

SECOND DIVISION

[A.C. No. 10243, October 02, 2017]

MYRNA OJALES, COMPLAINANT, VS. ATTY. OBDULIO GUY D. VILLAHERMOSA III, RESPONDENT.

RESOLUTION

PERALTA, J.:

On July 15, 2011, complainant Myrna Ojales filed a Complaint^[1] against respondent Atty. Obdulio Guy Villahermosa III with the Integrated Bar of the Philippines (*IBP*).

In her Complaint, complainant Ojales stated that on February 26, 2010, she bought a parcel of land situated in Palinpinon, Valencia, Negros Occidental as evidenced by a Deed of Absolute Sale^[2] notarized by respondent Atty. Villahermosa. Respondent volunteered to process the issuance of the title in complainant's name and assured her that the title would come out in two to three months.

On March 2, 2010, respondent received from complainant the total amount of P21,280.00 as evidenced by two receipts signed by respondent. The first receipt for P10,000.00^[3] was for the payment of respondent's processing fee, and the second receipt for P11,280.00^[4] was for the payment of the capital gains tax.

After five months, complainant went to the Bureau of Internal Revenue (*BIR*) to inquire whether the capital gains tax on the sale of property was paid, but she was told that no document pertaining to a deed of sale in her favor was submitted to the *BIR*. So complainant went to the house of respondent, who assured her that her title would be ready by September 4, 2010. After September 4, 2010, complainant went back to the *BIR*, but she was again informed that no document of her transaction was submitted. She was advised to secure from respondent the claim slip normally issued by the *BIR* for such transaction. Thus, complainant asked respondent for the claim slip from the *BIR*, but respondent could not produce it and asked for another month to process her title. Finally, complainant went back to respondent's house to ask for a refund of her money, but she was instead scolded by respondent's wife. Hence, complainant filed this administrative case praying for the refund of the money she gave respondent and that the appropriate disciplinary action be imposed on the respondent.

On July 18, 2011, Director for Bar Discipline Alicia A. Risos-Vidal issued an Order^[5] directing respondent to answer the Complaint within 15 days from receipt of the Order. A copy of the Order was received by respondent on August 3, 2011 per the registry return receipt^[6] attached to the record. However, respondent did not file an Answer.

On October 10, 2011, a Notice of Mandatory Conference/Hearing scheduled on

December 1, 2011 at 2:00 p.m. was sent to the parties. A copy of the Notice was received by the respondent on October 25, 2011 per the registry return receipt^[7] attached to the record. Only the complainant appeared at the scheduled mandatory conference.

On December 1, 2011, Commissioner Loreto C. Ata issued an Order^[8] declaring respondent in default and deemed to have waived his right to participate in the proceedings.

The Commissioner's Report and Recommendation

On June 1, 2012, Investigating Commissioner Loreto C. Ata submitted a Report and Recommendation^[9] on the administrative complaint.

Commissioner Ata stated that the record shows that respondent received from complainant P21,280.00 for which respondent wrote and signed two receipts. Respondent's acceptance of the amount established an attorney-client relationship between him and complainant, thereby giving rise to his duty of fidelity to the client's cause,^[10] and to attend with dedication and care to the legal matter entrusted to him, which was to pay the capital gains tax on the sale of property and to work on the transfer of the title of the property in complainant's name. As twice verified by complainant from the BIR, nothing was done by respondent on the matter from the time he received the money from complainant on March 2, 2010 and even after complainant filed her complaint with the Committee on Bar Discipline of the IBP Negros Oriental Chapter.

The Investigating Commissioner reported that as of the date of the mandatory conference held on December 1, 2011, complainant affirmed that respondent had not performed the legal matter entrusted to him and he had not returned the amount received from complainant as she had demanded. Respondent's omissions give rise to the presumption that he appropriated for himself the amount of P21,280.00 that he received from complainant to the latter's prejudice:

Moreover, the Investigating Commissioner stressed that respondent failed to answer the complaint filed against him by complainant with the Committee on Bar Discipline of the IBP Negros Oriental Chapter and the IBP Commission on Bar Discipline. He also did not attend the mandatory conference held on December 1, 2011 despite notice. He had not taken steps to meet the issue against him, deny the charge, or offer a valid explanation for his conduct, as would have been expected of someone who is innocent of the charge. His failure to answer the charge and participate in the disciplinary proceeding evinces disrespect and disregard of authority.^[11]

On the basis of the foregoing, the Investigating Commissioner recommended that the respondent be suspended for six months from the practice of law and ordered to return to the complainant the amount of P21,280.00 within 30 days from notice.

On March 20, 2013, the IBP Board of Governors passed Resolution No. XX-2013-197, which adopted and approved the Report and Recommendation of the Investigating Commissioner. The Resolution reads:

RESOLUTION NO. XX-2013-197
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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 respondent's failure to perform the legal matter entrusted to him nor returned the amount received from complainant and for his disrespect and disregard of the notices of the Commission on Bar Discipline, Atty. Obdulio Guy Villahermosa III is hereby **SUSPENDED from the practice of law for six (6) months.**^[12]

In a letter^[13] dated October 7, 2013, the Director for Bar Discipline notified the Chief Justice of the Supreme Court of the transmittal of the documents of the case to the Court and that no motion for reconsideration has been filed by either party.

The Ruling of the Court

The Court agrees with the finding and recommendation of the IBP Board of Governors.

The records show that respondent notarized the *Deed of Absolute Sale of a Portion of Real Property* executed by the vendor, Alberto C. Tajo, and the vendee, complainant herein. In two receipts^[14] both dated March 2, 2010, respondent acknowledged that complainant gave him the amount of P11,280.00 for payment of the capital gains tax on the sale of property and that complainant paid him P10,000.00 for processing the transfer of the title of the property in complainant's name. As respondent failed to comply with his obligation at the promised time, complainant went to the BIR to inquire whether the capital gains tax had been paid. Complainant learned from the BIR that no document of her transaction was submitted, and respondent could not produce the claim slip from the BIR, which showed that respondent did not fulfill the legal matter entrusted to him by the complainant. Respondent's omission is violative of Canon 18 and Rule 18.03, thus:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03. - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Moreover, despite complainant's demand that respondent return her money as he did not fulfill his obligation, respondent failed to do so, which is violative of Canon 16 of the Code of Professional Responsibility:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.