

THIRD DIVISION

[A.C. No. 9129, January 31, 2018]

MARIA EVA DE MESA, COMPLAINANT, V. ATTY. OLIVER O. OLAYBAL, RESPONDENT.

DECISION

BERSAMIN, J.:

We stress, yet again, the fidelity that the attorney owes towards the client. A violation of such fidelity warrants the sanction of the attorney with suspension from the practice of law.

Antecedents

The complainant charges respondent Atty. Oliver O. Olaybal with betrayal of trust and confidence, malpractice and gross misconduct as a lawyer.

The complainant avers that the respondent was her counsel in her criminal cases for violation of Batas Pambansa Blg. 22, specifically: Criminal Case No. 88229, filed in the Metropolitan Trial Court in Pasig City (Pasig Case), Br. 72, and Criminal Case Nos. 26685 to 26688, filed in the Municipal Circuit Trial Court (MCTC), Branch 2, in Legaspi City (Legaspi Case); that as regards the Pasig Case, he advised her to settle amicably for the amount of P78,640.00; that following his advice, she procured, through the help of Rowena Basco, her sister, Prudential Bank Manager's Checks No. 5574 and No. 5575 dated November 18, 2005 respectively for the amounts of P74,400.00 and P4,240.00; that both checks were crossed and payable to Asialink Finance Corporation (Asialink); that she handed the checks to the respondent for delivery to Asialink; that he did not deliver the checks to Asialink, but instead deposited them to his account through his son; that on February 28, 2006, he executed a compromise agreement with Asialink on her behalf as settlement of the Pasig Case; that under the compromise agreement, he undertook to pay Asialink the total sum of P83,328.00 through monthly installment payments of P6,110.75 from March 28, 2006 to February 28, 2007; that he also executed a deed of undertaking in Asialink's favor, whereby he guaranteed her monthly payment by issuing 12 post-dated checks in favor of Asialink; and that with respect to the Legaspi Cases, he failed to file her counter-affidavit on time, thereby jeopardizing her chances of testifying therein.^[1]

In his answer and position paper, the respondent counters that the two manager's checks worth P78,640.00 were not in full settlement of the complainant's obligations because he still had to negotiate with Asialink on the final amount; that before he could negotiate with Asialink's representative, his son erroneously deposited the manager's checks to his account for safekeeping, without his knowledge and consent; that he nonetheless succeeded in settling her account with Asialink to her advantage by reducing her obligation from P115,770.00 to P83,328.00 through the elimination of surcharges and attorney's fees; that he was authorized to agree to

the terms of the compromise agreement by her sister, Rowena Basco, and that she also agreed, through Atty. Romulo Ricafort, a friend of her mother-in-law, to implement the terms of the compromise agreement; that he prepared ahead of time the counter-affidavit to be submitted in the Legaspi Cases, but he was unable to file the same due to her fault and negligence and those of her witnesses; and that the matter already became moot and academic in any case inasmuch as the Legaspi Cases were dismissed on October 26, 2006.^[2]

Findings and Recommendation of the Integrated Bar of the Philippines (IBP)

In his Report and Recommendation dated February 22, 2008,^[3] IBP Investigating Commissioner Randall C. Tabayoyong declared that the respondent had misappropriated the amounts of the manager's checks for his personal gain and benefit in violation of Canon 16, Rule 16.01^[4] of the *Code of Professional Responsibility*; ^[5] that his depositing the checks to his account and commingling the proceeds thereof with his personal funds violated Rule 16.02^[6] of the *Code of Professional Responsibility*; ^[7] and that his entering into the compromise settlement without authority placed the complainant at risk of undergoing criminal prosecution and conviction, thereby failing to safeguard her interest in violation of his ethical duty under Canon 18^[8] of the *Code of Professional Responsibility*.

Anent the penalty to be imposed upon the respondent, IBP Investigating Commissioner Tabayoyong, taking into consideration the respondent's age and his efforts to rectify his wrongdoing, such as: (a) executing a deed of undertaking in favor of Asialink to guarantee the complainant's monthly installment payment under the compromise agreement; (b) issuing checks from his own checking account as the complainant's payment under the compromise agreement; and (c) bearing the P4,098.00 difference between the settlement amount and the amount given to him by the complainant,^[9] recommended as follows:

WHEREFORE, it is therefore respectfully recommended that respondent be suspended for six (6) months for having violated Canons 16 and 18 and Rules 16.01 and 16.02 of the Code of Professional Responsibility.^[10]

In its Resolution No. XVIII-2008-159 dated April 15, 2008, the IBP Board of Governors adopted and approved the report of IBP Investigating Commissioner Tabayoyong, but modified the recommended penalty by also requiring the return of the amount of P78,640.00 to the complainant within 30 days from notice, *viz.*:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violations of Canons 16 and 17 and Rule 16.01 and 16.02 of the Code of Professional Responsibility, Atty. Oliver O. Olaybal is hereby SUSPENDED from the practice of law for six (6) months and Ordered to Return the P78,640.00 to complainant within Thirty (30) days from receipt of notice.^[11]