

## EN BANC

[ A.C. No. 11477 (Formerly CBD Case No. 12-3535), January 19, 2021 ]

**JAIME IGNACIO D. BERNASCONI, COMPLAINANT, VS. ATTY. BELLEZA A. DEMAISIP, RESPONDENT.**

### D E C I S I O N

**GAERLAN, J.:**

This resolves the verified Complaint<sup>[1]</sup> initiated by Jaime Ignacio Bernasconi (Bernasconi) against Atty. Belleza Demaisip (Atty. Demaisip) for violation of Rule 1.01 of Canon 1 and Rules 16.01, 16.02, and 16.03, and Canon 16 of the Code of Professional Responsibility (CPR).

According to Bernasconi, in 2008, he engaged Atty. Demaisip's legal services for the transfer of ownership of a parcel of land. Atty. Demaisip estimated that the cost of transfer would amount to P2,960,000.00. Consequently, Bernasconi gave her the specified amount to effect the transfer.<sup>[2]</sup>

However, Atty. Demaisip was not able to deliver any transfer certificate of title to Bernasconi. Thus, he demanded her to refund the amount of P2,960,000.00. In October 2009, Atty. Demaisip turned over to Bernasconi a liquidation of expenses amounting to P512,000.00, and returned the sum of P810,000.00. Nevertheless, she was not able to account for the remaining P1,638,000.00.<sup>[3]</sup>

On March 1, 2009, Atty. Demaisip issued in favor of Bernasconi a check in the amount of P1,638,000.00, which was dishonored by the drawee bank upon presentment for being drawn against a closed account. Despite several demands from Bernasconi, Atty. Demaisip still failed to make good the check. On September 24, 2009 and October 5, 2009, Atty. Demaisip executed promissory notes where she undertook to pay Bernasconi the amount of P1,638,000.00. But again, Atty. Demaisip failed to fulfill her promise. This led Bernasconi to file a criminal complaint for violation of Batas Pambansa Blg. 22 (B.P. Blg. 22) and *estafa* against her, aside from this administrative complaint.<sup>[4]</sup>

In her Answer,<sup>[5]</sup> Atty. Demaisip countered that she was not able to carry out her agreement with Bernasconi because the amount he entrusted to her was not enough to process the transfer of ownership. Later on, in her Position Paper,<sup>[6]</sup> Atty. Demaisip proffered that Bernasconi agreed to pay her attorney's fees amounting to P1,890,810.00, which was 7.5% of the value of the property sold.<sup>[7]</sup> She admitted that she received P2,960,000.00 for the expenses on the transfer. However, the property was previously the subject of a case and was only subsequently sold, thus, there were two transfers involved requiring the payment of more than what she initially estimated.<sup>[8]</sup> Since Bernasconi demanded Atty. Demaisip to return his

money, she claimed that she had no recourse but to issue a guarantee check in his favor. Additionally, Atty. Demaisip claimed that her attorney's fees were not deducted from the amount being demanded from her.<sup>[9]</sup>

On August 7, 2014, the Integrated Bar of the Philippines- Commission on Bar Discipline (IBP-CBD) received a Withdrawal of Complaint<sup>[10]</sup> from Bernasconi.

In a Report and Recommendation,<sup>[11]</sup> dated February 5, 2016, the IBP-CBD recommended that Atty. Demaisip be suspended from the practice of law for a period of two years with a stern warning that a repetition of the same or similar acts will be dealt with more severely.<sup>[12]</sup>

The IBP-CBD observed that Atty. Demaisip did not deny issuing a check that was dishonored for being drawn against a closed account. Informations for *estafa* and for violation of B.P. Blg. 22 were also filed against her. Although trial of the case did not ensue, the investigating prosecutor found probable cause, which shows Atty. Demaisip's disregard for a law of the land. She also violated Canon 16, Rules 16.01 and 16.03 of the CPR when she failed to refund to Bernasconi the amount of P1,638,000.00.<sup>[13]</sup>

Further, assuming that Bernasconi still owed Atty. Demaisip unpaid attorney's fees, she never informed Bernasconi of such fact. She raised this argument for the first time in her Position Paper. Moreover, this does not relieve her of her duty to account for the money she received from her client.<sup>[14]</sup>

On February 25, 2016, the IBP Board of Governors issued a Resolution,<sup>[15]</sup> which reads as follows:

RESOLUTION NO. XXII-2016-180  
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*RESOLVED to ADOPT with modification the recommendation of the Investigating Commissioner reducing the penalty to one (1) year suspension from the practice of law.*<sup>[16]</sup>

The case was thereafter referred to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.

The OBC, in its Report and Recommendation<sup>[17]</sup> dated April 5, 2019, recommended the imposition of a two-year suspension from the practice of law with stern warning as penalty for Atty. Demaisip's infractions.<sup>[18]</sup> The OBC pointed out that there is no reason why Atty. Demaisip could not return the outstanding balance as she herself submitted the accounting of expenses incurred. Worse, she aggravated her wrongdoings when she issued a worthless check to cover the unpaid balance. This is an act of willful dishonesty and immoral conduct that undermine the public confidence in the legal profession.<sup>[19]</sup>

The Court sustains the recommendation of the IBP-CBD and OCA.

Preliminarily, the Court notes that Bernasconi had already withdrawn his administrative complaint against Atty. Demaisip. He explained that the complaint he filed was "a result of misunderstanding in the engagement of the legal services"<sup>[20]</sup> of Atty. Demaisip. However, Bernasconi's desistance does not have the effect of exonerating Atty. Demaisip. In *Bautista v. Atty. Bernabe*,<sup>[21]</sup> a lawyer was suspended from the practice of law for one year and his notarial commission was revoked in addition to his disqualification for reappointment as a notary public for two years, despite his client's affidavit of desistance. This is so because of the unique nature of disciplinary proceedings wherein the sole purpose is to promote public welfare by weeding out those who are unfit for the practice of law. As the Court elucidated in *Bautista, viz.:*

Complainant's desistance or withdrawal of the complaint does not exonerate respondent or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.<sup>[22]</sup>

Proceeding to the merits of the present case, Atty. Demaisip maintained that feeling pressured from Bernasconi's demands, she was merely forced to issue the check as a guarantee check.<sup>[23]</sup> She invokes good faith on her part as she executed a promissory note and entered into a compromise agreement with Bernasconi for the payment of the outstanding balance during the pendency of the criminal case.<sup>[24]</sup>

Atty. Demaisip's arguments fail to persuade.

Atty. Demaisip had already admitted that she failed to return the balance of the money entrusted to her for the transfer of ownership of Bernasconi's property. Taking into account the fiduciary nature of a lawyer-client relationship, she clearly violated the trust reposed in her by her client. The "fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client."<sup>[25]</sup>