

## FIRST DIVISION

[ A.C. No. 5718, December 04, 2003 ]

**EDUARDO T. ABAY, COMPLAINANT, VS. ATTY. RAUL T. MONTESINO, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

The failure to file an appellate court brief without any justifiable reason deserves sanction. Lawyers who disagree with the pursuit of an appeal should properly withdraw their appearance and allow their client to retain another counsel.

#### The Case and the Facts

In a Complaint<sup>[1]</sup> dated June 21, 2002, Eduardo T. Abay charges Atty. Raul T. Montesino with gross negligence, gross incompetence and evident bad faith, in violation of his oath as a member of the Philippine bar.

Complainant avers that the Negros Institute of Technology (NIT), of which he is a stockholder, hired respondent as counsel in an action for "Cancellation of Title of Ownership, Recovery of Ownership and Possession and Damages with Preliminary Injunction" against the estate of Vicente T. Galo. The matter was docketed as Civil Case No. 1329 at the Regional Trial Court (RTC) of Bacolod City (Branch 45).

On April 27, 1995, the RTC rendered a Decision dismissing the civil case. Respondent's Motion for Reconsideration of the judgment of dismissal was denied by the trial court in its Order dated November 3, 1995. Although respondent filed a Notice of Appeal with the Court of Appeals (CA), he thereafter failed to submit an appellant's brief. Consequently, in a Resolution dated March 19, 1999, the CA dismissed the appeal with the following admonition:

"We made a warning in our Resolution dated as early as October 20, 1998 that no further extension will be entertained. Precisely because of non-submission of the Brief, we directed, on January 8, 1998, the dismissal of the appeal. This is not to mention the fact that a total of 120 days extension, over and above the 45-day reglementary period, had already been granted. This brings us to the February 9, 1999 ruling by the Supreme Court (A.M. No. 99-2-03-SC) giving the Solicitor General a limited time of 60 days and 90 days within which to submit his comment or appellee's brief, with a warning that no further extension will be granted. This precisely applies to a First Motion for Extension. The period can even be shortened, in cases of extreme urgency.

"We cannot see any reason why the court's admonishing for a limited time to do compliance does not apply to this case now before Us."<sup>[2]</sup>

Complainant attributes the failure of respondent to submit the brief to the latter's gross negligence and evident bad faith. Respondent allegedly abandoned the appeal without the knowledge and consent of the NIT. Worse, he supposedly never told the Institute that its appeal had already been dismissed. Complainant thus prayed that respondent be duly sanctioned with disbarment.<sup>[3]</sup>

In his Comment<sup>[4]</sup> dated October 29, 2002, respondent denied that he was negligent in his duty as counsel of NIT. According to him, while Civil Case No. 1329 was pending appeal, he discovered that the property that it was seeking to recover had been the subject of another case, Civil Case No. 6017, which was for "Annulment of Sale, Deed of Donation, Cancellation of Titles and Damages." The latter case was a result of the overlapping transfers of rights effected by the heirs of Vicente Galo through (1) a Contract of Sale executed on April 12, 1985<sup>[5]</sup> in favor of Floserfina Grandea <sup>[6]</sup> and (2) a Contract of Mortgage executed on September 3, 1985 in favor of Ludovico Hilado.<sup>[7]</sup>

Believing that the heirs of Vicente Galo had already validly transferred to another party the ownership of the property that the NIT was seeking to recover, respondent felt that to pursue the appeal would be "dilatatory, expensive, frivolous and taxing [to] the precious time of the [CA]."<sup>[8]</sup> Thus, he deemed it wise to advise the stockholders of the NIT to abandon the appeal and instead "file appropriate Complaint(s) against x x x Floserfina Grandea of Bacolod City and x x x Ludovico Hilado x x x of Silay City x x x to recover the ownership and possession of the NIT's claimed properties."<sup>[9]</sup>

Respondent avers that complainant was "unjustly adamant in his demand to continue with [the] appeal despite x x x said legal [advice]." However, because he sincerely felt that the "best way to protect the rights of NIT was to file appropriate complaint(s) against [Granda] and [Hilado], x x x [he] x x x allowed the period to submit NIT's Appellant's Brief to [lapse]."<sup>[10]</sup>

Furthermore, respondent maintains that despite the fact that the NIT did not pay his legal fees or reimburse him for his expenses, he still faithfully performed his duty during the entire time he served as its counsel.

In a Resolution<sup>[11]</sup> dated January 20, 2003, the Court referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

### **Report of the Investigating Commissioner**

In her April 24, 2003 Report,<sup>[12]</sup> Investigating IBP Commissioner Milagros V. San Juan found respondent guilty of violating the Code of Professional Responsibility.

According to Commissioner San Juan, respondent was not able to justify his failure to file the brief. She explained that "if respondent actually believed [that] it was futile to pursue [the appeal], why did he request from the Court of Appeals numerous extensions of time to file x x x the same within the given extension periods? Also, it should be noted that respondent admits that after he advised NIT and herein complainant [about] the futility of pursuing the appeal, the latter

expressed the wish to continue with [the appeal]. At the very least, respondent should have given due importance to the decision of his client to avail of a legal remedy available to it under the legal system."<sup>[13]</sup>

She recommended that respondent be suspended from the practice of law for a period of six months, with a warning that a harsher penalty would be meted out for a similar infraction in the future.<sup>[14]</sup>

### **Recommendation of the IBP Board of Governors**

On June 21, 2003, the Board of Governors of the IBP passed Resolution No. XV-2003-339<sup>[15]</sup> adopting the Report and Recommendation of the investigating commissioner."<sup>[16]</sup>

### **The Court's Ruling**

We agree with the findings and recommendation of the IBP.

### **Administrative Liability of Respondent**

The legal profession is invested with public trust.<sup>[17]</sup> Its goal is to render public service and secure justice for those who seek its aid.<sup>[18]</sup> Thus, the practice of law is considered a privilege, not a right, bestowed by the State on those who show that they possess and continue to possess the legal qualifications required for the conferment of such privilege.<sup>[19]</sup>

Verily, lawyers are expected to maintain at all times a high standard of legal proficiency and of morality -- which includes honesty, integrity and fair dealing.<sup>[20]</sup> They must perform their four-fold duty to society, the legal profession, the courts and their clients in accordance with the values and norms of the legal profession, as embodied in the Code of Professional Responsibility. Any conduct found wanting in these considerations, whether in their professional or private capacity, shall subject them to disciplinary action. In the present case, the failure of respondent to file the appellant's brief was a clear violation of his professional duty to his client.

The Code of Professional Responsibility mandates lawyers to serve their clients with competence and diligence.<sup>[21]</sup> Rules 18.03 and 18.04 specifically provide:

"Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

"Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information."

It must be noted that respondent and complainant disagreed on the legal course to be taken regarding the appealed case. The former strongly advised the latter to abandon the appeal and to consider the other available remedies. Complainant, on the other hand, wanted to pursue it. Feeling that he was "unjustly adamant" in wanting to do so, respondent -- contrary to the desire of the former -- deemed it wise to abandon the appeal without informing his client.