

EN BANC

[A.C. No. 12008, August 14, 2019]

**PALALAN CARP FARMERS MULTI-PURPOSE COOP, REPRESENTED
BY BEVERLY DOMO, COMPLAINANT, VS. ATTY. ELMER A. DELA
ROSA, RESPONDENT.**

DECISION

PER CURIAM:

A mistake repeated more than once is a decision.^[1]

"A mistake repeated more than once is a decision."^[2] And there is a variation to that. "You can't make the same mistake twice. The second time you make it, it's not a mistake anymore, it's a choice. ENOUGH!"^[3] A mistake is corrected at once; and not repeated. More so when the mistake has already been called out and heavily penalized.

Respondent Atty. Elmer A. Dela Rosa has been suspended from the practice of law for three (3) years effective September 26, 2016. His infractions consisted of borrowing a substantial amount of money from his client-spouses. Not only was he unable to pay despite demand, he even denied he owed them anything.^[4] Atty. Elmer A. Dela Rosa is here once again being accused of breaching his fiduciary duties on money matters affecting this time his Client-Cooperative and its farmer-beneficiaries.

Antecedents

Complainant Palalan CARP Farmers Multi-Purpose Cooperative was the registered owner of a sizeable tract of prime agricultural land (111.4 hectares) situated in Barangay Lumbia, Cagayan De Oro City. The land was covered by Transfer Certificate of Title No. T-170 (TCT No. T-170). Complainant acquired the land pursuant to a Certificate of Land Ownership Award issued by the Department of Agrarian Reform in 1992. As a Cooperative, it held legal title to the land on behalf of its members as its beneficial owners of the land.

In 1995, the Cooperative, among others, was sued by the Philippine Veterans Bank for annulment of TCT No. T-170, docketed as Civil Case No. 95-086. The case was raffled to the Regional Trial Court, Branch 41, Cagayan De Oro City.

In 1997, the Cooperative engaged Respondent and his law office to represent it in Civil Case No. 95-086.^[5] Under their retainer agreement,^[6] Respondent and his law office were to be paid P3,339.00 a month and a contingent fee of five percent (5%) of the settlement award, sale proceeds of the sale of the land, disturbance compensation, or fair market value of the land.

Meantime, on February 12, 2000, the Cooperative executed a special power of attorney authorizing Respondent to do the following acts on its behalf:

1. negotiate for the sale of the land or issue to any interested broker further limited or conditional authority to negotiate with and/or introduce prospective buyers;
2. execute any and all documents which may be necessary to consummate the sale transaction;
3. open an account with a bank of Respondent's choice, in the name of the Cooperative with its Chairperson Paz Genilla as co-signatory; and
4. collect, accept, or demand all the sale proceeds on the land due the Cooperative and to deposit the same to its account.

Seven (7) years later, on June 12, 2007, the Cooperative revoked Respondent's special power of attorney. To this, Respondent reacted by presenting to the Cooperative a copy of General Assembly Resolution No. 1 dated March 19, 2008 showing that members of the Cooperative's new governing board had actually retained Respondent as the Cooperative's counsel and "reconfirming all previous authorities granted him by the General Assembly." General Assembly Resolution No. 1 and the other related General Assembly Resolutions appeared to have been adopted by the new set of officers/board members led by one Lino D. Sajol.

For its part, the old set of officers/board members led by Beverly Domo opposed Lino D. Sajol's leadership.

Back to Civil Case No. 95-086, the trial court rendered its Decision dated May 14, 2008, dismissing the case on ground of lack of jurisdiction over the subject matter of the case. Not long after, the Cooperative's 111.1484 hectare property got sold with Respondent, no less, brokering the sale. Reports had it that Respondent was already able to book a buyer as early as February of 2008. Later reports had it though that the sale actually took place on August 7, 2009 to one Diana Biron.^[7] Respondent did not reveal to the Cooperative the circumstances surrounding the sale, let alone, the buyer's identity. He invariably claimed to have been bound to keep confidential the buyer's identity. He did not dispute though that it was he who processed the sale and paid the farmers-beneficiaries their respective shares in the purchase price.

