

## **THIRD DIVISION**

**[ A.C. No. 9390, August 01, 2012 ]**

**EMILIA O. DHALIWAL, COMPLAINANT, VS. ATTY. ABELARDO B. DUMAGUING, RESPONDENT.**

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

**PERLAS-BERNABE, J.:**

Emilia O. Dhaliwal filed a complaint for violation of Canon 16 of the Code of Professional Responsibility against Atty. Abelardo B. Dumaguing.

In her sworn statement, complainant alleged that she engaged the services or respondent in connection with the purchase of a parcel of land from Fil-Estate Development Inc. (Fil-Estate). On June 13, 2000, upon the instruction of respondent, complainant's daughter and son-in-law withdrew P342,000.00 from the Philippine National Bank (PNB) and handed the cash over to respondent. They then proceeded to BPI Family Bank Malcolm Square Branch where respondent purchased two manager's checks in the amounts of P58,631.94 and P253,188.00 both payable to the order of Fil-Estate Inc. When asked why the manager's checks were not purchased at PNB, respondent explained that he has friends at the BPI Family Bank and that is where he maintains an account. These manager's checks were subsequently consigned with the Housing and Land Use Regulatory Board (HLURB) after complainant's request to suspend payments to Fil-Estate had been granted. On September 22, 2000, respondent, on behalf of complainant, filed with the HLURB a complaint for delivery of title and damages against Fil-Estate. A week after or on September 29, 2000, he withdrew the two manager's checks that were previously consigned. On March 3, 2003, complainant informed the HLURB through a letter that respondent was no longer representing her. On March 11, 2003, the HLURB promulgated its Decision, adverse to complainant, finding the case for delivery of title and damages premature as there was no evidence of full payment of the purchase price. Thereafter, complainant made demands upon respondent to return and account to her the amounts previously consigned with the HLURB. Respondent did not comply. Thus, complainant prays that respondent be disbarred.

In his answer, respondent admitted substantially all of the allegations in the complaint. In defense, he claims that the amount of P311,819.94 was consigned to the HLURB to cover the full payment of the balance of the purchase price of the lot with Fil-Estate. Fil-Estate, however, did not accept the same as it wanted complainant to also pay interests and surcharges totalling more than P800,000.00. Because the amount was formally consigned with the HLURB, he allegedly filed a motion<sup>[1]</sup> to verify if the judgment in the case was already satisfied. He claimed that his motion has not yet been acted upon; hence, he did not deem it proper as yet to return the consigned amount.

Following the submission by complainant of her verified position paper and the

failure of respondent to submit his, despite having been given ample opportunity to do so, the Commission on Bar Discipline, through Attorney Gerely C. Rico, submitted its Report and Recommendation finding complainant to have sufficiently established that respondent violated Canon 16 of the Code of Professional Responsibility. It also found respondent to have submitted a false and fabricated piece of documentary evidence, as the January 2004 Motion attached to his answer as Annex A did not bear any proof of service upon the opposing party and proof of filing with the HLURB. The Commission recommended that respondent be suspended from the practice of law for a period of one (1) year. On September 19, 2007, the IBP Board of Governors passed Resolution No. XVIII-2007-93, adopting with modification the Commission's Report and Recommendation, to wit:

*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, and considering Respondent's violation of Canon 16 of the Code of Professional Responsibility by his failure to return and account to complainant the amount previously consigned with the HLURB despite demand, Atty. Abelardo B. Dumaguing is hereby **SUSPENDED** from the practice of law for six (6) months and Ordered to Return the amount of P311,819.94 to complainant within thirty (30) days from receipt of notice.*

Respondent's motion for reconsideration was denied by the IBP Board of Governors in Resolution No. XX-2012-42.

The Court adopts the IBP's findings of fact and conclusions of law.

The Code of Professional Responsibility provides:

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.

Rule 16.02-A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03-A lawyer shall deliver the funds and property of his client when due or upon demand.

Money entrusted to a lawyer for a specific purpose, such as payment for the balance of the purchase price of a parcel of land as in the present case, but not used for the purpose, should be immediately returned.<sup>[2]</sup> "A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment."<sup>[3]</sup>