

EN BANC

[A.C. No. 6674, June 30, 2009]

**ROBERT BERNHARD BUEHS, COMPLAINANT, VS. ATTY.
INOCENCIO T. BACATAN, RESPONDENT.**

DECISION

PERALTA, J.:

Before this Court is a petition for the disbarment of respondent Atty. Inocencio T. Bacatan filed on February 11, 2005 by complainant Robert Bernhard Buehs, charging respondent with representation of conflicting interests and gross misconduct for usurpation of authority.

It appears that on July 19, 1993, Genaro Alvarez and Sergia Malukuh, two employees of Mar Fishing Company, Inc., filed a labor case for illegal dismissal with prayer for backwages and other damages against said company and/or complainant in the latter's capacity as Executive Vice- President and Chief Operations Officer of Miramar Fish Company, Inc., and former General Manager of Mar Fishing Co., Inc., and the Mar Fishing Workers Union National Federation of Labor (MFWU-NFL).

The case was docketed as NCMB RB IX Case No. VA-12-0045-879 entitled *Genaro Alvarez and Sergia Malukuh v. Mar Fishing Company, Inc. and/or Robert Buehs and Mar Fishing Workers Union NFL*, and later assigned to respondent, who was then an accredited Voluntary Arbitrator of the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment (DOLE), Regional Office 9, Zamboanga City.

Respondent rendered a Decision^[1] dated May 30, 1997 in favor of Alvarez and Malukuh, ordering Mar Fishing Company, Inc. and MFWU-NFL to pay complainants in said case their separation pay, backwages, moral damages, exemplary damages and other benefits in the amount of P1,563,360.00. On appeal, the Court of Appeals (CA) modified said Decision by deleting the award of moral and exemplary damages.^[2] The Decision became final and executory when the Court denied complainant's petition for review on *certiorari* and, subsequently, his motion for reconsideration, in its Resolution^[3] dated April 4, 2001.

Upon motion of Alvarez and Malukuh, respondent issued a Writ of Execution^[4] on February 8, 2002 to enforce the Decision dated May 30, 1997. Respondent also issued a levy on execution on the properties of Miramar Fish Company, Inc. prompting the latter to question said levy on execution on the ground that it was not a party to the labor case, and to file a case with the CA docketed as CA-G.R. SP No. 76721, entitled *Miramar Fish Corp. v. Inocencio T. Bacatan, et al.*

In the said case, the CA issued a Temporary Restraining Order (TRO) on April 30, 2003, and eventually, a Writ of Preliminary Injunction on July 11, 2003, restraining

and enjoining respondent from enforcing his Order for the levy on execution of the properties owned by Miramar Fish Company.

During the pendency of the proceedings, Alvarez and Malukuh, represented by respondent as their counsel, filed a criminal complaint for violation of Article 41 of the Labor Code against petitioner. Respondent, in his Indorsement^[5] dated June 26, 2003, stated that he was acting as counsel for complainants in said case, who were the same complainants in the labor case pending before him.

On November 3, 2004, without notice and hearing, respondent also issued an Order^[6] directing the BID to place herein complainant in its Watchlist and to issue a Hold Departure Order. However, complainant was not given a copy of the said Hold Departure Order.

In the present petition with administrative complaint against respondent, complainant alleged that:

1. Respondent clearly represented conflicting interests by acting as counsel for Alvarez and Malukuh in the criminal case they filed against herein complainant while the labor case filed by Alvarez and Malukuh against complainant was still pending before him.
2. Respondent usurped the judicial powers of the Regional Trial Court and the higher judicial authorities by issuing a Hold Departure Order/Watchlist Order without any notice or hearing.^[7]

On the other hand, in his Comment^[8] dated May 3, 2005, respondent asserted that it was complainant who resorted to legal maneuvers to delay, if not evade, his monetary obligations. Thus, the former was compelled to ask for an Order to place petitioner in the Watchlist of the Bureau of Immigration and Deportation (BID), as the latter had resigned from his position. He also claimed that it was erroneous to say that the issue was still pending with the arbitrator at the stage of execution because as of March 30, 1997, when he submitted the Decision, he was already in *functus officio*. He further stated that the phrase "counsel for complainants" printed under his name was a misprint, and he could not be considered as one actively prosecuting the case.

