

## SECOND DIVISION

[ A.C. No. 7024, January 30, 2009 ]

**OFELIA R. SOMOSOT, COMPLAINANT, VS. ATTY. GERARDO F. LARA, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

Once again, we are faced in this complaint for disbarment with the problem of a client-lawyer relationship developing into a legal action between the lawyer and the client.<sup>[1]</sup> The complaining client is Ofelia R. Somosot (*complainant*), a defendant in a collection case before the trial court; her defense was handled by Atty. Gerardo F. Lara (*respondent*).<sup>[2]</sup>

#### The Factual Background

In support of her complaint for disbarment, the complainant alleged that she retained the services of the respondent as her counsel in Civil Case No. Q01-43544, entitled "*Golden Collection Marketing Corporation v. Ofelia Somosot, et al.*," filed against her and her co-defendants for the collection of a sum of money amounting to P1.3 Million. Her defense was that it was the plaintiff who actually owed her P800,000.00. She claimed that she had the evidence to prove this defense at the trial. The respondent agreed to handle the case and duly entered his appearance as counsel after securing his acceptance fee.

The complainant expected the respondent to perform his duty as counsel and to defend her interests to the utmost. She alleged, however, that after filing the Answer to the Complaint, the respondent failed to fully inform her of further developments in the case. She only heard about the case when there was already a decision against her and her co-defendants. She even belatedly learned that the respondent had sought his discharge as counsel without her knowledge and consent. Contrary to the respondent's claim that he could no longer locate her, she claimed that the respondent knew all along where she lived and could have easily contacted her had he been in good faith.

After the court denied the respondent's motion to withdraw from the case, the complainant claimed that the respondent represented her interests in a half-hearted manner, resulting in the grant of the plaintiff's motion for judgment on the pleadings. Allegedly, the respondent failed to properly oppose the motion and she was thereafter deprived of the chance to present her evidence. Execution of the court's decision followed, resulting in the sale of her house and lot at public auction despite her efforts to reverse the judgment with the help of another lawyer. Thereafter, a third party to whom her property had been mortgaged sued her.

The complainant bewailed the respondent's evasive attitude when she confronted

him about her problem with his representation. She found the respondent's excuse - that he could not contact her because she had changed her office address - to be unsatisfactory. She accused the respondent of miserably failing to comply with his oath as a lawyer and to discharge his duty of ably representing her.

In his comment,<sup>[3]</sup> the respondent denied that he failed to exercise the diligence required of him as counsel in Civil Case No. Q01-43544. He argued that pursuant to his oath as counsel, he pursued the complainant's case "according to his own ability and knowledge." He alleged that:<sup>[4]</sup>

1. He filed the complainant's Answer with Counterclaim on July 16, 2001. He presented all the complainant's defenses and claims, but the plaintiff, Golden Collection Marketing Corporation, filed for "interrogatories and request for admission." He filed an objection to the plaintiff's motion on the ground that the interrogatories and request for admission are, by law, properly addressed to the complainant herself and not to him as counsel.
2. He filed a reply to the plaintiff's comment (on his objection) and the case proceeded despite the complainant's failure to pay his billing from May 3, 2001 to August 2, 2001 amounting to P27,000.00
3. On November 1, 2001, he joined the government service as consultant in the Board of Investments and full-time counsel to BOI Gov. J. Antonio Leviste. He tried to inform the complainant of his appointment and to collect his billings at her office in Greenhills, but the office was locked. A security guard told him that the complainant had moved without leaving any forwarding address. He even tried to contact complainant and her husband's cellular phones, to no avail.
4. Desperate, he filed a notice of withdrawal of appearance with the explanation that the conformity of the complainant could not be obtained since the complainant's corporation had moved its office without informing him of its new location, and the complainant had not been communicating with him.<sup>[5]</sup> He later learned that the complainant had moved to Pasig City.
5. In late December 2001, he was able to talk with the complainant by phone and he informed her that he could no longer handle cases for the complainant's company, thereby terminating his relationship with complainant. He advised the complainant to look for another lawyer; the complainant replied that she already had another lawyer.
6. Despite his situation and aware that the court had denied his motion to withdraw from the case, the respondent continued rendering legal services as the complainant's counsel. He filed a motion for reconsideration of the Court's decision dated June 3, 2002. He likewise filed an urgent opposition to the winning party's motion for execution.
7. On September 2, 2005, he received a letter from the complainant giving him "one final opportunity to convince me, why she should not pursue disbarment proceedings." He promptly prepared a reply which, upon her suggestion, he

