

SECOND DIVISION

[Adm. Case No. 5831, January 13, 2003]

**CESAR A. ESPIRITU, COMPLAINANT, VS. ATTY. JUAN CABREDO
IV, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is an administrative complaint filed with the Integrated Bar of the Philippines (IBP) on May 8, 2001 by complainant Cesar A. Espiritu against Atty. Juan Cabredo IV for failure to fulfill a fiduciary obligation to a client.

The complaint alleges the following facts:

On November 5, 1999, the BPI Family Savings Bank Inc. (BPI-FSB) filed two complaints for replevin and damages against Esphar Medical Center, (Esphar) Inc. and its president Cesar Espiritu and a certain John Doe. In the first complaint, the BPI-FSB alleged that, on July 14, 1997, Esphar, Cesar Espiritu, and a certain John Doe executed in favor of Gencars, Inc. (Gencars) a promissory note in which they obligated themselves jointly and severally to pay the latter P511,956.00 in monthly installments pursuant to a schedule they had agreed upon. It was provided that failure on the part of the makers to pay any installment when due shall make subsequent installments and the balance of the obligation immediately due and demandable. The promissory note was secured by a chattel mortgage on an Isuzu "Close Van" (1997 model) and registered with the Register of Deeds and the Land Transportation Commission. On July 14, 1997, Gencars executed a deed of assignment in favor of the BPI-FSB, assigning to the latter all of its rights, title and interest in the promissory note secured by the chattel mortgage. In 1999, Esphar, Espiritu and John Doe failed to pay installments for three consecutive months, for which reason demands were made on the three to pay the entire balance of P186,806.28, with accrued interest at the rate of 36% per annum or to give to BPI-FSB the possession of the Isuzu van in order to foreclose the mortgage. As the three failed to comply with the demands, the BPI-FSB brought suit for replevin and damages against them.^[1]

The second complaint alleged similar facts involving Citimotors, Inc. as the payee of another promissory note in which Esphar, Espiritu and John Doe, as makers, obligated themselves solidarily to pay the former P674,640.00 in monthly installments. The promissory note was secured by a chattel mortgage on a Mitsubishi L-300 "Exceed Montone Van" (1997 model), which BPI-FSB, as holder of the said promissory note, sought to foreclose due to the makers' failure to comply with its terms and conditions.^[2]

On December 10, 1999, Espiritu engaged the services of Atty. Juan Cabredo IV, herein respondent, to represent him in the two civil cases. On same day, Cabredo's

secretary, Rose Tria, picked up copies of the complaints from Espiritu's office and, on December 14, 1999, his representative Reynaldo Nuñez received from Esphar P16,000.00 for use as filing and acceptance fees. While the cases were pending in court, Atty. Cabredo advised Esphar to remit money and update payments to BPI-FSB through the trial court. Accordingly, on December 28, 1999 and again January 28, 2000, Esphar's representative, Maritess Alejandrino, delivered a total of P51,161.00 to Atty. Cabredo's office. Later on, when Atty. Cabredo failed to appear at a hearing of the civil cases, the management of Esphar found out that he did not deliver the sum of P51,161.00 to the court or BPI-FSB. The management of Esphar then agreed to settle the cases amicably. For this reason, a joint motion to dismiss was filed by the parties, and the cases were dismissed on May 15, 2000. Thereafter, on May 8, 2001, Espiritu filed a complaint against Atty. Cabredo for fraud.^[3]

In his answer dated June 6, 2001, respondent Cabredo admitted that his secretary, Rose Tria, had indeed received P51,161.00 from Esphar, but claimed that Tria failed to inform him about it. It was only when he read Esphar's first demand letter dated March 21, 2000 that he learned for the first time about the receipt of the money. Respondent claimed that he failed to get complainant's demand letters of March 24, 2000 and January 5, 2001 because of lapses on the part of his staff. He thus shifted the blame on his staff.

7. It is quite unfortunate that this incident happened all thru the fault of the law firm personnel. In spite of respondent's candid, honest and sincere desire to faithfully and religiously serve good clients, [his efforts have been] rendered inutile by lapses of his staff;
8. Respondent believes that complainant Cesar A. Espiritu would not have resorted to this present action had the firm personnel been vigilant enough to inform respondent of this matter.

Respondent said he was willing to reimburse complainant to show his good faith and "to erase the suspicion that respondent intentionally spent the amount for his own use and benefit."^[4]

Acting on the complaint, the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline scheduled a hearing on September 24, 2001. However, the hearing had to be rescheduled three times - on November 14, 2001, December 14, 2001, and January 18, 2002 - because of respondent's failure to appear despite due notice to him. In orders dated November 14, 2001^[5] and December 14, 2001,^[6] respondent was warned that the investigator would proceed with the case if he failed to appear again in subsequent hearings. Finally, in the order dated January 18, 2002, Investigating Commissioner Wilfredo Reyes ordered:

Considering that this is the fifth (5th) time that the respondent has failed to appear despite notice, the undersigned Commissioner has no option but to decide the case on the basis of the pleadings submitted. It must be noted that despite receipt of the Orders of the Commission, the respondent Atty. Juan Cabredo IV has failed to appear before the Commission on Bar Discipline.

This case is deemed submitted for resolution based on the pleadings submitted by the parties.^[7]

On February 13, 2002, Commissioner Reyes submitted his report and recommendation. He found respondent guilty of violation of the Code of Professional Responsibility and recommended that the latter be suspended from the practice of law for three months and ordered to return the amount of P51,161.00 to Esphar.^[8] In a resolution dated August 3, 2002, the IBP Board of Governors adopted and approved the recommendation of the investigating commissioner.^[9]

Except for the penalty, we find the recommendation is well taken.

The Code of Professional Responsibility provides:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO 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.

The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith.^[10] Hence, in dealing with trust property, a lawyer should be very scrupulous. Money or other trust property of the client coming into the possession of the lawyer should be reported by the latter and accounted for promptly and should not, under any circumstances, be commingled with his own or be used by him.^[11]

In this case, respondent claims that he did not know about the receipt by his secretary on the amount of P51,161.00 received from Esphar until he read the first demand letter of the company, which stated:

March 21, 2000

JUDGE JUAN CABREDO
Cubao, Quezon City

Dear Judge Cabredo:

Due to your failure to make an interbank deposit as what we have agreed upon yesterday, March 20, 2000, we are sending bearer, MRS. MARITESS ALEJANDRINO, to collect the amount of P51,161.00 representing payment intended for BPI FAMILY BANK which was coursed through your office per your instruction.