

EN BANC

**[A.C. No. 8253(Formerly CBD Case No. 03-1067),
March 15, 2011]**

**ERLINDA R. TAROG, COMPLAINANT, VS. ATTY. ROMULO L.
RICAFORT, RESPONDENT.**

D E C I S I O N

PER CURIAM:

We resolve a complaint for disbarment for alleged grave misconduct brought against Atty. Romulo L. Ricafort for his failure to account for and to return the sums of money received from his clients for purposes of the civil action to recover their property from a foreclosing banking institution he was handling for them. The original complainant was Arnulfo A. Tarog, but his wife, Erlinda R. Tarog, substituted him upon his intervening death.

Antecedents

In 1992, the Tarogs sought the advice of Atty. Jaime L. Miralles regarding their bank-foreclosed property located in the Bicol Region. Atty. Miralles advised them to engage a Bicol-based attorney for that purpose. Thus, they went to see Atty. Ricafort accompanied by Vidal Miralles, their friend who was a brother of Atty. Miralles.^[1] They ultimately engaged Atty. Ricafort as their attorney on account of his being well-known in the community, and being also the Dean of the College of Law of Aquinas University where their son was then studying.

Having willingly accepted the engagement, Atty. Ricafort required the Tarogs to pay P7,000.00 as filing fee, which they gave to him.^[2] He explained the importance of depositing P65,000.00 in court to counter the P60,000.00 deposited by Antonio Tee, the buyer of the foreclosed property. After they informed him that they had only P60,000.00, he required them to add some more amount (*dagdagan niyo ng konti*).^[3] To raise the P65,000.00 for the Tarogs, therefore, Vidal solicited a loan from one Sia with the guarantee of his brother Atty. Miralles. Sia issued a check in that amount in the name of Arnulfo.^[4]

On November 7, 1992, the Tarogs and Vidal went to the office of Atty. Ricafort to deliver the P65,000.00. When Arnulfo said that he had first to encash the check at the bank, Atty. Ricafort persuaded him to entrust the check to him instead so that he (Atty. Ricafort) would be the one to encash it and then deposit the amount in court. On that representation, Arnulfo handed the check to Atty. Ricafort.^[5]

After some time, the Tarogs visited Atty. Ricafort to verify the status of the consignation. Atty. Ricafort informed them that he had not deposited the amount in court, but in his own account. He promised to return the money, plus interest.

Despite several inquiries about when the amount would be returned, however, the Tarogs received mere assurances from Atty. Ricafort that the money was in good hands.

The Tarogs further claimed that the Regional Trial Court, Branch 52, in Sorsogon (RTC), where their complaint for annulment of sale was being heard, had required the parties to file their memoranda. Accordingly, they delivered P15,000.00 to Atty. Ricafort for that purpose, but he did not file the memorandum.^[6]

When it became apparent to the Tarogs that Atty. Ricafort would not make good his promise of returning the P65,000.00, plus interest, Arnulfo demanded by his letter dated December 3, 2002 that Atty. Ricafort return the P65,000.00, plus interest, and the P15,000.00 paid for the filing of the memorandum.^[7] Yet, they did not receive any reply from Atty. Ricafort.

In his defense, Atty. Ricafort denied that the P65,000.00 was intended to be deposited in court, insisting that the amount was payment for his legal services under a "package deal," that is, the amount included his acceptance fee, attorney's fee, and appearance fees from the filing of the complaint for annulment of sale until judgment, but excluding appeal. He claimed that the fees were agreed upon after considering the value of the property, his skill and experience as a lawyer, the labor, time, and trouble involved, and his professional character and social standing; that at the time he delivered the check, Arnulfo read, understood, and agreed to the contents of the complaint, which did not mention anything about any consignment;^[8] and that Arnulfo, being a retired school principal, was a learned person who would not have easily fallen for any scheme like the one they depicted against him.

