

SECOND DIVISION

[A.C. No. 10548, December 10, 2014]

**CAROLINE CASTAÑEDA JIMENEZ, COMPLAINANT, VS. ATTY.
EDGAR B. FRANCISCO, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This refers to the Resolutions of the Integrated Bar of the Philippines, Board of Governors (*IBP-BOG*), dated January 3, 2013^[1] and March 22, 2014,^[2] adopting and approving the findings of the Commission on Bar Discipline (*CBD*) which found Atty. Edgar B. Francisco (*Atty. Francisco*) administratively liable for multiple violations of the Code of Professional Responsibility (*CPR*) and recommended the penalty of suspension of one (1) year from the practice of law.

On September 6, 2007, the *CBD* received a complaint, dated July 14, 2007,^[3] filed by Caroline Castañeda Jimenez (*complainant*) against Atty. Francisco for multiple violations of the *CPR*. On October 24, 2007, Atty. Francisco filed his Answer.^[4] On June 26, 2009, the mandatory conference was held and terminated. Only the counsel for Atty. Francisco appeared. The notice of the said conference addressed to complainant was returned with the notation "unknown at the given address." No new address was provided by the complainant. Both parties were required to submit their respective position papers. For this purpose, Atty. Francisco adopted his Answer.

The Antecedents

Mario Crespo, otherwise known as Mark Jimenez (*Jimenez*), filed a complaint for estafa against complainant, her sister Rosemarie Flaminiano, Marcel Crespo, Geraldine Antonio, Brenda Heffron, Magdalena Cunanan, and Isabel Gonzalez.^[5] The said complaint was docketed as IS No. 074314 with the Office of the City Prosecutor of Makati City. Jimenez alleged that he was the true and beneficial owner of the shares of stock in Clarion Realty and Development Corporation (*Clarion*), which was incorporated specifically for the purpose of purchasing a residential house located in Forbes Park, Makati City (*Forbes property*). The incorporators and original stockholders of *Clarion* were as follows:

Thomas K. Chua	- P500,000.00
Teresita C. Alsua	- P500,000.00
Myla Villanueva	- P249,998.00
Edgar B. Francisco	- P1.00

Soledad - P1.00
Gammat

Simultaneous with the drafting of Clarion's Articles of Incorporation, the above-named stockholders, except for Myla Villanueva (*Myla*), executed a deed of assignment of their respective shares in favor of complainant, who was then Jimenez's common-law partner. Clarion's total capitalization was only P5,000,000.00. Thus, in order to achieve its purpose of purchasing the Forbes property, Clarion simulated a loan from the complainant in the amount of P80,750,000.00. Thereafter, Clarion purchased the Forbes property in the amount of P117,000,000.00 from Gerardo Contreras. To effect the sale, Myla handed a check in the said amount which was funded entirely by Jimenez. The sale, however, was undervalued. In the deed of sale, it was made to appear that the Forbes property was purchased for P78,000,000.00 only. Further, the money used as the purchase price was not reflected in the books of Clarion.

On July 19, 2001, Thomas Chua and Teresita Alsua assigned their shares in Clarion to Jimenez by virtue of a deed of trust. On the other hand, Myla's 249,997 shares were transferred to complainant based on a deed of assignment. The remaining one (1) share was transferred to Ma. Carolina C. Crespo. These transactions appeared in Clarion's General Information Sheet (*GIS*) filed with the Securities and Exchange Commission (*SEC*). Resultantly, the subscribed shares of Clarion were as follows:

Mark Jimenez	- P 500,000.00
Caroline Jimenez	- P 749,997.00
Ma. Carolina C. Crespo	- P 1.00
Edgar B. Francisco	- P 1.00
Soledad Gammat	- P 1.00

On November 5, 2002, Jimenez transferred all his shares to complainant by another deed of assignment, making her the holder of Clarion shares amounting to P1,249,997.00.

According to Jimenez's complaint, while he was in prison in the United States in 2004, he learned from Atty. Francisco that his son, Marcel Crespo (*Marcel*), approached the complainant and threatened her, claiming that the United States Internal Revenue Service (*IRS*) was about to go after their properties. Marcel succeeded in persuading complainant to transfer her nominal shares in Clarion to Geraldine Antonio, through another deed of assignment. Again, this was reflected in Clarion's *GIS* for the year 2004.

