

SECOND DIVISION

**[A.C. No. 9387 (Formerly CBD Case No. 05-1562),
June 20, 2012]**

**EMILIA R. HERNANDEZ, COMPLAINANT, VS. ATTY. VENANCIO B.
PADILLA, RESPONDENT.**

RESOLUTION

SERENO, J.:

This is a disbarment case filed by Emilia Hernandez (complainant) against her lawyer, Atty. Venancio B. Padilla (respondent) of Padilla Padilla Bautista Law Offices, for his alleged negligence in the handling of her case.

The records disclose that complainant and her husband were the respondents in an ejectment case filed against them with the Regional Trial Court of Manila (RTC).

In a Decision^[1] dated 28 June 2002, penned by Judge Rosmari D. Carandang (Judge Carandang), the RTC ordered that the Deed of Sale executed in favor of complainant be cancelled; and that the latter pay the complainant therein, Elisa Duigan (Duigan), attorney's fees and moral damages.

Complainant and her husband filed their Notice of Appeal with the RTC. Thereafter, the Court of Appeals (CA) ordered them to file their Appellants' Brief. They chose respondent to represent them in the case. On their behalf, he filed a Memorandum on Appeal instead of an Appellants' Brief. Thus, Duigan filed a Motion to Dismiss the Appeal. The CA granted the Motion in a Resolution^[2] dated 16 December 2003.

No Motion for Reconsideration (MR) of the Resolution dismissing the appeal was filed by the couple. Complainant claims that because respondent ignored the Resolution, he acted with "deceit, unfaithfulness amounting to malpractice of law."^[3] Complainant and her husband failed to file an appeal, because respondent never informed them of the adverse decision. Complainant further claims that she asked respondent "several times" about the status of the appeal, but "despite inquiries he deliberately withheld response [sic]," to the damage and prejudice of the spouses.^[4]

The Resolution became final and executory on 8 January 2004. Complainant was informed of the Resolution sometime in July 2005, when the Sheriff of the RTC came to her house and informed her of the Resolution.

On 9 September 2005, complainant filed an Affidavit of Complaint^[5] with the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP), seeking the disbarment of respondent on the following grounds: deceit, malpractice, and grave misconduct. Complainant prays for moral damages in the amount of P350,000.

Through an Order^[6] dated 12 September 2005, Director of Bar Discipline Rogelio A. Vinluan ordered respondent to submit an answer to the Complaint. In his Counter-Affidavit/Answer,^[7] respondent prayed for the outright dismissal of the Complaint.

Respondent explained that he was not the lawyer of complainant. He averred that prior to the mandatory conference set by the IBP on 13 December 2005, he had never met complainant, because it was her husband who had personally transacted with him. According to respondent, the husband "despondently pleaded to me to prepare a Memorandum on Appeal because according to him the period given by the CA was to lapse within two or three days."^[8] Thus, respondent claims that he filed a Memorandum on Appeal because he honestly believed that "it is this pleading which was required."^[9]

Before filing the Memorandum, respondent advised complainant's husband to settle the case. The latter allegedly "gestured approval of the advice."^[10]

After the husband of complainant picked up the Memorandum for filing, respondent never saw or heard from him again and thus assumed that the husband heeded his advice and settled the case. When respondent received an Order from the CA requiring him to file a comment on the Motion to Dismiss filed by Duigan, he "instructed his office staff to contact Mr. Hernandez thru available means of communication, but to no avail."^[11] Thus, when complainant's husband went to the office of respondent to tell the latter that the Sheriff of the RTC had informed complainant of the CA's

Resolution dismissing the case, respondent was just as surprised. The lawyer exclaimed, "KALA KO BA NAKIPAG AREGLO NA KAYO."^[12]

In his 5 January 2009 Report,^[13] IBP Investigating Commissioner Leland R. Villadolid, Jr. found that respondent violated Canons 5, 17, and 18 of the Code of Professional Responsibility (the Code). He recommended that respondent be suspended from practicing law from 3 to 6 months.

The board of governors of the IBP issued Resolution No. XIX-2010-452 on 28 August 2010. Therein, they resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner. Respondent was suspended from the practice of law for six months.

Respondent filed a Motion for Reconsideration.^[14] He prayed for the relaxation of the application of the Canons of the Code. On 14 January 2012, the IBP board of governors passed Resolution No. XX-2012-17^[15] partly granting his Motion and reducing the penalty imposed to one-month suspension from the practice of law.

Pursuant to Rule 139-B of the Rules of Court, acting Director for Bar Discipline Dennis A.B. Funa, through, a letter^[16] addressed to then Chief Justice Renato C. Corona, transmitted the documents pertaining to the disbarment Complaint against respondent.

We adopt the factual findings of the board of governors of the IBP. This Court,

however, disagrees with its Decision to reduce the penalty to one-month suspension. We thus affirm the six-month suspension the Board originally imposed in its 28 August 2010 Resolution.

Respondent insists that he had never met complainant prior to the mandatory conference set for the disbarment Complaint she filed against him. However, a perusal of the Memorandum of Appeal filed in the appellate court revealed that he had signed as counsel for the defendant-appellants therein, including complainant and her husband.^[17] The pleading starts with the following sentence: "DEFENDANT[S]-APPELLANTS, by counsel, unto this Honorable Court submit the Memorandum and further allege that: x x x."^[18] Nowhere does the document say that it was filed only on behalf of complainant's husband.

It is further claimed by respondent that the relation created between him and complainant's husband cannot be treated as a "client-lawyer" relationship, viz:

It is no more than a client needing a legal document and had it prepared by a lawyer for a fee. Under the factual milieu and circumstances, it could not be said that a client entrusted to a lawyer handling and prosecution of his case that calls for the strict application of the Code; x x x^[19]

As proof that none of them ever intended to enter into a lawyer-client relationship, he also alleges that complainant's husband never contacted him after the filing of the Memorandum of Appeal. According to respondent, this behavior was "very unusual if he really believed that he engaged" the former's services.^[20]

Complainant pointed out in her Reply^[21] that respondent was her lawyer, because he accepted her case and an acceptance fee in the amount of P7,000.

According to respondent, however, "[C]ontrary to the complainant's claim that he charged P7,000 as acceptance fee," "the fee was only for the preparation of the pleading which is even low for a Memorandum of Appeal: xxx."^[22]

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.^[23] Once a lawyer agrees to handle a case, it is that lawyer's duty to serve the client with competence and diligence.^[24] Respondent has failed to fulfill this duty.

According to respondent, he merely drafted the pleading that complainant's husband asked from him. Respondent also claims that he filed a Memorandum of Appeal, because he "honestly believed" that this was the pleading required, based on what complainant's husband said.

The IBP Investigating Commissioner's observation on this matter, in the 5 January 2009 Report, is correct. Regardless of the particular pleading his client may have believed to be necessary, it was respondent's duty to know the proper pleading to be filed in appeals from RTC decisions, viz: