

## SECOND DIVISION

[ A.C. No. 8776, March 22, 2015 ]

**ANTONINA S. SOSA, COMPLAINANT, VS. ATTY. MANUEL V. MENDOZA, RESPONDENT.**

### DECISION

**BRION, J.:**

Before this Court is the Complaint for the disbarment/suspension of Atty. Manuel V. Mendoza (*Atty. Mendoza*) filed on October 22, 2010 by Antonina S. Sosa (*Ms. Sosa*), for violation of Rule 1.01 of the Code of Professional Responsibility arising from non-payment of debt.<sup>[1]</sup>

This Court, in a Resolution dated April 18, 2012, referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.<sup>[2]</sup>

On May 11, 2013, the IBP Board of Governors adopted and approved with modification the Investigating Commissioner's report and recommendation. The IBP resolved to suspend Atty. Mendoza from the practice of law for six (6) months, likewise ordering him to return the amount of the debt with legal interest.<sup>[3]</sup>

On December 10, 2013, the IBP Director for Bar Discipline transmitted to this Court the Notice of the Resolution and the records of the case.<sup>[4]</sup>

#### **The Factual Background**

Ms. Sosa alleged that on July 28, 2006, she extended a loan of Five Hundred Thousand Pesos (P500,000.00) to Atty. Mendoza at an interest of twenty-five thousand pesos (P25,000.00) to be paid not later than September 25, 2006. They agreed that a penalty or collection charge of ten percent (10%) per month shall accrue in case of default.<sup>[5]</sup>

To ensure the payment of the obligation, Atty. Mendoza signed a promissory note and issued a postdated check for P500,000.00.<sup>[6]</sup>

Atty. Mendoza failed to comply with his obligation on due date. Upon demand to pay, he requested Ms. Sosa not to deposit the postdated check. She acceded and deferred the deposit of the check based on Atty. Mendoza's promise that he would later pay. The check was subsequently returned/dishonored after Ms. Sosa finally deposited it sometime in October 2006; it was "Drawn Against Insufficient Funds." Ms. Sosa then obtained the services of a lawyer, Atty. Ernesto V. Cabrera (*Atty. Cabrera*), to legally address Atty. Mendoza's failure to pay.

On January 11, 2010, Atty. Cabrera sent a letter<sup>[7]</sup> to Atty. Mendoza demanding

payment of the loan plus interest and collection charges. Atty. Mendoza ignored the demand letter despite receipt, as proven by the Registry Receipt and Registry Return Receipt.<sup>[8]</sup> Likewise, he did not, in any manner, contact Ms. Sosa to explain why he failed to pay.

In view of the repeated failure of Atty. Mendoza to pay, Ms. Sosa filed the complaint for disbarment or suspension, charging Atty. Mendoza for violation of Rule 1.01 of the Code of Professional Responsibility. This Rule states that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

Acting on the complaint, this Court required Atty. Mendoza to comment on the complaint in a Resolution dated January 10, 2011.<sup>[9]</sup> He filed an Urgent Motion for Extension on March 18, 2011,<sup>[10]</sup> which this Court granted in a Resolution dated October 19, 2011. Atty. Mendoza finally filed his Brief Comment on January 10, 2012.<sup>[11]</sup>

Atty. Mendoza **admitted** in his Brief Comment the existence of the loan and that it is a valid obligation. However, he alleged that he only received One Hundred Thousand Pesos (P100,000.00) from one Elenita Cruz (*Elenita*), a friend of the complainant. Atty. Mendoza did not attach an affidavit from Elenita nor any evidence proving that he *only* received P100,000.00.<sup>[12]</sup>

### **The Proceedings before the IBP**

On July 4, 2012, Investigating Commissioner Honesto A. Villamor issued the Notice of Mandatory Conference/Hearing scheduled on August 16, 2012.

When the case was called for hearing, only Atty. Cabrera appeared. Atty. Cabrera marked the complainant's documentary exhibits and the mandatory conference was subsequently declared terminated. The parties were then directed to submit their respective verified position papers, documentary exhibits and/or affidavits of their witnesses, if any, within fifteen (15) days.

In her position paper,<sup>[13]</sup> Ms. Sosa reiterated her allegations in her Complaint-Affidavit. She argued that Atty. Mendoza is liable not only administratively but also civilly.

