

SECOND DIVISION

[A.C. No. 6368, June 13, 2012]

**FIDELA BENGCO AND TERESITA BENGCO, COMPLAINANTS, VS.
ATTY. PABLO S. BERNARDO, RESPONDENT.**

DECISION

REYES, J.:

This is a complaint^[1] for disbarment filed by complainants Fidela G. Bengco (Fidela) and Teresita N. Bengco (Teresita) against respondent Atty. Pablo Bernardo (Atty. Bernardo) for deceit, malpractice, conduct unbecoming a member of the Bar and violation of his duties and oath as a lawyer.

The acts of the respondent which gave rise to the instant complaint are as follows:

That sometime on or about the period from April 15, 1997 to July 22, 1997, Atty. Pablo Bernardo with the help and in connivance and collusion with a certain Andres Magat [wilfully] and illegally committed fraudulent act with intent to defraud herein complainants Fidela G. Bengco and Teresita N. Bengco by using false pretenses, deceitful words to the effect that he would expedite the titling of the land belonging to the Miranda family of Tagaytay City who are the acquaintance of complainants herein and they convinced herein complainant[s] that if they will finance and deliver to him the amount of [P]495,000.00 as advance money he would expedite the titling of the subject land and further by means of other similar deceit like misrepresenting himself as lawyer of William Gatchalian, the prospective buyer of the subject land, who is the owner of Plastic City at Canomay Street, Valenzuela, Metro Manila and he is the one handling William Gatchalian's business transaction and that he has contracts at NAMREA, DENR, CENRO and REGISTER OF DEEDS which representation he well knew were false, fraudulent and were only made to induce the complainant[s] to give and deliver the said amount ([P]495,000.00) and once in possession of said amount, far from complying with his obligation to expedite and cause the titling of the subject land, [wilfully], unlawfully and illegally misappropriated, misapplied and converted the said amount to his personal use and benefit and despite demand upon him to return the said amount, he failed and refused to do so, which acts constitute deceit, malpractice, conduct unbecoming a member of the Bar and Violation of Duties and Oath as a lawyer.^[2]

In support of their complaint, the complainants attached thereto Resolutions dated December 7, 1998^[3] and June 22, 1999^[4] of the Third Municipal Circuit Trial Court

(MCTC) of Sto. Tomas and Minalin, Sto. Tomas, Pampanga and the Office of the Provincial Prosecutor of San Fernando, Pampanga, respectively, finding probable cause for the filing of the criminal information^[5] against both Atty. Bernardo and Andres Magat (Magat) before the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 48, charging them with the crime of Estafa punishable under Article 315, par. 2(a) of the Revised Penal Code.

The respondent was required to file his Comment.^[6] On September 24, 2004, the respondent filed an undated Comment,^[7] wherein he denied the allegations against him and averred the following:

2. He had not deceived both complainants between the period from April 15, 1997 to July 22, 1997 for purposes of getting from them the amount of [P]495,000.00. It was Andy Magat whom they contacted and who in turn sought the legal services of the respondent. It was Andy Magat who received the said money from them.

3. There was no connivance made and entered into by Andy Magat and respondent. The arrangement for titling of the land was made by Teresita N. Bengco and Andy Magat with no participation of respondent.

4. The acceptance of the respondent to render his legal service is legal and allowed in law practice.^[8]

The case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On February 16, 2005, the IBP ordered the respondent to submit a verified comment pursuant to Rule 139-B, Section 6 of the Rules of Court as it appeared that the respondent's undated comment filed with the Court was not verified.^[9]

On March 15, 2005, respondent through counsel requested for an additional fifteen (15) days from March 17, 2005, or until April 1, 2005, within which to comply due to his medical confinement.^[10]

Thereafter, on April 4, 2005, the respondent filed a second motion^[11] for extension praying for another 20 days, or until April 22, 2005, alleging that he was still recovering from his illness.

On August 3, 2005, the case was set for mandatory conference.^[12] The respondent failed to appear; thus, the IBP considered the respondent in default for his failure to appear and for not filing an answer despite extensions granted. The case was then submitted for report and recommendation.^[13]

Based on the records of the case, Investigating Commissioner Rebecca Villanueva-Maala made the following findings:

[O]n or before the period from 15 April 1997 to 22 July 1997, respondent with the help and in connivance and collusion with a certain Andres Magat ("Magat"), by using false pretenses and deceitful words, [wilfully] and illegally committed fraudulent acts to the effect that respondent would expedite the titling of the land belonging to the Miranda family of Tagaytay City, who were the acquaintance of complainants.

