

THIRD DIVISION

[A.C. No. 5041, November 23, 2004]

SALVADOR G. VILLANUEVA, COMPLAINANT, VS. ATTY. RAMON F. ISHIWATA, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

Complainant Salvador G. Villanueva seeks the disbarment of Atty. Ramon F. Ishiwata, herein respondent, for gross professional misconduct.

In his amended complaint filed with this Court on April 12, 1999,^[1] complainant alleged that sometime in May, 1994, he hired respondent to handle his case, NLRC-NCR Case No. 00-05-03808-94^[2] against J.T. Transport, Inc. for payment of his unpaid wages, separation pay, and other benefits.

Due to insistence of respondent, complainant executed a Special Power of Attorney designating the former as his attorney-in-fact.^[3]

In the course of the proceedings at the NLRC, the parties entered into a compromise agreement whereby for a consideration of P225,000.00, complainant agreed to release J.T. Transport from all its obligations to him. As a result, respondent signed a "Quitclaim and Release" for and on behalf of complainant. The NLRC then considered NLRC-NCR Case No. 00-05-03808-94 closed and terminated.

Sometime between June and August 1998, J.T. Transport delivered four (4) checks to respondent in the sum of P225,000.00 as payment of complainant's claims. However, respondent gave complainant only P45,000.00 as "first installment," without advising him that the settlement award had been paid in full.

Subsequently, complainant learned that J.T. Transport had fully settled its obligations to him. Thus, he made repeated demands upon respondent to deliver to him the balance. But the latter refused to comply, prompting complainant to hire the services of a new lawyer who sent respondent a demand letter. Still, respondent refused to pay.

In his comment on the complaint, respondent denied the charge. He alleged that it was actually one Zenaida Villanueva, claiming to be complainant's wife, who actually engaged his services. Due to a serious ailment, he secured the services of another person to do research work for a contingent fee with complainant's acquiescence. In fact, from the amount of P225,000.00, he paid that other person P33,000.00 with complainant's knowledge.

Respondent also alleged that since J.T. Transport paid in installments, the sums delivered to complainant were also in installments. Initially, complainant received

P45,000.00. As the money came in, respondent paid complainant's wife P90,000.00 in two installments, one in the sum of P11,000.00 and another in the amount of P79,000.00. However, the receipts she signed were misplaced by respondent's secretary. Respondent deducted his 25% attorney's fee or P56,250.00 from the award. According to his computation, all the payments are in the total sum of P224,250.00, leaving only P750.00 due and owing to complainant.

On October 11, 1999, we resolved to refer the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from notice.^[4]

On July 7, 2004, the IBP Board of Governors submitted to this Court Resolution No. XVI-2004-225 dated April 16, 2004, adopting and approving the Report and Recommendation of the Investigating Commissioner. The latter found respondent guilty as charged and recommended that he be suspended from the practice of law for one (1) year; that he return the sums of P90,000.00 and P33,000.00 to complainant; and that his attorney's fee in NLRC-NCR Case No. 00-05-03808-94 be reduced from 25% to 10% of the settlement award.

We sustain the Resolution of the IBP Board of Governors.

Canon 16 and Rules 16.01 to 16.03 of the Code of Professional Responsibility provides:

"Canon 16 – A lawyer shall hold in trust all moneys and properties of his client that may come to his possession.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements; giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court."

Respondent violated the above provisions and should thus be penalized.

Obviously, respondent's failure to return the balance to complainant upon demand gave rise to the presumption that he misappropriated it in violation of the trust reposed on him. His act is indicative of lack of integrity and propriety. He was clinging to something not his and which he had no right. As found by the Investigating Commissioner, out of the settlement amount of P225,000.00, respondent gave complainant only P45,000.00. His claim that he gave complainant's alleged wife the amount of P11,000.00 and P79,000.00 is not true. He could not show the corresponding receipts. In *Gonato vs. Atty. Adaza*,^[5] we held that conversion by a lawyer of the funds entrusted to him is a gross violation of