

SECOND DIVISION

[A.C. No. 12792, November 16, 2020]

JOEL A. PILAR, COMPLAINANT, VS. ATTY. CLARENCE T. BALLICUD, RESPONDENT.

R E S O L U T I O N

LOPEZ, J.:

For resolution is a Complaint for Disbarment^[1] dated November 10, 2016 filed by Joel A. Pilar (Pilar) charging respondent Atty. Clarence T. Ballicud (Atty. Ballicud) with conflict of interest, in violation of Kalen born Weartech Philippines' (KWP), trust and confidence by establishing and running a competing company, Engel Anlagen Technik Phils., Inc. (EAT), while still serving as its legal counsel in 2013.

ANTECEDENTS

KWP is a corporation registered with the Securities and Exchange Commission (SEC) on January 3, 2007,^[2] primarily engaged in manufacturing, distributing, and dealing wear resistant linings, other industrial supplies and related products.^[3] KWP engaged the services of Atty. Ballicud to draft legal documents, such as policy on retirement benefits, voluntary resignation, and shareholder's agreement, from 2010 to 2013.^[4]

After the termination of Atty. Ballicud's engagement, [KWP came across EAT, a company engaged in selling, assembling, and distributing electrical products],^[5] and other merchandise similar to KWP's products. Allegedly, KWP had previously lost several project bids to EAT that resulted in the loss of clients and business opportunities on their part. This prompted KWP to investigate about EAT. K WP found out that EAT was registered with the SEC on March 27, 2013, with Atty. Ballicud as its President and one of the incorporators.^[6] Further investigation revealed that the other incorporators are the nephews of KWP's former President, Dennis M. Gabriel (Dennis),^[7] who resigned in 2014.^[8]

Thus, on November 10, 2016, KWP's Vice President for Technical and Sales,^[9] Pilar, filed a disbarment complaint against Atty. Ballicud with the Integrated Bar of the Philippines (IBP) for representing clients with conflicting interests.

Pilar claimed that when Atty. Ballicud served as KWP's legal counsel from 2010 to July 2013, he had ample opportunity and time to study KWP's business operations. Atty. Ballicud then used the confidential information he received as KWP's retained counsel to build EAT and profit at the expense of KWP. Further, Pilar discovered that while Atty. Ballicud was EAT's President and major shareholder,^[10] Spouses Dennis and Marianne Gabriel (Spouses Gabriel), KWP's former President and Corporate

Secretary, respectively, actually own and operate EAT.^[11] Spouses Gabriel represented EAT in all its dealings with clients and Atty. Ballicud never participated in the operations nor represented EAT in its affairs.^[12] Atty. Ballicud, therefore, acted as Spouses Gabriel's dummy^[13] to circumvent KWP's policy of non-compete and non-pirating.^[14] Pilar also discovered that EAT pirated some of KWP's employees.^[15] The circumstances show that Atty. Ballicud incorporated EAT and took advantage of his connection with Dennis, used KWP's connections, stole KWP's clients, pirated KWP's employees, and applied KWP's operations for his and Dennis' gain.^[16] Thus, Atty. Ballicud violated Rule 1.02, Canon 1; Rule 7.03, Canon 7; Rules 15.03 and 15.07, Canon 15; Rule 19.02, Canon 19; and Rule 21.02, Canon 21 of the Code of Professional Responsibility (CPR).^[17]

As a defense, Atty. Ballicud insisted that there was no law prohibiting him from setting up a business. EAT started its operation in December 2013, after the termination of his engagement with KWP in March 2013.^[18] Further, EAT's primary purpose is different from KWP because EAT is engaged more in retail business than in wholesale business. Atty. Ballicud explained that his duty as KWP's counsel was limited to contracts and documents review; he did not represent KWP in any case. As such, he did not know any confidential information about KWP's operations, and there was no conflict of interest on his part.^[19]

IBP's Recommendation and Action

On February 20, 2018, the Investigating Commissioner of the Commission on Bar Discipline, IBP,^[20] found Atty. Ballicud guilty of violating the prohibition against the representation of conflicting interests under Rule 15.03 of the CPR for putting up a corporation in direct competition, at least in the wholesale market, with his existing client. The Investigating Commissioner recommended Atty. Ballicud's suspension from the practice of law for one year, viz.:

