

EN BANC

[A.C. No. 5314, June 23, 2020]

**SPOUSES ELENA ROMEO CUÑA, SR., AND COMPLAINANTS, VS.
ATTY. DONALITO ELONA, RESPONDENT.**

DECISION

PER CURIAM:

Before this Court is a Complaint^[1] for Disbarment dated November 15, 1999 filed by spouses Romeo Cuña, Sr. and Elena Cuña (complainants) against Atty. Donalito Elona (respondent) for violation of specific provisions of the Code of Professional Responsibility (CPR).

Antecedent Facts

The Complaint was originally filed before this Court. After respondent filed his Answer^[2] to the complaint, this Court, by Resolution dated July 18, 2001,^[3] referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation/decision.

Upon referral of the case by the IBP to IBP Davao City, several mandatory conferences were held. During the mandatory conference on May 26, 2006, complainants, through counsel, and respondent appeared thereat and submitted their respective admissions and stipulation of facts.^[4] The Hearing Officer set another mandatory conference on October 19, 2006 for the presentation of evidence, which respondent, however, failed to attend despite due notice thereof. Complainants, through counsel, on the other hand, proceeded to mark their documentary exhibits *ex parte*.^[5] The parties were then ordered to submit their respective Position Papers. Only the complainants filed their Position Paper^[6] which, reiterated the allegations and arguments in their complaint.

Report and Recommendation of the Investigating Commissioner

On March 1, 2007, the Hearing Officer issued an Order submitting the case for resolution and forwarded all records of the case to the IBP for its appropriate action.^[7] Accordingly, on July 24, 2007, then Investigating Commissioner Salvador B. Hababag (Investigating Commissioner) of the IBP Commission on Bar Discipline issued his Report and Recommendation^[8] finding respondent to have violated Canons 16 and 17 of the CPR and recommending that respondent be suspended from the practice of law for a period of six months with stem warning that commission of similar offenses shall be dealt with more severely.^[9]

The Investigating Commissioner concluded in this wise:

Respondent's deliberate failure to disclose to the complainants that he extracted a contract to sell with the buyer, Law Firm Hagan, Te[er], *et al.*, for seven million one hundred thousand (P7,100,000.00) pesos on terms manifested malicious taking x x x advantage o[f] his moral dominion and emotional and intellectual control over complainants who are impoverished and [not] mentally equipped to grasp the gravity of his acts/omission and by preparing a Special Power of Attorney and to enjoin them to sign and authorize him to represent complainants manifested lack of integrity and propriety on his part. x x x^[10].

Report and Recommendation of the Board of Governors (BOG)

The BOG, in its Resolution No. XVIII-2007-137^[11] dated September 28, 2007, adopted and approved the Investigating Commissioner's Report and Recommendation with modification that the recommended penalty of suspension from the practice of law be increased to three years. On January 4, 2008, respondent filed his Motion for Reconsideration^[12] praying that Resolution No. XVIII-2007-137 be reconsidered and set aside, and a new one be entered dismissing the complaint for lack of merit,^[13] which was, however denied by the IBP BOG in Resolution No. XX-2012-46^[14] dated January 15, 2012. Meanwhile, the IBP-BOG received respondent's Supplemental Motion for Reconsideration^[15] (of Resolution No. XVIII-2007-137 dated February 29, 2008) on June 10, 2008.

On February 28, 2012, the IBP forwarded the case to this Court for proper disposition pursuant to Section 12, Rule 139-B of the Rules of Court.^[16] In an Indorsement Letter^[17] dated April 17, 2012, the IBP referred additional records to this Court, which included respondent's Urgent Motion for Reconsideration (of Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings^[18] dated April 10, 2012 filed with the IBP on even date, which prayed, among others, for the suspension of the resolution of the instant case pending the filing of a civil complaint for collection of a sum of money by respondent against complainants.

