

THIRD DIVISION

[A.C. No. 4566, December 10, 2004]

**UNITY FISHING DEVELOPMENT CORPORATION, COMPLAINANT,
VS. ATTY. DANILO G. MACALINO, RESPONDENT.**

R E S O L U T I O N

GARCIA, J.:

Under consideration is this petition by way of a **complaint for disbarment** filed by Unity Fishing Development Corporation against **Atty. Danilo Macalino** for having violated Canon 16 of the Code of Professional Responsibility.

In its resolution of June 26, 1996, the Court required respondent to comment on the complaint within ten (10) days from notice.^[1]

On July 26, 1996, respondent filed a motion for extension of thirty (30) days within which to file comment,^[2] which motion was granted by the Court in its resolution of August 21, 1996.^[3]

On August 26, 1996, respondent filed another motion for extension, this time for an additional period of fifteen (15) days.^[4] The motion was similarly granted by the Court in its resolution of October 7, 1996.^[5]

Still, on September 19, 1996, respondent filed a third and "last extension of time to file comment".^[6] Again, this was granted by the Court via its resolution of November 27, 1996.^[7]

Unfortunately, no comment was ever filed by respondent.

Hence, and taking note of complainant's "Motion to Conduct Further Proceedings", filed on March 23, 1998,^[8] the Court, in its resolution of April 27, 1998,^[9] referred the case to the Integrated Bar of the Philippines (IBP), for investigation, report and recommendation.

Acting on the referral, the IBP Commission on Bar Discipline designated Atty. Cesar R. Dulay as investigating commissioner.

It appears, however, that even while the case was already under formal investigation, respondent displayed the same attitude of lack of concern. As reported by Atty. Dulay:

The Commission issued a notice setting the case for hearing on October 8, 1998, at which hearing complainant represented by its legal counsel and respondent appeared. Again, respondent asked for fifteen days from

October 8, 1998 to file his Answer. Complainant also asked the same period within which to file his reply.

On November 5, 1998, respondent filed an urgent motion for extension of time to file answer.

On November 9, 1998, respondent again filed an urgent motion for last extension of time or a period of fifteen (15) days from November 15, 1998 to file answer, which was granted by the Commission.

Since the respondent has not filed his answer as required by the Honorable Supreme Court and the Commission, the case was again set for hearing on November 9, 1999.

On said date, only the counsel for complainant appeared. Respondent was absent. However, records show the notice sent to him was returned unserved with the annotation "Moved." Records also show that respondent has not filed his answer and again he was given a last chance to file his answer within ten (10) days from receipt of the Order dated November 9, 1999 and the hearing of the case was reset to December 9, 1999.

On December 9, 1999, only counsel for complainant appeared and moved that respondent's right to file answer be deemed waived and that complainant be allowed to file Memorandum after which, the case shall be deemed submitted for resolution.

On December 14, 1999, respondent again filed an Urgent Motion for Extension of fifteen (15) days from December 4, 1999 within which to file his answer.

On January 7, 2000, the complainant filed a Memorandum, a copy of which was furnished to respondent and which was not controverted by respondent.

All told, respondent filed six (6) motions for extension of time to file Answer and up to this time, which is almost seven (7) years from the time the Honorable Supreme Court required respondent to file his answer to the complaint, respondent has not filed any answer,^[10]

on account of which the investigating commissioner considered the case as "now ready for resolution".^[11]

Thereafter, the investigating commissioner submitted his Report. Dated January 20, 2003,^[12] the Report recites the factual background of the case and the commissioner's discussion and findings thereon, thus:

"Frabal Fishing and Ice Plant Corporation (hereinafter, Frabal) was the owner of a parcel of land located along Ramon Magsaysay Boulevard, Sta. Mesa, Manila which was leased to Wheels Distributors, Inc. (hereinafter, Wheels), an authorized dealer of cars and motor vehicles of various make;

A dispute arose between Frabal and Wheels regarding the terms and conditions of the lease contract. The dispute eventually led to a lawsuit. Frabal hired the services of respondent Atty. Danilo G. Macalino as counsel for the purpose of representing its interest in the said lawsuit;