Respondent and Magat convinced complainants that if they finance and deliver to them the amount of [P]495,000.00 as advance money, they would expedite the titling of the subject land. Respondent represented himself to be the lawyer of William Gatchalian, the owner of Plastic City located at Canomay Street, Valenzuela, Metro Manila, who was allegedly the buyer of the subject land once it has been titled. Respondent and Magat also represented that they have contacts at NAMREA, DENR, CENRO and the Register of Deeds which representation they knew to be false, fraudulent and were only made to induce complainants to give and deliver to them the amount of [P]495,000.00. Once in possession of the said amount, far from complying with their obligation to expedite and cause the titling of the subject land, respondent and Magat [wilfully], unlawfully and illegally misappropriated, misapplied and converted the said amount to their personal use and benefit and despite demand upon them to return the said amount, they failed and refused to do so.

In view of the deceit committed by respondent and Magat, complainants filed a complaint for Estafa against the former before the Third Municipal Circuit Trial Court, of Sto. Tomas and Minalin, Sto. Tomas, Pampanga. In the preliminary investigation conducted by the said court, it finds sufficient grounds to hold respondent and Magat for trial for the crime of Estafa defined under par. 2(a) of Art. 315 of the Revised Penal Code, as amended. The case was transmitted to the Office of the Provincial Prosecutor of Pampanga for appropriate action as per Order dated 7 December 1998.

The Assistant Provincial Prosecutor of the Office of the Provincial Prosecutor of Pampanga conducted a re-investigation of the case. During the re-investigation thereof, Magat was willing to reimburse to complainants the amount of [P]200,000.00 because according to him the amount of [P]295,000.00 should be reimbursed by respondent considering that the said amount was turned over to respondent for expenses incurred in the documentation prior to the titling of the subject land. Both respondent and Magat requested for several extensions for time to pay back their obligations to the complainants. However, despite extensions of time granted to them, respondent and Magat failed to fulfil their promise to pay back their obligation. Hence, it was resolved that the offer of compromise was construed to be an implied admission of guilt. The Asst. Provincial Prosecutor believes that there was no reason to disturb the findings of the investigating judge and an Information for Estafa was filed against respondent and Magat on 8 July 1999 before the Regional Trial Court, San Fernando, Pampanga.

The failure of the lawyer to answer the complaint for disbarment despite due notice on several occasions and appear on the scheduled hearings

set, shows his flouting resistance to lawful orders of the court and illustrates his despicency for his oath of office as a lawyer which deserves disciplinary sanction x x x.

From the facts and evidence presented, it could not be denied that respondent committed a crime that import deceit and violation of his attorney's oath and the Code of Professional Responsibility under both of which he was bound to 'obey the laws of the land.' The commission of unlawful acts, specially crimes involving moral turpitude, acts of dishonesty in violation of the attorney's oath, grossly immoral conduct and deceit are grounds for suspension or disbarment of lawyers (Rule 138, Section 27, RRC).

The misconduct complained of took place in 1997 and complainants filed the case only on 16 April 2004. As provided for by the Rules of Procedure of the Commission of Bar Discipline, as amended, dated 24 March 2004, "A complaint for disbarment, suspension or discipline of attorneys prescribes in two (2) years from the date of the professional misconduct" (Section 1, Rule VIII).^[14]

The Investigating Commissioner recommended that:

x x x [R]espondent ATTY. PABLO A. BERNARDO be SUSPENDED for a period of TWO YEARS from receipt hereof from the practice of his profession as a lawyer and as a member of the Bar. ^[15]

On February 1, 2007, the IBP Board of Governors issued Resolution No. XVII-2007-065, viz:

RESOLVED to ADOPT and APPROVE, as it is hereby 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, Atty. Pablo S. Bernardo is hereby ordered, **the restitution of the amount of [P]200,000.00** within sixty (60) days from receipt of notice with Warning that if he does not return the amount within sixty days from receipt of this Order then he will be meted the penalty of ***Suspension from the practice of law for one (1) year.***^[16]

On May 16, 2007, the respondent promptly filed a Motion for Reconsideration^[17] of the aforesaid Resolution of the IBP. The respondent averred that: (1) the IBP resolution is not in accord with the rules considering that the complaint was filed more than two (2) years from the alleged misconduct and therefore, must have been dismissed outright; (2) he did not commit any misrepresentation in convincing Fidela to give him money to finance the titling of the land; (3) he was hired as a lawyer through Magat who transacted with Teresita as evidenced by a Memorandum