

## THIRD DIVISION

[ A.C. No. 5113, October 07, 2004 ]

**DOLORES SILVA VDA. DE FAJARDO, COMPLAINANT, VS. ATTY.  
REXIE EFREN A. BUGARING, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Lawyers must be completely truthful, more so when they plead their own causes against former clients. In the present case, the lawyer misrepresented facts in his claim for attorney's fees; hence, he must be sanctioned.

#### The Case

The administrative case before the Court stems from a Complaint<sup>[1]</sup> filed by Dolores Silva vda. de Fajardo, seeking the disbarment of Atty. Rexie Efren A. Bugaring for untruthful statements in allegedly trying to fleece her of P3,532,170 in attorney's fees. The Complaint and respondent's Comment<sup>[2]</sup> thereon were referred<sup>[3]</sup> by the Court to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Commissioner Rebecca Villanueva-Maala's Report<sup>[4]</sup> recommending the suspension of respondent from the practice of law for one year was adopted and approved by the IBP Board of Governors in its June 21, 2003 Resolution No. XV-2003-348. On June 30, 2003, the Notice of the IBP Resolution<sup>[5]</sup> and the records of the case -- including the Commissioner's Report -- were forwarded to this Court by Atty. Julio C. Elamparo, director for bar discipline of the IBP.<sup>[6]</sup>

#### The Facts

The facts are narrated by the investigating commissioner in her Report as follows:

"Complainant alleged that she had known respondent since 1989 when she, together with her co-heirs, were trying to sell [the] properties which they inherited from their predecessors, Jose and Buenaventura Silva x x x. [They] were encountering disputes with the heirs of Alfredo Silva Cruz ('Cruz Family'), then represented by one Atty. Ricardo Dantes, and with their tenants, over x x x Lots 2434 and 2454 located in Sta. Rosa, Laguna, [which they were trying to sell] to Golden Bay Realty and Development Corporation.

"Atty. Bugaring was recommended by Atty. Dantes to complainant to assist her and her co-heirs with the legal aspects of the disputes they were encountering. Atty. Bugaring and Atty. Dantes were close associates and they hold and belong to the same law office of Bugaring, Tugonon

and Associates Law Offices. Whenever complainant and her companion Maria Luisa Tamondong would go to the office of Atty. Bugaring to see him, they also see Atty. Dantes at the same office. Thinking that Atty. Bugaring was an honest and honorable man, complainant accepted the recommendation. At that time, complainant thought that there was nothing wrong or anomalous in she being represented by Atty. Bugaring, who belong to the same law office as that of Atty. Dantes, counsel of the Cruz family with which complainant and her co-heirs were then having disputes over Lots 2434 and 2454. She did not know that it was improper and unethical for lawyers of the same firm to handle conflicting interests of clients.

"Initially, Atty. Bugaring assisted complainant with their problems with the tenants of Lots 2434 and 2454. The tenants then had the preferential right to purchase the said properties they were occupying x x x. [T]hey [had] verbally expressed their non-interest in purchasing the same but refused to vacate the premises [and] demanded that they be given 1/3 of the total land area of the two lots before they agree to vacate. Atty. Bugaring wrote, on behalf of the complainant and her co-heirs, the said tenants and the Agrarian Reform Office. Meanwhile, the dispute of complainant and her co-heirs with the Cruz family later led to the filing of the case entitled 'Alicia Cruz, et al., vs. Dolores Fajardo, et al.' with the Regional Trial Court of Biñan, Laguna, docketed as Civil Case No. B-3472 (hereinafter the 'Mother Case'). The Cruz family was asserting an alleged right over Lots 2434 and 2454. Atty. Bugaring represented the complainant and her co-heirs for purposes of this case.

"Every time there was a hearing in the 'Mother Case' in Laguna, the driver of complainant would fetch Atty. Bugaring at 5:00 o'clock in the morning from his residence/office in Quezon City, and would likewise drive him back after the hearing. Complainant paid Atty. Bugaring every hearing an appearance fee of P1,000.00, whether hearings were postponed or not, treated him to lunch and used to send him off with vegetables, candies and other goodies.

"Complainant had always asked Atty. Bugaring how much [he would] charge for his professional fees, but Atty. Bugaring would just answer: 'Huwag na ninyo alalahanin iyon. Para ko na kayong nanay o lola.' All along, complainant was swayed to believe that Atty. Bugaring was nice and courteous.

"Later, the dispute of complainant and her co-heirs with the Cruz family got worse. The 'Mother Case' soon branched out to more and more cases, about eleven (11) cases in all, which were but the offshoots of the 'Mother Case,' (Civil Case No. 3472). Atty. Bugaring continued to represent the complaint and her co-heirs in the foregoing cases and as in the 'Mother Case,' whenever there were hearings, Atty. Bugaring was fetched back and forth by complainant's driver x x x, [was paid] an appearance fee of P1,000.00 per hearing, [was] treated to lunch and sent x x x off [with] some goodies. In all these cases, complainant had asked Atty. Bugaring of his professional fees, but the complainant would get the usual reply of: 'Huwag na ninyo alalahanin iyon. Para ko na kayong

nanay o lola.' With the rate things were going on then, Atty. Bugaring all the more earned the trust and respect of the complainant more than anybody else.

"In November 1992, complainant had a meeting with her co-heirs and the latter expressed their discontent with the way Atty. Bugaring was handling the 'Mother Case' and the offshoot cases because the cases were derailing their intended sale of Lots 2434 and 2454 to Golden Bay Realty and Development Corporation. Complainant was hounded by questions regarding her arrangement with Atty. Bugaring to which complainant could not give any answer because there really was no contract or agreement between her and Atty. Bugaring, who refused to discuss any arrangement with complainant. After their meeting, complainant told Atty. Bugaring of the discontent of her co-heirs, and Atty. Bugaring told complainant that he can draw a fictitious 'Contract' for his services which complainant can show to her co-heirs. Indeed, Atty. Bugaring drew up two (2) fictitious 'Contract of Services' both dated 11 December 1992. One specifically states that it was for the 'Mother Case' and the other was for the case of 'Catalina Roberto, et al. v. Dolores Fajardo, et al.' Each of said fictitious contracts stipulate[d] x x x an acceptance fee of P50,000.00, per appearance fee of P1,000.00 and upon the termination of the case, an additional attorney's fee 'equivalent to 25% of the value of the subject property in litigation.' When the fictitious contracts were shown to complainant, she was assured by Atty. Bugaring that the contracts were not valid and binding and told her 'Ito ho ay para lamang may maipakita kayo sa kanila, pero hindi ito totoo.' With that assurance, complainant signed the contract and was given a copy of the same.

"Around 1992, complainant and her co-heirs entered into separate compromise agreements with the tenants of Lots 2434 and 2454 and with the Cruz family. The agreement with the Cruz family was later put into writing with the execution of a Compromise Agreement dated 7 June 1992, which was submitted to the court before which the 'Mother Case' was pending. [I]t became the basis of the Judgment dated 22 November 1993 x x x [and the dismissal of] all the offshoot cases x x x. [On the other hand,] the Compromise Agreement reached with the tenants of Lots 2434 and [2454] consisted of an agreement totally ceding Lot 2454 to the tenants as [d]isturbance [c]ompensation. Complainant and her co-heirs decided not to reveal these agreements [to Atty. Bugaring] until they were finalized because they knew that [he] did not want such settlement for reasons known [only] to him.

"With the settlement of the disputes over Lots 2434 and 2454, the sale of the remaining property (Lot 2434) to Golden Bay [R]ealty and Development Corporation materialized on 2 March 1994. Complainant was accompanied by Atty. Bugaring and Maria Luisa Tam[o]ndong to the office of Golden Bay Realty when the sale was finalized. When complainant received the proceeds of the sale, they went to see Atty. Bugaring to settle their account with him. They tendered to Atty. Bugaring the amount of P100,000.00 which they believed was commensurate for his services considering [that] the cases ended x x x

by compromise agreement. However, Atty. Bugaring rejected the amount. On said occasion, Atty. Bugaring requested the companions of complainant to step out of the room first and said he wanted to talk to complainant alone. Atty. Bugaring proposed to complainant a deal to the effect that only P85,000.00 will be paid to him by complainant and he will charge the estate or the complainant's co-heirs the amount of P1,200,000.00. [C]omplainant vehemently objected to [this] because the estate or her co-heirs did not have that amount of money. The co-heirs of complainant maintained that they would only pay Atty. Bugaring P100,000.00, which [amount] the latter rejected.

"x x x [C]omplainant did not hear x x x from Atty. Bugaring [since April 1994]. [However, almost three years later], she learned that her property in Tandang Sora was already attached by Atty. Bugaring. Unknown to complainant, Atty. Bugaring had filed the case entitled 'Rexie Efren A. Bugaring vs. Dolores Fajardo' docketed as Civil Case No. Q-96-29422 in the Regional Trial Court of Quezon City, Branch 78, for Sum of Money and Damages with Prayer for Preliminary Attachment for x x x collection of his legal x x x fees. Atty. Bugaring specifically prayed for the attachment of complainant's properties and other assets to answer for his claim of P3,532,170.00 plus 12% interest per annum for x x x unpaid attorney's fees, P1,000,000.00 as moral damages, P500,000.00 as exemplary damages and such amount equivalent to 25% from the total claim as attorney's fees plus P2,000.00 per court attendance as appearance fee plus other proven litigation expenses.

x x x                      x x x                      x x x

"Atty. Bugaring, by way of comment, avers that from 1991 to May 1994, complainant retained his services as her personal legal consultant and x x x lawyer in nineteen (19) court cases. Considering that Civil Case Nos. B-3472 and 3<sup>[8]</sup>96 before the RTC, Biñan, Laguna, involved various real estate properties, complainant asked Atty. Bugaring to prepare a written contract for his attorney's fees, which was thereafter signed by the complainant x x x. [The] Contract of Services dated 11 December 1992 x x x provide[d] that complainant will pay Atty. Bugaring an (1) acceptance fee of P50,000.00; (2) appearance fee for every court appearance of P1,000.00 and (3) attorney's fee equivalent to 25% of the value of the properties in litigation. [As to] all the other cases [he] handled, [Atty. Bugaring charged] a minimum amount of P50,000.00 as attorney's fees and P1,000.00 appearance fee [for] every court attendance. Under these conditions, considering the complexities of the cases, Atty. Bugaring laboriously and painstakingly represented the rights and interest of the complainant, and thereby successfully terminated all cases, except Civil Cases Nos. B-3971 and 3<sup>[8]</sup>96, which were still under litigation.

"Due to the failure and adamant refusal of complainant to settle and pay Atty. Bugaring x x x his accumulated professional fees, he was constrained to make verbal, and finally, written demands on 30 April 1994 and 6 May 1994. Notwithstanding the receipts of the demand letters, which explicitly indicated to her the computation of the amount of

professional fees demanded, complainant simply remained silent about the matter, thereby signifying her adamant refusal to settle and pay her legitimately contracted obligations to Atty. Bugaring. With no other extra-judicial recourse, and after Atty. Bugaring was able to save an amount for payment of filing fees, attachment bond and other initial expenses (P100,000.00 more or less) for a collection case on the matter, x x x Atty. Bugaring instituted an action for sum of money with damages against complainant before RTC Quezon City, Branch 78, docketed as Civil Case No. Q-96-29442 [on 11 November 1996]. After receiving complainant's Answer to the Complaint, the trial court set the case for [p]re-trial conference on 3 June 1997. However, due to the failure of complainant and her counsel to appear, the court declared complainant in default and Atty. Bugaring was allowed to present evidence ex-parte x x x on 6 June 1997. On 15 October 1997, the court rendered judgment in favor of Atty. Bugaring. As no appeal was undertaken by complainant, Atty. Bugaring on 14 July 1998 filed his Motion for Issuance of Writ of Execution thereto which was granted by the court on 28 September 1998. When the Writ of Execution was issued on 24 December 1998, complainant filed [a] Petition for Certiorari with Temporary Restraining Injunction and/or Temporary Restraining Order with the Court of Appeals, docketed as CA G.R. SP No. 49866, questioning the trial court's orders dated 3 and 13 February 1998, as well as the resolution dated 28 September 1998. The Court of Appeals, finding no merit in the petition, dismissed the same and affirmed the trial court's Resolution on 4 February 1999. Complainant, finding the adverse decision of the Court of Appeals, filed a Motion for Reconsideration on 26 April 1999. Complainant also filed a Motion dated 15 July 1999 asking for the issuance of a Cease, Desist and Refrain Order against the [p]ublic [a]uction sale [scheduled] on 30 July 1999 [by] the deputy sheriff of the trial court. Acting on complainant's motion, the Court of Appeals issued a Temporary Restraining Order dated 29 July 1999. [H]owever, on 30 September 1999, the appellate court finally issued its resolution denying complainant's Motion for Reconsideration."<sup>[7]</sup>

### **Evaluation and Recommendation of the IBP**

Commissioner Maala found respondent guilty of gross misconduct for making untruthful statements and for misleading the trial courts on several occasions in Civil Case No. Q-96-29422 and Civil Case No. B-3896. Respondent allegedly lied to and misled these courts in the following instances:

1. When he included in his claim for attorney's fees in Civil Case Q-96-29422 25 percent of the value of two lots (at P3,670,000 and P750,000), which were not among the properties in litigation in the "Mother Case" and had already been sold in 1987 and 1968, respectively
2. When he concealed the fact that Lot 2454 had been given to complainant's tenants as disturbance compensation
3. When he failed to disclose that the Contract of Service for the "Mother Case" was executed six months after it had already been