

EN BANC

[**A.C. No. 8159 (formerly CBD 05-1452), April 23, 2010**]

REYNARIA BARCENAS, COMPLAINANT, VS. ATTY. ANORLITO A. ALVERO, RESPONDENT.

DECISION

PERALTA, J.:

Before us is a Complaint^[1] dated May 17, 2005 for disciplinary action against respondent Atty. Anorlito A. Alvero filed by Reynaria Barcenas with the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 05-1452, now Administrative Case (A.C.) No. 8159.

The facts as culled from the records are as follows:

On May 7, 2004, Barcenas, through her employee Rodolfo San Antonio (San Antonio), entrusted to Atty. Alvero the amount of P300,000.00, which the latter was supposed to give to a certain Amanda Gasta to redeem the rights of his deceased father as tenant of a ricefield located in *Barangay* San Benito, Victoria, Laguna. The receipt of the money was evidenced by an acknowledgment receipt^[2] dated May 7, 2004. In the said receipt, Atty. Alvero said that he would deposit the money in court because Amanda Gasta refused to accept the same.^[3]

Later, Barcenas found out that Atty. Alvero was losing a lot of money in cockfights. To check if the money they gave Atty. Alvero was still intact, Barcenas pretended to borrow P80,000.00 from the P300,000.00 and promised to return the amount when needed or as soon as the case was set for hearing. However, Atty. Alvero allegedly replied, "*Akala nyo ba ay madali kunin ang pera pag nasa korte na?*" Subsequently, Barcenas discovered that Atty. Alvero did not deposit the money in court, but instead converted and used the same for his personal needs.

In his letters dated August 18, 2004^[4] and August 25, 2004,^[5] Atty. Alvero admitted the receipt of the P300,000.00 and promised to return the money. The pertinent portions of said letters are quoted as follows:

Dahil sa kagustuhan ng iyong amo na maibalik ko ang perang tinanggap ko sa iyo, lumakad ako agad at pilit kong kinukuha kahit iyon man lang na hiniram sa akin na P80,000.00 pero hindi karakapraka ang lumikom ng gayong halaga. Pero tiniyak sa akin na sa Martes, ika-24 ng buwan ay ibibigay sa akin.

Bukas ay tutungo ako sa amin upang lumikom pa ng karagdang halaga upang maisauli ko ang buong P300,000.00. Nakikiusap

ako sa iyo dahil sa ikaw ang nagbigay sa akin ng pera na bigyan mo ako ng kaunting panahon upang malikom ko ang pera na ipinagkatiwala mo sa akin, hanggang ika-25 ng Agosto, 2004. x x x"
[6]

Maya-mayang alas nuwebe (9:00) titingnan ang lupang aking ipinagbibili ng Dalawang Milyon. Gustong-gusto ng bibili gusto lang makita ang lupa dahil malayo, nasa Cavinti. **Kung ok na sa bibili pinakamatagal na ang Friday ang bayaran.**

Iyong aking sinisingil na isang P344,000.00 at isang P258,000.00 na utang ng taga-Liliw ay darating sa akin ngayong umaga bago mag alas otso. **Kung maydala ng pambayad kahit magkano ay ibibigay ko sa iyo ngayong hapon.**

x x x x

Lahat ng pagkakaperahan ko ay aking ginagawa, pati anak ko ay tinawagan ko na. Pakihintay muna lang ng kauting panahon pa, hindi matatapos ang linggong ito, tapos ang problema ko sa iyo. Pasensiya ka na."^[7]

However, as of the filing of the instant complaint, despite repeated demands, Atty. Alvero failed to return the same. Thus, Barcenas prayed that Atty. Alvero be disbarred for being a disgrace to the legal profession.

