

EN BANC

[A.C. NO. 6707, March 24, 2006]

GISELA HUYSSSEN, COMPLAINANT, VS. ATTY. FRED L. GUTIERREZ, RESPONDENT.

DECISION

PER CURIAM:

This treats of a Complaint^[1] for Disbarment filed by Gisela Huyssen against respondent Atty. Fred L. Gutierrez.

Complainant alleged that in 1995, while respondent was still connected with the Bureau of Immigration and Deportation (BID), she and her three sons, who are all American citizens, applied for Philippine Visas under Section 13[g] of the Immigration Law. Respondent told complainant that in order that their visa applications will be favorably acted upon by the BID they needed to deposit a certain sum of money for a period of one year which could be withdrawn after one year. Believing that the deposit was indeed required by law, complainant deposited with respondent on six different occasions from April 1995 to April 1996 the total amount of US\$20,000. Respondent prepared receipts/vouchers as proofs that he received the amounts deposited by the complainant but refused to give her copies of official receipts despite her demands. After one year, complainant demanded from respondent the return of US\$20,000 who assured her that said amount would be returned. When respondent failed to return the sum deposited, the World Mission for Jesus (of which complainant was a member) sent a demand letter to respondent for the immediate return of the money. In a letter dated 1 March 1999, respondent promised to release the amount not later than 9 March 1999. Failing to comply with his promise, the World Mission for Jesus sent another demand letter. In response thereto, respondent sent complainant a letter dated 19 March 1999 explaining the alleged reasons for the delay in the release of deposited amount. He enclosed two blank checks postdated to 6 April and 20 April 1999 and authorized complainant to fill in the amounts. When complainant deposited the postdated checks on their due dates, the same were dishonored because respondent had stopped payment on the same. Thereafter, respondent, in his letter to complainant dated 25 April 1999, explained the reasons for stopping payment on the checks, and gave complainant five postdated checks with the assurance that said checks would be honored. Complainant deposited the five postdated checks on their due dates but they were all dishonored for having been drawn against insufficient funds or payment thereon was ordered stopped by respondent. After respondent made several unfulfilled promises to return the deposited amount, complainant referred the matter to a lawyer who sent two demand letters to respondent. The demand letters remained unheeded.

Thus, a complaint^[2] for disbarment was filed by complainant in the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP).

On 15 November 2000, Victor C. Fernandez, Director for Bar Discipline, required^[3] respondent to submit his answer within 15 days from receipt thereof.

In his Counter-Affidavit dated 2 July 2001,^[4] respondent denied the allegations in the complaint claiming that having never physically received the money mentioned in the complaint, he could not have appropriated or pocketed the same. He said the amount was used as payment for services rendered for obtaining the permanent visas in the Philippines. Respondent explained thus:

a) Through a close-friend, Jovie Galaraga, a Pastor and likewise a friend of the complainant, the latter was introduced to me at my office at the Bureau of Immigration with a big problem concerning their stay in the Philippines, herself and three sons, one of which is already of major age while the two others were still minors then. Their problem was the fact that since they have been staying in the Philippines for almost ten (10) years as holders of missionary visas (9G) they could no longer extend their said status as under the law and related polic[i]es of the government, missionary visa holders could only remain as such for ten (10) years after which they could no longer extend their said status and have to leave the country.

b) Studying their case and being U.S. Citizen (sic), I advised them that they better secure a permanent visa under Section 3 of the Philippine Immigration Law otherwise known as Quota Visa and thereafter, provided them with list of the requirements in obtaining the said visa, one of which is that the applicant must have a \$40,000 deposited in the bank. I also inform that her son Marcus Huyssen, who was already of major age, has to have the same amount of show money separate of her money as he would be issued separate visa, while her two minor children would be included as her dependents in her said visa application. I advised them to get a lawyer (sic), complainant further requested me to refer to her to a lawyer to work for their application, which I did and contacted the late Atty. Mendoza, an Immigration lawyer, to do the job for the complainant and her family.

c) The application was filed, processed and followed-up by the said Atty. Mendoza until the same was finished and the corresponding permanent visa were obtained by the complainant and her family. Her son Marcus Huyssen was given an independent permanent visa while the other two were made as dependents of the complainant. In between the processing of the papers and becoming very close to the complainant, I became the intermediary between complainant and their counsel so much that every amount that the latter would request for whatever purpose was coursed through me which request were then transmitted to the complainant and every amount of money given by the complainant to their counsel were coursed thru me which is the very reason why my signature appears in the vouchers attached in the complaint-affidavit;

d) That as time goes by, I noticed that the amount appeared to be huge for services of a lawyer that I myself began to wonder why and, to satisfy

my curiosity, I met Atty. Mendoza and inquired from him regarding the matter and the following facts were revealed to me:

1) That what was used by the complainant as her show money from the bank is not really her money but money of World Mission for Jesus, which therefore is a serious violation of the Immigration Law as there was a misrepresentation. This fact was confirmed later when the said entity sent their demand letter to the undersigned affiant and which is attached to the complaint-affidavit;

2) That worst, the same amount used by the complainant, was the very same amount used by her son Marcus Huysen, in obtaining his separate permanent visa. These acts of the complainant and her son could have been a ground for deportation and likewise constitute criminal offense under the Immigration Law and the Revised Penal Code. These could have been the possible reason why complainant was made to pay for quite huge amount.

e) That after they have secured their visas, complainant and her family became very close to undersigned and my family that I was even invited to their residence several times;

f) However after three years, complainant demanded the return of their money given and surprisingly they want to recover the same from me. By twist of fate, Atty. Mendoza is no longer around, he died sometime 1997;

g) That it is unfortunate that the real facts of the matter is now being hidden and that the amount of money is now being sought to be recovered from me;

h) That the fact is I signed the vouchers and being a lawyer I know the consequences of having signed the same and therefore I had to answer for it and pay. I tried to raised the fund needed but up to the present my standby loan application has not been released and was informed that the same would only be forthcoming second week of August. The same should have been released last March but was aborted due to prevalent condition. The amount to be paid, according to the complainant has now become doubled plus attorney's fees of P200,000.00.