Findings of the IBP Commissioner

Following his investigation, Commissioner Wilfredo E.J.E. Reyes of the Integrated Bar of the Philippines-Commission on Bar Discipline rendered his Report and Recommendation dated October 7, 2004,^[9] in which he concluded that:

It is respectfully recommended that respondent, Atty. Romulo L. Ricafort be DISBARRED and be ordered to return the amount of P65,000 and P15,000 which he got from his client.

RESPECTFULLY SUBMITTED.

Commissioner Reyes regarded the testimonies of Erlinda and Vidal more credible than the testimony of Atty. Ricafort, observing:

Based on the said testimony, statements and actuations of complainant Erlinda Tarog and his collaborating witness, we find their statements to be credible.

Atty. Ricafort in his testimony attempted to show that the amount of P65,000.00 was paid to him by the complainant as acceptance fee on a package deal basis and under said deal, he will answer the filing fee,

attorney's fees and other expenses incurred up to the time the judgment is rendered. He presented a transcript of stenographic notes wherein it was stated that complainant himself did not consign the money in court. The respondent admitted in his testimony that he did not have any retainer agreement nor any memorandum signed or any receipt which would prove that the amount of P65,000.00 was received as an acceptance fee for the handling of the case.

Atty. Romulo Ricafort stated that there was no retainer agreement and that he issued only receipt because the late Arnulfo Tarog will not pay unless a receipt is issued.

The Undersigned Commissioner asked the respondent "Basically you describe that thing that will happen in the litigation related to the payment of fees. But when you received that P65,000.00 did you not put anything there that you will describe the nature of legal work which you will undertake considering that you have considered this P65,000.00 as your attorney's fees? And Atty. Ricafort stated: Yes I did. I do not know why they were not showing the receipt. That is a big amount, Your Honor. They demanded for me the receipt of P30,000.00 how much more with that P65,000.00. They demanded for the receipt of that P65,000.00 but I cannot explain the reason why.....

During the clarificatory questioning, the Undersigned Commissioner also asked Atty. Ricafort why he did not answer the demand letter sent by Arnulfo Tarog and the proof of service of the said letter was presented by the complainant. Conveniently, Atty. Ricafort stated that he did not receive the letter and it was received by their helper who did not forward the letter to him. He also adopted the position that the complainant was demanding the P65,000.00 wherefore this case was filed. When confronted by the testimony of Mr. Vidal Miralles, the respondent Atty. Ricafort just denied the allegation that he received the P65,000.00 for deposit to the court. He also denied that Mr. Miralles has visited his residence for follow-up the reimbursement.

The Undersigned Commissioner asked the respondent if he has personal animosity with Arnulfo Tarog, Erlinda Tarog and Vidal Miralles and if there are any reason why this case was filed against him. In his answer the respondent stated that we have been very good friends for the past ten (10) years and he said that in fact he was surprised when the complaint was filed against him and they even attached the decision of the Supreme Court for his suspension and maybe they are using this case to be able to collect from him.

The main defense of the respondent is that the complainant in this case testified that the total amount to redeem his property is P240,000.00 and when asked whether he consigned the money to the court to redeem the property he answered in the negative.

The alleged payment of P65,000.00 was made prior to the said testimony sometime in 1992. Hence, it was stated on complainant's affidavit that on November 7, 1992, prior to filing said complaint I had given him the sum

of Sixty Five Thousand Pesos to be deposited to the Regional Trial Court representing redemption money of the Real Estate Mortgage. The amount of P65,000.00 is very much close to the amount of the principal obligation of the complainant and it is not surprising for a non-lawyer to hold on to the belief that with the filing of the case for annulment of foreclosure his case would be strengthened by making a deposit in court hence, the motivation to produce the deposit was logical and natural insofar as the complainant is concerned. The testimony of the complainant in court that the bank needed P240,000.00 for the redemption of the property will have no bearing on the actuation of the complainant who has been required to deposit P65,000.00 by his lawyer. The Undersigned Commission has no alternative but to believe in the credibility and truthfulness of complainant's narration that of Mrs. Erlinda Tarog and Vidal Miralles.^[10]

Commissioner Reyes concluded that Atty. Ricafort violated Canon 15, and Rules 16.01, 16.02 and 16.03 of Canon 16 of the *Code of Professional Responsibility* by taking advantage of the vulnerability of his clients and by being dishonest in his dealings with them by refusing to return the amount of P65,000.00 to them.

