

FIRST DIVISION

[A.C. NO. 5760, September 30, 2005]

THE HEIRS OF TIBURCIO F. BALLESTEROS, SR., NAMELY ELSIE B. AROMIN, DOLORES D. BALLESTEROS, TIBURCIO B. BALLESTEROS, JR., AND FE BALLESTEROS-YABUT, AND THE RURAL BANK OF PAGADIAN, INC., REPRESENTED BY JULIAN B. BALLESTEROS IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE AND PRESIDENT/MANAGER OF THE BANK, COMPLAINANTS, VS. ATTY. MANILEÑO N. APIAG, RESPONDENT.

DECISION

CARPIO, J.:

The Case

This is a complaint for disbarment filed by Julian B. Ballesteros ("complainant") as Administrator of the Ballesteros Estate and President and Manager of the Rural Bank of Pagadian, Inc. ("Bank") against Atty. Manileño N. Apiag ("respondent"), the retained counsel of the Ballesteros Estate and the Bank.

Complainant alleged that respondent violated the terms of the Legal Services Retainership Agreement^[1] ("Retainer Agreement") and Canons 15, 17, 18, 19 and Rules 18.03 and 18.04 of the Code of Professional Responsibility.^[2]

The Facts

Complainant charges respondent for reneging on his obligations as retained counsel in the following instances:

1. Civil Case Nos. 1645-1648

Respondent handled four actions for Unlawful Detainer and Damages with Prayer for Issuance of Preliminary Mandatory Injunction docketed as Civil Case Nos. 1645-1648 ("ejectment cases"). Respondent filed the ejectment cases on 26 November 1998, which were raffled to Branch 1 of the Municipal Trial Court in Cities, Pagadian City, presided by Judge Edilberto G. Absin ("Judge Absin"). In all these cases, Judge Absin issued an Order^[3] dated 2 August 1999, requiring the parties to submit their position papers. Respondent failed to submit the position papers. On 8 December 1999, Judge Absin issued four identical Orders dismissing the ejectment cases.^[4]

Complainant claims that respondent never informed him of the dismissal of the ejectment cases. Complainant learned of the dismissal only during the first week of March 2002 when his new counsel filed a Motion for Substitution of Legal Counsel.^[5]

Complainant also claims that respondent was aware beforehand that complainant would suffer tremendous financial losses in the event of dismissal of the ejectment cases.^[6]

2. Civil Case No. 3844

Respondent also handled Civil Case No. 3844 for Quieting of Title with Preliminary Injunction and Declaration of Nullity of Deed of Mortgage. The trial court set the case for pre-trial conference on 5 February 2002. Respondent failed to appear. He did not file a pre-trial brief as well. The trial court then ordered the third-party plaintiff to present evidence *ex-parte*.^[7]

Complainant claimed he was present during the pre-trial conference. He later learned that respondent was at his residence and did not attend the pre-trial conference.^[8]

3. Civil Case No. 3395

Respondent also prosecuted the latter stages of an Action for Reconveyance of Real Property docketed as Civil Case No. 3395. This case is now on appeal with the Court of Appeals' 13th Division. However, when the case was still in the Regional Trial Court, respondent failed to file a Motion for Reconsideration, particularly on the cancellation of the Notice of *Lis Pendens* annotated on the Torrens title of the property under litigation.^[9]

Complainant asserts that the failure to move for reconsideration would enable the defendants to sell the property, thus making it difficult for complainant to regain possession of the property if the appellate court rules in his favor.^[10]

4. Civil Case No. 4019

Respondent handled Civil Case No. 4019 for Rescission of Contract and Damages against Spouses Hawani. On 20 January 2000, the trial court rendered a decision ordering the Spouses Hawani to pay the Ballesteros Estate back rentals including penalties of P852,263.84 plus P30,000 attorney's fees.^[11]

Respondent billed complainant P255,679.15 representing 30% contingent fee and P30,000 attorney's fees. Complainant asserts that the bill does not conform to the terms of the Retainer Agreement, which reads:

"OBLIGATIONS OF THE CLIENT"

x x x

5. To pay the Attorney by way of contingent fee the following:

x x x

c. Thirty percent (30%) of the total amount or equivalent sum recovered from Moral and Exemplary Damages to the exclusion of Actual Damages, paid and received by the client thru the execution of any/all judgment

rendered in favor of the client; and by way of an additional incentive, awards for Attorney's fees and payment relative thereto shall pertain to and exclusively belong to the Attorney;^[12]

Complainant claims that the award of P852,263.84 corresponds to unpaid rentals, penalties and charges from 16 January 1997 to 15 January 2000. This amount represents actual damages and not moral or exemplary damages.^[13]

Complainant further claims that for this case alone, he paid respondent a total of P219,000 consisting of fees for consultation, acceptance, court appearances, preparation of pleadings and motions.^[14]

On 5 March 2002, complainant received from respondent a final demand letter. Complainant refused to pay respondent. Thus, on 2 April 2002, respondent filed Civil Case No. 4370-2k2 for Collection of Sum of Money and Damages with Preliminary Injunction and Restraining Order.^[15]

Complainant now seeks the disbarment of respondent for violating Canons 15, 17, 18, 19 and Rules 18.03 and 18.04 of the Code of Professional Responsibility.^[16]

In his Comment, respondent refutes complainant's allegations and counters that:

1. Civil Case Nos. 1645-1648

Complainant was one of the defendants in several criminal complaints^[17] that involved the same lot in the four ejectment cases. Respondent contends that complainant's motive in filing the Actions for Unlawful Detainer was to harass the private offended party and her witnesses so they would drop the criminal cases against complainant.^[18] Nevertheless, respondent filed the ejectment cases with all fidelity to his client.

