

## **SECOND DIVISION**

**[ A.C. No. 5440, November 26, 2014 ]**

**SPOUSES NICASIO AND DONELITA SAN PEDRO, COMPLAINANTS,  
VS. ATTY. ISAGANI A. MENDOZA, RESPONDENT.**

### **R E S O L U T I O N**

**LEONEN, J.:**

For resolution is a complaint for disbarment filed by Spouses Nicasio and Donelita San Pedro (complainants) against Atty. Isagani A. Mendoza (respondent).<sup>[1]</sup> This case involves a determination of whether respondent violated his duty to hold in trust all moneys and properties of the client; his duty to account for all funds and property collected or received for or from the client; and his duty to deliver the funds and property of the client when due or upon demand under the Code of Professional Responsibility.

The facts are summarized as follows:

On or about November 21, 1996, complainants engaged the services of respondent to facilitate the transfer of title to property, in the name of Isabel Azcarraga Marcaida, to complainants.<sup>[2]</sup>

Complainants then gave respondent a check for P68,250.00 for the payment of transfer taxes.<sup>[3]</sup> They also gave respondent a check for ₱13,800.00 for respondent's professional fee.<sup>[4]</sup>

Respondent failed to produce the title despite complainants' repeated follow-ups.<sup>[5]</sup>

Several letters were sent by respondent explaining the delay in the transfer of title.<sup>[6]</sup> However, respondent still failed to produce the title.

Complainants subsequently referred the case to the barangay.<sup>[7]</sup> Respondent refused to return the amount complainants gave for the transfer taxes.<sup>[8]</sup> Complainants were then issued a certificate to file action.<sup>[9]</sup> They also sent a letter demanding the refund of the money intended for the transfer taxes.<sup>[10]</sup> Respondent still did not return the money.

On May 8, 2000, respondent sent another letter to complainants. He promised to settle the transfer of the land title.<sup>[11]</sup> However, respondent reneged on this promise.<sup>[12]</sup> Complainants were then forced to obtain a loan from Philippine American Life and General Insurance Company to secure the transfer of the title to the property in their names.<sup>[13]</sup>

Respondent contested the allegations of complainants. According to him, it was complainants who caused the three-year delay in the transfer of title to complainants' names. Complainants were not able to furnish respondent several important documents: (a) original copy of the deed of extrajudicial petition; (b) affidavit of publication with the clippings of the published item in a newspaper of general circulation; and (c) a barangay certificate from the barangay where the property is located as required by the Bureau of Internal Revenue.<sup>[14]</sup>

In addition, respondent argued that complainants paid him the measly sum of P13,800.00 despite all the work he did for them, including facilitating the sale of the property. These involved "being-pulled from the office four or five times to discuss . . . the details of the transaction [with the sellers]; going twice to the Regional Trial Court of Biñan, Laguna[,] Branch 24, to expedite the . . . issuance of a [n]ew owner's duplicate copy of the title; going twice to the office of the Register of Deeds for Calamba, Laguna to make verification and submit the court [o]rder; [and facilitating the] preparation and notarization of the Deed of Absolute Sale."<sup>[15]</sup>

Respondent also claimed that retention of the money is justified owing to his receivables from complainants for the services he rendered in various cases:

- 1) In the case of Spouses Nicasio and Donelita San Pedro versus Severo Basbas, for Forcible Entry, docketed as Civil Case No. 2004 in the Metropolitan Trial Court of Santa Rosa, Laguna. This case was dismissed by the Honorable Court for alleged lack of jurisdiction, the issue of possession being intertwined with that of ownership;
- 2) In the case of Spouses Nicasio and Donelita San Pedro versus Severo Basbas for Accion Publiciana docketed as Civil Case No. B-5386 raffled to the Regional Trial Court of Biñan, Laguna[,] Branch 25;
- 3) In Civil Case No. B-4503 entitled Basbas versus Spouses Nicasio and Donelita San Pedro et al., for nullity of title, [r]econveyance with prayer for issuance of writ of preliminary injunction directed specifically to herein complainant. This case was assigned to the Regional Trial Court of San Pedro, Laguna[.] Respondent, for and in behalf of herein complainant, submitted an [a]nswer and [o]pposition to the prayer for issuance of the injunction, which was favorably acted upon. Consequently[,] the case was dismissed by the Court[;]
- 4) In Civil Case No. B-688 entitled Basbas versus Spouses Nicasio and Donelita San Pedro et al., for [r]e-partition and [r]econveyance, which was raffled to the Regional Trial Court of Biñan, Laguna, Branch 24[;] [and]
- 5) Likewise, respondent represented herein complainant in [an] ESTAFA case they [filed] against Greg Ramos and Benjamin Corsino, which case, as per reliable source, was discontinued by complainant after the civil aspect of the same was amicably settled.<sup>[16]</sup>

Respondent further alleged that complainants challenged him to prove his worth as a lawyer by doing away with the requirements and expediting the cancellation of the

Marcaidas' title.<sup>[17]</sup>

The present administrative case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>[18]</sup> The parties were then called to a mandatory conference before the IBP Commission on Bar Discipline.<sup>[19]</sup> They were required to submit their position papers.<sup>[20]</sup> Respondent did not submit his position paper.<sup>[21]</sup>

On July 8, 2008, the Investigating Commissioner, Atty. Salvador B. Hababag, submitted his findings and recommendation. The Investigating Commissioner found that respondent violated Canon 16, Rules 16.01<sup>[22]</sup> and 16.03<sup>[23]</sup> of the Code of Professional Responsibility.

The Investigating Commissioner found that both checks issued to respondent were encashed despite respondent's failure to facilitate the release of the title in the name of complainants.<sup>[24]</sup> Complainants had to obtain a loan to facilitate the transfer of title in their names.<sup>[25]</sup>

Moreover, respondent admitted his liability in his letters to complainants.<sup>[26]</sup> Complainant Nicasio San Pedro's affidavit of desistance is immaterial.<sup>[27]</sup>

The Investigating Commissioner recommended the disciplinary action of "censure and warning," hence:

WHEREFORE, premises considered, it is most respectfully recommended that the disciplinary sanction of CENSURE and WARNING be given the respondent with the admonition that he be extremely careful of his acts to forego severe penalty in the future.<sup>[28]</sup>

In the Notice of Resolution No. XVIII-2008-399 dated August 14, 2008, the IBP Board of Governors adopted with modification the findings of the Investigating Commissioner. It held:

*RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of 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 for Respondent's violation of Canon 16, [Rule] 16.01 and Rule 16.03 of the Code of Professional Responsibility when he failed to effect the transfer of property despite encashment of the two checks, Atty. Isagani A. Mendoza is hereby **SUSPENDED** from the practice of law for three (3) months and **Ordered to Return** the amount of Sixty Eight Thousand Two Hundred Fifty (P68,250.00) Pesos to complainants within thirty days from receipt of notice.<sup>[29]</sup> (Emphasis, italics, and underscoring in the original)*

On November 14, 2008, respondent filed his motion for reconsideration.<sup>[30]</sup> The IBP Board of Governors denied respondent's motion in the Notice of Resolution No. XX-2013-839 dated June 22, 2013:

*RESOLVED to unanimously DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XVIII-2008-399 dated August 14, 2008 is hereby **AFFIRMED**.*<sup>[31]</sup>  
(Emphasis and italics in the original)

On December 11, 2013, this court resolved to note the following: (a) Notice of Resolution No. XVIII-2008-399 dated August 14, 2008 of the IBP Board of Governors; (b) Notice of Resolution No. XX-2013-839 dated June 22, 2013 of the IBP Board of Governors; and (c) IBP's letter dated October 7, 2013 transmitting the documents pertaining to the case.<sup>[32]</sup>

In the manifestation and motion dated October 25, 2013, respondent requested for a formal hearing, reasoning that he "wants to exercise his right to confront his accusers [to] cross[-]examine them and that of their witness."<sup>[33]</sup> The manifestation and motion was denied by this court in the resolution dated September 22, 2014.<sup>[34]</sup>

The main issue in this case is whether respondent is guilty of violating Canon 16 of the Code of Professional Responsibility for failing to hold in trust the money of his clients.

After considering the parties' arguments and the records of this case, this court resolves to adopt and approve the Notice of Resolution No. XX-2013-839 dated June 22, 2013 of the IBP Board of Governors.

It has been said that "[t]he practice of law is a privilege bestowed on lawyers who meet the high standards of legal proficiency and morality. Any conduct that shows a violation of the norms and values of the legal profession exposes the lawyer to administrative liability."<sup>[35]</sup>

An examination of the records reveals that respondent violated the Code of Professional Responsibility.

Canon 16 of the Code of Professional Responsibility states:

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

*Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.*