The Administrative Complaint

Believing that Respondent was engaging in conflict of interest, the Cooperative charged him with gross misconduct for multiple violations of the *Code of Professional Responsibility* (CPR).

On November 13, 2008, the Integrated Bar of the Philippines (IBP), Misamis Oriental Chapter, Cagayan de Oro City, referred the Complaint to the IBP - Commission on Bar Discipline (IBP-CBD). It was docketed CBD Case No. 08-2327.

On November 24, 2008, Investigating Commissioner Fernandez ordered Respondent to answer the complaint but the latter did not comply therewith. On April 17, 2009 the complaint was set for mandatory conference, during which, both the Cooperative's representative and Respondent appeared. On even date, Respondent filed his verified answer. Investigating Commissioner Fernandez set another

mandatory conference on May 13, 2009. On that date though, the Cooperative's representative no longer appeared. The mandatory conference was, thus, deemed terminated as of that date. The parties were then ordered to file their respective position papers with supporting evidence as attachments. Only the Cooperative complied.

In addition to the present administrative case, the Cooperative initiated a civil action for annulment of the sale brokered by Respondent and the actions of the new governing board led by Lino D. Sajol. The case was docketed Civil Case No. 2010-299 and raffled to the Regional Trial Court, Branch 17, Cagayan De Oro City.

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation dated June 1, 2010, Investigating Commissioner Fernandez recommended that the Complaint be dismissed without prejudice. He opined that since the complaint arose from the seminal issue of which between the two (2) warring groups is truly the Cooperative's governing board, the resolution of the administrative case should await the outcome of Civil Case No. 2010-299 where such seminal issue is being currently litigated.

The Recommendation of the IBP - Board of Governors

By its Extended Resolution dated November 28, 2015, the IBP-Board of Governors declined the recommendation of Investigating Commissioner Fernandez, pronouncing that to be able to determine which of the two (2) warring groups truly represents the Cooperative, one need only to refer to the records of the Cooperative Development Authority pertaining to which governing Board was actually registered therein. On the merits, the Extended Resolution bore the following findings:

1. Respondent did not act with diligence and competence when he allowed Civil Case No. 95-086 (Philippine Veterans Bank v. Palalan CARP Farmers Multi-Purpose Cooperative et al.) to drag on for about ten (10) years until May 14, 2008 when the trial court finally dismissed the case on ground of lack of jurisdiction over the subject-matter of the case. On this score, Respondent violated Subsection 20(g), Rule 138, *Rules of Court* and Rule 1.03,^[8] Canon 12,^[9] and Rule 12.04^[10] of the CPR.
2. Respondent violated Rule 15.03^[11] of the CPR which prohibits a lawyer from engaging in conflict of interest. Respondent engaged in conflict of interest when he demanded that the sale of the land be done only through his intervention.
3. Respondent breached his sworn duty to protect his client's interest when he refused to divulge to the latter the identity of the buyer of the land in violation of Canons 15^[12] and 17^[13] and Rule 16.01^[14] of the CPR.
4. Respondent verbally abused the farmer-beneficiaries, in violation of Rule 8.01^[15] of the CPR.
5. Respondent improperly compelled the Cooperative to sell the land at an extremely low price of P30.00 per square meter in violation of Canon 15, Rules 15.01^[16] and 15.03 and Canon 17 of the CPR.

The IBP-Board of Governors concluded that Respondent preferred to protect his own personal pecuniary interest over the interest of his client and its members. For Respondent's multiple infractions, the IBP-Board of Governors recommended the extreme penalty of Disbarment.^[17]

In his motion for reconsideration,^[18] Respondent asserted that the sale of the land to the undisclosed buyer bore the board's authorization through Lino D. Sajol's group.

