

# FIRST DIVISION

[ A.C. No. 9176, December 05, 2019 ]

**AGUSTIN ABOY, SR., COMPLAINANT, VS. ATTY. LEO, B. DIOCOS,  
RESPONDENT.**

## D E C I S I O N

**PERALTA, C.J.:**

For resolution is an Administrative Complaint<sup>[1]</sup> filed by Agustin Aboy (*complainant*) against respondent Atty. Leo B. Diocos (*Atty. Diocos*) for estafa, abuse of power, and administrative connivance with Judge Winston M. Villegas and Atty. Rod Salazar, President of Pepsi Cola Production of the Philippines.

The facts are as follows.

Complainant alleged that he is the President of all the holders of Pepsi Cola 349 cap holders in Negros Oriental which is a winning code in a promo held by the Pepsi Cola Company. Atty. Diocos, on the other hand, was hired by the cap holders as counsel in their complaint for specific performance, sum of money, breach of contract and damages against Pepsi Cola Company. The association's then first president, Tumolac, and Atty. Diocos agreed that the latter would get 20% if the case progresses in court.<sup>[2]</sup> He further averred that Atty. Diocos collected P150.00 each from all the cap 349 holders which summed up to more than five hundred persons.

<sup>[3]</sup> The subject case was, subsequently, filed in court and tried before the sala of Judge Winston Villegas (*Judge Villegas* ).

On November 7, 2007,<sup>[4]</sup> however, Judge Villegas ordered the dismissal of the case for lack of cause of action. After learning the same, complainant and Gloria Ruamar (*Ruamar*), the president of the cap holders succeeding Tumolac, went to Judge Villegas to ask for a copy of his order but the latter allegedly refused to accede to their request. They then approached Atty. Diocos to ask for the same Order, but he refused as well, and instead asked them to produce P90,000.00 so that he will appeal their case. Disappointed, Ruamar and complainant asked Atty. Diocos to withdraw his services so they can hire another counsel to appeal their case, but he failed to issue his withdrawal.

In 2009, complainant and Ruamar went back to Judge Villegas to ask for a copy of the Decision and this time they were able to secure a copy of the Decision. They found out that the ground for the dismissal of their case was the failure of Atty. Diocos to pay docket fees. Complainant, however, alleged that they lost the copy of the Decision and when they asked for another copy, they discovered that the ground for the dismissal was changed to absence of cause of action. Complainant, thus, accused Atty. Diocos of conniving with Judge Villegas in dismissing their case.

Hence, this instant administrative complaint against Atty. Diocos.

On September 12, 2011, the Court resolved to require Atty. Diocos to file his Comment on the charges against him.<sup>[5]</sup>

In his Comment<sup>[6]</sup> dated November 7, 2011, Atty. Diocos admitted that Tumolac engaged his services to prosecute the cause of the 349 cap holders, but denied that he had collected the amount of P150.00 from each of the members.<sup>[7]</sup> He also denied that complainant had been authorized to act as president of the cap holders.

Atty. Diocos contend that he gave his clients a copy of the Decision and told them to photocopy it since they are more than one hundred in number. He claimed that under the law, the counsel is not dutybound to furnish his clients a copy of the Decision in a case he handles. As to the request of withdrawal, he claimed that he could not have done it since the case was already terminated with finality.

He maintained that the case of the cap holders has no cause of action and that his clients failed to pay him his attorney's fees. Hence, he prayed for the dismissal of this administrative complaint.

In a Resolution<sup>[8]</sup> dated February 15, 2012, the Court resolved to refer the instant complaint for investigation, report and recommendation.

In its Report and Recommendation<sup>[9]</sup> dated April 28, 2013, Investigating Commissioner Oliver A. Cachapero recommended that Atty. Diocos be censured for his negligence as counsel to his client.

In Resolution No. XX-2013-627<sup>[10]</sup> dated May 11, 2013, the Board of Governors of the Integrated Bar of the Philippines (*IBP*) resolved to adopt and approve with modification the Report and Recommendation of the Investigating Commissioner, and instead recommended that Atty. Diocos be suspended from the practice of law for three (3) months.

Aggrieved, on September 3, 2013, Atty. Diocos filed a Motion for Reconsideration.<sup>[11]</sup> Meanwhile, complainant filed a Motion<sup>[12]</sup> to direct Atty. Diocos to return and surrender to him the amount of Three Hundred Sixty Four Million Five Hundred Twenty Thousand Pesos (P364,520,000.00), plus damages.

In an Extended Resolution<sup>[13]</sup> dated February 1, 2017, the IBP-Board of Governors resolved to deny Atty. Diocos' Motion for Reconsideration dated September 3, 2013 and complainant's Motion to return and surrender to complainant the amount of Three Hundred Sixty-Four Million Five Hundred Twenty Thousand Pesos (P364,520,000.00), plus damages. It further affirmed the Board of Governors' Resolution No. XX-2013-627 dated May 11, 2013, which adopted and approved with modification the Report and Recommendation of the Investigating Commissioner, and instead recommended that Atty. Diocos be suspended from the practice of law for three (3) months.

In Resolution No. XXII-2017-971 dated April 19, 2017, the Board of Governors resolved to approve the release of the Extended Resolution dated February 1, 2017.

### ***The Issue Before the Court***

The essential issue in this case is whether or not respondent should be held administratively liable for violating the Code of Professional Responsibility.

### ***The Court's Ruling***

We adopt the findings of the IBP-Board of Governors, except the recommended penalty.

At the onset, it must be emphasized that in administrative proceedings against lawyers, the burden of proof rests on the complainant, and he/she must establish the case against the respondent by clear, convincing and satisfactory proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power.<sup>[14]</sup> The oft-repeated rule is that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."<sup>[15]</sup>

In the instant case, there is no question that Atty. Diocos is the counsel of the complainants in view of his own admission in his Comment dated November 7, 2011. However, complainant failed to prove and substantiate that Atty. Diocos had indeed collected P150.00 from each of the cap holders. There was neither any receipt nor affidavit from the cap holders that would show that Atty. Diocos collected the amount of P150.00 from each of the cap holders.

Complainant also failed to prove that there were two versions of the decisions, i.e., one where their case was dismissed due to non-payment of docket fees but later changed to absence of cause of action. Indeed, the best way to prove this allegation is to present copies of the two versions of the disputed decision but complainant failed to do.<sup>[16]</sup>

However, Atty. Diocos is not without fault. It appeared that the complaint was dismissed due to lack of cause of action, yet, no appeal was made. Indeed, as the IBP noted, although complainant failed to prove that the case was not appealed because they failed to give the amount being asked of them by Atty. Diocos, it is still apparent that the period to appeal was simply allowed to lapse. It does not matter if Atty. Diocos thought the court *a quo's* decision to dismiss the case was lawful, he is still bound by his duty to inform his clients the next steps to take and the possible consequences of their action or inaction. He should have notified his clients of the adverse decision within the period to appeal to give his clients time to decide whether to seek an appellate review. Neither does the failure of his clients to pay him fees warrant abandoning the case.

It must be stressed that an attorney-client relationship is imbued with utmost trust and confidence, such that clients are led to expect that their lawyer would be ever-mindful of their cause and, accordingly, exercise the required degree of diligence in handling their affairs. Accordingly, lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill, and competence to their cases, regardless of their importance, and whether they accept them for a fee or for free.<sup>[17]</sup> Rule 18.03 of Canon 18 of the Code of Professional Responsibility is instructive: