

FIRST DIVISION

[A.C. No. 5131, September 22, 2004]

**JOSE E. ORIA, COMPLAINANT, VS. ATTY. ANTONIO K. TUPAZ,
RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

In a Letter-Complaint^[1] dated September 1, 1999, respondent Atty. Antonio K. Tupaz was charged with negligence in the performance of his duties as counsel to complainant Jose E. Oria.

Complainant Oria avers that his wife, Viola Luna Oria authorized him to institute legal action to recover her unirrigated ricelands located at Barangay Banuyo, Gasan, Marinduque, with an area of 1.2121 hectares, which were transferred, by virtue of the Operation Land Transfer of the Agrarian Reform Program, to the alleged tenants in connivance with Lourdes Argosino and Linda Rey, field personnel of the Marinduque Agrarian Office (MARO).

Sometime in 1988, complainant went to the MARO and informed the Chief of the Complaints Section of the illegal transfer. Subsequently, the spouses Oria discovered that Emancipation Patents were issued to the so-called tenants.

Mr. Oria sought the assistance of then Agrarian Reform Secretary Miriam Defensor Santiago, who ordered Legal Officer Pablo F. Reyes to investigate the matter. The latter recommended that the Emancipation Patents be cancelled and the property returned to Mrs. Oria.

On May 6, 1991, the Provincial Agrarian Reform Officer (PARO), Herminiano C. Echiverri, Jr., sent Mrs. Oria a notice that her children were eligible for Retention. However, she did not file an application for Retention because she was awaiting the Investigation Report of Legal Officer Reyes.

On April 21, 1993, the Chief of the Legal Division, Ibra D. Omar Al Haj sent a letter to complainant's wife stating that the case had been forwarded to respondent Atty. Antonio K. Tupaz, Chief of the Litigation Division of the Bureau of Agrarian Legal Assistance (BALA) in Quezon City.

Thereafter, complainant consulted the respondent regarding the case and he gave the amount of P5,000.00 to the latter, promising a bigger amount after the termination of the case. He also assured the respondent that a fixed amount of P1,000.00 as traveling expenses would be given every time the latter will go to Marinduque. Complainant kept on reminding respondent to follow up the case but the latter was always unavailable. Finally, complainant's wife visited respondent's office and she was told that additional money was needed for expenses. Hence,

Mrs. Oria made a bank-to-bank deposit of P5,000.00 to the account of respondent. She later learned that he had already retired and was engaged in private practice.

Complainant further alleged that when he went to the Litigation Division of the DAR on August 31, 1999, he was told by Atty. Ibra D. Omar Al Haj, that the files of the agrarian case of his wife were missing from the office. Thus, he filed the instant complaint.

In his Comment,^[2] respondent avers that he met complainant during his tenure as Chief of the Litigation Division of the DAR, in relation to a dispute over the ownership of an agricultural riceland in Marinduque that was covered by the Operation Land Transfer of the Agrarian Reform Program. He also alleged that due to the volume of work and pending cases handled by the legal officers in the office, he did the evaluation and secured the necessary documents to support the first endorsement. It was only sometime in October 1993 when his office received the partial records of the case and a copy of the Investigation Report dated November 14, 1993, recommending the cancellation of the Emancipation Patents issued in favor of the tenant-farmers. Finally, in 1994, he was able to secure the documents relevant to the case, including copies of the Emancipation Patents, by going to Boac, Marinduque on two occasions.

Respondent further alleged that he caused the preparation of a possible petition for the cancellation of the Emancipation Patents and recommended its filing to the Office of the BALA, DAR Central Office. Thereafter, he was informed that the matter was referred to the Office of the Assistant Secretary of Legal Affairs because one of the party-defendants would be the Secretary of Agrarian Reform.

Respondent avers that he had no discretion over the matter since the filing of the case has to be approved not only by the Director of BALA but also by the Assistant Secretary for Legal Affairs of the DAR. His duty was only to evaluate the legal remedy to be availed of which the BALA then endorses for official action to the department. He further alleged that he informed complainant of these incidents and the action taken regarding the case pending before the DAR.

Finally, respondent denies that he received P5,000.00 from complainant during his tenure as Chief of the Litigation Division. He avers that he engaged in private practice upon his retirement and that sometime in December 1997, he was requested by complainant to handle the agrarian case, and they agreed on the amount of P25,000.00 as attorney's fees and P5,000.00 as appearance fee including roundtrip tickets from Manila to Marinduque per hearing. He admits receiving the said amount only in January 1998, which was sent to his account as partial payment of the agreed attorney's fees.

Respondent states that he should not be penalized for merely doing his job as a foot soldier of the government and that he should not be blamed for something that was already a *fait accompli* as a result of government's desire to implement social legislation. He promised to help complainant regardless of monetary consideration with the filing of the case for the cancellation of the Emancipation Patents issued to the latter's tenants.^[3]

Based on the Report and Recommendation of Commissioner Rebecca Villanueva-