On November 4, 2004, the IBP Board of Governors adopted Resolution No. XVI-2004-473,^[11] resolving to return the matter to Commissioner Reyes for a clarification of whether or not there was evidence to support the claim that the P65,000.00 had been in payment of attorney's fees and other expenses.

On October 11, 2005, Commissioner Reyes issued a second Report and Recommendation,^[12] in which he declared that Atty. Ricafort did not present any retainer agreement or receipt to prove that the amount of P65,000.00 had been part of his attorney's fees; that Atty. Ricafort had willfully ignored the demand of Arnulfo by not replying to the demand letter; that, instead, Atty. Ricafort had insisted that the househelp who had received the demand letter had not given it to him; and that in his (Commissioner Reyes) presence, Atty. Ricafort had also promised to the complainant that he would settle his liability, but Atty. Ricafort did not make good his promise despite several resettings to allow him to settle his obligation.

Action of IBP Board of Governors

Through Resolution No. XVII-2006-569,^[13] therefore, the IBP Board of Governors adopted and approved the Report and Recommendation of Commissioner Reyes and recommended the disbarment of Atty. Ricafort and the order for him to return the amounts of P65,000.00 and P15,000.00 to Erlinda, viz:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, 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 that Respondent has taken advantage of his client [sic] vulnerability and has been dishonest with his dealings to his client, Atty.

Romulo L. Ricafort is hereby DISBARRED and Ordered to Return the amount of P65,000 and P15,000 to complainant.

Atty. Ricafort moved for reconsideration,^[14] maintaining that a retainer agreement was immaterial because he had affirmed having received the P65,000.00 and having issued a receipt for the amount; that he had not kept the receipt because "the practice of lawyers in most instances is that receipt is issued without duplicate as it behooves upon the client to demand for a receipt;"^[15] that considering that the Tarogs had produced a photocopy of the receipt he had issued for the P30,000.00 in connection with their appeal, it followed that a similar receipt for attorney's fees had been made at the time when the case had been about to be filed in the RTC; that the testimonies of Erlinda and Vidal were inconsistent with Arnulfo's affidavit; and that he did not receive Arnulfo's demand letter, which was received by one Gemma Agnote (the name printed on the registry receipt), whom he did not at all know.

Acting on Atty. Ricafort's *motion for reconsideration*, the IBP Board of Governors downgraded the penalty from disbarment to indefinite suspension,^[16] thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Recommendation of the Board of Governors First Division 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, the Motion for Reconsideration is hereby DENIED with modification of Resolution No. XVII-2006-509 of the Board of Governors dated 18 November 2006, that in lieu of the Disbarment of Atty. Romulo Ricafort, he is INDEFINITELY SUSPENDED from the practice of law and Ordered to return the amount of P65,000 and P15,000 to complainant.

Atty. Ricafort filed a second *motion for reconsideration*,^[17] assailing the resolution of the IBP Board of Governors for violating Section 12, Rule 139-B of the *Rules of Court* requiring the decision of the IBP Board of Governors to be in writing and to clearly and distinctly state the facts and reasons on which the decision was based.

Hence, the administrative case is now before the Court for resolution.

Ruling

We affirm the findings of the Commissioner Reyes, because they were supported by substantial evidence. However, we impose the penalty of disbarment instead of the recommended penalty of indefinite suspension, considering that Atty. Ricafort committed a very serious offense that was aggravated by his having been previously administratively sanctioned for a similar offense on the occasion of which he was warned against committing a similar offense.

A.

**Version of the complainants was
more credible than version of Atty. Ricafort**