Thereafter, Jimenez was informed by Atty. Francisco that, through fraudulent means, complainant and her co-respondents in the estafa case, put the Forbes property for sale sometime in August 2004. The said property was eventually sold to Philmetro Southwest Enterprise Inc. (*Philmetro*) for the amount of P118,000,000.00 without Jimenez's knowledge. This sale was again undervalued at P78,000,000.00 per the deed of sale. Atty. Francisco relayed to Jimenez that he was the one who received

the payment for the sale of the Forbes property and that he handed all the proceeds thereof to Rosemarie Flaminiano in the presence of complainant.

Jimenez's complaint for estafa was based on complainant's alleged participation in the fraudulent means in selling the Forbes property which was acquired by Clarion with Jimenez's money. Complainant was duty-bound to remit all the proceeds of the sale to Jimenez as the true and beneficial owner. Complainant and her co-respondents, however, misappropriated and converted the funds for their personal use and benefit.

In support of Jimenez's complaint for estafa, Atty. Francisco executed an affidavit reiterating its factual averments.^[6] A perusal of this affidavit likewise would show the following claims and admissions, among other things, of Atty. Francisco:

1. Sometime in August 2004, complainant called him, asking for assistance in the documentation of the sale of the Forbes property owned by Clarion. Atty. Francisco asked her if she had secured permission from Mark Jimenez and complainant answered in the affirmative.
2. The Board of Directors of Clarion issued a resolution authorizing him to negotiate the sale of the property.
3. For purposes of the sale, he opened an account with Security Bank, San Francisco Del Monte branch. When the cash payment was deposited, he withdrew the amount and handed the same to Rosemarie Flaminiano in the presence of complainant.
4. All transfers of shares were caused without any consideration. The transfer taxes, however, were paid.
5. When Mark Jimenez returned to the Philippines, he was able to confirm that the sale of the Forbes property was without his knowledge and approval. The proceeds of the sale had already been farmed out to different corporations established by complainant and her sister.
6. The frequent changes in stockholdings were premeditated in order to steal the money of Mark Jimenez.

The Complaint

Complainant was shocked upon reading the allegations in the complaint for estafa filed by Jimenez against her. She felt even more betrayed when she read the affidavit of Atty. Francisco, on whom she relied as her personal lawyer and Clarion's corporate counsel and secretary of Clarion. This prompted her to file a disciplinary case against Atty. Francisco for representing conflicting interests. According to her, she usually conferred with Atty. Francisco regarding the legal implications of Clarion's transactions. More significantly, the principal documents relative to the sale and transfer of Clarion's property were all prepared and drafted by Atty. Francisco or the members of his law office.^[7] Atty. Francisco was the one who actively participated in the transactions involving the sale of the Forbes property. Without

admitting the truth of the allegations in his affidavit, complainant argued that its execution clearly betrayed the trust and confidence she reposed on him as a lawyer. For this reason, complainant prayed for the disbarment of Atty. Francisco.

The Respondent's Position

In his Answer,^[8] Atty. Francisco replied that Jimenez initially engaged his services in 1998 for the incorporation of Clarion for the purpose of purchasing a residential house in Forbes Park, where he intended to live with his long-time partner, the complainant; that the original incorporators and stockholders of Clarion held their respective shares in trust for Jimenez; that the subsequent changes in the ownership of Clarion shareholdings were also pursuant to Jimenez's orders; and that as the corporate secretary and legal counsel of Clarion, he prepared all the legal documentation to give effect to the said transfers and, ultimately, to the purchase of the Forbes property.

Atty. Francisco further stated that sometime in 2004, Jimenez was imprisoned in the United States for excessive contributions to the Democratic Party; that during this time, Jimenez's son, Marcel, and the complainant, asked him again to change the ownership of Clarion shares in order to avoid the attachment of Jimenez's properties in a tax evasion case; that he acceded to the request on the belief that this was in accordance with Jimenez's wishes; and that as a result, almost 100% of Clarion's ownership was transferred in the name of Geraldine Antonio.

Atty. Francisco also claimed that, thereafter, complainant tasked him to talk to prospective buyers and to negotiate the sale of the Forbes property until it was sold for P118,000,000.00; that Marcel and complainant led him to believe that Jimenez had knowledge of the sale as they were in constant communication with him; that all these representations, however, turned out to be false when Jimenez returned to the Philippines and discovered that the proceeds of the sale were coursed through other corporations set up by complainant and her sister; that Jimenez likewise learned of the successive sale of his other properties, including Meridian Telekoms Inc., by the members of his family; and that this led to the filing of the estafa case against the complainant and the others. As a witness to the fraud committed against Jimenez, Atty. Francisco executed the affidavit narrating the facts and circumstances surrounding the said transactions.

Atty. Francisco mainly argued that he violated neither the rule on disclosures of privileged communication nor the proscription against representing conflicting interests, on the ground that complainant was not his client. He was the lawyer of Jimenez and the legal counsel of Clarion, but never of the complainant. He might have assisted her in some matters, but these were all under the notion that Jimenez had given him authority to do so. Further, though he acted as legal counsel for Clarion, no attorney-client relationship between him and complainant was formed, as a corporation has a separate and distinct personality from its shareholders. While he admitted that the legal documentation for the transfer of shares and the sale of the Forbes property were prepared by him and notarized by the members of his law firm, he averred that these acts were performed in his capacity as the corporate secretary and legal counsel of Clarion, and not as a lawyer of complainant. Therefore, he served no conflicting interests because it was not a "former client" and a "subsequent client" who were the opposing parties in litigation.

He opined that assuming that complainant was indeed his client, the rule on privileged communication does not apply to his case. Here, complainant failed to allege, much less prove, the requisites for the application of the privilege. When Atty. Francisco denied being her lawyer, the complainant should have established, by clear and convincing evidence, that a lawyer-client relationship indeed existed between them. Complainant failed to do this.

Arguing that the execution of his affidavit in the estafa case was but a truthful narration of facts by a witness, Atty. Francisco cited *Gonzaga v. Cañete*,^[9] where the Court ruled that "the fact that one of the witnesses for the defendant had been formerly the lawyer for the defendant in this suit was no ground for rejecting his testimony." In this case, he merely attested to the fraudulent acts of complainant, in the course of which, he defended and served Jimenez as a client. This was likewise pursuant to the rule that unlawful and illegal motives and purposes were not covered by the privilege. It was just unfortunate that he fell for the ploy of complainant.

The Findings of the Investigating Commissioner

In the Commissioner's Report,^[10] dated November 7, 2011, the Investigating Commissioner, Atty. Jose I. dela Rama, Jr. (*Investigating Commissioner*), found Atty. Francisco guilty of violations of the CPR and recommended that he be suspended for one (1) year from the practice of law.

Initially, the Investigating Commissioner noted that the subsequent affidavit of desistance executed by Jimenez in the estafa case did not affect the investigation conducted by the CBD as it was not an ordinary court which accepted compromises or withdrawals of cases. After weighing on the claims of the parties, the Investigating Commissioner concluded that nothing in the records would show that a lawyer-client relationship existed between Atty. Francisco and Jimenez.^[11] The circumstances would show that Atty. Francisco was an original incorporator and shareholder of Clarion. He was also the legal counsel and corporate secretary of the said corporation, the articles of incorporation of which did not include Jimenez as an original incorporator. He became a stockholder only in 2001, when Jimenez acquired shares from Thomas Chua and Teresita Alsua. Jimenez's participation in Clarion affairs again stopped when he assigned the entirety of his shares in favor of complainant.

Granting that Jimenez really owned 100% of Clarion as alluded to by Atty. Francisco, the report stated that it would appear that the latter permitted misrepresentations as to Clarion's ownership to be reported to the SEC through its GIS. The Investigating Commissioner also pointed out Atty. Francisco's clear admission that the transfer of shares within Clarion were "without any consideration," ran counter to the deeds of assignment that he again admittedly executed as corporate counsel. Worse, Atty. Francisco admitted to have simulated the loan and undervalued the consideration of the effected sale of the Forbes property, which displayed his unlawful, dishonest, immoral, and deceitful conduct in violation of Canon 1 of the CPR. Further, when he executed the affidavit containing allegations against the interest of Clarion and complainant, the Investigating Commissioner held that Atty. Francisco violated the rule on privileged communication and engaged in an act that constituted representation of conflicting interests in violation of Canons 15 and 21 of