On March 30, 2005, the IBP-CBD ordered Atty. Alvero to submit his Answer to the complaint.^[8]

In compliance, in his Answer^[9] dated April 18, 2005, Atty. Alvero claimed that he did not know Barcenas prior to the filing of the instant complaint nor did he know that San Antonio was an employee of Barcenas. He alleged that he came to know Barcenas only when the latter went to him to borrow P60,000.00 "from the amount entrusted to Rodolfo San Antonio" who entrusted to respondent. At that time, Atty. Alvero claimed that San Antonio was reluctant to grant the request because it might jeopardize the main and principal cause of action of the Department of Agrarian Reform Adjudication Board (DARAB) case. Atty. Alvero, however, admitted that he received an amount of P300,000.00 from San Antonio, though he claimed that said money was the principal cause of action in the reconveyance action.^[10]

Atty. Alvero stressed that there was no lawyer-client relationship between him and Barcenas. He, however, insisted that the lawyer-client relationship between him and San Antonio still subsisted as his service was never severed by the latter. He further emphasized that he had not breached the trust of his client, since he had, in fact, manifested his willingness to return the said amount as long as his lawyer-client relationship with San Antonio subsisted. Finally, Atty. Alvero prayed that the instant complaint be dismissed.

On June 20, 2005, the IBP-CBD notified the parties to appear for the mandatory conference.^[11]

Meanwhile, in a separate Affidavit^[12] dated September 19, 2005, San Antonio narrated that he indeed sought Atty. Alvero's professional services concerning an agricultural land dispute. He claimed that Atty. Alvero made him believe that he needed to provide an amount of P300,000.00 in order to file his complaint, as the same would be deposited in court. San Antonio quoted Atty. Alvero as saying: "*Hindi pwedeng hindi kasabay ang pera sa pagpa-file ng papel dahil tubusan yan, kung sakaling ipatubos ay nasa korte na ang pera.*" Believing that it was the truth, San Antonio was forced to borrow money from Barcenas in the amount of P300,000.00. Subsequently, San Antonio gave the said amount to Atty. Alvero, in addition to the professional fees, as shown by an acknowledgment receipt.^[13]

San Antonio further corroborated Barcenas' allegation that they tried to borrow P80,000.00 from the P300,000.00 they gave to Atty. Alvero after they found out that the latter lost a big amount of money in cockfighting. He reiterated that Atty. Alvero declined and stated, "*Akala nyo ba ay madali kunin ang pera pag nasa korte na.*" Later on, they found out that Atty. Alvero lied to them since the money was never deposited in court but was instead used for his personal needs. For several times, Atty. Alvero promised to return the money to them, but consistently failed to do so. San Antonio submitted Atty. Alvero's letters dated August 18, 2004^[14] and August 25, 2004^[15] showing the latter's promises to return the amount of P300,000.00.

During the mandatory conference, Atty. Alvero failed to attend despite notice. Thus, he was deemed to have waived his right to participate in the mandatory conference.

In its Report and Recommendation dated May 21, 2008, the IBP-CBD recommended that Atty. Alvero be suspended from the practice of law for a period of one (1) year for gross misconduct. Atty. Alvero was, likewise, ordered to immediately account for and return the amount of P300,000.00 to Barcenas and/or Rodolfo San Antonio. The pertinent portion thereof reads:

The record does not show and no evidence was presented by respondent to prove that the amount of P300,000 which was entrusted to him was already returned to complainant or Rodolfo San Antonio, by way of justifying his non-return of the money, respondent claims in his Answer that the P300,000 "was the source of the principal cause of action of the petitioner, Rodolfo San Antonio, in the above-cited DARAB Case No. R-0403-0011-04 as shown by a copy of the Amended Petition, copy of which is hereto attached as Annex "1" and made an integral part hereof.

A review of Annex 1, which in the Amended Petition dated October 31, 2004 and filed on November 3, 2004, will show that the Petitioner Rodolfo San Antonio is praying that he be allowed to cultivate the land after the P300,000 is consigned by Petitioner to the Honorable Adjudication Board. ***Up to the time of the filing of the instant complaint, no such deposit or consignment took place and no evidence was presented that respondent deposited the amount in court.***