

SECOND DIVISION

[A.C. No. 9880, November 28, 2016]

WILSON CHUA, COMPLAINANT, VS. ATTY. DIOSDADO B. JIMENEZ, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

This case was filed with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline on October 20, 2003 by complainant Wilson Chua against respondent Atty. Diosdado B. Jimenez for grave misconduct, malpractice, dishonesty, and conduct unbecoming a member of the Bar.^[1]

Factual Antecedents

The complainant alleged that he entered into a retainer agreement with the respondent for the latter to handle all his legal problems, with particular emphasis on those that needed filing in the courts: more specifically, against Excellent Quality, Alexander Ty, Benny Lao, Clarita Tan. and Amosup. For these, he gave respondent the amount of P235,127.00 for the necessary filing fees. Complainant likewise entrusted to the respondent all the pertinent documents thereto.

The complainant likewise alleged that, for the last seven years prior, he had never attended a single hearing on any case that he had assigned to respondent, save for those involving Clarita Tan and Union Bank and in which case he was a defendant. Respondent allegedly would advise him of upcoming hearings only to cancel them last minute due purportedly to cancellations, postponements, or resettings of the hearings.

Complainant had written respondent several times - on June 11, 2003; June 20, 2003; July 14, 2003; August 18, 2003; September 9, 2003; and September 24, 2003 - for the return of the documents he had entrusted to respondent as well as the amount of P235,127.00. On September 24, 2003, he terminated respondent's legal services for failure to file the necessary cases, the very object of the retainer agreement, and to return the sum of P235,127.00.

In an Order^[2] dated October 23, 2003, the IBP directed respondent to file his Answer within 15 days. Instead of filing an Answer, respondent requested for additional 15 days within which to comply.^[3] Thereafter, respondent filed a Motion for Bill of Particulars^[4] and another Urgent Motion to File Answer.^[5] However, for being a prohibited pleading, the IBP denied the motion for bill of particulars.^[6] With no action yet on the part of the IBP with regard to his Urgent Motion To File Answer, respondent again filed an Urgent Motion For Last Extension To File Answer.^[7] Perhaps exasperated by respondent's delaying tactics, complainant moved that

respondent be declared in default and that he be allowed to present evidence ex-parte.^[8]

In an Order^[9] dated March 17, 2004, the IBP declared respondent in default and set the mandatory conference on April 28, 2004. In the meantime, respondent moved for the lifting of the default order^[10] attaching thereto his Answer with Counterclaim.

Respondent denied complainant's charges that he had violated his oath of office as a lawyer and the Code of Professional Responsibility. He further alleged that he had been pressuring the complainant and his mother Tiu Eng Te for the payment of professional services rendered by his law firm amounting to around P13 Million. And because of this non-payment or failure to arrive at a mutually acceptable arrangement for the payment of his professional fees, he has withheld the filing of cases on behalf of the complainant and his companies. He also denied receiving the amount of P235,127.00 from complainant.^[11]

By way of Reply,^[12] complainant insisted that respondent had received the amount of P235,127.00 intended for payment of filing fees. As proof, he submitted photocopies of checks payable to respondent as well as cash vouchers showing details of said payment.^[13]

Mandatory conference was thereafter conducted during which both parties appeared and entered into stipulations. After the termination of the mandatory conference, both parties were directed to submit their verified position papers. Only complainant complied. Respondent failed to submit his position paper.

Report and Recommendation of the IBP:

The Investigating Commissioner^[14] found respondent guilty of violating the Code of Professional Responsibility, particularly Canon 18, Rules 18.03 and 18.04 as well as Canon 22, Rule 22.02. He opined that:

As between the claim of Complainant that he gave Respondent an amount for filing fees of the cases endorsed x x x and the denial of Respondent we are inclined to agree with Complainant that at least the amount of P165,127.00 x x x was given to Respondent. Besides, such bare denial would appear inconsistent with Respondent's own admission that he was forced to hold on the filing of new cases because of unsettled professional fees. x x x

x x x There is nothing on record to show that Respondent ever informed Complainant on the status of their case. x x x

Respondent has raised the matter of his unpaid fees in other cases handled by him as a reason for his not filing the cases. Respondent has not presented enough evidence to convince us of such unpaid fees. Besides, it is clear that the papers and documents were given to him for the specific purpose of filing cases but which Respondent did not file. He already received the amounts for filing fees. x x x Respondent has not even accomplished the purpose for which the monies and documents

were given.

x x x x

Respondent has not been candid with Complainant in terms of his handling of the aforementioned accounts contrary to the demands of the Code of Professional Responsibility.

