

## EN BANC

[ A.C. No. 7657, February 12, 2008 ]

**VIVIAN VILLANUEVA, Complainant, vs. ATTY. CORNELIUS M. GONZALES, Respondent.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a complaint Vivian Villanueva (complainant) filed against Atty. Cornelius M. Gonzales (respondent) for failure to render legal services and failure to return the money, Transfer Certificate of Title (TCT), and other documents he received from complainant.

#### The Facts

Sometime in 2000, complainant engaged the services of respondent for the purpose of transferring the title over a piece of property located in Talisay, Cebu. Complainant, as mortgagee, wanted to transfer the title to her name because the mortgagor failed to redeem the property within the redemption period and the sheriff had already issued a sheriff's definite deed of sale in complainant's favor. Complainant gave respondent P8,000 as acceptance fee, the property's TCT, and other pertinent documents.<sup>[1]</sup>

After receiving the money, TCT, and other documents, respondent began to avoid complainant. Whenever complainant went to respondent's office at BPI Building, Escario St., Cebu City, respondent's secretary would tell her that respondent could not be disturbed because he was either sleeping or doing something important.<sup>[2]</sup>

In a letter dated 2 July 2003,<sup>[3]</sup> complainant told respondent that she had lost her trust and confidence in him and asked him to return the P8,000, TCT, and other documents. Respondent refused to return the money, TCT, and other documents. After some time and after complainant's daughter confronted him, respondent finally returned the money. However, until now, respondent has not returned the TCT and other documents.<sup>[4]</sup> Thus, complainant filed a complaint<sup>[5]</sup> dated 10 September 2003 against respondent before the Integrated Bar of the Philippines (IBP).

In an Order<sup>[6]</sup> dated 7 October 2003, IBP Director for Bar Discipline Rogelio A. Vinluan ordered respondent to submit his answer to the complaint. Respondent did not submit an answer.<sup>[7]</sup> In an Order<sup>[8]</sup> dated 21 April 2004, IBP Commissioner for Bar Discipline Rebecca Villanueva-Maala ordered respondent to submit his answer to the complaint, and set the mandatory conference on 2 June 2004. Respondent did not submit an answer or attend the mandatory conference. The Commission on Bar

Discipline considered the case submitted for resolution.<sup>[9]</sup>

### **The IBP's Report and Recommendations**

In a Report<sup>[10]</sup> dated 27 October 2006, IBP Commissioner for Bar Discipline Caesar R. Dulay (Commissioner Dulay) found respondent guilty of misconduct and negligent behavior: (1) he failed to perform any legal service to his client, (2) he did not inform his client about the status of the case, (3) he returned the P8,000 acceptance fee without any explanation, and (4) he was indifferent. Commissioner Dulay found that respondent violated Canons 16 and 18 of the Code of Professional Responsibility and recommended his suspension from the practice of law for one year.

In a Resolution<sup>[11]</sup> dated 31 May 2007, the IBP Board of Governors (IBP Board) adopted and approved the Report dated 27 October 2006 with modification. The IBP Board suspended respondent from the practice of law for six months and ordered him to return to complainant the P2,000, TCT, and the other documents.

As provided in Section 12(b), Rule 139-B of the Rules of Court,<sup>[12]</sup> the IBP Board forwarded the instant case to the Court for final action.

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

The Court sustains the findings and recommendations of the IBP with modification. Respondent violated Canons 16, 17, and 18, and Rules 16.01, 16.03, 18.03, and 18.04 of the Code of Professional Responsibility.

#### ***Respondent Refused to Account for and Return His Client's Money***

Canon 16 states that *a lawyer shall hold in trust all moneys of his client that may come into his possession*. Rule 16.01 of the Code states that *a lawyer shall account for all money received from the client*. Rule 16.03 of the Code states that *a lawyer shall deliver the funds of his client when due or upon demand*.

In *Meneses v. Macalino*,<sup>[13]</sup> the Court held that "if [a] lawyer does not use the money for the intended purpose, the lawyer must *immediately* return the money to the client." In the instant case, respondent demanded P10,000 and received P8,000 as acceptance fee. Since he did not render *any* legal service, he should have *promptly* accounted for and returned the money to complainant.<sup>[14]</sup> He did not.

After receiving the money, respondent began to avoid complainant. He asked his secretary to lie to complainant and shoo her off. When complainant demanded for the return of the money after *three years* of not hearing from respondent, respondent opted to ignore the demand. Respondent only returned the money after complainant's daughter confronted him. If complainant's daughter had not persisted, respondent would not have returned the money. Respondent did not offer any explanation as to why he waited for three years to lapse before returning the money. In *Macarilay v. Serina*,<sup>[15]</sup> the Court held that "[t]he unjustified withholding of funds belonging to the client warrants the imposition of disciplinary action against

the lawyer.”

Respondent’s failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity<sup>[16]</sup> and moral soundness,<sup>[17]</sup> and warrants the imposition of disciplinary action.<sup>[18]</sup> It gave rise to the presumption that he converted the money to his own use and constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession.<sup>[19]</sup>

### ***Respondent Refuses to Return His Client’s TCT and Other Documents***

Canon 16 of the Code of Professional Responsibility states that *a lawyer shall hold in trust all properties of his client that may come into his possession*. Rule 16.03 of the Code states that *a lawyer shall deliver the property of his client when due or upon demand*.

The TCT and other documents are the properties of complainant. Since respondent did not render any legal service to complainant, he should have returned complainant’s properties to her. However, he refuses without any explanation to return them. Respondent has kept the TCT and other documents in his possession since 2000. He refuses to return them despite receiving a written demand and being confronted by complainant’s daughter. In *Vda. De Enriquez v. San Jose*,<sup>[20]</sup> the Court held that failure to return the documents to the client is *reprehensible*: “this Court finds reprehensible respondent’s failure to heed the request of his client for the return of the case documents. That respondent gave no reasonable explanation for that failure makes his neglect patent.”

### ***Respondent Failed to Serve His Client with Fidelity, Competence, and Diligence***

Canon 17 of the Code of Professional Responsibility states that *a lawyer owes fidelity to the cause of his client*. Canon 18 of the Code states that “[a] lawyer shall serve his client with competence and diligence.” Rule 18.03 of the Code states that “[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.”

Clearly, respondent did not serve complainant with fidelity, competence, or diligence. He totally neglected complainant’s cause. An attorney-client relationship between respondent and complainant was established when respondent accepted the acceptance fee. Since then, he should have exercised due diligence in furthering his client’s cause and given it his full attention.<sup>[21]</sup> Respondent did not render any service.

Once a lawyer agrees to handle a case, he is bound by the Canons of the Code of Professional Responsibility. In *Emiliano Court Townhouses v. Atty. Dioneda*,<sup>[22]</sup> the Court held that the act of receiving money as acceptance fee for legal services and subsequently failing to render such service is a clear violation of Canons 17 and 18.

### ***Respondent Did Not Keep His Client Informed of the Status of Her Case and Refused to Respond***