

## EN BANC

[ A.C. No. 7178, August 23, 2016 ]

**VICENTE M. GIMENA, COMPLAINANT, VS. ATTY. SALVADOR T. SABIO, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

Before us is a Complaint for Disbarment<sup>[1]</sup> filed by Vicente M. Gimena (complainant) against Atty. Salvador T. Sabio (respondent) for gross negligence in handling RAB Case No. 06-11-10970-99 (case). Complainant laments that his company, Simon Peter Equipment and Construction Systems, Inc. (company) lost in the case because respondent filed an unsigned position paper and ignored the order of the labor arbiter directing him to sign the pleading. Aware of the unfavorable decision, respondent did not even bother to inform complainant of the same. The adverse decision became final and executory, robbing complainant of a chance to file a timely appeal.

#### Facts

Complainant is the president and general manager of the company.<sup>[2]</sup> In his Complaint<sup>[3]</sup> dated March 7, 2006, he narrated that he engaged the legal services of respondent in relation to a case for illegal dismissal<sup>[4]</sup> filed against him and the company. All the pleadings and orders were directed to respondent because the company no longer had active presence in Bacolod, save for the stockpile of construction equipment found in Barangay Mansilingan.<sup>[5]</sup> Sometime in February 2000, complainant signed the verification page of the position paper for the case and sent it to respondent for his signature. However, respondent filed the position paper without signing it.<sup>[6]</sup> The labor arbiter noticed the unsigned pleading and directed respondent to sign it within 10 days from notice.<sup>[7]</sup> Respondent did not comply with the directive.

In a Decision<sup>[8]</sup> dated October 21, 2004, the labor arbiter ruled against the company and noted that: "*[the company] filed an unsigned position paper which cannot be considered as such. Despite the order to Atty. Salvador Sabio to sign said position paper, the order was deemed to have been taken for granted.*"<sup>[9]</sup> Respondent received a copy of the Decision on January 13, 2005 but he did not notify complainant about it.<sup>[10]</sup> Complainant only learned of the Decision after a writ of execution was served on the company on June 2005 and by that time, it was already too late to file an appeal.<sup>[11]</sup>

Complainant stressed that respondent was previously suspended from the practice of law on two (2) occasions: first was in the case of *Cordova v. Labayen*,<sup>[12]</sup> where

respondent was suspended for six (6) months, and the second was in the case of *Credito v. Sabio*,<sup>[13]</sup> where he was suspended for one (1) year. The latter case involved facts analogous to the present Complaint.

In his Comment,<sup>[14]</sup> respondent countered that complainant engaged his services in 2000. Complainant, however, did not pay the expenses and attorney's fees for the preparation and filing of the position paper in the amount of P20,000.00.<sup>[15]</sup> The lack of payment contributed to respondent's oversight in the filing of the unsigned position paper.<sup>[16]</sup> Respondent also insisted that the unfavorable Decision of the labor arbiter is based on the merits and not due to default.<sup>[17]</sup> Respondent further explained that he was not able to inform complainant of the outcome of the case because he does not know the address of the company after it allegedly abandoned its place of business in Barangay Mansilingan, without leaving any forwarding address.<sup>[18]</sup> Respondent claimed that complainant only communicated to him when the writ of execution was issued on July 27, 2005.<sup>[19]</sup> He faulted complainant and the company for being remiss in their legal obligation to be in constant communication with him as to the status of the case.<sup>[20]</sup>

Moreover, respondent averred that the filing of the administrative case against him is tainted with ill will to compensate for complainant's failure to post a bond to stay the writ of execution and the sale of the construction equipment levied upon.<sup>[21]</sup> Respondent submitted that if it were true that he was negligent in the handling of the case, then why did complainant, the company and the third party claimants still avail of his services as attorney-in-fact in the auction sale?<sup>[22]</sup>

In his Reply,<sup>[23]</sup> complainant insisted that the acceptance fee of respondent was P50,000.00. Complainant paid respondent P20,000.00 as advance payment, but which was without a receipt because complainant trusted him.<sup>[24]</sup> The remaining P30,000.00 was also paid to respondent, as evidenced by photocopies of deposit slips to his Banco De Oro account.<sup>[25]</sup>

We referred the case to the Integrated Bar of the Philippines (IBP) for report and recommendation. During the mandatory conference before the IBP Commission on Bar Discipline (the Commission), complainant and respondent were asked to discuss their complaint and defense, respectively. For the first time, respondent raised the issue of lack of attorney-client relationship. He pointed out that he and complainant had never met each other and that there was no formal engagement of his services.<sup>[26]</sup> The parties did not enter into stipulation of facts and limited the issues to the following:

- a) Whether or not there was attorney-client relationship between respondent and the company in RAB Case No. 06-11-10970-99;
- b) If in the affirmative, whether or not respondent was negligent in handling RAB Case No. 06-11-10970-99 and whether such negligence renders him liable under the Code of Professional Responsibility.<sup>[27]</sup>

The Commission ordered the parties to file their verified position papers. Respondent, in his Position Paper,<sup>[28]</sup> reiterated that he cannot be expected to render legal services to the company and the complainant because no formal

contract for legal retainer services was executed.<sup>[29]</sup>

On December 2, 2008, the Commission issued its Report and Recommendation<sup>[30]</sup> finding respondent guilty of gross negligence.