Respondent maintains that he submitted the drafts of the Position Paper and Affidavit to complainant for his signature. However, complainant did not return the drafts despite several reminders. Respondent cannot now present the drafts because respondent submitted all copies of the Affidavit and Position Paper to complainant. Respondent's computer used in encoding the final drafts no longer contains the drafts in its files.^[19]

Respondent insists that he furnished complainant a copy of the dismissal order in the four ejectment cases.^[20] Respondent points out that complainant's claim of lack of knowledge of the dismissal order for more than two years is incredible. Respondent posits that complainant's inaction for two years constitutes dereliction and makes him unworthy as an administrator of the Ballesteros Estate.^[21]

2. Civil Case No. 3844

In the civil case for Quieting of Title, respondent did not file a pre-trial brief because of the possibility of a compromise agreement. Respondent claims that complainant, upon receiving the proposed compromise agreement from respondent, promised to submit the compromise agreement to the Bank's Board of Directors for its

consensus. Respondent was hopeful that the compromise agreement would succeed so he decided not to file the pre-trial brief. His non-appearance at the pre-trial conference on 5 February 2002 was based on his assumption that the trial court would grant the Motion for Postponement filed by counsel for plaintiffs.^[22] Respondent attributed to complainant's failure to act on the compromise agreement the subsequent issuance by Judge Absin of the order allowing the third-party plaintiff to present evidence *ex-parte*.^[23]

Further, respondent denies the allegation that complainant was present in court during the pre-trial conference on 5 February 2002.^[24] As shown in the trial court's Order,^[25] defendant Bank failed to appear, proving that complainant never attended the pre-trial conference. Respondent points to this as a clear indicium of complainant's extraordinary temerity to lie to the Court.^[26]

3. Civil Case No. 3395

On Civil Case No. 3395, respondent claims that complainant never referred this case to him. Respondent's participation in this case was only by special appearance due to the inability of Atty. Manuel Diokno, the counsel of record from Manila, to attend the scheduled trial. In fact, a separate Special Agreement governed respondent's services in this case.^[27]

Respondent insists that he is not at fault for the non-filing of a Motion for Reconsideration because he merely followed the instruction of Atty. Diokno to file the Notice of Appeal.^[28]

However, to protect complainant's interest, respondent filed a Motion for Reconsideration with the Office of the Registry of Deeds to remedy the impending effect of the cancellation of the Notice of *Lis Pendens*.^[29]

4. Civil Case No. 4019

Respondent claims that complainant presented to him the draft of the Retainer Agreement. The original provision on the payment of contingent fee to which respondent agreed reads: "xxx [i]n the event of an award for damages, the fee shall be thirty (30) percent of the award xxx."^[30] That complainant prepared the final draft of the Retainer Agreement is shown by the details of complainant's Residence Certificate which were typewritten while the details of respondent's Residence Certificate remained in blank.^[31]

Respondent asserts that complainant maliciously altered the agreed word "inclusion" by changing it to "exclusion"^[32] to make it appear that actual damages are excluded in computing the 30% contingent fee. Respondent laments that he would not receive any contingent fee because his clients, the Ballesteros Estate and the Bank, are artificial persons which could not recover moral and exemplary damages.^[33] Respondent asserts that the word "exclusion" is inconsistent to a holistic interpretation of the Retainer Agreement.^[34]

Respondent contends that he exerted great effort in preparing the case against the

Spouses Hawani, thus he rightfully deserves his attorney's fees.^[35]

Finally, respondent claims that complainant's stubborn refusal to pay left respondent no other course but to file the case for Collection of Sum of Money and Damages against complainant.^[36]

The IBP's Report and Recommendation

The Integrated Bar of the Philippines Investigating Commissioner Lydia A. Navarro ("IBP Commissioner Navarro") allowed the parties to submit position paper or memorandum in lieu of a formal hearing.^[37] After the parties filed their memoranda, the IBP Board of Governors issued Resolution No. XVI-2004-234 ("IBP Resolution") dated 16 April 2004 adopting with modification^[38] IBP Commissioner Navarro's Report and Recommendation ("Report") finding respondent negligent in legal matters entrusted to him by his client. The IBP Board of Governors recommended the imposition on respondent of a penalty of six months suspension from the practice of law. The Report reads:

After going over the evidence submitted by the parties, the undersigned noted that the interpretation concerning their Retainer Agreement is a matter to be resolved by the Court where Civil Case No. 4370-2K2 for Collection of Sum of Money and Damages was filed on April 20, 2002 and that is before RTC Branch, 18 when complainant allegedly refused to pay respondent his attorneys fees pursuant to their agreement which is still pending litigation between them.

With respect to the four (4) ejectment cases dismissed by the court for failure of respondent to file Position Papers for each case as per Court Order; respondent's allegation that it was attributable to the complainant who did not return the draft to him which was refuted by the complainant for he was not supposed to sign the same is of no moment for as counsel of record, it was incumbent upon respondent to take the necessary action and not for the complainant who is not conversant with the court proceedings otherwise respondent's legal services would not have been engaged; and for such remission respondent had been negligent considering that he should not have taken for granted the non-filing of Position Papers for each of the four (4) ejectment cases which had been the very reason for the dismissal of said cases.

Respondent's contention that his appearance in Civil Case No. 3395 being special; instead of a motion for reconsideration he filed a Notice of Appeal upon complainant's instruction as allegedly relayed to the latter by their counsel of record Atty. Diokno was in violation of Rule 19.01 (sic), Canon 19 of the Code of Professional Responsibility when respondent allowed his client to dictate upon him the procedure in handling said case without first making the necessary coordination with Atty. Diokno the alleged counsel of record of the complainant. But the fact remains that respondent pursued the case until a decision was promulgated; therefore as such he was in control in having prosecuted Case No. 3395; a legal responsibility.