Complainant submitted her evidence on 4 September 2002 and April 2003, and filed her Formal Offer of Evidence on 25 August 2003.

On several occasions, the complaint was set for reception of respondent's evidence but the scheduled hearings (11 settings) were all reset at the instance of the respondent who was allegedly out of the country to attend to his client's needs. Reception of respondent's evidence was scheduled for the last time on 28 September 2004 and again respondent failed to appear, despite due notice and without just cause.

On 5 November 2004, Investigating Commissioner Milagros V. San Juan submitted

her report^[5] recommending the disbarment of respondent. She justified her recommendation in this manner:

At the outset it should be noted that there is no question that respondent received the amount of US\$20,000 from complainant, as respondent himself admitted that he signed the vouchers (Annexes A to F of complainant) showing his receipt of said amount from complainant. Respondent however claims that he did not appropriate the same for himself but that he delivered the said amount to a certain Atty. Mendoza. This defense raised by respondent is untenable considering the documentary evidence submitted by complainant. On record is the 1 March 1999 letter of respondent addressed to the World Mission for Jesus (Annex H of Complaint) where he stated thus:

"I really understand your feelings on the delay of the release of the deposit but I repeat, nobody really intended that the thing would happen that way. Many events were the causes of the said delay particularly the death of then Commissioner L. Verceles, whose sudden death prevented us the needed papers for the immediate release. It was only from compiling all on the first week of January this year, that all the said papers were recovered, hence, the process of the release just started though some important papers were already finished as early as the last quarter of last year. We are just going through the normal standard operating procedure and there is no day since January that I do not make any follow — ups on the progress of the same."

and his letter dated 19 March 1999 (Annex L of Complaint) where he stated thus:

"I am sending you my personal checks to cover the refund of the amount deposited by your good self in connection with the procurement of your permanent visa and that of your family. It might take some more time before the Bureau could release the refund as some other pertinent papers are being still compiled are being looked at the files of the late Commissioner Verceles, who approved your visa and who died of heart attack. Anyway, I am sure that everything would be fine later as all the documents needed are already intact. This is just a bureaucratic delay."

From the above letters, respondent makes it appear that the US\$20,000 was officially deposited with the Bureau of Immigration and Deportation. However, if this is true, how come only Petty Cash Vouchers were issued by respondent to complainant to prove his receipt of the said sum and official receipts therefore were never issued by the said Bureau? Also, why would respondent issue his personal checks to cover the return of the money to complainant if said amount was really officially deposited with the Bureau of Immigration? All these actions of respondent point to the inescapable conclusion that respondent received the money from complainant and appropriated the same for his personal use. It should

also be noted that respondent has failed to establish that the "late Atty. Mendoza" referred to in his Counter-Affidavit really exists. There is not one correspondence from Atty. Mendoza regarding the visa application of complainant and his family, and complainant has also testified that she never met this Atty. Mendoza referred to by respondent.

Considering that respondent was able to perpetrate the fraud by taking advantage of his position with the Board of Special Inquiry of the Bureau of Immigration and Deportation, makes it more reprehensible as it has caused damage to the reputation and integrity of said office. It is submitted that respondent has violated Rule 6.02 of Canon 6 of the Code of Professional Responsibility which reads:

"A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties."

On 4 November 2004, the IBP Board of Governors approved^[6] the Investigating Commissioner's report with modification, thus:

RESOLVED to ADOPT and APPROVE, as it hereby ADOPTED and APPROVED, with **modification**, 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 applicable laws and rules, and considering respondent's violation of Rule 6.02 of Canon 6 of the Code of Professional Responsibility, Atty. Fred L. Gutierrez is hereby **DISBARRED** from the practice of law and **ordered to return** the amount with legal interest from receipt of the money until payment. This case shall be referred to the Office of the Ombudsman for prosecution for violation of Anti-Graft and Corrupt Practices Acts and to the Department of Justice for appropriate administrative action.

We agree with the IBP Board of Governors that respondent should be severely sanctioned.

We begin with the veritable fact that lawyers in government service in the discharge of their official task have more restrictions than lawyers in private practice. Want of moral integrity is to be more severely condemned in a lawyer who holds a responsible public office.^[7]

It is undisputed that respondent admitted^[8] having received the US\$20,000 from complainant as shown by his signatures in the petty cash vouchers^[9] and receipts^[10] he prepared, on the false representation that that it was needed in complainant's application for visa with the BID. Respondent denied he misappropriated the said amount and interposed the defense that he delivered it to a certain Atty. Mendoza who assisted complainant and children in their application for visa in the BID.^[11] Such defense remains unsubstantiated as he failed to submit evidence on the matter. While he claims that Atty. Mendoza already died, he did not present the death certificate of said Atty. Mendoza. Worse, the action of respondent in shifting the blame to someone who has been naturally silenced by fate, is not only impudent but downright ignominious. When the integrity of a member of the