Frabal merged and was absorbed by Petitioner corporation on February 12, 1991, with the former conveying, assigning and transferring all its business assets and liabilities to the latter, including all judicial and extra-judicial claims. Hence, Petitioner was substituted in lieu of Frabal in the former's lawsuit with Wheels;

As Petitioner's legal counsel, Respondent advised Petitioner to sever all contractual relationship with Wheels as a step towards eventually evicting the latter from the property they were occupying;

Hence, upon advice of Respondent, the contract of lease between Frabal and Wheels was terminated. Respondent likewise advised Petitioner to return the guarantee deposit equivalent to two (2) months rental or the amount of P50,000.00 to Wheels;

On March 2, 1988, Petitioner prepared Metrobank Check No. MB350288 dated March 8, 1988 for the amount of P50,000.00. The check was crossed and made payable to the Wheels Distributors, Inc. (Annex "A").

Respondent volunteered to bring the check to the office of Wheels himself and to make them accept it. Hence, on March 3, 1988, Respondent sent his representative to Petitioner's office to get the said check;

Respondent's representative duly received the said check from Petitioner, as proof of which he signed Check Voucher No. 3-012 (Annex "B");

Thereafter, Respondent represented to Petitioner that he was able to deliver the check to Wheels Distributors, Inc.;

The suit between Petitioner and Wheels continued for several years. In the meantime, Petitioner changed counsels, replacing Respondent with someone else;

Finally, sometime in May 1994, the suit ended in amicable settlement. In the process of negotiating the terms and conditions of the settlement, Wheels informed Petitioner that it never received therefund (sic) guarantee deposit in the amount of P50,000.00;

Petitioner was shocked to learn this piece of information from Wheels Distributors as all along Respondent had represented to Petitioner that Wheels has already received the guarantee deposit of P50,000.00;

Petitioner searched its files for the subject check. After locating the check, Petitioner noted that at the back of the check was a rubber stamp marking indicating that it was deposited with the United Savings Bank

Head Office on May 13, 1988 to Account No. CA-483-3. United Savings Bank has since been acquired by the United Coconut Planters Bank (UCPB) and is now known as UCPB Savings Bank;

Petitioner checked with Wheels Distributors from whom it later learned that the latter never maintained an account with the United Savings Bank, now the UCPB Savings Bank;

Petitioner wrote to Respondent on May 19, 1994 to explain why the check in issue never reached Wheels Distributors and how it was endorsed and encashed despite the fact that it was a crossed check (Copy of said letter is Annex "C");

Despite receipt of said letter, however, Respondent never responded nor attempted to explain his side to what strongly appears to be a gross misappropriation of the money for his own personal use;

Hence, Petitioner was constrained to institute an action for damages against Respondent Danilo G. Macalino as well as UCPB Savings Bank with the Regional Trial Court of Malabon, Branch 72 where the same is now docketed as Civil Case No. 2382-MN;

That Respondent misappropriated the amount of P50,000.00 for his own personal use cannot be denied. An employee of UCPB in the person of Eduardo Estremadura testified in the aforesaid case for damages that Respondent Atty. Danilo G. Macalino was the one maintaining Account No. CA-483-37 at UCPB, to which the crossed check payable to Wheels was deposited (TSN, p. 8, Aug. 24, 1995, copy of the TSN is Annex "D");

The Metrobank Check No. MB350288 dated March 8, 1988 for the amount of P50,000.00 was deposited to Respondent's account is further shown in United Savings Bank Current Account Deposit Slip accomplished by Respondent when he deposited said check with United Savings Bank on May 13, 1988 (Copy of said deposit slip is Annex "E").

DISCUSSION AND FINDINGS:

Respondent Atty. Danilo G. Macalino was given all the opportunity to answer and present his defenses to the complaint. Regrettably, the records show that despite the orders of the Supreme Court and this Commission respondent has not taken any step to verify and inquire as to the status of the complaint against him. Almost three years since the submission of the complainant's memorandum, respondent has not reacted nor made any move to protect himself and answer the complaint. Due process consists in being given the opportunity to be heard and we believe that in this case respondent has been given all the opportunity to be heard.

On the basis of the above, the investigating commissioner concluded his Report with the following -