

SECOND DIVISION

[A.C. No. 4552, December 14, 2004]

JOSE A. ROLDAN, COMPLAINANT, VS. ATTY. NATALIO PANGANIBAN AND ATTY. JUANITO P. NOEL, RESPONDENTS.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Before us is an administrative case for disbarment filed by complainant Jose A. Roldan against respondents Atty. Natalio M. Panganiban and Atty. Juanito P. Noel. Complainant charges that respondent lawyers reneged in their duties and obligations towards him as their client, especially in the complainant's right to appeal to the higher court after losing his case in the lower courts. The allegations in the complaint dated February 12, 1996^[1] in support of the accusations are as follows:

1. Na ako ang plaintiff sa Civil Case No. 144860-CV M.I.T. Branch 25 "Jose A. Roldan vs. Ramon Montano & Robert Montano," na ang Judge ay si Honorable Severino De Castro, Jr. na ang kaso ay "Recovery of possession with damages." Ito'y iniapila ko sa RTC Branch 43 with Civil Case No. 95-73739 na ang Judge naman dito ay si Honorable Manuel F. Lorenzo ng RTC. Si Atty. Panganiban at Atty. Noel ang abogado ko.
...
4. Na noong February 6, 1995 bago kami pumasok sa court room ay nagtanong sa akin si Atty. Noel, ng ganito: "Mr. Roldan nasaan nga pala yung resibo na ibinigay ni Tessie sa iyo na nagbigay ka ng down payment na Ten Thousand Pesos (P10,000.00) noong March 1, 1986." Agad akong sumagot at sinabi ko sa kaniya, "Atty. Noel lahat po ng original ay hiningi ninyo sa akin, lahat po ay binigay ko sa inyo kasama iyong resibo ni Tessie Dalusong, na ako'y magbigay ng Ten Thousand Pesos bilang downpayment sa ipinagbili niyang bahay sa akin. Agad siyang sumagot "Wala kang ibinibigay sa akin!"
5. Na kaya nga sinabi ko kay Atty. Noel na: "Ibigay ninyo sa akin ang folder at ako ang hahanap ng resibo ni Tessie Dalusong." Tumulong din si Atty. Noel, at nakita din namin. Sinabi ni Atty. Noel "Sayang hindi na natin maipasok ito, hindi na kasi pwedeng magpasok pa ng mga ibidensya." Di ko alam kung bakit hindi niya ipinasok noon pa man. (Ang resibo na nagpapatunay na ako ang unang nakabili ng bahay sa 1723 Pedro Gil St., Paco, Maynila).
6. Na noong nasa loob na kami ng court room ay handa na ako sa sinasabi ni Atty. Noel no "Rebuttal" pero nagtaka ako kinumbinsi ako na diumano ay malinaw na ang aking deklarasyon at malinaw ang mga ebidensya kaya hindi na raw dapat mag "rebuttal" i-waive na lang daw sa Memorandum kaya nga sinabi ng Judge na: "Gumawa kayo ng Memoranda within fifteen days submitted for decision." Noong March 8, 1995 ang memorandum ay submitted

for decision;

7. Na noong Abril 7, 1995 sinabi ko kay Atty. Noel, "Bakit may ibinigay na zerox copies ng decision si Robert Montano na aking kalaban "sumagot si Atty. Noel, at sinabi sa akin "Tsekin mo sa court." Gayon nga ang aking ginawa. At bumalik ako kay Atty. Noel, at sinabi ko: Totoo nga na may decision na. Sinabi ni Atty. Noel na: "Ginapang nila yun, sapalagay mo, magkano ang inilagay nila?" Sa palagay ko ay hindi lang trenta mil (P30,000.00) pesos ang magagastos nila sa kasong ito, yun ang isinagot ko;
8. Na iminungkahi ko kay Atty. Noel na magpayl ng "motion for reconsideration, sinagot ako ni Atty. Noel na: 'Ginapang na nila yun kaya dapat umapila na lang tayo.' Sinabi ko kay Atty. Noel na: Kung matalo pa rin ako dito, ay dalhin natin sa Supreme Court" para parehas ang laban; Na bilang bahagi nito inilakip ko dito ang decision ng MTC; at ang apilasyon sa RTC, at ang petsa ng decision ng RTC na tinaggap ni Atty. Noel.
9. Na noong Abril 24, 1995 umapila ako sa "Court of Appeal" makaraan ang ilang buwan ay dumating sa office ni Atty. Noel at Atty. Panganiban, noong November 13, 1995 ang decision subalit tinawagan ako ng sekretarya nila Atty. Noel at Atty. Panganiban noon lang November 24, 1995. Tinanong ko ang sekretarya ni Atty. Panganiban kung nasaan si Atty. Noel, ang sagot ng sekretarya ay "Nasa probinsiya maraming inaasikaso doon." Agad kong sinabi: "Hindi ba fifteen days lang para maka-apila sa Supreme Court." Sumagot si Zeny at sinabi "Isang buwan daw yun para sagutin."
10. Na madalas kong tawagan si Zeny (ang sekretarya ni Atty. Panganiban) na sinasabi kong nakahanda na ang pangbayad gawin na ninyo ang apilasyon sa "Supreme Court," ito'y madalas kong sabihin sa sekretarya (si Zeny) kaya't ibinigay niya ang bagong office ni Atty. Noel sa Gedisco Centre Rm. 134, 1564 Mabini St., Ermita, Manila.
11. Na madalas akong magpunta sa bagong office ni Atty. Noel gaya noong Dec. 1, 1995, Dec. 4, 1995, Dec. 5, 1995, Dec. 7, 1995, Dec. 8, 1995 at noon pang huling linggo ng November ay sisimulan ko ng sabihin sa dalawang sekretarya (si Zeny at Marie Cris) na gawin na ang aking apilasyon sabihin kay Atty. Noel sa "Supreme Court."
12. Na noong December 12, 1995 maaga pa ay nagpunta ako sa office ni Atty. Noel sa Gedisco 3rd Flr. Mabini St., Ermita, Manila. Tinanong ko ang kaniyang sekretarya kung nakausap si Atty. Noel, sinagot ako ng sekretarya at sinabing 'Tinanong ko si Atty. Noel kung yari na yung apilasyong ipinagagawa ninyo (Jose Roldan) hindi po niya ako sinasagot.'
13. Na kaya agad akong magpunta sa RTC Branch 43 upang alamin ang katotohanan nabatid ko noon lang, na ako'y natalo ng walang kalaban-laban, pagkat nag-laps na o lampas na ang panahong ibinibigay ng batas para makapag-payl ng apilasyon sa Supreme Court.
14. Na dahil dito sa mga panloloko, at pagwawalang bahala sa aking kaso ni Atty. Noel, at Atty. Panganiban ay idinidimanda ko sila ng Damages na halagang one

hundred fifty thousand (P150,000.00) pesos **at dapat silang alisan ng karapatan na makapag-practice sa kanilang propesyon.**

In his Comment dated August 8, 1996, Atty. Panganiban avers that he was neither aware nor did he participate in the prosecution of "Civil Case No. 144860-CV M.I.T. Branch 25 *Jose A. Roldan vs. Ramon Montano & Robert Montano*" and in the appeal of said case to the Regional Trial Court (RTC), Branch 43; they do not have a lawyer-client relationship because he is on leave in the practice of law since October 18, 1993 when he was designated Acting Mayor of Laurel, Batangas, and during his incumbency as such, and up to the filing of this administrative complaint in 1996, he is still on leave as law practitioner because he was elected Mayor of Laurel, Batangas in the last 1995 election; probably, complainant included him as respondent because he thought that he is practicing law and is still an associate of Atty. Juanito P. Noel, due to the fact that on some occasions complainant might have seen him or they might have talked casually in the law office from which he was on leave in his practice of law because he drops there from time to time to meet visitors from Laurel who are living and who have problems in Metro Manila; and he has not received any single centavo from the complainant.

In his Comment, dated August 29, 1996, Atty. Noel alleges: Sometime in 1994, he agreed to represent complainant in recovering a one-half portion of the ground floor of a house located at 1723 Pedro Gil St., Paco, Manila which complainant bought from one Simplicia Villanueva represented by her daughter Teresita Dalusong on November 28, 1986. A civil complaint for recovery of ownership and possession was filed on February 8, 1994 with the RTC but upon the effectivity of the law expanding the jurisdiction of the Metropolitan Trial Court (MTC) the case was transferred to the MTC. From the evidence of the defendant, he honestly saw no need to present a rebuttal evidence. The MTC rendered a decision dismissing the case on the alleged ground that the identity of the subject matter of the action was not clearly established. He filed an appeal in due time to the RTC of Manila (Branch 43) and not with the Court of Appeals as stated in paragraph 9 of the complaint. On November 13, 1995, he received a copy of the RTC decision dated October 10, 1995, affirming the decision of the MTC. Through the telephone, he informed the complainant about the decision of the RTC. Complainant instructed him to prepare an appeal to the higher court which actually refers to the Court of Appeals and not with the Supreme Court as complainant claims. He advised the complainant that he could find no error in the said decision and a further appeal would be frivolous and without merit and requested the complainant to come over so that he could discuss the matter with him. Whenever the complainant went to the law office, he failed to see him because the latter was still attending court hearings. The complainant asked for the records of the case which was given by his secretary. Complainant never returned the case folder to him, neither did he call up by phone, or see him personally. He then assumed that the complainant had hired another lawyer to handle the appeal. He was surprised when he received on July 18, 1996 a copy of the resolution of this Honorable Court dated June 19, 1996, requiring them to file their comment on the complaint of Jose A. Roldan.

We referred the matter to the Integrated Bar of the Philippines (IBP) for investigation. After hearing, IBP Investigating Commissioner Manuel A. Quiambao submitted his Report and Recommendation dismissing the complaint against Atty. Panganiban and imposing censure to Atty. Noel. In a Resolution dated February 27, 2004, the IBP adopted and approved the said Report and Recommendation.

We shall first resolve the issue of the existence or non-existence of lawyer-client relationship between Atty. Panganiban and the complainant.

From a careful reading of the records of this case, it appears that Atty. Panganiban and Atty. Noel used to be law associates. However, Atty. Panganiban went on leave from the practice of law since October 18, 1993 when he was designated as acting mayor of Laurel, Batangas^[2] due to the indefinite leave of absence filed by the mayor and by reason of his election as mayor of the said municipality in 1995. The complainant claims that he secured the services of Atty. Panganiban on January 6, 1994.^[3] It is thus clear that Atty. Panganiban was not an active associate of the law firm, since at that time, he was already on leave from the practice of law. Moreover, the complaint filed in 1996 before the RTC for Recovery of Possession and Ownership with Damages was prepared and signed by Atty. Noel alone and not in any representation of any law firm. In fact from the filing of the said civil case in the RTC, it was Atty. Noel who represented the complainant. Not once did Atty. Panganiban appear for the complainant nor did he sign any document pertaining with the aforesaid case. Necessarily, the complaint against Atty. Panganiban must be dismissed.

As to the complaint against Atty. Noel.

The main issues to be resolved are: (1) whether there was a deliberate attempt to suppress evidence on the part of Atty. Noel, to the prejudice of complainant and (2) whether it was correct for Atty. Noel to refuse to file a further appeal of the case to the Court of Appeals by way of petition for review despite the manifest desire of the complainant to do so.

Anent the first issue.

Complainant insists that Atty. Noel's failure to present in evidence the receipt dated March 1, 1986 was fatal to his cause. The receipt shows that complainant made a partial payment of P10,000.00 of the P40,000.00 price of the subject property. Complainant claims that this piece of document proves that complainant bought the subject property ahead of the defendants who bought it only on July 30, 1986. Thus, to the mind of the complainant, the non-presentation of the subject receipt is suppression of evidence.

Atty. Noel denied receiving the subject receipt and asserts that the same was mere fabrication of the complainant. He insists that said receipt did not exist during the preparation and filing of the complaint and even during the presentation of evidence. Otherwise, he argues that such fact should have been alleged in the complaint to show that complainant bought the subject property ahead of the other buyer. Atty. Noel also claims that assuming that the receipt was given to him, the same cannot be used as evidence because the receipt shows that it was signed by one Romeo Dalusong who is not a party to the sale; neither does it appear in the receipt that Romeo was acting in a representative capacity.

A short historical backdrop is necessary for a clearer insight of this issue.

It appears that the subject property was subjected to a double sale by the same