

EN BANC

[A.C. No. 12833, November 10, 2020]

SALVACION C. ROMO, COMPLAINANT, VS. ATTY. ORHEIM T. FERRER, RESPONDENT.

RESOLUTION

LOPEZ, J.:

A lawyer is a trustee of all client's funds and properties, which may come into his possession. The failure to render an accounting upon demand deserves administrative sanctions.

ANTECEDENTS

In 2006, Salvacion Romo (Salvacion) engaged the legal services of Atty. Orheim Ferrer (Atty. Ferrer) in prosecuting an action for violation of Batas Pambansa Bilang (BP) 22 against Amada Yu (Amada).^[1] Thereafter, Amada settled the case and gave a total amount of P375,000.00 to Atty. Ferrer on different dates, to wit: (a) P50,000.00 on March 6, 2006;^[2] (b) P50,000.00 on March 15, 2006;^[3] (c) P20,000.00 on June 6, 2006;^[4] (d) P50,000.00 on October 6, 2006;^[5] (e) P5,000.00 on November 16, 2006;^[6] (f) P10,000.00 on December 9, 2006;^[7] (g) P50,000.00 on December 18, 2006;^[8] (h) P10,000.00 on January 10, 2007;^[9] (i) P10,000.00 on February 19, 2007;^[10] and (j) P120,000.00 on March 15, 2007.^[11]

Yet, Atty. Ferrer remitted only P80,000.00 to Salvacion. As such, Salvacion demanded from Atty. Ferrer the balance of P295,000.00.^[12] Atty. Ferrer agreed to pay his obligation on or before October 15, 2012 and promised to deliver a land title as collateral.^[13] However, Atty. Ferrer did not comply with his undertakings. Salvacion sent a final demand letter^[14] to Atty. Ferrer but was ignored. Thus, Salvacion filed an administrative complaint against Atty. Ferrer for failure to account the funds entrusted to him docketed as Commission on Bar Discipline (CBD) Case No. 13-3782.^[15] As supporting evidence, Salvacion, submitted the special power of attorney, acknowledgment receipts signed by Atty. Ferrer, the memorandum of agreement and the demand letters.

On the other hand, Atty. Ferrer countered that he remitted P120,000.00 to Salvacion, and not only P80,000.00. The other payments from Amada were given personally to Salvacion's daughter. Atty. Ferrer did not issue receipts because he trusted Salvacion and her daughter. Moreover, Atty. Ferrer claimed that the acknowledgement receipts showing various amounts that he allegedly received from Amada were fabricated. Atty. Ferrer likewise argued that he signed the memorandum of agreement because Salvacion threatened him with the filing of a disbarment suit. As evidence, Atty. Ferrer presented the affidavits^[16] of his

employees in the law office. Lastly, Atty. Ferrer manifested to return the funds and humbly asked to settle the amounts in partial periodic payments. [17]

On March 15, 2017, the Commission on Bar Discipline (the Commission) of the Integrated Bar of the Philippines (IBP) recommended to suspend Atty. Ferrer from the practice of law for a period of two years. The Commission noted that Atty. Ferrer abused his client's confidence, with evident intent to misappropriate the funds. Atty. Ferrer admitted that he received P295,000.00 from Amada but failed to substantiate his claim that he remitted the money to Salvacion's daughter. The Commission also found that Atty. Ferrer voluntarily signed the memorandum of agreement and cannot later assail it on the ground of threat or intimidation, [18] to wit:

Complainant has overwhelming [sic] shown that Respondent has received the various amounts from Amada Yu the total amount of P375,000.00. With the admission by herein Complainant that she only received the amount of Php80,000.00, Respondent is still under obligation to remit the amount of Php295,000.00 to the Complainant.

Respondent however raised the defense that the amount of Php295,000.00 has already been collected by Complainant and/or the latter's daughter at the Office of the Respondent.

We are not persuaded by the Respondent's claim. **Respondent has shown no document that the amount of Php295,000.00 had in fact been remitted to the Complainant.** In fact, in the Memorandum of Agreement, which Respondent has voluntarily executed, Respondent has clearly admitted that the amount of Php295,000.00 remains unremitted. In fact, Respondent has promised to pay said amount on or before October 15, 2012. **We have absolutely no doubt that Respondent's claim depicts his evident intention to misappropriate his client's funds. Incidentally, with the admission by Respondent of his failure to turn over the funds to herein Complainant, Respondent's insinuation that the acknowledgment receipts presented by Complainant as fabricated or manufactured is baseless, if not a clear evidence of bad faith and a gross violation of the trust and confidence reposed upon by complainant to his lawyer,** herein Respondent.

X X X X

As a lawyer, Respondent knows or ought to know that Complainant's threat of a disbarment case against him is not a legal ground to prove that he was unduly influenced, forced or intimidated into signing the Memorandum of Agreement. x x x **"A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent."**

X X X X

Other than Respondent's bare claim and that of his witnesses x x x, no document or sufficient proof has been presented or shown by the Respondent that indeed complainant had received such amounts. x x x This simply means that Respondent has tried to evade

the obligation of remitting the amount he received from Amada Yu to the Complainant. **Respondent's conduct of first, initially denying having received from Amada Yu; second, of admitting the receipt after being confronted with the acknowledgment receipt; and thirdly, after convincing complainant to agree to a settlement, Respondent thereafter assailed the Memorandum of Agreement which he freely executed** x x x. Moreover, in his Counter-Affidavit, Respondent's defenses are clearly contradictory. While Respondent is humbly asking Complainant to pay in partial periodic installments the amounts which he has misappropriated, Respondent is also claiming that the acknowledgment receipts which Amada Yu has provided to herein Complainant, have been manufactured or fabricated. These actions of herein Respondent depict the moral depravity of herein Respondent. x x x.

x x x x

Respondent's plain abuse of the confidence reposed in him by complainant rendered him liable for violations of Rule 1.01, Canon 16, Rules 16.1, 16.02 and 16.03 and Canon 17 of the Code of Professional Responsibility x x x.

x x x x

In this case however, considering that this administrative case is the first offense of the Respondent and is humbly asking for the payment of amount misappropriated in periodic installments and considering further that there may still be a room for the reformation of the Respondent's actuations, it is respectfully recommended that a two (2) year suspension from the practice of law may be the appropriate penalty for the Respondent instead of the harsh penalty of disbarment.

x x x x

WHEREFORE, premises considered, this Commission hereby respectfully recommends that Respondent ATTY. ORHEIM T. FERRER be suspended for two (2) years from the practice of law, with a stern warning that similar violations in the future shall be dealt with more severely.

It is further recommended that Respondent be further ordered to return to Complainant the total amount of Php295,000.00 which he has unjustly misappropriated with 6% interest from demand on November 16, 2012. RESPECTFULLY SUBMITTED.^[19] (Emphases supplied.)

On September 28, 2017, the IBP Board of Governors adopted the Commission's factual findings and recommendations,^[20] viz.:

*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 two (2) years and Ordered to Return the amount of P295,000.00** with 6% interest from demand.*^[21] (Emphasis and italics in the original.)