

EN BANC

[A.C. No. 4585, November 12, 2004]

MICHAEL P. BARRIOS, COMPLAINANT, VS. ATTY. FRANCISCO P. MARTINEZ, RESPONDENT.

DECISION

PER CURIAM:

This is a verified petition^[1] for disbarment filed against Atty. Francisco Martinez for having been convicted by final judgment in Criminal Case No. 6608 of a crime involving moral turpitude by Branch 8 of the Regional Trial Court (RTC) of Tacloban City.^[2]

The dispositive portion of the same states:

WHEREFORE, this Court finds the accused Francisco Martinez guilty beyond reasonable doubt of the crime for (sic) violation of Batas Pambansa Blg. 22 charged in the Information. He is imposed a penalty of one (1) year imprisonment and fine double the amount of the check which is EIGHT THOUSAND (8,000.00) PESOS, plus payment of the tax pursuant to Section 205 of the Internal Revenue Code and costs against the accused.^[3]

Complainant further submitted our Resolution dated 13 March 1996 and the Entry of Judgment from this Court dated 20 March 1996.

On 03 July 1996, we required^[4] respondent to comment on said petition within ten (10) days from notice. On 17 February 1997, we issued a second resolution^[5] requiring him to show cause why no disciplinary action should be imposed on him for failure to comply with our earlier Resolution, and to submit said Comment. On 07 July 1997, we imposed a fine of P1,000 for respondent's failure to file said Comment and required him to comply with our previous resolution within ten days.^[6] On 27 April 1998, we fined respondent an additional P2,000 and required him to comply with the resolution requiring his comment within ten days under pain of imprisonment and arrest for a period of five (5) days or until his compliance.^[7] Finally, on 03 February 1999, or almost three years later, we declared respondent Martinez guilty of Contempt under Rule 71, Sec. 3[b] of the 1997 Rules of Civil Procedure and ordered his imprisonment until he complied with the aforesaid resolutions.^[8]

On 05 April 1999, the National Bureau of Investigation reported^[9] that respondent was arrested in Tacloban City on 26 March 1999, but was subsequently released after having shown proof of compliance with the resolutions of 17 February 1997 and 27 April 1998 by remitting the amount of P2,000 and submitting his long

overdue Comment.

In the said Comment^[10] dated 16 March 1999, respondent stated that:

1. He failed to respond to our Resolution dated 17 February 1997 as he was at that time undergoing medical treatment at Camp Ruperto Kangleon in Palo, Leyte;
2. Complainant Michael Barrios passed away sometime in June 1997; and
3. Said administrative complaint is an offshoot of a civil case which was decided in respondent's favor (as plaintiff in the said case). Respondent avers that as a result of his moving for the execution of judgment in his favor and the eviction of the family of herein complainant Michael Barrios, the latter filed the present administrative case.

In the meantime, on 11 September 1997, a certain Robert Visbal of the Provincial Prosecution Office of Tacloban City submitted a letter^[11] to the First Division Clerk of Court alleging that respondent Martinez also stood charged in another *estafa* case before the Regional Trial Court of Tacloban City, Branch 9, as well as a civil case involving the victims of the Doña Paz tragedy in 1987, for which the Regional Trial Court of Basey, Samar, Branch 30 rendered a decision against him, his appeal thereto having been dismissed by the Court of Appeals.

In the said Decision of Branch 30 of the Regional Trial Court of Basey, Samar,^[12] it appears that herein respondent Atty. Martinez offered his legal services to the victims of the Doña Paz tragedy for free. However, when the plaintiff in the said civil case was issued a check for P90,000 by Sulpicio Lines representing compensation for the deaths of his wife and two daughters, Atty. Martinez asked plaintiff to endorse said check, which was then deposited in the account of Dr. Martinez, Atty. Martinez's wife. When plaintiff asked for his money, he was only able to recover a total of P30,000. Atty. Martinez claimed the remaining P60,000 as his attorney's fees. Holding that it was "absurd and totally ridiculous that for a simple legal service ... he would collect 2/3 of the money claim," the trial court ordered Atty. Martinez to pay the plaintiff therein the amount of P60,000 with interest, P5,000 for moral and exemplary damages, and the costs of the suit.

Said trial court also made particular mention of Martinez's dilatory tactics during the trial, citing fourteen (14) specific instances thereof. Martinez's appeal from the above judgment was dismissed by the Court of Appeals for his failure to file his brief, despite having been granted three thirty (30)-day extensions to do so.^[13]

On 16 June 1999, we referred^[14] the present case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The report^[15] of IBP Investigating Commissioner Winston D. Abuyuan stated in part that:

Several dates for the hearing of the case were scheduled but none of the parties appeared before the Commission, until finally it was considered submitted for resolution last 27 June 2002. On the same date respondent filed a motion for the dismissal of the case on the ground that the complainant died sometime in June 1997 and that dismissal is warranted because "the case filed by him does not survive due to his demise; as a matter of fact, it is extinguished upon his death."

We disagree with respondent's contention.

Pursuant to Section 1, Rule 139-B of the Revised Rules of Court, the Honorable Supreme Court or the IBP may motu proprio initiate the proceedings when they perceive acts of lawyers which deserve sanctions or when their attention is called by any one and a probable cause exists that an act has been perpetrated by a lawyer which requires disciplinary sanctions.

