

EN BANC

[A.C. No. 4500, April 30, 1999]

BAN HUA U. FLORES, COMPLAINANT, VS. ATTY. ENRIQUE S. CHUA, RESPONDENT.

D E C I S I O N

PER CURIAM:

In its Resolution No. XIII-98-288 in this Administrative Case, the Board of Governors of the Integrated Bar of the Philippines RESOLVED as follows:

... to ADOPT and APPROVE ...the Report and Recommendation of the Investigating Commissioner in 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, respondent Atty. Enrique S. Chua is SUSPENDED from the practice of law for three (3) years.

We quote the 21-page report of the Investigating Commissioner, Atty. Jaime M. Vibar:

THE FACTS AND THE CASE

Complainant Ban Hua U. Flores seeks the disbarment of respondent Atty. Enrique S. Chua, a practicing lawyer in the City of Bacolod (Complaint dated October 11, 1995) for various offenses amounting to "malpractice, gross misconduct, violation of his lawyer's oath, the Code of Professional Conduct and Responsibility, as well as the provisions of the laws of the Republic of the Philippines, to wit:

- I. FRAUD AGAINST A DEFENSELESS WIDOW BY THE DEATHBED OF HER DECEASED SPOUSE THROUGH FALSIFICATION AND FORGERY OF PUBLIC DOCUMENT.
- II. FOISTING FALSEHOOD AND FABRICATED PUBLIC DOCUMENT TO MOLEST AND HARASS PARTIES CONCERNED AND DEPRIVED THEM OF THEIR PROPERTY RIGHTS TO THEIR PREJUDICE AND DETRIMENT.
- III. LIBEL, MISPRESENTATION AND UNLAWFUL ADVERTISEMENT THROUGH THE PREMATURE PUBLICATION OF PORTION OF A QUESTIONABLE DECISION WHICH IS PENDING APPEAL.
- IV. BRIBERY AND CORRUPTION AND BLACKMAIL OF THE JUDICIARY AMOUNTING TO MALPRACTICE.

V. ILLEGAL TAPPING OF CONVERSATIONS IN VIOLATION OF REPUBLIC ACT NO. 4200.

VI. COMMISSION OF PERJURY, FORUM SHOPPING, MISPRESENTATION, FILLING A FALSE SUIT AND MISLEADING THE CLERK OF COURT TO EVADE PAYMENT OF DOCKET FEES.

Respondent filed his comment on the complaint with a countercharge against complainant and counsel, dated January 24, 1996. Respondent denies the charges and alleges that:

1. Grounds I and II, referring to the forgery of the signature on a Deed of Sale notarized by respondent Chua, "are presently the subject of an on-going litigation (Crim. Case No. 12036 or Annex "A" Complaint and SEC Case No. 3328 or Annex "F" or Sec Case No. 520 or Annex "P", Complaint) whose termination or conclusion is far from over, thus it would be premature to impose now any sanction upon the respondent xxxx"
2. Grounds III, III-A and III-B "are presently litigated in the Libel Complaint docketed as BC-I.S. No. 93-2801 filed by complainant against the respondent and her (Complainant's) brother xxx and is still awaiting resolution". Said grounds are also intertwined with other pending cases.
3. Grounds IV, IV-A. IV-B and IV-C "are absolutely baseless and false".
4. Other grounds mentioned are not valid and sufficient basis for respondent's disbarment for the issues raised therein are still the subject of pending cases. Such grounds are flimsy and frivolous.

Respondent claims that the cases he is handling and subject of the complaint involve disputes between family members. As he represents the brother of complainant, the present administrative complaint has apparently been filed by complainant to vent her ire for failing to attain what she sought in the pending litigations against respondent's client.

In the trial of the case, complainant presented testimonial and documentary evidence, including decisions of courts and pleadings filed therein while respondent opted to submit the case for decision only on the basis of documents. He submitted resolutions, pleadings and orders issued in other pending cases adverted to in the complaint, to prove that the issues raised in the disbarment case are still the subject of pending actions, or that the complaint has no legal and factual basis.

Let us examine the facts as established by the evidence adduced by the parties.

GROUND I. On the charge that respondent Chua was guilty of falsification and criminal activities in connection with his office as lawyer and notary public.

