

## FIRST DIVISION

**[ A.C. No. 5763 (Formerly CBD 01-864), December 03, 2002 ]**

**GABRIEL T. INGLES, COMPLAINANT, VS. ATTY. VICTOR DELA SERNA, RESPONDENT.**

### RESOLUTION

**VITUG, J.:**

In a complaint, dated 25 July 2001, filed before the Integrated Bar of the Philippines (IBP), Atty. Gabriel Ingles, charged Atty. Victor dela Serna with violation, specifically of Canon 8, Rule 8.01, of the Code of Professional Responsibility.

The complaint stemmed from a memorandum submitted by Atty. dela Serna in Civil Case No. 5781, entitled "Cattleya Land, Inc., vs. Carmelita Fudot Singpit and Atty. Narciso dela Serna," before the Regional Trial Court, Branch 4, of Bohol. Respondent lawyer, who represented the defendant, stated in his memorandum thusly:

"Recourse Available to Cattleya

"When it turned out that Tecson had already sold Lot 2-A to Fudot TCT -17402 in 1986, Cattleya can blame only its lawyers, Atty. Federico Cabilao and Atty. Gabriel Ingles. **Apparently, these lawyers were themselves fooling Cattleya so that they can get their commission and overprice immediately.** x x x (Underscoring supplied).

"Bad Faith on the Part of Cattleya and Its Lawyers Cabilao and Ingles

"x x x The reason is obvious, Cattleya through its agents and lawyers, Atty. Cabilao and Atty. Ingles, are in cohorts with Tecson and Pizarra<sup>[1]</sup>.

Complainant averred that the statements were false and malicious and argued that they were uncalled for in a memorandum that should contain only a summation of the facts and the laws applicable to the case. In passing, complainant also denied that he had overpriced the property in order to obtain a commission.

In his answer, Atty. dela Serna maintained that the proper forum to consider the complaint should have been the Regional Trial Court that tried the case, and not the IBP, where complainant could have asked the court to cite respondent for contempt.

In a transmittal letter, dated **05 August 2001**, Atty. Victor C. Fernandez, Director for Bar Discipline, submitted to the Court 1) a Notice of the Resolution of the Board of Governors and 2) the Records of the Case consisting of 51 pages. The resolution of the Board of Governors (Resolution No. XV-2002-232), adopting the recommendation of Commissioner Lydia A. Navarro, read:

"RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating

Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex `A;’ and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that respondent having conducted himself with utter discourtesy by using uncalled for statements in his Defendants’ Memorandum without evident proofs of said accusations and using offensive and abusive language therein respondent violated Rule 8.01 of Canon 8 of the Code of Professional Responsibility, Respondent is hereby SUSPENDED from the practice of law for six (6) months.”<sup>[2]</sup>

When Atty. dela Serna learned of the resolution, he promptly filed an Appeal before this Court claiming a denial of substantive and procedural due process, no formal investigation having been conducted by the IBP before it issued the resolution recommending his six-month suspension from the practice of law.

A review of the records would indeed show that no formal investigation was conducted by the IBP.

In *Cottam vs. Atty. Laysa* (326 SCRA 614) and *Baldomar vs. Atty. Paras* (348 SCRA 212), the Court outlined the procedure for disciplinary action against a member of the Bar. The Court elucidated:

“Complaints against lawyers for misconduct are normally addressed to the Court. If, at the outset, the Court finds a complaint to be clearly wanting in merit, it outrightly dismisses the case. If, however, the Court deems it necessary that further inquiry should be made, such as when the matter could not be resolved by merely evaluating the pleadings submitted, a referral is made to the IBP for a formal investigation of the case during which the parties are accorded an opportunity to be heard. An ex parte investigation may only be conducted when respondent fails to appear despite reasonable notice. Hereunder are some of the pertinent provisions of Rule 139-B of the Rules of Court on this matter; viz.:

“`SEC. 3. Duties of the National Grievance Investigator. – The National Grievance Investigators shall investigate all complaints against members of the Integrated Bar referred to them by the IBP Board of Governors.

`x x x x x x x x

`SEC. 5. Service or dismissal. – If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation. A copy of the resolution of dismissal shall be furnished to the complainant and the Supreme Court which may review the case motu proprio or upon timely appeal of the complainant filed within 15 days from notice of the dismissal of the complaint.