

SECOND DIVISION

[A.C. NO. 5417[1], March 31, 2006]

AMADOR Z. MALHABOUR, COMPLAINANT, VS. ATTY. ALBERTI R. SARMIENTO, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a complaint for disbarment filed by Amador Z. Malhabour against Atty. Alberti R. Sarmiento.

Complainant was private respondent in CA-G.R. SP No. 50835, *"HY2LB Shipping & Management Services, Inc. and New Ocean Ltd. v. The National Labor Relations Commission and Amador Malhabour."*

Respondent, then a lawyer of the Public Attorneys Office (PAO), was complainant's counsel in National Labor Relations Commission (NLRC) Case No. 009719-95. After the respondent retired from the PAO in March 1997, complainant asked him to continue assisting him in said labor case.

The facts are:

On May 29, 1993, HY2LB Shipping and Management Services, Inc., (HY2LB Shipping), a local manning agency, hired complainant as electrician for M/V Gold Faith, a vessel owned by New Ocean Ltd., a foreign principal based in Hongkong. The employment contract was for a period of 12 months and that complainant's monthly salary would be six hundred US dollars (\$600.00). He had to work 48 hours a week with 30% overtime pay.

Complainant rendered service on board the vessel for four months and nine days only. On August 5, 1993, HY2LB Shipping asked him to disembark on the ground that the foreign principal was reducing its personnel. Thus, complainant filed with the Philippine Overseas Employment and Administration Office (POEA), a Complaint for Illegal Dismissal against HY2LB Shipping, New Ocean Ltd., and Premier Insurance and Surety Corporation.

On June 14, 1995, the POEA Adjudication Office rendered judgment in favor of complainant, the dispositive portion of which reads:

WHEREFORE, premises considered, respondents HY2LB Shipping and Management Services, Inc., New Ocean Ltd. and Premier Insurance are hereby ordered jointly and severally to pay complainant or in Philippine Peso at the exchange rate prevailing during actual payment, the following:

1. The sum of US\$4,680.00 representing the unexpired portion of the contract;
2. The sum of US\$220.00 representing the unpaid salary of complainant; and
3. The sum of US\$774.00 representing the fixed overtime pay of complainant.

No other pronouncement.

SO ORDERED.

On appeal by HY2LB Shipping, New Ocean Ltd., and Premier Insurance and Surety Corporation, the NLRC rendered its Decision affirming the POEA judgment. Their motions for reconsideration were denied.

HY2LB Shipping then filed with the Court of Appeals a Petition for *Certiorari* against NLRC and complainant.

In its Decision dated June 17, 1999, the Court of Appeals dismissed HY2LB Shipping's petition, holding that in affirming the POEA judgment, the NLRC did not gravely abuse its discretion. HY2LB Shipping filed a Motion for Reconsideration, invoking Section 10 of R.A. No. 8042.^[2] The Court of Appeals, in its Resolution of February 15, 2000, modified the NLRC Decision, in the sense that complainant is entitled to only three (3) months' salary "considering that this is the lesser amount of his one year employment contract;"^[3] and overtime pay since this was provided in the parties' contract of employment.

Immediately upon receipt of the Court of Appeals' Resolution, complainant requested respondent to file a motion for reconsideration. But the latter merely filed a "Notice to File Motion for Reconsideration with Manifestation to File an Appeal in case Same is Denied."^[4] Respondent advised complainant "to accept" the Decision of the Court of Appeals and that filing a motion for reconsideration will just prolong the litigation. Complainant did not heed respondent's advice and filed the motion for reconsideration himself. But it was denied by the Appellate Court for being late by 43 days.^[5] At this point, complainant urged respondent to file with this Court a Petition for Review on *Certiorari*. Respondent agreed but delayed its filing. On July 24, 2000, this Court issued a Resolution^[6] denying complainant's petition for being late.

Meantime, unknown to complainant, respondent sent a letter dated April 7, 2000 to the NLRC stating that complainant gave him a Special Power of Attorney authorizing him to receive the "judgment award." Respondent then filed a Motion for Execution alleging that complainant decided to terminate the case and will no longer file a motion for reconsideration of the February 15, 2000 Resolution of the Court of Appeals.^[7]

On June 16, 2000, respondent received from the NLRC a check^[8] dated June 14, 2000 in the amount of P99,490.00 which he deposited with the Ecology Bank, Banawe Branch, under his personal account.

Subsequently, complainant came to know of the NLRC Order dated June 6, 2000

directing the NLRC cashier to release to respondent the sum of P99,490.00 representing the money judgment.

Thereupon, complainant sought the assistance of the Presidential Anti-Organized Crime Task Force.^[9] Then he filed with the National Bureau of Investigation (NBI) a complaint for estafa thru falsification of a public document. The NBI referred the matter to the Office of the City Prosecutor of Quezon City.

During their confrontation at the NBI, respondent paid complainant P40,000.00 as partial payment of the P60,000.00 awarded to the latter.

Later, or on January 30, 2001,^[10] respondent paid complainant only P10,000.00, leaving a balance of P10,000.00. This prompted complainant to file with this Court the instant complaint for disbarment.

In his Comment dated June 1, 2001, respondent alleged *inter alia* that this case arose from "a quarrel between a client and his counsel;" that after the promulgation of the Court of Appeals' Decision and Resolution in CA-G.R. SP No. 50835, HY2LB Shipping filed with this Court a Petition for Review of *Certiorari*; that at this time, he (respondent) filed with the NLRC a Motion for Execution; that the NLRC partially granted his motion by issuing a check in the amount of P100,000.00 "by virtue of a Special Power of Attorney signed by complainant;" that pursuant to their agreement that their shares in the award is on a "40-60 ratio," he (respondent) kept complainant's share of P60,000.00; and that he was ready to give complainant his share but he did not make any demand and refused to receive the balance on June 30, 2001.

On August 27, 2001, this Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In its Report and Recommendation^[11] dated April 15, 2002, the IBP through Investigating Commissioner Rebecca Villanueva-Maala, made the following findings:

It was apparent that the complainant did not agree with the modified decision of the Court of Appeals and instructed respondent to file a Petition for *Certiorari* with the Supreme Court. All the while and without his knowledge and consent, respondent filed a Motion for Execution with the NLRC who awarded complainant the amount of One Hundred Thousand Pesos (P100,000.00). Respondent admitted that he was able to encash the check awarded to complainant by virtue of a Special Power of Attorney which complainant denies having executed. x x x.

x x x. When respondent received the amount of money awarded to complainant by the NLRC, he took it upon himself to divide the money into 60-40 ratio because complainant owed him his attorney's fees; however, he failed to inform complainant beforehand of his plan, and only when complainant filed a criminal complaint against him that respondent paid complainant and on installment basis at that. Respondent in fact still has a balance of Ten Thousand Pesos (P10,000.00). Respondent claims that complainant exceeded and abused his goodness and kindness but it is the other way around.