### **IBP Recommendation**

As regards the first issue, the Investigating Commissioner Atty. Randall C. Tabayoyong (the Investigating Commissioner) ruled that there is indeed an attorney-client relationship between complainant and respondent. Respondent's assertion that he was not a counsel of record in the case is belied by his own admission in the Comment he filed before the Commission.<sup>[31]</sup> In paragraph 1 of his Comment, respondent stated that he was "engaged by complainant in 2000 regarding the labor case of the [company]."<sup>[32]</sup> Then, in paragraph 2, he averred that he was not paid for legal expenses and legal charges for the filing of the position paper.<sup>[33]</sup> More, the Order and Decision of the labor arbiter referred to respondent as the counsel of the company.<sup>[34]</sup>

With respect to the second issue, the Investigating Commissioner declared that the evidence on record sufficiently supports the charges of negligence against respondent.<sup>[35]</sup> Again, it was respondent's own admissions that put the final nail on his coffin. Respondent neither denied that he filed an unsigned pleading nor refuted the claim that he did not inform complainant of the outcome of the case and the due date of the appeal before the National Labor Relations Commission. He only offered excuses, which the Investigating Commissioner found as "reprehensible" and "downright misleading."<sup>[36]</sup>

The Investigating Commissioner noted that respondent violated Rule 18.03 of the Code of Professional Responsibility for the negligence that he committed in handling the case referred to him.<sup>[37]</sup> Weight was also given to the fact that respondent was previously suspended for the same offense in Credito.<sup>[38]</sup> Hence, it was recommended that respondent be suspended from the practice of law for a period of two (2) years with a warning that a similar violation in the future will merit a heavier penalty.<sup>[39]</sup>

The recommendation was adopted and approved by the IBP Board of Governors in its Resolution<sup>[40]</sup> dated April 16, 2010. Respondent filed a Motion for Reconsideration<sup>[41]</sup> but the same was denied.<sup>[42]</sup>

### **Issue**

Whether respondent should be held administratively liable for the acts complained of.

### **Ruling**

We concur with the findings of the IBP, with the addition that respondent also violated Rule 18.04 of the Code of Professional Responsibility. We also find that a longer period of suspension is warranted in view of the number of times that

respondent had been disciplined administratively.

### ***There is attorney-client relationship between respondent and complainant***

The contention of respondent that there was no attorney-client relationship between him and the company is, at best, flimsy. It is improper for him to capitalize on the fact that no formal contract for legal retainer was signed by the parties, for formality is not an essential element in the employment of an attorney.<sup>[43]</sup> The contract may be express or implied and it is sufficient that the advice and assistance of the attorney is sought and received, in matters pertinent to his profession. An attorney impliedly accepts the relation when he acts on behalf of his client in pursuance of the request made by the latter.<sup>[44]</sup>

Respondent acted on behalf of the company and the complainant in relation to the case. Albeit unsigned, he allowed his name to appear as "counsel for respondent"<sup>[45]</sup> in the position paper that he filed before the labor arbiter. He never called the attention of the labor court that he was not the counsel of the company. More importantly, he admitted in his Comment that the complainant engaged his legal services. Respondent cannot plead the same before us then later on deny it before the IBP to save him from his omissions. Estoppel works against him. Basic is the rule that an admission made in the pleading cannot be controverted by the party making it for such is conclusive as to him, and all proofs to the contrary shall be ignored, whether objection is interposed by the said party or not.<sup>[46]</sup>

### ***Respondent is grossly negligent in handling RAB Case No. 06-11-10970-99***

Canon 18 of the Code of Professional Responsibility (the "Code") mandates that a lawyer shall serve his client with competence and diligence. Corollarily, Rule 18.03 directs that a lawyer shall not neglect a legal matter entrusted to him.<sup>[47]</sup> He must exercise the diligence of a good father of a family with respect to the case that he is handling. This is true whether he accepted the case for free or in consideration of a fee.

A lawyer is presumed to be prompt and diligent in the performance of his obligations and in the protection of his client's interest and in the discharge of his duties as an officer of the court.<sup>[48]</sup> Here, however, this presumption is overturned by clear and convincing evidence that respondent was grossly negligent as counsel of the company and complainant in the case.

Every law student is taught that an unsigned pleading creates no legal effect, such that the party may be deemed not to have filed a pleading at all. Yet, respondent, a long standing legal practitioner, did not sign a position paper that he filed in a labor suit allegedly due to oversight. What more, he claimed that his client's failure to pay legal expenses and attorney's fees contributed to such oversight. These actuations of respondent demean the legal profession. Lawyering is not primarily concerned with money-making; rather, public service and administration of justice are the tenets of the profession.<sup>[49]</sup> Due to respondent's negligence, the labor arbiter did not consider the position paper of the company and the complainant. This circumstance deprived the company of the chance to explain its side of the controversy - an unfortunate incident brought about by its own counsel.