

## THIRD DIVISION

[ A.C. No. 4829, July 21, 2008 ]

**ELAINE V. ARMA, COMPLAINANT, VS. ATTY. ANITA C. MONTEVILLA, RESPONDENT.**

### DECISION

**NACHURA, J.:**

The instant controversy arose from a Complaint for Disbarment filed by Elaine V. Arma (complainant) against Atty. Anita Montevilla (respondent) for alleged negligence and irresponsibility in the handling of Labor Case NLRC-NCR Case No. 00-01-00216, which caused irreparable prejudice to her clients including the complainant herein.

The factual antecedents are as follows:

On October 6, 1997, complainant Elaine V. Arma wrote a letter-complaint addressed to then Chief Presidential Legal Counsel, Atty. Renato L. Cayetano. In her handwritten complaint, she sought the help of Atty. Cayetano's office to assist their group in their plight against their former employer, Tashi Garments, Inc., and their counsel, respondent Atty. Anita C. Montevilla.

In response to that request, the Office of the Chief Presidential Legal Counsel indorsed complainant's letter-complaint<sup>[1]</sup> to the Office of the Court Administrator (OCA), who in turn, ordered the referral of the same to the Office of the Bar Confidant (OBC).<sup>[2]</sup>

On November 6, 1997, the OBC wrote complainant a letter<sup>[3]</sup> requiring her to file a verified complaint together with the documents that would strengthen her allegations against the respondent.

Accordingly, Elaine V. Arma filed a verified Complaint for Disbarment,<sup>[4]</sup> received by the OBC on November 26, 1997. In her complaint, she alleged that she was one of the thirty-two (32) dismissed workers of Tashi Garments, Inc. who filed a complaint<sup>[5]</sup> for illegal dismissal, non-payment of wages, underpayment of wages and money claims before the Department of Labor and Employment. The complainant averred that they availed themselves of the legal services of the respondent, Atty. Montevilla, in this labor case; and that respondent accepted the case on a contingency basis, with a success fee equivalent to thirty percent (30%) of whatever amount they would recover, and Six Hundred Pesos (P600.00) per appearance for her gasoline expense and the daily salary of the counsel's driver. The laborers obtained a favorable decision from the Labor Arbiter (LA), which ordered the reinstatement of the thirty-two (32) workers with full backwages and awarded the money claims in the aggregate amount of Three Million Three Hundred Ninety

Six Thousand Six Hundred Ninety-Four Pesos and Eighty-Four centavos (P3,396,694.84).<sup>[6]</sup> The said decision, however, was appealed to the National Labor Relations Commission (NLRC), with Tashi Garments, Inc. posting a P500,000.00 cash bond. However, the NLRC reversed the decision of the LA and dismissed the complaint for lack of merit.<sup>[7]</sup>

The complainant averred that Atty. Montevilla promised to attend personally to the filing of a motion for reconsideration and an application for the issuance of the restraining order to prevent the NLRC from allowing the withdrawal of the cash bond posted by Tashi Garments, Inc.; that she paid the counsel the amount of P600.00 on July 20, 1997 and P1,000.00 on July 23, 1997 to facilitate the filing of the Motion for Reconsideration (MR); but that upon her verification with the NLRC, the counsel had not filed a motion for reconsideration.<sup>[8]</sup> Complainant added that when she returned to the residence of Atty. Montevilla to seek explanation for her failure to file the said MR, the latter refused to accommodate her and, instead, directed her sister, Emma Montevilla, to hand her back the records of the case including three (3) copies of a signed and postdated Notice of Withdrawal of Counsel.<sup>[9]</sup> Complainant then concluded that she is filing this instant Complaint for Disbarment for the misconduct of Atty. Montevilla which prejudiced their interest as clients.

The Supreme Court Third Division then issued a Resolution<sup>[10]</sup> requiring respondent to comment on the complaint. Later, the Supreme Court Third Division issued a Resolution<sup>[11]</sup> transferring the case to the First Division.

In compliance with the Honorable Court's order, respondent filed her Comment<sup>[12]</sup> vehemently denying the accusations of the complainant. She contends that the complaint is baseless, unfounded, malicious, and purposely filed to destroy her good name and to blemish her reputation. She, likewise, denied having a verbal agreement for the payment of a 30% contingency fee because if such were the case she would have prepared a Contract of Service. She denied that she received attorney's fees per appearance. She contends that the complainant merely assured her that they would give her a share should they win the case. The respondent also claimed that she even had to spend her own money for the preparation and filing of their complaint against Tashi Garments, Inc.

Atty. Montevilla alleged that what prompted her to withdraw as counsel was the incident that transpired after the complainant learned that through her painstaking efforts they won the case and were able to obtain an award of P3,396,694.84. Respondent narrated that, at that point, the complainant then insisted that they should make an appointment with Jesusa dela Cruz, owner of Tashi Garments, Inc. so that she could collect her share and that of her sister Lilibeth Eñevo ahead of their co-workers; that, as counsel, she, however, admonished the complainant for her selfishness and disloyalty to her co-workers; and that because of the persistent demand of the complainant, respondent told her to find a new lawyer and advised her to pick up the Motion to Withdraw as Counsel on the following day.

In a Resolution,<sup>[13]</sup> the Supreme Court Third Division referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Hearings were conducted, after which, the IBP-Commission on Bar Discipline (CBD), through Investigating Commissioner Elpidio G. Soriano III, rendered a Report and Recommendation<sup>[14]</sup> which discussed the pertinent issues of whether or not respondent: (1) was negligent in handling the labor case of the complainant; and (2) made a proper withdrawal as counsel on March 19, 1997 or on October 6, 1997.

The Investigating Commissioner found respondent negligent in the filing and service of pleadings, especially the two (2) Motions to Withdraw as Counsel.

Respondent, in her defense, stated that she ordered the complainant to file the March 19, 1997 Motion to Withdraw but that it was not filed because of the fault of the complainant. Per findings of Commissioner Soriano, the motion was never made part of the records of the labor case. The records revealed that, on a later date, Atty. Montevilla even filed a subsequent pleading<sup>[15]</sup> which belies her claim that she withdrew as counsel on March 19, 1997. On one hand, the complainant claimed that the NLRC considered a Notice of Withdrawal as Counsel dated October 6, 1997, but the respondent denied any participation in the preparation and filing of the same.

Since there was irreconcilable conflict in the two contentions, the Investigating Commissioner then sought the professional assistance of the National Bureau of Investigation Questioned Documents Division (NBI-QDD) to determine the genuineness of the signatures in the two Motions to Withdraw. As affirmed by NBI-QDD Report No. 526-1005 and 526-1005 A,<sup>[16]</sup> the questioned signatures matched the specimen signatures of both E. Arma and Atty. Montevilla, giving rise to the conclusion that both parties were at fault for the non-filing or belated filing of the Motion to Withdraw as Counsel. However, the IBP Commissioner concludes that this finding that Atty. Montevilla has been remiss in this instance will not justify the imposition of the supreme administrative sanction of disbarment.

The Investigating Commissioner then recommended that the disbarment complaint against Atty. Montevilla should be dismissed for lack of basis, but the respondent should be admonished for her failure to observe due diligence in the filing and service of pleadings, especially relating to the filing of her Motion to Withdraw as Counsel which she simply delegated to the complainant.

On July 18 2007, the IBP Board of Governors passed a Resolution adopting and approving the recommendation of Commissioner Soriano, as follows:

**"RESOLUTION NO. XVII-2006-035**

**Adm. Case No. 4829**

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*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, considering that the complaint lacks merit, the same is hereby **DISMISSED**. However, Atty. Anita C. Montevilla is **ADMONISHED** for her failure to observe the required diligence.*