delivered at the complainant's residence.

8. He thought that he had given the complainant a satisfactory explanation only to learn later that she filed a complaint for disbarment against him.
9. The respondent expressed his regret for what happened to the case, but stressed that he did not abandon the complainant and the cases he had been handling for her company. He did not likewise neglect to perform his duties as counsel. On the insinuation that he may have been "bought," he emphasized he that cannot and will never abandon a client as a Christian lawyer and a family man.

In a Resolution dated July 17, 2006, the Court referred the case to the Integrated Bar of the Philippines (*IBP*) "for investigation, report and recommendation." The complainant filed a Position Paper (dated January 12, 2007) before the IBP Commission on Bar Discipline through her counsel Honorato V. Reyes, Jr.<sup>[6]</sup> She reiterated in this position paper the allegations in her complaint. She could not understand how a simple collection case against her where she felt she had a good defense and which she expected to go through a full-blown litigation could be lost virtually through a mere technicality, i.e., through a judgment on the pleadings for her failure to answer the plaintiff's interrogatories and request for admission. She insisted she had not been informed by the respondent of the plaintiff's motion for written interrogatories and request for admission. Had he informed her, she could have responded.

The complainant was even more surprised to learn that the respondent tried to withdraw from the case because she (the complainant) could not be contacted. She maintained that she had never transferred her residence where she could be reached had the respondent exerted a meaningful effort to contact her. She claimed that the respondent was able to do so later when he was collecting the balance of his legal fees. She denied that she had not paid respondent his retainer fees.

The complainant stressed that the respondent violated his oath as a lawyer by mishandling her case, resulting in the loss of her house and lot and other damages.

The respondent's Position Paper (dated January 3, 2007) essentially reflected the arguments presented in his Comment before this Court.<sup>[7]</sup> He clarified that the complainant did not incur extra expenses in defending herself in the collection case since its handling was part of the services covered by his retainer. He insisted that he vigorously pursued the case and defended the complainant to the utmost despite the complainant's unpaid billings of P27,000.00.

The respondent contended that he had good reasons not to continue as the complainant's counsel. He reasoned out that under the Code of Professional Responsibility, a lawyer may withdraw from a case upon a good cause such as when the client deliberately fails to pay the fees for the lawyer's services, or fails to comply with the terms of the retainer agreement, or when the lawyer is elected or appointed to public office.<sup>[8]</sup> Two of these possible causes applied to his situation; he was appointed legal consultant at the BOI requiring full-time work and the complainant had failed to pay his legal fees to him amounting to P27,000.00. He filed the formal notice of withdrawal without the conformity of the complainant

because he could not locate her.

The respondent insinuated that that the complainant's real intent was merely to harass him and his family as indicated by her non-appearance, despite due notice, at the preliminary conference before the IBP. He argued that he could not be disbarred considering that it was the complainant who was negligent in informing him of her whereabouts. While he expressed regret for what happened in the case, he insisted that he exerted every effort to locate her, filed the necessary pleadings, protected her and her company's interest as best as he could.

### **The IBP Recommendation**

In a letter to the Chief Justice dated January 28, 2007, the IBP Board of Governors, through the IBP Commission on Bar Discipline, transmitted to the Court a Notice of Resolution<sup>[9]</sup> and the records of the case. The resolution was for the adoption and approval of the Report and Recommendation of Commissioner Rico A. Limpingco who had investigated the case. <sup>[10]</sup>

Commissioner Limpingco recommended that respondent be reprimanded for lack of reasonable diligence in representing the complainant.

