

**EN BANC****[ A.C. No. 11836, November 21, 2017 ]****CARLINA P. ROBIÑOL, COMPLAINANT, V. ATTY. EDILBERTO P. BASSIG, RESPONDENT.****D E C I S I O N****TIJAM, J.:**

This is a disbarment case against respondent Atty. Edilberto P. Bassig (Atty. Bassig) for violation of Code of Professional Responsibility and Lawyer's Oath.

**The Facts**

In her Complaint-Affidavit, complainant Carlina Robiñol (Robiñol) alleged that respondent rented a house from her in Brgy. Tanong, Marikina City, for a monthly rental of P8,500.00. Said lease, without any written contract, was for a period of two years, or from June 12, 2010 to August 12, 2012. Upon the start of the lease agreement, it was agreed that Atty. Bassig will pay a one month advance and another one month deposit, both of which are equivalent of one month rental payment. However, he did not comply with the same. Atty. Bassig instead paid the monthly rental from June 13, 2010 to July 13, 2010.<sup>[1]</sup>

Atty. Bassig then paid his rents belatedly from July 2010 to January 2012. However, after said period, he stopped making any payment, to wit<sup>[2]</sup>:

<b>Month/s covered</b>	<b>Payment date</b>	<b>Amount paid</b>
July 13, 2010 to August 13, 2010	August 12, 2010	PhP 8,500.00
August 13, 2010 to October 13, 2010	November 24, 2010	PhP17,000.00
October 13, 2010 to November 13, 2010	August 13, 2010	PhP 8,500.00
November 13, 2011 to December 13, 2011	January 4, 2012	PhP 8,500.00
December 13, 2011 to January 13, 2012	March 13, 2012	PhP 8,500.00

Robiñol alleged that the last payment in the amount of P17,000.00, for two months' rent was made in July 2012, but no receipt was issued upon Atty. Bassig's instruction. Atty. Bassig told Robiñol that he will be receiving a big amount from his client and that he will thereafter pay the remaining unpaid rent.<sup>[3]</sup>

Believing that Atty. Bassig will remain truthful to his promise, Robiñol allowed him to stay in the premises. However, when Typhoon Habagat struck Marikina City, Atty.

Bassig left the house because of the heavy flood. When he left, he neither informed Robiñol of his intended destination nor satisfied his unsettled obligation.<sup>[4]</sup>

When the situation in Marikina City got better, Atty. Bassig still failed to return to his rented house.<sup>[5]</sup>

Later on, Robiñol chanced upon Atty. Bassig's daughter and learned that Atty. Bassig was living with her. Robiñol then went to the said house and demanded payment from Atty. Bassig. As a consequence, he executed a promissory note<sup>[6]</sup> dated August 18, 2012, undertaking to pay the amount of P127,500.00 on installment basis. The promissory note indicates that half of the amount due would be paid on August 31, 2012 and the other half on September 30, 2012. However, Atty. Bassig reneged on his obligation.<sup>[7]</sup>

Because of the foregoing incidents, Robiñol was constrained to hire a counsel to protect her interest. Thus, a demand letter<sup>[8]</sup> was sent to Atty. Bassig on December 8, 2012.

In an unverified answer, Atty. Bassig acknowledged his obligation to Robiñol and promised to pay the same within the next two months after the answer was filed. He maintained that he had difficulty in managing his finances as he was paying for his son's medical expenses and his car's monthly amortizations.<sup>[9]</sup>

A Notice of Mandatory Conference/Hearing<sup>[10]</sup> dated January 21, 2015 was issued by the IBP Commissioner Rebecca Villanueva-Maala. However, the Orders dated February 25, 2015<sup>[11]</sup> and March 25, 2015<sup>[12]</sup> issued by the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) reveals that only Robiñol appeared in the scheduled mandatory conferences. The latter Order also expunged the answer filed by Atty. Bassig for lack of verification. In view thereof, the parties were directed to file their respective position paper.

In a Report and Recommendation dated November 20, 2015<sup>[13]</sup> the IBP-CBD recommended the suspension of Atty. Bassig from the practice of law for a period of two years. The IBP Commissioner ruled that Atty. Bassig's failure to file his answer despite due notice and to appear on the scheduled hearings showed his resistance to lawful orders and illustrated his despicency for his oath of office as a lawyer, which deserves disciplinary sanction. The *fallo* thereof reads:

IN VIEW THEREOF, we respectfully recommend that respondent, **ATTY. EDILBERTO P. BASSIG**, be **SUSPENDED** for a period of **TWO (2) YEARS** from receipt hereof, from the practice of law and as member of the Bar.

**RESPECTFULLY SUBMITTED.**<sup>[14]</sup>

In a Resolution No. XXII-2016-165,<sup>[15]</sup> CBD Case No. 14-4447, entitled Carlina P. Robiñol v. Atty. Edilberto P. Bassig, dated February 25, 2016, the IBP Board of Governors adopted the recommendation of the IBP-CBD and disposed thus:

*RESOLVED to ADOPT the recommendation of the Investigating Commissioner imposing a penalty of suspension from the practice of law for two (2) years considering that there was a previous sanction of*

*suspension of two (2) years against the same Respondent in another disbarment case.*

As this Court has disciplinary authority over members of the bar, We are tasked to resolve the instant case against Atty. Bassig.

In disbarment proceedings, the burden of proof rests upon the complainant<sup>[16]</sup> and the proper evidentiary threshold is substantial evidence.<sup>[17]</sup>

Here, Robiñol failed to discharge the burden of proof. For one, the evidence submitted were inadmissible. It must be noted that the receipts showing payment of Atty. Bassig to Robiñol and the promissory note executed and signed by Atty. Bassig were photocopies of the original.

A photocopy, being a mere secondary evidence, is not admissible unless it is shown that the original is unavailable.<sup>[18]</sup> Section 5, Rule 130 of the Rules of Court states:

*SEC.5 When original document is unavailable.* - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

In the case of *Country Bankers Insurance Corporation v. Antonio Lagman*<sup>[19]</sup> the Court held that:

Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. xxx<sup>[20]</sup>

In this case, nowhere in the record shows that Robiñol laid down the predicate for the admission of said photocopies. Thus, aside from the bare allegations in her complaint, Robiñol was not able to present any evidence to prove that Atty. Bassig failed to pay his rent and that he had in fact leased a house from Robiñol.

Moreover, We cannot deem Atty. Bassig's failure to file his verified answer and to attend in the scheduled mandatory conferences as an admission of the allegations in the complaint. The consequences of such omission are clearly laid down in Section 5, Rule V of the Rules of Procedure of the Commission on Bar Discipline of the IBP, to wit:

Section 5. Non-appearance of parties, and Non-verification of Pleadings.  
— a) Non-appearance at the mandatory conference or at the clarificatory questioning date shall be deemed a waiver of the right to participate in the proceedings. Ex parte conference or hearings shall then be conducted. Pleadings submitted or filed which are not verified shall not be given weight by the Investigating Commissioner.

Disciplinary proceedings against lawyers are *sui generis*-neither purely civil nor purely criminal. They do not involve a trial of an action or a suit, but rather