

## EN BANC

**[ A.C. No. 6084 (formerly CBD 99-614),  
September 03, 2003 ]**

**FELICITAS BERBANO, COMPLAINANT, VS. ATTY. WENCESLAO  
BARCELONA, RESPONDENT.**

### D E C I S I O N

#### PER CURIAM:

*A lawyer shall at all times uphold the integrity and dignity of the legal profession. The trust and confidence necessarily reposed by clients require in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. Generally speaking, a lawyer can do honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.*<sup>[1]</sup>

In a sworn Affidavit-Complaint dated March 11, 1999 filed before the Integrated Bar of the Philippines (IBP), complainant Felicitas Berbano seeks the disbarment of Atty. Wenceslao Barcelona for Malpractice and Gross Misconduct Unbecoming a Lawyer, Dereliction of Duty and Unjust Enrichment.<sup>[2]</sup> Complainant alleges:

1. I am one of the heirs of Rufino Esteban Hilapo, owner of a 244-hectare lot situated at Alabang, Muntinlupa, which property is being claimed by Filinvest Dev. Corp. in a case pending with the Commission on the Settlement of Land Problems (COSLAP), Quezon City. The heirs of REH has appointed Mr. PORFIRIO DAEN as their attorney-in-fact giving him authority to prosecute the case for and in their behalf.
2. On January 26, 1999, Mr. Porfirio Daen was arrested by a Muntinlupa police on the strength of an expired warrant of arrest-it was issued on February 1990-and subsequently detained at the Muntinlupa City Jail, Tunasan, Muntinlupa City, until his release on February 18, 1999.
3. Since Mr. Daen needed the assistance of a lawyer for his release from incarceration, we tried to look for one. We told our friend Naty Sibuya, about the predicament of Mr. Daen, who recommended Atty. Wenceslao Barcelona to us, his wife being Naty's cousin/relative.

4. So on January 26, 1999, at about 10:30 in the evening, Atty. Wenceslao Barcelona arrived at the Muntinlupa City Jail and conferred with Mr. Daen. We learned later that Mr. Daen has engaged the services of Atty. Barcelona for the latter to secure the release of the former from prison. After their conversation, Atty. Barcelona told us that if you could produce the amount of FIFTY THOUSAND (P50,000.00) Pesos he will cause the release of Mr. Daen from prison the following day. I told him that it was already late in the evening and I cannot any more produce the amount. But he insisted that I must produce even just a small amount. So, what I did was ask my relatives who were with me at the time to contribute and we were able to raise FIFTEEN THOUSAND SEVEN-HUNDRED (P15,700.00) Pesos. In the meantime, Atty. Barcelona proceeded to Chowking Restaurant which is just located across the city jail where he waited for us there.
5. At the aforesaid restaurant, I handed to Atty. Barcelona the amount who accepted the same. He reiterated his promise to secure the release of Mr. Daen the following day. Before he left, he asked us to meet him at Max' Restaurant at around 12:00 noon at EDSA Crossing. He thereafter left because according to him, he would go and see somebody, (a justice) from the Supreme Court who could help the release of Mr. Daen. It was already about 12:30 in the early morning of January 27, 1999.
6. As agreed upon, I, together with Romana Soriano, proceeded to Max' Restaurant. We arrived at around 12:00 noon. Atty. Barcelona came at around 1:00 P.M. He even told us that he just came from the Supreme Court where he "fixed" the case of Mr. Daen. It surprised me though, that he did not have with him any single document at the time. Then, I handed him a "pay-to-cash" check for TWENTY-FOUR THOUSAND (P24,000.00) Pesos, dated January 29, 1999. We told him that the check may be encashed on the said date. Although, he said that the Justices of the Supreme Court do not accept check he nonetheless, accepted it saying that he will have the same rediscounted. We thereafter left.
7. The following morning, January 28, 1999, at around 7:00 o'clock Atty. Barcelona called me up by phone to say that since he was unable to have the check rediscounted, I must produce the amount of P5,000.00 and give the amount to him at Max' Restaurant at EDSA Crossing at around 12:00 noon. We were unable to meet him because we arrived at about 1:00 o'clock already. Nonetheless, we waited for him until 3:00 in the afternoon. Thereafter, I called him through his pager saying that we were waiting for him at Max'. I also called up our house and inquire (sic) if a lawyer has called up. I was able to talk to my husband who informed me that a certain Atty. Barcelona called up. That Atty. Barcelona wanted to meet us at McDonald's at Barangka Drive, Mandaluyong. So we rushed to the place but he was not there. I again paged him informing him that we were already at McDonald's and to return my call through my cell phone. After a while, his wife called up to inform us to

proceed to their house which was just five houses away from McDonald's. When we reached their house, we were met by his daughter who called her mother. We were ushered inside the house and after introducing ourselves, we gave not only P5,000.00, but TEN THOUSAND (P10,000.00) Pesos in cash to his wife in the presence of his daughter. Then we went to Putatan, Muntinlupa, hoping that he might be there.

8. We arrived at Putatan, Muntinlupa at around 4:30 in the afternoon and there we saw Atty. Barcelona. We informed him that we left the P10,000.00 with his wife at their house. Since Atty. Barcelona informed us that he could not secure the release of Mr. Daen because the check had not been encashed, Mr. Gil Daen, a nephew of Porfirio Daen, gave him FIFTEEN THOUSAND (P15,000.00) Pesos in cash. I also gave him an additional P1,000.00 for his gasoline expenses.
9. The next time that we saw Atty. Barcelona was on February 3, 1999, Wednesday at around 6:00 in the evening at Putatan, Muntinlupa. He informed us that he just came from the city jail where he had a conversation with Mr. Daen. He told us that he is going to release Mr. Daen from prison tomorrow, February 4, 1999. However, in the morning of February 4, we learned from the wife of Atty. Barcelona when she returned my call that her husband had left for Mindanao early that morning on board a private plane owned by Chiongbian allegedly to attend a peace talk with the Muslims.
10. After more than a week, I went to Putatan, Muntinlupa, because I was informed by the son of Mr. Daen that he saw Atty. Barcelona there. When I saw him, I confronted him about his undertaking to release Mr. Daen from prison, but he only advised us not to worry and promised (again) that he will return the entire amount of P64,000.00 more or less, on Thursday, February 18, 1999. But I never saw him again since then. I have repeatedly paged him to return my call but he never returned any of my calls.<sup>[3]</sup>

In an Order dated April 15, 1999, Investigating Commissioner J. Virgilio A. Bautista of the Commission on Bar Discipline of the IBP, required respondent to submit his answer to the complaint, with a warning that he will be considered in default and the case will be heard *ex parte*, if he fails to do so.<sup>[4]</sup> Despite due notice,<sup>[5]</sup> respondent failed to file his answer. Thus, complainant filed a motion to declare respondent in default,<sup>[6]</sup> resolution of which was held in abeyance by the Investigating Commissioner who required the parties to appear for hearing before the Commission on August 13, 1999.<sup>[7]</sup> On said date, respondent again failed to appear despite due receipt of notice.<sup>[8]</sup> Commissioner Bautista was thus constrained to consider respondent in default and complainant was allowed to present her evidence *ex parte*. Complainant testified and affirmed under oath the truthfulness and veracity of her Affidavit-Complaint.<sup>[9]</sup> Complainant also manifested that she will present the check in the amount of P24,000.00<sup>[10]</sup> at the next date of hearing.

Further hearings were set by the Commissioner, on October 1, 1999, November 19, 1999, October 12, 2001, December 14, 2001 and June 28, 2002, but both parties failed to appear on said dates despite due notice.<sup>[11]</sup>

Commissioner Bautista submitted his Final Report and Recommendation on December 23, 2002 finding respondent guilty of malpractice and serious breach of the Code of Professional Responsibility and recommending that respondent be disbarred and ordered to return to complainant the amount of P64,000.00. The IBP Board of Governors adopted Commissioner Bautista's findings but reduced the penalty to suspension from the practice of law for six years.

The Court disagrees with the IBP Board of Governors in reducing the penalty and upholds the findings and recommendation of Commissioner Bautista. Under the facts established by complainant, respondent should not only be suspended, but disbarred from practice.

The object of a disbarment proceeding is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of officers of the court, and to remove from the profession of law persons whose disregard for their oath of office have proved them unfit to continue discharging the trust reposed in them as members of the bar.<sup>[12]</sup>

In *In re Almacen*, the Court expounded on the nature of disbarment proceedings, viz.:

. . . Disciplinary proceedings against lawyers are *sui generis* . Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, [they are] in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. [They] may be initiated by the Court *motu proprio*. Public interest is [their] primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have prove[n] themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. . . .<sup>[13]</sup>

As in the *Ricafort* case,<sup>[14]</sup> herein respondent chose to forget that by swearing the lawyer's oath, he became a guardian of truth and the rule of law, and an indispensable instrument in the fair and impartial administration of justice - a vital function of democracy a failure of which is disastrous to society.<sup>[15]</sup> In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.<sup>[16]</sup> Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has