It is, therefore, respectfully recommended that the respondent be SUSPENDED from the practice of the legal profession for a period of one (1) year.^[21]

In a Resolution^[22] dated June 28, 2018, the IBP Board of Governors adopted the factual findings and recommendation of the Investigating Commissioner, thus:

CBD Case No.16-5163 Joel A. Pilar vs. Atty. Clarence T. Ballicud

*RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon the Respondent the penalty of **SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE (1) YEAR.***

Atty. Ballicud filed a Motion for Reconsideration^[23] dated October 29, 2018, which was denied by the IBP Board of Governors in a Resolution^[24] on May 27, 2019, as follows:

CBD Case No. 16-5163
Joel Pilar vs. Atty. Clarence T. Ballicud

RESOLVED to DENY the Respondent's Motion for Reconsideration there being no new reasons or arguments adduced to justify the reversal of the previous decision of the Board of Governors.^[25]

Thereafter, the entire records of the case were transmitted to this Court for review.

RULING

We agree with the factual findings of the IBP. However, the Court deems it proper to modify the penalty.

The nature of a lawyer-client relationship is one of trust and confidence of the highest degree.^[26] Necessity and public interest require that it be so to encourage the client to entrust his case to his lawyer.^[27] Otherwise, the entire profession will suffer and the administration of justice will be compromised. To preserve this fiduciary relationship and protect the public's trust in the legal system, a lawyer is prohibited from representing conflicting interests under Rule 1.02, Canon 1, in relation to Rule 15.03, Canon 15, of the CPR, thus:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

Rule 1.02. - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

Rule 15.03. - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The proscription against representation of conflicting interests applies to situations where opposing parties are represented by the same lawyer in the same, or an unrelated action. It also applies even if a lawyer would not be called upon to contend for one client, or that there would be no occasion to use the confidential information acquired from one client to the other's disadvantage.^[28] The determining factor is whether acceptance of the new relation will prevent a lawyer from fulfilling his duty of undivided fidelity and loyalty to his client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.^[29]

In *Aniñon v. Atty. Sabitsana, Jr.*,^[30] we identified three tests developed by jurisprudence to determine the existence of conflict of interest. *First*, whether a lawyer is duty-bound to fight for an issue, or claim on behalf of one client and, at the same time, to oppose that claim for the other client. *Second*, whether acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. *Third*, whether the lawyer would be

called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

This case falls under the *second* test. Atty. Ballicud caused the registration of EAT with the SEC on March 27, 2013, or before the termination of his services with KWP in July 2013.^[31] Atty. Ballicud occupied the highest position as EAT's President and major stockholder. The primary purpose of EAT is to engage in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with industrial supplies, equipment, and other related products and components on wholesale and retail basis, including importing and exporting of said products.^[32] Meanwhile, the primary purpose of KWP is to engage "in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with wear resistant linings and other industrial supplies and other related products and components on wholesale basis."^[33] Considering that EAT and KWP's primary purposes are the same, save for the inclusion of "wear resistant linings" as KWP's product and the phrase "retail basis including importing and exporting of said products" in EAT's primary purpose, both companies clearly belong to the same industry. In the circumstances, Atty. Ballicud's new relation with EAT would prevent the full discharge of his duty of undivided fidelity and loyalty to KWP and would invite suspicion of unfaithfulness or double-dealing in the performance of his duty.

Atty. Ballicud's contentions that he never handled a case for, or against KWP and that he has no knowledge of any confidential information relating to KWP's business operations are of no moment. In *Quiambao*,^[34] we emphasized that actual case or controversy is not required for the proscription against representation of conflicting interests to apply. The important criterion is the probability, and not the certainty, of conflict, *viz.* :

It must be noted that the **proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be. It applies even if the conflict pertains to the lawyer's private activity or in the performance of a function in a non-professional capacity.** In the process of determining whether there is a conflict of interest, an **important criterion is probability, not certainty, of conflict.**

Since the respondent has financial or pecuniary interest in SESSI, which is engaged in a business competing with his client's, and, more importantly, he occupies the highest position in SESSI, one cannot help entertaining a doubt on his loyalty to his client AIB. This kind of situation passes the second test of conflict of interest, which is whether the acceptance of a new relationship would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. The close relationship of the majority stockholders of both companies does not negate the conflict of interest. Neither does his protestation that his shareholding in SESSI is "a mere pebble among the sands."