As earlier cited, respondent lawyer's propensity to disregard or ignore orders of the Honorable Supreme Court for which he was fined twice, arrested and imprisoned reflects an utter lack of good moral character.

Respondent's conviction of a crime involving moral turpitude (estafa and/or violation of BP Blg. 22) clearly shows his unfitness to protect the administration of justice and therefore justifies the imposition of sanctions against him (see In re: Abesamis, 102 Phil. 1182; In re: Jaramillo, 101 Phil. 323; In re: Vinzon, 19 SCRA 815; Medina vs. Bautista, 12 SCRA 1, People vs. Tuanda, Adm. Case No. 3360, 30 Jan. 1990).

WHEREFORE, premises considered, it is respectfully recommended that respondent Atty. Francisco P. Martinez be disbarred and his name stricken out from the Roll of Attorneys immediately.

On 27 September 2003, the IBP Board of Governors passed a Resolution^[16] adopting and approving the report and recommendation of its Investigating Commissioner.

On 03 December 2003, respondent Martinez filed a Motion for Reconsideration and/or Reinvestigation,^[17] in the instant case alleging that:

1. The Report and Recommendation of the IBP Investigating Commissioner is tantamount to a deprivation of property without due process of law, although admittedly the practice of law is a privilege;
2. If respondent is given another chance to have his day in court and allowed to adduce evidence, the result/outcome would be entirely different from that arrived at by the Investigating Commissioner; and
3. Respondent is now 71 years of age, and has served the judiciary in various capacities (from acting city judge to Municipal Judges

League Leyte Chapter President) for almost 17 years prior to resuming his law practice.

On 14 January 2004, we required^[18] complainant to file a comment within ten days. On 16 February 2004, we received a Manifestation and Motion^[19] from complainant's daughter, Diane Francis Barrios Latoja, alleging that they had not been furnished with a copy of respondent's Motion, notwithstanding the fact that respondent ostensibly lives next door to complainant's family. Required to Comment on 17 May 2004, respondent has until now failed to do so.

The records show that respondent, indeed, failed to furnish a copy of said Motion to herein complainant. The records also show that respondent was given several opportunities to present evidence by this Court^[20] as well as by the IBP.^[21] Indeed, he only has himself to blame, for he has failed to present his case despite several occasions to do so. It is now too late in the day for respondent to ask this court to receive his evidence.

This court, moreover, is unwilling to exercise the same patience that it did when it waited for his comment on the original petition. At any rate, after a careful consideration of the records of the instant case, we find the evidence on record sufficient to support the IBP's findings.

Under Sec. 27, Rule 138 of the Rules of Court, a member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so.

In the present case, respondent has been found guilty and convicted by final judgment for violation of B.P. Blg. 22 for issuing a worthless check in the amount of P8,000. The issue with which we are now concerned is whether or not the said crime is one involving moral turpitude. ^[22]

Moral turpitude "includes everything which is done contrary to justice, honesty, modesty, or good morals."^[23] It involves "an act of baseness, vileness, or depravity in the private duties which a man owes his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals."^[24]

In *People of the Philippines v. Atty. Fe Tuanda*,^[25] where the erring lawyer was indefinitely suspended for having been convicted of three counts of violation of B.P. Blg. 22, we held that conviction by final judgment of violation of B.P. Blg. 22 involves moral turpitude and stated:

We should add that the crimes of which respondent was convicted also *import deceit* and violation of her attorney's oath and the Code of Professional Responsibility under both of which she was bound to "obey the laws of the land." *Conviction of a crime involving moral turpitude* might not (as in the instant case, violation of B.P. Blg. 22 does not) relate

to the exercise of the profession of a lawyer; however, it *certainly relates to and affects the good moral character of a person convicted of such offense...*^[26] (emphasis supplied)

Over ten years later, we reiterated the above ruling in *Villaber v. Commission on Elections*^[27] and disqualified a congressional candidate for having been sentenced by final judgment for three counts of violation of B.P. Blg. 22 in accordance with Sec. 12 of the Omnibus Election Code, which states:

SEC. 12. Disqualifications. — Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion, or for any offense for which he has been sentenced to a penalty of more than eighteen months, or for a *crime involving moral turpitude*, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty. (emphasis supplied)

Enumerating the elements of that crime, we held that the act of a person in issuing a check knowing at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the check in full upon its presentment, is a manifestation of moral turpitude. Notwithstanding therein petitioner's averment that he was not a lawyer, we nevertheless applied our ruling in *People v. Tuanda*, to the effect that

(A) conviction for violation of B.P. Blg. 22, "imports deceit" and "certainly relates to and affects the good moral character of a person." [Indeed] the effects of the issuance of a worthless check, as we held in the landmark case of *Lozano v. Martinez*, through Justice Pedro L. Yap, "transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public" since the circulation of valueless commercial papers "can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest." Thus, paraphrasing Black's definition, a *drawer who issues an unfunded check deliberately reneges on his private duties he owes his fellow men or society in a manner contrary to accepted and customary rule of right and duty, justice, honesty or good morals.*^[28] (emphasis supplied)

In the recent case of *Barrientos v. Libiran-Meteoro*,^[29] we stated that:

(T)he issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on her. It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. [*Cuizon v. Macalino*, A.C. No. 4334, 07 July 2004] The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. [*Lao v. Medel*, 405 SCRA 227] It also manifests a lawyer's low regard for her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image