His recommendation was based on the following evaluation:

It appears that the respondent was to some degree, remiss in fulfilling his duties to complainant Somosot. While it may be true that he had filed an answer in Civil Case No. Q01-43544, objected to the plaintiff's interrogatories and requests for admission, asked for reconsideration of the decision rendered by the court and opposed the adverse party's efforts to have the same executed, it can nevertheless be seen that the remedial measures taken by the respondent were inadequate, especially in view of the direction which the proceedings were taking.

The respondent is not incorrect in saying that a lawyer may be relieved of his duties even without the conformity of his client when he lost all contact with the latter, and the complainant's failure to settle his unpaid fees is not received without sympathy. The fact remains, however, that the respondent's efforts to be discharged as counsel were disallowed by the court, under the circumstances, he was bound by his oath to represent complainant Somosot and to advocate her cause to the best of his ability.

The respondent claims that in late December 2001, he was finally able to talk to complainant Somosot and was told that she already had another lawyer by the name of Atty. Tomas Dulay. Considering his stated desire to withdraw from the case and his own declaration that he had again come into the means of contacting the complainant, it is thus entirely puzzling why he did not at this point, revive his efforts to be relieved of his responsibilities in Civil Case No. Q02-43544 given complainant Somosot's alleged engagement of Atty. Tomas Dulay and her presumed willingness to give her consent to such discharge. As it is, respondent Atty. Lara remained as counsel of record and for some undisclosed reason did not appeal the decision against his client.

This is not to say that the client is entirely without fault. While complainant Ofelia Somosot's narrative is in many respects at odds with that of the respondent, it is nevertheless clear from her submissions that she never made any effort to contact the respondent to follow up the status of the case, but instead expected the latter to take complete initiative in this regard.

It has been held that it is the duty of a party-litigant to remain in contact with his lawyer in order to be informed of the progress of his case. "True enough, the party-litigant should not rely totally on his counsel to litigate his case even if the latter expressly assures that the former's presence in court will no longer be needed. No prudent party will leave the fate of his case entirely to his lawyer. Absence in one or two hearings may be negligible but want of inquiry or update on the status of his case for several months (four, in this case) is inexcusable. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case." Thus the complainant did not do, and such circumstance can only mitigate in respondent's favor.

### **The Court's Ruling**

As the IBP did, we find that the respondent deserves to be sanctioned for having fallen short of the standards required of him as defense counsel in Civil Case No. Q01-43544. He violated the basic rule, expressed under Canon 18 of the Code of Professional Responsibility,<sup>[11]</sup> that "a lawyer shall serve his client with competence and diligence."<sup>[12]</sup>

While it may be said that the respondent did not completely abandon the case, his handing of the complainant's defense left much to be desired.

The records show that the plaintiff in the collection case filed interrogatories and a request for admission. The respondent duly filed his objection to the plaintiff's move, but the court apparently allowed the interrogatories and request for admission and directed the complainant (as the defendant in the civil case) to respond. The complainant was never informed of this development and the omission eventually led to the grant of the plaintiff's motion for judgment on the pleadings, which in turn led to the decision against the defendants.<sup>[13]</sup>

In his submissions before this Court and before the IBP, the respondent alleged that he objected to the interrogatories and request for admission and did all he could, even filing a reply to the defendant's comment to his objection. He likewise alleged that from May 3, 2001 to August 2, 2001, the complainant had not paid the billings sent to her; that the complainant could not be contacted because she had closed her office without any forwarding address;<sup>[14]</sup> that as of November 1, 2001, he had been appointed as a consultant in the office of BOI Governor J. Antonio Leviste; and that he continued to represent the complainant even after the trial court's decision by filing a motion for reconsideration and opposing the plaintiff's motion for execution.<sup>[15]</sup>

After examining the whole record of the case, we find the respondent's positions to