Complainant presented evidence on the notarization by respondent Chua

of a Deed of Sale allegedly executed on December 5, 1989 (Exhibit "E"), or one (1) day before the death of Chua Beng, one of the owners of the property. In the transcript of stenographic notes taken in Criminal Case Nos. 12037 and 12036, a proceeding against respondent Chua for falsification and notarization of a falsified document, RTC-Bacolod City, Branch 53, it is revealed that during the wake of Chua Beng, Silvina Chua, the wife of the deceased, asked to sign a document by Yu Seng, her husband's helper or assistant, who represented to her that said document she signed was a deed of sale which conveyed a property of her husband located in Nandalagan, Bacolod City, containing 344 square meters and evidenced by Transfer Certificate of Title No. 151706. She also found out that her husband's signature was forged. The deed of sale purportedly transferred their property to Yu Seng and Benjamin Laudio.

Silvina Chua gave testimony that her husband Chua Beng could not have signed the deed of sale as they were together all the time prior to his death and she did not see him sign any document (Exhibit "G" at pages 39, et seq.) The forgery of the signature of her husband was reported to authorities (Exhibit "G" at page 55) and a fingerprint expert in the person of Police Superintendent Rodolfo Castillo attested to such forgery (Exhibit "F" at page 48 et. seq.) The forgery and notarization of the document containing the said forged signature of Chua Beng became the basis of a criminal prosecution for falsification of notarial document against Atty. Chua, the above-mentioned Criminal Case Nos. 12037 and 12036.

Respondent Chua has not rebutted evidence presented on his role in notarizing a deed of sale where the signatory did not appear before him as, in fact, the signature was a forgery. The "Acknowledgment" in the deed of sale states that Chua Beng appeared and signed the deed personally before respondent. In his defense, respondent claims that there is a criminal case still pending against him for his participation in the notarization and alleged falsification of the document so the administrative case cannot proceed until the decision is rendered in the criminal case.

GROUND II. On the charge that respondent foisted falsehood and falsification to molest and harass parties concerned to their prejudice and detriment.

The charge relates to the filing of a notice of lis pendens in connection with a case filed before the Securities [sic] and Exchange Commission (SEC). It appears that a petition, dated April 6, 1988, was filed by the lawyers Ramon Encarnacion and Alberto de Joya in behalf of UBS Marketing Corporation and Johnny K.H. Uy. Complainant herein and other family members were the respondents. The action was for the "turn over of Books of Accounts, Sums of Money and Damages with Writ of Preliminary Mandatory Injunction". Subsequently, or on April 26, 1995, a notice of lis pendens was sent to the Register of Deed of Bacolod City, informing of the filing of a SEC petition, docketed as Case No. 3328. The first page of the petition was altered by obliterating the entry pertaining to the nature of the suit appearing at the upper right hand portion of the caption of the case just below the case number. The complainant testified

that the erasure was made to conceal the true nature of the suit and lack of basis of the notice so as to mislead the Register of Deeds into annotating the notice of *lis pendens*. The notice sent to the Register of Deeds, Exhibit "J", Annex "F", Disbarment Complaint, was signed for "Ramon Encarnacion and Associates".

It is further charged that the notice was unlawful and baseless as the owner (SK Realty, Inc.) of the properties subject thereof was not even a party to the SEC petition.

The application for the annotation of the notice of *lis pendens* was denied by the Register of Deeds in a letter dated May 5, 1995, addressed to UBS Marketing Corp. and Johnny KH Uy c/o Atty. Enrique Chua on the ground that the ownership of the titles was never an issue in the case and the registered owner was not a party thereto. Respondent Chua, this time acting for the applicants, appealed the denial to the Land Registration Commission (LRC) *en consulta*. However, the LRC Administrator, in a Resolution dated September 21, 1995, denied the appeal, sustaining the ground stated by the Register of Deeds that the notice was not registrable as the registered owner of the affected properties was not a party to the SEC case.

No contrary evidence was presented by respondent.