Respondent, in turn, filed a Counter-Affidavit^[9] wherein he prayed that the petition for disbarment against him be dismissed, and that the name of Atty. Dennis Pangan, counsel for petitioner, be stricken from the Roll of Attorneys. He likewise alleged that all the foregoing pleadings, including those filed through Atty. Pangan, were designed to unreasonably delay the judgment of the court.

In its Resolution^[10] dated August 31, 2005, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from receipt of the record.

On November 23, 2005, respondent filed an Addendum and/or Supplement to his Comment^[11] dated October 23, 2005. He claimed that he did not violate the

principle of contradiction because, according to him, the labor case and criminal complaint were not cognate to each other.

On December 1, 2005, the IBP Commission on Bar Discipline directed the parties to appear in a mandatory conference on January 6, 2006.^[12] On the scheduled date, the parties failed to appear and, thus, the mandatory conference was reset to February 3, 2006.

Upon submission of complainant's exhibits and presentation of the witnesses, the IBP Commission on Bar Discipline, in an Order dated February 3, 2006, submitted the case for resolution and directed the parties to file their respective position papers. Of the parties, only complainant submitted his Position Paper^[13] on March 16, 2006 reiterating his earlier arguments.

In the Report and Recommendation of the IBP dated May 31, 2006, Commissioner Lolita Quisumbing found respondent guilty of misconduct for representing the complainants in the criminal case filed by the latter against the petitioner. She held that respondent, as accredited Voluntary Arbitrator of the NCMB, exhibited his bias and partiality towards the complainants when he endorsed the criminal complaint and signed thereon as counsel for the complainants. She likewise found respondent guilty of gross ignorance of the law when he issued a Hold Departure Order in violation of Circular No. 39-97.^[14]

The Investigating Commissioner also discovered from the respondent's Comment dated May 3, 2005 that the respondent's community tax certificate and IBP Number covered the year 2004, not the current year 2005, and concluded that respondent failed to update his IBP membership and pay his professional tax receipt for the year 2005.

In view of her findings, Commissioner Quisumbing recommended that respondent be suspended from the practice of law for one (1) year, and thereafter, submitted her Report and Recommendation to the Board of Governors of the IBP.

In its Resolution dated November 18, 2006, the Board of Governors of the IBP adopted and approved, with modification, the Report and Recommendation of the Investigating Commissioner, stating thus:

x x x finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that Respondent is guilty of gross misconduct for representing conflicting interest, gross ignorance of the law for issuing a hold-departure and watchlist order without authority, and likewise, for failure to update his membership dues to the Integrated Bar of the Philippines, Atty. Inocencio T. Bacatan is hereby SUSPENDED from the practice of law for two (2) years.

In an Indorsement dated March 21, 2007, Atty. Rogelio Vinluan, Director for Bar Discipline of the IBP, referred the administrative case to the Office of the Bar Confidant (OBC).

In a Resolution dated July 16, 2007, the Court required the parties to manifest within thirty (30) days from notice whether they were willing to submit the case for decision on the basis of the pleadings/records already filed and submitted.

On February 20, 2008, the counsel for complainant filed a Manifestation stating that the complainant was submitting the case for decision on the basis of the pleadings/records already filed and submitted.

In a Resolution dated August 4, 2008, in view of respondent's failure to file a manifestation on whether he was willing to submit the case for decision on the basis of the pleadings/records already filed and submitted, the case was then submitted for resolution.

Respondent claimed that when he indorsed the criminal complaint for the complainants, he could already do so as counsel because he had already rendered his Decision in the illegal dismissal case.

Respondent is mistaken. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated, or until the writ of execution has been issued to enforce the judgment.^[15] The Indorsement was dated June 26, 2003, at which time the decision had not yet been enforced, as evidenced by respondent's issuance of an Alias Writ of Execution^[16] dated December 28, 2004.

Even assuming that he had already lost jurisdiction over the illegal dismissal case, he remains liable for representing conflicting interests. Relevant provisions of the Code of Professional Responsibility^[17] state:

Rule 15.01 - A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or is own interest, and if so, shall forthwith inform the prospective client.

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In *Samala v. Valencia*,^[18] the Court held that a lawyer may not undertake to discharge conflicting duties any more than he may represent antagonistic interests. This stern rule is founded on the principles of public policy and good taste, which springs from the relation of attorney and client, which is one of trust and confidence. Lawyers should not only keep inviolate the client's confidence, but also avoid the appearance of treachery and double-dealing. Only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.

A conflict of interests also exists when the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double-dealing in the performance thereof.^[19]