

THIRD DIVISION

[A.C. NO. 5647, December 15, 2005]

JOSEPHINE CARANAY, COMPLAINANT, VS. ATTY. ERNESTO P. TABARA, RESPONDENT.

RESOLUTION

GARCIA, J.:

This is a complaint for disbarment instituted by complainant Josephine R. Caranay against Atty. Ernesto P. Tabara^[1] for the latter's failure to perform his duty as complainant's counsel and for refusal thereafter to return, despite demands, the corresponding acceptance fee.

From the complaint, it appears that sometime in October 2000, complainant retained the services of respondent in connection with a suit for a sum of money she intended to file against someone. Respondent agreed and accordingly received from and was paid by complainant the sum of P25,000.00 by way of retainer's fee. According to complainant, respondent, despite the lapse of a considerable length of time, failed to take the necessary legal action towards a successful collection suit. Owing to what she considered as respondent's neglect of duty and willful infidelity, complainant asked for the return of the amount she had given to respondent, but all her repeated entreaties fell on deaf ears. Hence, this complaint.

In his answer,^[2] respondent admits having been retained by and having received from complainant the amount of P25,000.00 for the purpose of filing a case for a sum of money against a certain Onia. He explained, however, that the amount aforesaid was to cover legal expenses, documentation and filing fee. According to him, he submitted the necessary complaint to complainant's aide, a certain Tito Ochave, who informed him (respondent) that complainant, who was then about to depart for Germany, wanted it revised. And per respondent's version of succeeding events, Ochave, who undertook to return the copy of the complaint and other supporting documents by October 14, 2000, never came around to keep his promise. Respondent further alleged that he was subsequently informed by Ochave that complainant had already secured the services of another lawyer, for which reason she is demanding the return of the P25,000.00. Continuing, respondent averred advising Ochave of his willingness to return the amount, provided complainant first talk to him personally, or, if this is not feasible since complainant has already departed for Germany, that he is shown by Ochave of his special authority to receive the money. Since that time on, according to respondent, he has not heard anything from complainant or Ochave, until he received a copy of the instant complaint for disbarment.

Following the referral^[3] of the case by the Court to the Integrated Bar of the Philippines (IBP), Investigating Commissioner Lydia A. Navarro submitted a Report^[4] stating, in gist, as follows:

1. Neither complainant nor her representative appeared in all of the four scheduled hearings;
2. In the January 14, 2003 setting, respondent submitted a photocopy of a Motion to Terminate Proceedings dated August 12, 2002, which, on its face, appears to have been signed by complainant but is not notarized. In the motion, complainant states that respondent is innocent of any wrongdoing;
3. Respondent has not submitted verified affidavits of Tito Ochave and Atty. Zarate who were purportedly present when the return of the P25,000.00 was effected;
4. The xeroxed copy of the Motion to Terminate Proceedings that respondent submitted to the IBP Commission of Bar Discipline is nothing but a scrap without any probative value; and
5. Inasmuch as respondent was not able to extend the legal services commensurate to his agreement with the complainant, it is incumbent upon him to return the amount received from the latter.

Commissioner Navarro's report contained the following recommendation:

Wherefore in view of the foregoing, the undersigned respectfully recommends that respondent Atty. Ernesto Tabarra be required to submit proof that he really returned to the complainant the amount of P25,000.00 paid to him for legal services he did not extend to the complainant within thirty (30) days from receipt hereof otherwise for failure to do so aside from returning said amount; he will be suspended from the practice of law for a period of three (3) months from the said period.

On June 21, 2003, the IBP Board of Governors promulgated Resolution No. XV-2003-374,^[5] adopting and approving the report and recommendation of the investigating commissioner.

In its Resolution^[6] dated August 27, 2003, the Court, thru its First Division, took note of IBP Resolution No. XV-2003-374 and returned the case back to the IBP for completion of the proceedings to enable respondent to submit proof of his return of the amount of P25,000.00 to complainant within the time frame set forth in the same IBP resolution.

In her Report^[7] dated August 02, 2004, designated IBP Commissioner Doroteo B. Aguila, noting that respondent, notwithstanding the opportunities afforded him, has failed to present proof that he had indeed refunded the amount in question, recommended as follows:

WHEREFORE, premises considered, it is recommended that Commissioner Lydia A. Navarro's earlier recommendation as contained in the Report and Recommendation dated 29 March 2003 that respondent be suspended for three (3) months from the practice of law in the event respondent fails to