Atty. Mendoza, in his Manifestation,<sup>[14]</sup> **admitted** that (i) he arrived late during the scheduled hearing; (ii) he had on hand Six Hundred Thousand Pesos (P600,000.00); (iii) he was advised by the Hearing Officer to communicate with the complainant's counsel; and (iv) **the validity of his obligation and that he has to pay the same.**

Atty. Mendoza did not make good his offer to pay despite the express manifestation he made.<sup>[15]</sup>

### **The IBP Findings**

The Investigating Commissioner found Atty. Mendoza liable not only administratively but also civilly. He gave credence to Ms. Sosa's allegations that Atty. Mendoza failed

to pay the loan despite Ms. Sosa's attempts to collect. He also took notice of Atty. Mendoza's admission that the obligation is valid.

The IBP Board of Governors adopted with modification the findings of the Investigating Commissioner. In a Resolution dated May 11, 2013, the IBP ruled:

*RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner x x x finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that [the respondent] is guilty of misconduct for his failure to pay a just and valid debt, Atty. Manuel V. Mendoza is hereby **SUSPENDED from the practice of law for six (6) months and Ordered to Return the amount of Five Hundred Thousand (P500,000.00) to [the complainant] with legal interest.***

### **The Court's Ruling**

We adopt *with modification* the findings and recommendation of the IBP.

This Court has held that any gross misconduct of a lawyer in his professional or in his **private capacity** is a ground for the imposition of the penalty of suspension or disbarment because good character is an essential qualification for the admission to and continued practice of law.<sup>[16]</sup> Any wrongdoing, whether **professional or non-professional**, indicating unfitness for the profession justifies disciplinary action.<sup>[17]</sup>

Gross misconduct is defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment."<sup>[18]</sup>

Rule 1.01 of the Code of Professional Responsibility is emphatic: "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

The facts of the case show that Atty. Mendoza engaged in improper or wrong conduct, as found under Rule 1.01, as the failure to pay the loan was *willful in character and implied a wrongful intent and not a mere error in judgment*.

We find it undisputed that Atty. Mendoza obtained a loan in the amount of P500,000.00. He signed the promissory note and acknowledgement receipt showing he received P500,000.00.<sup>[19]</sup> Although he initially denied getting this amount and claimed that he only received P100,000.00, he did not present any evidence to prove his claim. He later also admitted the validity of his loan without qualification as to the amount.<sup>[20]</sup>

Also undisputed is the fact that Ms. Sosa tried to collect the amount due upon maturity but Atty. Mendoza failed to pay. In fact, Ms. Sosa deferred depositing the postdated check upon Atty. Mendoza's request, and based on his promises that he would pay. Despite all these, he still failed to comply with his obligation. Worse, the check – when finally deposited – was dishonored, a fact that Atty. Mendoza did

not dispute.

Atty. Mendoza further claimed he had P600,000.00 on hand during the hearing with the IBP Investigating Officer.<sup>[21]</sup> He allegedly failed to deliver the amount to Ms. Sosa or her counsel because he arrived late.

We find Atty. Mendoza's excuse to be flimsy. It could have been very easy for him to deliver the P600,000.00 to Ms. Sosa if he had the real intention to pay. In fact, Ms. Sosa wrote, through her counsel, Atty. Mendoza asking him to settle his obligation because of his manifestation that he already had the money.<sup>[22]</sup>

It is unclear to us why Atty. Mendoza ignored Ms. Sosa's request for settlement after claiming that he already had the needed funds. He was either lying he had the money, or had no intention of paying in the first place. Atty. Mendoza was also not candid with the IBP Investigating Officer when he claimed he had P600,000.00 and that he was ready to pay his obligation. What is clear is that his obligation remains outstanding after all these years.

In *Yuhico v. Atty. Gutierrez*<sup>[23]</sup> this Court sitting *en banc* held:

We have held that **deliberate failure to pay just debts constitute gross misconduct**, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. **They must, at all times, faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations.** They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility. [Emphasis supplied.]

Other than his claim that he was disposing of real properties in order to settle his obligation,<sup>[24]</sup> Atty. Mendoza failed to explain why he failed to pay despite his admission of a just and valid loan. Whatever his reasons or excuses may be, dire financial condition does not justify non-payment of debt, as we have held in *Yuhico*.<sup>[25]</sup>

We also reiterate that –

[A] lawyer can do honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. **No moral qualification for bar membership is more important than truthfulness and candor.** To this end nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.