Report and Recommendation of the Office of the Bar Confidant (OBC)

In a Resolution^[19] dated September 26, 2012, this Court referred to the OBC respondent's Motion for Reconsideration (of Resolution No. XX-2012-46) and/or Motion to Suspend Proceedings for evaluation, report, and recommendation. Thus, on May 22, 2015, the OBC issued its Report and Recommendation^[20] which recommended respondent's suspension from the practice of law for three years. The OBC found respondent to have violated Rule 16.01, Canon 16 of the CPR for his failure to properly account for the money and property entrusted to him by complainants.

As to respondent's prayer to suspend the resolution of the administrative proceedings pending the filing of a civil complaint for collection of a sum of money which respondent intends to institute against complainants, the OBC held that there was no ground to suspend the administrative case considering that the resolution of the civil case has no bearing on the outcome of the disbarment proceedings.

The OBC also emphasized that respondent should have inhibited himself from acting as counsel for complainants considering that he was a Trial Attorney of the Department of Agrarian Reform (DAR) at the time complainants' application for the subject property was pending with the Bureau of Lands. The OBC observed that respondent even took advantage of his position as Trial Attorney in his dealings with complainants which led to their eventual acquisition of the subject property and the subsequent sale thereof to the buyer without complainants' knowledge or consent. The OBC also found that respondent failed to account for and return the purchase price of the property and, by his own admissions, refused to deliver Original Certificate of Title (OCT) No. P-29483 to complainants despite their repeated demands. The OBC thus recommended respondent's suspension from the practice of law for three years.

On June 17, 2015, the IBP received respondent's Supplemental Motion for Reconsideration dated May 22, 2015 of Resolution No. XVIII-2007-137^[21] which was later indorsed to this Court on June 23, 2015.^[22]

Complainants' Allegations

In their Complaint and Position Paper, complainants alleged that they were applicants/occupants of a Four Thousand Two Hundred Ninety-Seven (4,297) square meters parcel of land situated in Tagum City, Davao Del Norte. At the instance of and through the efforts of herein respondent, complainants, in September of 1992, were able to acquire ownership and possession of the property by virtue of a favorable decision of the Bureau of Lands.

Sometime in January 1996, respondent made complainants sign a Special Power of Attorney (SPA)^[23] which gave respondent absolute authority to sell the property to third parties. Respondent did not explain the contents of the SPA and the implications thereof to herein complainants.

During the period from March to June 1996, respondent, on several occasions, released to complainants various sums of money ranging between One Thousand Pesos (P1,000.00) to Two Hundred Thousand Pesos (P200,000.00). Complainants alleged, however, that respondent did not advise them of their source, and for what reason the sums of money were released to them.

After respondent paid to the government the appraised value of the land which amounted to One Hundred Seven Thousand Four Hundred Twenty-Four and 40/100 Pesos (P107,424.40), the owner's duplicate of OCT No. P-29483 covering the property was issued in the name of herein complainants in July of 1996. OCT No. P-29483, however, remained in the possession of respondent despite complainants' repeated demands to return the same. For this reason, complainants were constrained to file a complaint against respondent before the Office of the Ombudsman (OMB) for violation of Republic Act No. 3019 or the Anti-Graft and

Corrupt Practices Act on the ground of respondent's willful refusal to turn over to them OCT No. P-29483. It was during the proceedings before the OMB that they discovered respondent's alleged misconduct.

It was revealed to complainants that without their knowledge and consent, respondent, sometime in May of 1996, entered into a Contract to Sell^[24] involving the property with the Davao City Law Firm of Hagan, Te, Escudero, Laguindam, & Jocom ("Buyer") under the following terms and conditions:

1) PRICE AND TERMS OF PAYMENT: The purchase price of the land shall be SEVEN MILLION ONE HUNDRED THOUSAND (P7,100,000.00) PESOS, Philippine Currency, to be paid by the VENDEE in the following manner:

a. TWO MILLION (P2,000,000.00) PESOS to be paid upon execution of this Contract to Sell, and

b. FIVE MILLION ONE HUNDRED THOUSAND (P5,100,000.00) PESOS to be paid upon the eviction of occupants/squatters on the land and after delivery of a clean title and possession of the land in favor of the herein VENDEE free from occupants and squatters[.]^[25]

Complainants alleged that respondent received from the buyer Four Million Pesos (P4,000,000.00) as down payment and/or partial payment of the property, thus leaving a balance of Three Million One Hundred Thousand Pesos (P3,100,000.00) of the property's total purchase price under the Contract to Sell. Considering the same, complainants concluded that the sums of money released to them from March to June 1996 were derived from the P4,000,000.00 received by respondent from the buyer as partial payment of the property.