GROUND III. On the third charge that respondent was guilty of libel, misrepresentation and unlawful conduct by causing the publication and advertisement of a portion of the SEC decision in a newspaper of general and wide circulation in the province, evidence is not disputed that indeed an advertisement/notice and news report came out in the Visayan Daily Star, in its issues of June 6, 1995 and June 9, 1995 (Exhibits "Q" and "R", Annexes "L" and "M") respectively, relating to the decision of the hearing officer in the SEC Case No. 3328 holding complainant and other liable for P68 million. The decision as published included, among others, the cancellation of titles of SK Realty, Inc. and New Challenge Resources, Inc.

In these publications, respondent was always in the forefront, claiming to be the lawyer of the winning parties and paying for the advertisement/notice of the SEC decision. (Annexes "N" and "O").'

Complainant testified (TSN February 19, 1997 at page 54 et seq.) before this Commission and affirmed that the decision of the hearing officer in SEC Case No. 3328 declared her and others in default and held liable for P68 million. Thereafter, Atty. Chua, who was not the counsel of petitioners in the proceedings, caused damage and embarrassment to the [sic] them when said respondent instigated and initiated the publication in a newspaper of general and wide circulation in the Visayas, the Visayan Daily Star issue of June 6, 1995, the issuance of the decision with the caption "BUSINESSMEN ORDERED TO PAY P68 MILLION PESOS BY THE SECURITIES AND EXCHANGE COMMISSION". The publication reported that Atty. Chua was the counsel of the petitioners. Not content with the news report, respondent Chua himself caused and paid for the publication of a two (2) page notice/advertisement in the Visayan Daily

Star in its issue of June 9, 1995, informing the public about the decision of the SEC finding the complainant and others liable for P68 million.

Even non-parties, SK Realty, Inc. and New Challenge Resources were mentioned in the publication (Exhibit "Q", Annex "L", Complaint).

The SEC decision adverted to in the publications had been appealed to the Commission en banc. A copy of the notice of appeal was sent by mail to the counsel of record on June 9, 1995. (Exhibit "V, Annex "P").

While the SEC case was pending appeal, respondent Chua filed a case against SK Realty, complainant herein and others with the Regional Trial Court of Bacolod City, Case No. 95-9051 for "Reconveyance of Property and Cancellation of Titles and/or Recovery of Ownership and Possession of Real Estate with Damages and Accounting." (Annex "Q").

In defense, respondent Chua submitted evidence to show that a complaint for libel filed by Ban Hua Flores against respondent, arising from the publication/advertisement of the decision in SEC No. 3328, was dismissed by the prosecutor's office of Bacolod (Annex "1", Respondent's Manifestation and Submission of Evidence dated February 15, 1997). He further alleged that while complainant filed an administrative complaint against the prosecutors, the said complaint was likewise dismissed for the acts complained of amounted merely to errors of judgment correctible by appeal or a petition for review and not by an administrative proceedings (Annex "3", Ibid). Respondent maintains that the complaint on the publication is, therefore, baseless.

GROUND IV. On the charge that respondent was guilty of bribery, corruption and blackmail of the judiciary, as well as harassment of the prosecution arm through the filing of administrative and criminal cases against them, complainant presented evidence that respondent testified in Administrative Matter No. RTJ-92-863 and Administrative Matter No. RTJ No. 92-880, involving Judge Renato Abastillas and Judge Bethel Moscardon, respectively, whereat respondent Chua allegedly admitted having bribed and/or conspired to bribe then RTC Judge Abastillas in order to obtain a favorable ruling for his clients in Crim. Case Nos. 10009 and 10010. Failing to get a favorable action, respondent Chua "squealed/fabricated Administrative Matter No. RTJ-92-863 against ex-Judge Abastillas".

Complainant further charges respondent of having conspired to bribe Judge Moscardon, which illegal act he admitted in A.M. RTJ-92-880. Complainant also makes the sweeping accusation that respondent Chua has the propensity to either bribe or sue the judges and prosecutors. He is charged of having harassed Provincial Prosecutor Bartolome Facuña.

Respondent denies the accusation but admits that he has already been proceeded against and, in fact sternly warned for his misconduct in giving Judge Abastillas P20,000.00 for a case he was handling and for which acts he has already expressed rancor (A.M. No. RTJ-92-863). He emphasizes that the charges he acted irresponsibly by indiscriminately