

## THIRD DIVISION

[ A.C. NO. 6051, April 02, 2007 ]

**CELIA ARROYO-POSIDIO, COMPLAINANT, VS. ATTY. JEREMIAS R. VITAN, RESPONDENT.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

In a verified complaint<sup>[1]</sup> dated June 14, 2002, complainant Celia Arroyo-Posidio prayed for the disbarment of respondent Atty. Jeremias R. Vitán on account of deceit, fraud, dishonesty and commission of acts in violation of the lawyer's oath.

Complainant alleged that she engaged the services of respondent in Special Proceeding No. C-525, entitled "*Testate Estate of deceased Nicolasa S. de Guzman Arroyo*," filed before the Regional Trial Court of Caloocan City. Complainant paid respondent legal fees in the amount of P20,000.00. However, on June 6, 1990, respondent withdrew his appearance as counsel in the said case, thus complainant engaged the services of another lawyer.

Sometime in August 1996, respondent contacted complainant and showed her documents consisting of tax declarations of properties purportedly forming part of the estate of Nicolasa S. de Guzman-Arroyo, but were not included in the Inventory of Properties for distribution in Special Proceeding No. C-525. He convinced complainant to file another case to recover her share in the alleged undeclared properties and demanded P100,000.00 as legal fees therefor. After several months, however, respondent failed to institute any action. Complainant decided to forego the filing of the case and asked for the return of the P100,000.00, but respondent refused despite repeated demands.

Consequently, complainant filed an action for sum of money and damages against respondent before Branch 81, Metropolitan Trial Court, Valenzuela City which was docketed as Civil Case No. 7130. On March 31, 1999, the trial court rendered a decision, the dispositive portion of which states:

WHEREEFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to:

1. To pay plaintiff the sum of P100,000.00 with interest at the rate of 12% per annum from September 7, 1996 until the same is fully paid and/or satisfied;
2. To pay plaintiff the amount of P8,000.00 as and for attorney's fees; and
3. To pay the cost of suit.<sup>[2]</sup>

Respondent appealed to the Regional Trial Court which affirmed<sup>[3]</sup> the Metropolitan Trial Court decision *in toto*. Thus, complainant filed a Motion for Issuance of a Writ of Execution which was granted on March 19, 2001.<sup>[4]</sup>

To satisfy the judgment against him, respondent issued Prudential Bank check number 0338742<sup>[5]</sup> dated May 31, 2001 in the amount of P120,000.00 in favor of complainant. However, upon presentment for payment, the check was dishonored for the reason: ACCOUNT CLOSED. Despite a written notice of dishonor and demand<sup>[6]</sup> dated September 3, 2001, respondent refused to honor his obligation. Hence, this administrative complaint charging respondent with deceit, fraud, dishonesty and commission of acts in violation of the lawyer's oath.

Respondent denied complainant's allegations. He admitted having received the amount of P100,000.00 but claimed that the same was partial payment for his services in Special Proceeding Case No. C-525. Further, he alleged that he had already paid complainant the amount of P150,000.00 as evidenced by a Receipt & Quitclaim<sup>[7]</sup> dated August 10, 2000.

On March 1, 2004, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. On January 15, 2006, the Investigating Commissioner submitted his Report<sup>[8]</sup> finding respondent guilty of violating the lawyer's oath and the Code of Professional Responsibility in defrauding his client and issuing a check without sufficient funds to cover the same. Thus —

4.3 x x x

Noteworthy is the factual finding of the court that Complainant had already paid respondent the amount of P20,000.00 for services he had rendered in Special Proceeding case No. C-525. Thus, Respondent's claim that the P100,000.00 given to him by Complainant allegedly for payment of his legal services in the Special Proceeding is not correct. The MTC decision likewise found that Respondent requested payment of the P100,000.00 in consideration for his representing Complainant in the additional claims to be filed against the estate of Nicolasa S. de Guzman Arroyo. Respondent, however, failed to file the claims. Hence, complainant demanded the return of the P100,000.00. The MTC decision has already become final and executory as evidenced by a copy of the Order of Writ of Execution issued by the Court.

4.4 x x x

4.5 As already pointed out, the RTC had rendered a decision affirming *in toto* the decision of the MTC that the P100,000.00 given by Complainant to Respondent is not for the payment of his previous services rendered in the Special Proceeding case No. C-525 but rather as payment for filing of an additional claim from the estate of the late Nicolasa S. de Guzman Arroyo. It is clear that there is identity of parties in the civil case for recovery of sum of money and damages and in the administrative case for disbarment filed by herein Complainant. Thus, while the causes of action are different in the two cases, there is conclusiveness on the factual circumstances surrounding Complainant's delivery of the

P100,000.00 to Respondent. Respondent['s] bare assertion that his receipt of the P100,000.00 was for payment of legal services previously rendered in the Special Proceeding case No. C-525 does not hold water and cannot overturn the factual conclusions reached by the MTC in its decision.

4.6 A lawyer may be suspended or disbarred for deceit or misrepresentation to the prejudice of or as a means to defraud his client. In the case of *Munar v. Flores*, **the Supreme Court suspended an attorney who deceitfully defrauded a client of a sum of money allegedly representing cost of fees and other miscellaneous expenses for a suit to be filed but which promised suit he never filed nor did he return the amount despite demands.** Failure on the part of the lawyer, upon demand, to return to his client the funds or property held by him on the latter's behalf gives rise to the presumption that he has appropriated the same for his own use to the prejudice of and in violation of the trust reposed in him by his client.

It is clear in this case that Complainant made demands for the return of the P100,000.00, but the same remained unanswered by Respondent. This prompted Complainant to file a civil case for collection of sum of money and damages. Worse, after the decision was rendered in favor of Complainant, and a writ of execution issued, Respondent issued a check purportedly to settle the case only to have the check bounce for insufficiency of funds. The conversion of the client's property is a gross violation of general morality as well as professional ethics, and deserves severe punishment. This conversion of client's property is a ground for disciplinary action and presupposes fraudulent intent on the part of the lawyer. In the case of *Manalato v. Reyes*, the Supreme Court emphasized that fraudulent intent may be inferred from the lawyer's refusal to make restitution after demand. Such circumstance is present in this case.

x x x x

In view of the foregoing, this Commissioner respectfully recommends that a penalty ranging from suspension for a period of six (6) months to one (1) year at the discretion of the Board be imposed with warning that repetition of similar conduct in the future will warrant a more severe penalty.<sup>[9]</sup>

The IBP Board of Governors adopted the findings of the Investigating Commissioner but modified the penalty from suspension to reprimand<sup>[10]</sup> with stern warning that a similar misconduct will warrant a more severe penalty.

We agree with the findings of the IBP. However, we find that the penalty of reprimand is not commensurate to the gravity of wrong committed by respondent.

The ethics of the legal profession rightly enjoin every lawyer to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law. <sup>[11]</sup> Lawyers are prohibited from engaging in unlawful, dishonest, immoral or deceitful conduct<sup>[12]</sup> and are mandated to serve their clients with competence and