Respondent is also negligent in not acting on the cases endorsed to him by Complainant. The fact that there is an outstanding issue with respect to the payment of his retainer fees in not, to our mind, a justification for his inaction. The least Respondent would have done is to keep the Complainant updated on such cases and candidly discuss with him the matter of his outstanding fees.

Respondent has not returned any of the papers or documents demanded by the client after his services were terminated. Nothing on the record shows that he returned the documents and files requested. x x x

x x x x

We believe that under the facts presented, Respondent has violated the Code of Professional Responsibility and should therefore be disciplined.^[15]

Thus, the Investigating Commissioner recommended respondent's suspension from the practice of law for a period of three (3) months and that he be ordered to return the pertinent files and documents to complainant.^[16] The IBP Board of Governors, in Resolution No. XVII-2006-579 dated December 15, 2006, resolved to adopt the findings of the Investigating Commissioner but modified the recommended penalty to suspension of one (1) year from the practice of law and to return the files and documents of the complainant, and the amounts duly supported by receipts.^[17]

Respondent filed a motion for reconsideration. In Resolution No. XX-2012-591 dated December 29, 2012, the IBP Board of Governors granted the same and reinstated the penalty recommended by the Investigating Commissioner of suspension from the practice of law for a period of three (3) months and to return the records and documents to complainant.

The records of the case was thereafter transmitted by the IBP to this Court pursuant to Rule 139-B of the Rules of Court. In a Manifestation and Clarification dated April 2, 2013, complainant sought that respondent be also ordered to return the amount of P235,127.00 to complainant.

Issues

Before this Court is the long standing controversy associated with a retainership agreement - does a lawyer have the right to hold on to a client's documents, even after the relationship of lawyer-client has been terminated, due to non-payment of his or her professional legal fees? Or is this a ground for disciplinary action? Did respondent violate the Code of Professional Responsibility when he failed to file the

cases indorsed by complainant despite receipt of filing fees?

The Court's Ruling

Relying on the exhaustive fact finding deliberations of the IBP, we find the complainant's allegations to be believable and supported by evidence.

Because he had doubted that respondent ever filed any case as agreed upon with complainant, the latter started demanding from the former the return of all the documents and files he had given to him at the start of their retainerhip agreement as well as the amounts entrusted to him as filing fees. In a span of roughly two and a half months, complainant wrote respondent no less than six times. On the other hand, there is no record to show that respondent ever executed a written reply to any of the six letters.

We give credence to the allegation that complainant gave respondent some amount specifically for filing fees, relative to the cases both parties had earlier agreed to. However, as correctly noted by the Investigating Commissioner, only the amount of P165,127.00 out of the alleged P235,127.00 was duly proved by complainant to have been received by respondent specifically to defray the expenses for filing fees. Among the disbursements were 100,000.00 for filing and other fees relative to the Excellent Quality case (May 10, 1997); P23,000.00 for the Attachment Bond likewise for Excellent Quality (August 18, 1999); P13,563.50 representing the filing fee of Alex Ty (August 4, 2000); P13,563.50 representing the filing fee of Clarita Tan (August 5, 2000); and P15,000.00 as filing fee for Benny Lao (August 31, 2001). This total of P165,127.00 is duly supported by checks issued to respondent and company vouchers relating to the particular disbursements and which vouchers were signed by respondent.

Notably, during the mandatory conference held on December 13, 2004, respondent admitted that he received said amounts from complainant. However, he explained that notwithstanding receipt of money from complainant, he withheld filing of cases indorsed to him because complainant had not yet settled his obligation with respondent's law office, *viz.*:

COMM. DULAY:

So did you withhold action on those cases?

ATTY. JIMENEZ:

We suspended, Your Honor, not the services but we withhold the filing of the cases until after partial settlement at least of the obligation is settled.^[18]

Similarly, in his motion for reconsideration filed with the IBP, respondent admitted that he applied the monies he received from complainant to his and law office's professional fees instead of defraying the same as intended, *i.e.*, as filing fees, to wit:

Whatever amount paid by complainant to respondent's law office were applied as partial payments of respondent's law office professional fees,