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THIRD DIVISION

[A.C. No. 6933, July 05, 2017]

GREGORIO V. CAPINPIN, JR., COMPLAINANT, VS. ATTY. ESTANISLAO L. CESA, JR., RESPONDENT.

DECISION

TIJAM, J.:

Before this Court is an administrative complaint[1] filed by complainant Gregorio Capinpin, Jr., praying for the suspension from the practice of law or disbarment of respondent Atty. Estanislao L. Cesa, Jr. for violating the Canons of Professional Ethics in connection with the foreclosure of complainant's properties.

Factual Antecedents

On February 14, 1997, complainant executed a real estate mortgage (REM)[2] on his two lots in favor of Family Lending Corporation (FLC) as security for a loan amounting to PhP 5 Million with interest at two percent (2%) per month.

On April 29, 2002, due to complainant's default in payment, FLC, through its President Dr. Eli Malaya (Dr. Malaya), initiated foreclosure proceedings against the mortgaged properties.[3]

Complainant availed of legal remedies to stop the said foreclosure proceedings, to wit: (1) he filed a case for damages and injunction and also moved for the suspension of the sheriffs sale, wherein such motion for suspension was granted but the injunctive relief was denied after hearings. Complainant's motion for reconsideration (MR) therein was also denied; (2) he then filed a petition for *certiorari* and prohibition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) with the Court of Appeals (CA), wherein no TRO was granted due to some deficiencies in the petition; (3) he also filed an annulment of REM with prayer for a WPI and/or TRO before the trial court, wherein this time a WPI was issued to stop the auction sale.[4] This prompted FLC to file a petition for *certiorari* before the CA, questioning the trial court's issuance of the injunctive writ. The CA nullified the said writ, mainly on the ground of forum shopping, which was affirmed by this Court on review.[5] For these cases, FLC engaged respondent's legal services.

The complaint alleges that during the above-cited proceedings, respondent, without the knowledge of his client FLC, approached complainant to negotiate the deferment of the auction sale and the possible settlement of the loan obligation at a reduced amount without resorting to the auction sale. Respondent allegedly represented himself as being capable of influencing the sheriff to defer the auction sale, as well

as his client FLC through Dr. Malaya to accept the amount of PhP 7 Million to fully settle the loan obligation. For this, the complaint alleges that on April 13, 2005, respondent demanded payment of professional fees amounting to Php 1 Million from complainant.[6] In fact, complainant already gave the following amounts to respondent as payment of such professional fees: (1) PhP 50,000 check dated April 13, 2005; (2) PhP 25,000 check dated April 18, 2005; (3) PhP 75,000 check dated April 22, 2005; (4) PhP 20,000 check dated May 16, 2005; (5) PhP 200,000 on June 30, 2005; and (6) PhP 30,000 on August 17, 2005.[7] Despite such payments, the auction sale proceeded.[8] Hence, the instant complaint.

For his part, respondent denies that he was the one who approached complainant for negotiation, the truth being that it was complainant who asked for his help to be given more time to raise funds to pay the loan obligation.[9] Respondent further avers that he communicated the said request to his client.[10] Aside from the checks dated April 13, 18, 22 and May 16, 2005, which respondent claims to be advance payments of his attorney's fees, respondent avers that he did not receive any other amount from the complainant.[11] All these, according to the respondent, were known to his client.[12] In fact, in a Letter dated April 22, 2005 signed by the complainant and addressed to FLC through Dr. Malaya, complainant expressly stated that he will negotiate for the payment of respondent's fees as FLC's counsel.[13]

On July 16, 2007, this Court referred the instant administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation or decision.[14]

Report and Recommendation
of the Commission on Bar Discipline

In his Report and Recommendation[15] dated June 4, 2010, the Investigating Commissioner gave credence to complainant's allegations that respondent, without the knowledge of his client, negotiated with the complainant for the settlement of the loan obligation, and that the respondent demanded and received professional fees in negotiating the said settlement.

According to the Investigating Commissioner, respondent's act of negotiating with the complainant on the deferment of the auction sale and the settlement of the loan for a substantially reduced amount was highly improper as respondent's primary duty, being FLC's counsel, was to protect the interest of FLC by seeing to it that the foreclosure proceedings be done successfully to obtain the best amount possible to cover the loan obligation.[16] The Investigating Commissioner explained that if a lawyer can collect professional fees or advanced payment thereof from the adverse party, it results to a conflict of interest.[17] From the foregoing, the respondent was found to have violated Canon 15, Rule 15.03 of the Code of Professional Responsibility (CPR), which states that a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.[18]

The report further stated that the amounts collected by the respondent should be

considered as money received from his client; as such, he has the duty to account for and disclose the same to his client in accordance with Canon 16, Rule 16.01 of the said Code.[19] The Investigating Commissioner found nothing on record that showed that respondent made such accounting for or disclosure to his client.[20]

Hence, the Investigating Commissioner concluded that respondent was liable for malpractice and recommended that he be suspended from the practice of law for one (1) year, thus:

> WHEREFORE, in view of the foregoing discussion, this Commissioner finds the respondent liable for malpractice and, accordingly, recommends that respondent be meted a penalty of ONE (1) YEAR suspension from the practice of law with a warning that a repetition of a similar offense will be dealt with more severity.[21]

Resolutions of the Board of Governors
Integrated Bar of the Philippines

On September 28, 2013, the Integrated Bar of the Philippines (IBP) Board of Governors issued Resolution No. XX-2013-84,[22] which states:

> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in 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 that Respondent violated Canon 15, Rule 15.03, and Canon 16, Rule 16.01 of the Code of Professional Responsibility, Atty. Estanislao L. Cesa, Jr. is hereby* ***SUSPENDED from the practice of law for one (1) year.***[23] (Emphasis supplied)

Respondent's MR[24] was denied in the IBP Board of Governor's Resolution No. XXI-2014-280[25] dated May 3, 2014 as follows:

> RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and the resolution subject of the motion, it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-84 dated September 28, 2013 is hereby AFFIRMED.[26]

Necessarily, We now give Our final action on this case.

Issue

Should Atty. Cesa, Jr. be administratively disciplined based on the allegations in the complaint and evidence on record?

The Court's Ruling

We are in full accord with the findings of the Investigating Commissioner that respondent violated Canon 15, Rule 15.03 and Canon 16, Rule 16.01 of the CPR.

> 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.
>
> CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
>
> > Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Based on the records, We find substantial evidence to hold the respondent liable for violating Canon 15, Rule 15.03 of the said Code. It must be stressed that FLC engaged respondent's legal services to represent it in opposing complainant's actions to forestall the foreclosure proceedings. As can be gleaned from respondent's position paper, however, it is admitted that respondent extended help to the complainant in negotiating with FLC for the reduction of the loan payment and cessation of the foreclosure proceedings.[27] The case of *Hornilla v. Salunat*[28] is instructive on the concept of conflict of interest, *viz.:*

> There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client. This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. x x x. Another test of the inconsistency of interests is whether the acceptance of a new relation will