Respondent's Allegations

By way of rebuttal, respondent averred in his Answer to complainants' Complaint, and Motion for Reconsideration of Resolution No. XVIII-2007-137 that it was complainants themselves who availed of his services in his capacity as Trial Attorney III of the DAR to handle their application for the property which, at that time, was already pending before the Bureau of Lands in Tagum City, Davao Del Norte.

Several years after their application with the Bureau of Lands was granted in their favor, complainants, due to financial constraints, requested assistance from respondent in securing the funds needed for the survey and segregation of the subject property, and payment of the acquisition value including its subsequent titling. In this regard, respondent suggested to complainants to sell the property to an interested buyer and utilize the proceeds of the sale to settle all expenses for the survey, segregation, and titling of the property. Pursuant to respondent's proposal, complainants agreed to execute a notarized SPA in favor of respondent which authorized him to sell and convey the property for and in complainants' behalf. Respondent further alleged that he endeavored to explain the contents of the SPA to complainants in detail. Complainants then agreed that they will only collect Three Million Pesos (P3,000,000.00) of the purchase price of the property from the prospective buyer,^[26] while the remainder thereof will be given to respondent after the latter finally secures a title of the property and dispose the same to any interested buyer.

After entering into a Contract to Sell with the buyer, respondent received Six Hundred Fifty Thousand Pesos (P650,000.00) as partial payment of the purchase price of the property, which respondent released to complainants in various sums ranging from One Thousand Pesos (P1,000.00) to Two Hundred Thousand Pesos (P200,000.00) during the period from March 1996 to August 1998 as evidenced by a number of acknowledgment receipts^[27] signed by complainants. Notably, respondent later claimed in his Supplemental Motion for Reconsideration dated May 22, 2015 that he only received Four Hundred Fifty Thousand Pesos (P450,000.00) from Atty. Timothy C. Te, one of the named partners of the buyer. Respondent further alleged that he did not receive P4,000,000.00 from the buyer, and that said amount was, in fact, released to a certain Atty. Sergio Serrano.

In his Supplemental Motion for Reconsideration dated February 29, 2008, respondent claimed that pursuant to and in compliance with complainants' obligations under the Contract to Sell, respondent, for the benefit of complainants, incurred expenses amounting to Eight Hundred Nine Thousand Four Hundred Ninety-Five and 61/100 Pesos (P809,495.61), particularly for the titling of the property, relocation of illegal settlers, and the development of their resettlement area.

Complainants later demanded from the buyer One Million Pesos (P1,000,000.00) as partial payment of the property. However, considering that the property was not completely cleared of illegal settlers, the buyer refused to release the said amount in their favor. For this reason, complainants demanded from respondent to turn over to them OCT No. P-29483. While respondent admitted, that he refused to turn over to complainants OCT No. P-29483, respondent averred that such was justified by their refusal, notwithstanding repeated demands, to reimburse him of all monies advanced by him pursuant to the Contract to Sell, which respondent claims to be over and above the amount received by him from the buyer.

Our Ruling

We find that respondent deserves to be sanctioned for his unbecoming behavior as a member of the bar.

Disbarment Proceedings are Sui Generis

At the outset, we take note of respondent's Urgent Motion for Reconsideration and/or Motion to Suspend Proceedings dated April 10, 2012, which prayed, among others, for the suspension of the resolution of the instant case pending his filing of a civil complaint for collection of a sum of money against complainants.

We agree with the recommendation of the OBC that there is no ground to suspend the resolution of the instant proceedings pending the institution of the civil action by respondent against complainants.

"A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether [a member of the bar] is still fit to continue to be an officer of the court in the dispensation of justice."^[28] Thus, in *In re: Almacén*,^[29] this Court held that: