

FIRST DIVISION

[A.C. No. 6196, March 17, 2004]

ROSARIO H. MEJARES, COMPLAINANT, VS. ATTY. DANIEL T. ROMANA, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This is a complaint for disbarment filed by complainant Rosario H. Mejares ("complainant") against respondent Atty. Daniel T. Romana ("respondent") for gross negligence and gross misconduct.

The Facts

In her complaint filed before the Integrated Bar of the Philippines ("IBP"), complainant alleged that she was a member of a labor union^[1] ("Union") in M. Greenfield Corporation Inc. ("Greenfield"). Some 300 former employees of Greenfield comprise the Union. In 1990, the Union members sued Greenfield for illegal termination. The Union retained respondent as counsel in prosecuting the case against Greenfield. The Union and respondent agreed that respondent would be paid attorney's fees equivalent to 10% of whatever monetary benefits the Union members might recover from Greenfield.

In 1994, respondent required each member of the Union to contribute P500. Complainant claimed that although not all Union members contributed, respondent collected "not more than P100,000." Complainant alleges that respondent spent "a big portion of [this] amount" for his own benefit.

On 18 August 1997, respondent required the then Union president Elena Tolin ("Tolin") to sign a document, entitled "Verification and Certification of Service" ("Verification") of a petition for filing with this Court.^[2] The Verification, among others, authorized respondent "to deduct automatically x x x his contingent thirty (30) per cent attorney's fees from the individual awards that the [union members] shall win in this case." Complainant claims that it was only later that the Union members learned of the increase of respondent's attorney's fees from 10% to 30%. Complainant claims that respondent did not explain to Tolin the Verification's contents.

Complainant claims that the Union members objected to the increase in respondent's fees. In retaliation, respondent allegedly abandoned the Union's case then pending in the Court of Appeals.^[3] Thus, despite his receipt of the Court of Appeals' Decision dated 4 December 2000 ("4 December 2000 CA Decision") dismissing the Union's petition, respondent neither sought reconsideration of the ruling nor immediately informed the Union members of its issuance. It was only on

28 December 2000, when complainant and Tolin went to visit respondent in his house, that they learned of the adverse ruling of the Court of Appeals. The Union, through another counsel, filed a motion for reconsideration of the 4 December 2000 CA Decision. However, the Court of Appeals, in its Resolution dated 16 February 2001 ("16 February 2001 CA Resolution"), denied the motion for being filed late. Respondent subsequently withdrew as the Union's counsel on 23 March 2001.^[4]

In its Order of 27 May 2002, the IBP required respondent to file his Answer to the complaint. Instead of complying, respondent sought the dismissal of the complaint. Respondent claimed that complainant is not a real party-in-interest because (1) the Union did not authorize complainant to initiate disbarment proceedings against him; (2) the allegations in the complaint were "false, fabricated, illegal x x x and libelous;" and (3) respondent's withdrawal as the Union's counsel was with the conformity of Tolin. Respondent attached to his motion a *Sinumpaang Salaysay-Affidavit* of Tolin dated 19 June 2002 ("19 June 2002 Salaysay") attesting that (1) Tolin voluntarily signed the Verification increasing respondent's fees from 10% to 30% as the Union had so far paid respondent only P10,000 for the services he had rendered since 1990; (2) it was the Union which decided to terminate the services of respondent as he had become busy with his other cases; and (3) all the other allegations raised in the complaint are false. Tolin joined respondent in his prayer for the dismissal of the complaint. [5]

Complainant opposed respondent's motion to dismiss the complaint. Complainant asserted that contrary to respondent's allegations, complainant is the attorney-in-fact of the Union as shown by the special power of attorney the Union members signed authorizing complainant to represent them before the Court of Appeals. Complainant also submitted an Affidavit of Retraction of Tolin dated 4 September 2002 ("4 September 2002 Retraction"), disclaiming the contents of her 19 June 2002 *Salaysay*. Tolin claimed that she was unaware of the contents of the 19 June 2002 *Salaysay* because respondent did not give Tolin a chance to go over the document before Tolin signed it. Tolin confirmed complainant's allegations regarding (1) respondent's failure to update Union members of the 4 December 2000 CA Decision; (2) his misappropriation of the funds contributed by the Union members; and (3) his failure to account for the same. In addition, complainant also submitted the affidavits of three other individuals,^[6] all dated 4 September 2002, confirming Tolin's claim that respondent did not give her any chance to read the contents of the 19 June 2002 *Salaysay*.

The IBP's Findings

The IBP Investigating Commissioner ("IBP Commissioner") conducted hearings on the case but respondent failed to appear despite notice. After the parties filed their memoranda, the IBP issued Resolution No. XVI-2003-68 ("IBP Resolution") dated 30 August 2003 adopting the Investigating Commissioner's Report and Recommendation ("Report") finding respondent liable for violation of the lawyer's oath, gross misconduct, and gross negligence. The IBP imposed on respondent the penalty of six months suspension from the practice of law. The Report reads:

x x x

x x x

x x x

The Commission finds that respondent violated his lawyer's oath and committed gross misconduct and gross negligence. Complainant was able

to prove by clear and convincing evidence her charges against respondent.

Respondent filed a motion to dismiss on technical grounds, i.e., complainant's lack of legal personality and the purported notice of dismissal of Elena Tolin. He did not attend any of the Commission's hearings, which would have afforded him opportunity to explain his side. Even in his memorandum and other pleadings (where he made general and unsubstantiated attacks on complainant's character), he did not meet the charges against him head on. He merely reiterated his technical objections to the complaint. The Supreme Court has pronounced in the case of *Radjaie vs. Alovera* (337 SCRA 244) that when "the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him; he must meet the issue and overcome the evidence against him" and that "he must show proof that he still maintains that degree of morality and integrity which at all times is expected of him." Respondent having failed to discharge this burden, the charges against him are deemed admitted.

Respondent's technical objections have no merit. Being one of the employees and a member of SAMAT-MGI wh[ich] retained respondent, complainant was directly and adversely affected by respondent's unethical conduct. The special power of attorney executed by h[er] co-employees in CA-G.R. SP No. 57066 (Annex "A", Opposition To Motion to Dismiss) shows that she is the authorized representative of [her] co-complainants in the labor case, not Elena Tolin. Ms. Tolin's notice of dismissal does not have any effect on the complaint. Furthermore, Ms. Tolin herself retracted her *Sinumpaang Salaysay*, saying she was tricked by respondent into signing the same. The Commission gives credit to the allegations in her Retraction of Affidavit, which was supported by affidavits of other witnesses. This retraction compounds respondent's misconduct and unprofessionalism. It further proves his propensity to commit fraud, chicanery and other unethical practices.

The rules on professional conduct cited by complainant are well-placed. Respondent violated his attorney's oath to do no falsehood, to delay no man for money or malice, and to conduct himself with all good fidelity to the courts and his clients. His actions fall short of the required ethical standard of his profession. And it is palpable that his shortcomings, culminating in his abrupt withdrawal from the case, were precipitated by his clients' refusal to agree to pay more fees than that originally agreed upon (from 10% to 30% of the monetary award).

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The Commission cannot say whether SAMAT-MGI would have won the labor case in the Court of Appeals (not Supreme Court as stated in the complaint) if it had a more competent representation. It is clear from the records and undisputed facts of this case, however, that respondent lacked the zeal, diligence, honesty, and loyalty required in protecting the interests of complainant and her co-complainants.

Respondent is liable under Section 27, Rule 138 of the Rules of Court, which penalizes a member of the bar who commits deceit and gross

misconduct in office, and violates his attorney's oath.^[7]

Complainant sought reconsideration of the IBP Resolution. Complainant contended that considering the nature of respondent's culpability, the penalty of six months suspension from the practice of law is too light. Instead, complainant prayed that the heavier penalty of disbarment be imposed on respondent.

The IBP forwarded the instant case to this Court as provided under Rule 139-B, Section 12(b)^[8] of the Rules of Court.

The Ruling of the Court

The Court finds respondent liable for violation of Rule 16.01 and Rule 18.04 of the Code of Professional Responsibility ("Code").

Respondent Failed to Account for the Money he Received from the Union Members

A lawyer should be scrupulously careful in handling money entrusted to him in his professional capacity.^[9] Consequently, when a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to his client, showing that he spent the money for the purpose intended.^[10] Rule 16.01 of the Code provides:

A lawyer shall account for all money or property collected or received for or from the client.

The Union's Board Resolution dated 17 August 1997 ("Board Resolution"), signed by its officers,^[11] declared that the Union members contributed P100 each for "filing fees and *panggastos ng aming abogado*."^[12] Considering that respondent handled the Union members' case for more than ten years (from 1990 to 2001), it is highly likely that the Union members made other contributions to respondent, including the one complainant claims Union members made in 1994. Thus, respondent had the obligation to account for all the funds he received, giving a detailed explanation showing that such funds were spent for the purpose intended. Nothing in the records shows that respondent has done so. Indeed, instead of taking advantage of the opportunity to make an accounting in response to the charges raised in this case, respondent merely chose to deny, *in general terms*, complainant's allegations. As the IBP Commissioner correctly noted, such denial will not suffice.

On the other hand, respondent's failure to account for his clients' funds is no proof that he spent them for purposes other than those intended, which were for "filing fees" and other litigation expenses. Complainant's allegation that respondent misappropriated "a big portion" of the Union members' contributions, without more, does not suffice to hold respondent liable for misappropriation. Without clear proof detailing the complainant's claim on this point, the Court cannot give credence to such serious charge. For a charge to warrant a disciplinary action against a lawyer, the complainant must present convincing proof to substantiate the charge.^[13] Otherwise, the presumption that the lawyer is innocent of the charge prevails.^[14]

Respondent is also Liable for his Failure to Timely and Properly Inform the Union Members of the Status of their Case