The Cooperative's then Chairperson, Fernando Bermoy opposed the motion for reconsideration. He maintained that the bona fide Chairpersons and authorized representatives of the Cooperative from 2007 to 2010 were actually Beverly Domo and Perfecto Saliga, Jr., respectively. He clarified that Lino Sajol's group did not have any authority to bind the Cooperative at any time between 2007 and 2010. He also revealed that it was a certain Diana G. Biron who actually purchased the lot.^[19] Notably, Respondent did not dispute the identification of Diana G. Biron as the buyer of the land. By Resolution dated May 27, 2017, the IBP-Board of Governors denied Respondent's motion for reconsideration.

Issues

1. Did Respondent violate Section 27, Rule 138 of the Rules of Court and Rules 1.03, 8.01, 12.04, 15.03, 16.01 and Canons 12, 15, and 17 of the CPR?
2. In the affirmative, what appropriate penalty should be imposed on Respondent?

Ruling

Respondent violated several provisions of the CPR in relation to Section 27, Rule 138 of the Rules of Court

Section 27, Rule 138 of the Rules of Court governs the disbarment and suspension of attorneys, viz:

Section 27. Disbarment and suspension of attorneys by the Supreme Court; grounds therefor. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction for a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers constitute malpractice.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior.^[20] It is grave where the elements of

corruption, clear intent to violate the law or flagrant disregard of established rule are present. Otherwise, it is only simple.^[21]

What lies at the core of Respondent's multiple serious infractions has been his motivation to willfully, voluntarily, and knowingly engage in conflict of interest to serve his own personal pecuniary interest at all cost.

The rule against conflict of interest is expressed in Canon 15, Rules 15.01 and 15.03 of the CPR. It means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person, during the various stages of the professional relationship.^[22] The rule stipulates that a lawyer cannot act or continue to act for a client when there is a conflict of interest, except as provided in Rule 15.03 itself -- securing the written consent of all the parties concerned after full disclosure to them of the facts.

The rule against conflict of interest is founded on the bedrock of lawyer-client – relationship it is a fiduciary relationship. The lawyer, therefore, has a duty of loyalty to the client. The duty of confidentiality, the duty of candor, and the duty of commitment to the client's cause are all derivatives of the ultimate duty of loyalty.

For example, a conflict may arise when the lawyer has information from one client that is relevant to another client's or a prospective client's matter. The lawyer owes a duty to one client not to reveal the information but owes a duty to the other client or prospective client to disclose the information. Because the lawyer cannot fulfill both duties at the same time he or she is confronted with conflict of interest.

Conflicts may also arise because of the lawyer's own financial interests, which could impair client representation and loyalty. This is reasonably obvious where a lawyer is asked to advise the client in respect of a matter in which the lawyer or a family member has a material direct or indirect financial interest. The conflict of interest is exacerbated when the lawyer, without full and honest disclosure to the client of the consequences of appointing him or her as an agent with the power to sell a piece of property, willfully and knowingly accepts such an appointment. When the lawyer engages in conduct consistent with his or her appointment as an agent, this new relationship may obscure the line on whether certain information was acquired in the course of the lawyer-client relationship or by reason of agency, and may jeopardize the client's right to have all information concerning the client's affairs held in strict confidence.

The relationship may in some circumstances permit exploitation of the client by the lawyer as he or she still is, after all, the lawyer from whom the client seeks advice and guidance.

The IBP - Board of Governors here correctly found that at its most basic element, Respondent's conflict of interest hinges on the fact that while he may want a quick sale to be able to earn at once, Complainant would want a sale that brings the most profit.

But this is not all.

Respondent was obviously taking instructions from the unidentified buyer when he did not reveal the latter's identity to his client which itself authorized him to forge the sale. Too, while he may not be fully responsible in delaying Civil Case No. 95-