment on the complaint within ten days.

By Resolution of December 2, 1998,^[11] this Court, noting that the copy of the Resolution of July 13, 1998 requiring respondent to comment on the complaint sent to him at his office address at S. M. Mesina Law Office, 30 Jupiter St., Paseo de Roxas, Bel-Air Subd., Makati City was returned unserved with the notation "Moved," considered the Resolution of July 13, 1998 served on respondent by substituted service pursuant to Rule 13, Section 8 of the 1997 Rules of Civil Procedure. Respondent was accordingly deemed to have waived the filing of the required comment.

By the same Resolution of December 2, 1998, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety days.

The IBP, acting on the complaint, issued a notice of hearing on September 14, 2001,^[12] copy of which was sent to respondent at his office address via registered mail, covered by Registry Receipt No. 2605 of the Meralco Post Office.^[13] On the scheduled date of hearing, complainants personally appeared with their counsel. Respondent failed to show up.

Given the length of time that the case remained pending from its filing, the IBP Commission on Bar Discipline, by Order of October 12, 2001,^[14] directed complainants to just file their position paper with affidavits and supporting

documents in lieu of actual presentation of witnesses and to serve a copy thereof to respondent at his last known address.

In compliance with the IBP Order, complainants filed on April 1, 2002 their position paper,^[15] annexed to which were photocopies of: 1) a May 5, 1993 Certification^[16] issued by the Metrobank Cabanatuan Branch certifying that "it issued the demand drafts to the payees enumerated below, which were debited from the account of Mr. Chua Yap An under Savings Account No. 760:

<u>D/D No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Date of Issue</u>
214597	Planters Dev. Bank	P 805,299.54	12-19-85
214760	Planters Dev. Bank	100,000.00	01-14-86
214761	Atty. Simeon Mesina, Jr.	77,826.10	01-14-86";

2) Affidavit dated February 18, 1986^[17] of respondent acknowledging a debt of P400,000.00 to complainant Ana Alvaran Chua and promising to pay interest thereon within 2 years to commence upon the signing thereof [February 16, 1998] and, in the event no partial or full payment of the principal is made within 2 years, Ana Alvaran Chua "is under no obligation to pay any lease rentals over the lot situated in Burgos Avenue, Cabanatuan City where the Oceanic Hardware Bldg. is erected;" 3) Deed of Absolute Sale dated January 19, 1985^[18] and 4) Deed of Absolute Sale dated July 9, 1979,^[19] both executed by "Felicisima M. Melencio" in favor of complainant; 5) TCT No. T-48114^[20] issued by the Cabanatuan City in the name of complainants on January 21, 1986; 6) Affidavit of Juanito C. Tecson^[21] dated January 20, 1986 charging complainants et al. for Falsification of Public Documents; 7) Deed of Absolute Sale dated April 1, 1986 executed by complainants in favor of Mrs. Mesina,^[22] and 8) TCT No. T-48383 issued on April 4, 1986 in the name of "Felicisima M. Melencio;"^[23] and 9) Complaint of spouses Chua Yap An and Ana Alvaran Chua and Marcelina Hsia, for Declaration of Nullity of Deed of Sale and Reconveyance of Real Property against respondent and his two siblings.^[24]

A copy of complainant's position paper was sent on March 18, 2002 to respondent at his office address by registered mail covered by Registry Receipt No. 5278.^[25] There is no showing if respondent received this mail matter.

The IBP once more scheduled, by notice of December 13, 2002,^[26] a hearing of the administrative case to January 15, 2003, copy of which notice was sent to respondent at his office address by registered mail covered by Registry Receipt No. 2953 issued by the Meralco Post Office.^[27]

On the scheduled hearing on January 15, 2003, the IBP Investigating Commissioner, by Order of even date,^[28] noted the presence of complainants, and the absence of respondent, copy of the notice of hearing to whom was returned unserved with the notation "RTS-Moved." The case was thereupon deemed submitted for report and recommendation.