

## SECOND DIVISION

[ A.C. No. 6441, October 21, 2004 ]

**VIOLETA R. TAHAW, COMPLAINANT, VS. ATTY. JEREMIAS P. VITAN, RESPONDENT.**

### DECISION

**TINGA, J,:**

A lawyer must at all times comport himself in a manner befitting a member of this noble profession and worthy of his esteemed position in society. Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the Bar.<sup>[1]</sup> Thus, any indicia of erosion in the dignity of the profession will be dealt with accordingly by this Court.

In a *Complaint*<sup>[2]</sup> dated 11 March 2002, Violeta R. Tahaw claimed that she secured the services of respondent for filing the appropriate action for the partition of a real property located in Makati City sometime in 1999. As agreed upon, petitioner delivered to respondent four (4) checks in the total amount of P30,000.00 representing payment of the latter's professional fee. However, after almost a year without petitioner hearing from respondent about the case he would file in court, petitioner sent respondent a letter-inquiry as to the status of the case. Respondent assured complainant that he had already filed the appropriate case in Makati. Not convinced by her counsel's assurance, complainant went to the Office of the Clerk of Court of Makati City to check if a case was indeed filed by respondent for and in her behalf.

A Certification dated 15 August 2000 issued by the assistant Clerk of Court of Makati City confirmed complainant's suspicion that respondent did not file the case as agreed upon. She wrote respondent informing him that she is terminating the latter's services as counsel and demanded the refund of the P30,000.00. Respondent failed to refund the aforesaid amount, and complainant was thus prompted to seek the assistance of the Integrated Bar of the Philippines (IBP).

The IBP, responding to complainant's predicament and wrote respondent two (2) letters,<sup>[3]</sup> informing the latter of complainant's grievance and asking his position thereon. Respondent, through a letter<sup>[4]</sup> to the IBP, claimed that the problem arose from a miscommunication between client and counsel. In addition, respondent insinuated that the case he was supposed to file for the complainant was complicated by the filing of other earlier complaints which he was not privy to. He promised to refund the complainant the P30,000.00.

The IBP acknowledged receipt of respondent's response and instructed him to issue six (6) postdated checks, each in the amount of P5,000.00 and dated a month apart, and to deliver the same to the IBP's office to facilitate the return of the P30,000.00 to complainant. Despite the instruction, respondent failed to refund the

amount to complainant, and succeeded only in having complainant go back and forth to his office. Complainant once more wrote to respondent regarding the checks, only to be told by respondent that he will just send the checks through his secretary. Complainant then filed a complaint for disbarment or suspension with the IBP.

For his part, respondent denied that he obligated himself to file the partition case upon receipt of the P30,000.00 as claimed by complainant. He averred that the said amount represents consultation fees, research fees, and minimal acceptance fees.<sup>[5]</sup> He stated that complainant failed to disclose to him circumstances which would have adverse effects on the case sought to be filed<sup>[6]</sup> and that when he confronted complainant about these, the latter became "lukewarm."<sup>[7]</sup> Furthermore, he claimed that he asked complainant for the filing fees but the latter "dilly-dallied" and after a while he received a letter terminating his services.<sup>[8]</sup> In fact, complainant had already affixed her signature to the complaint but was probably swayed by other advisers not to proceed with the case and instead pursue the refund of the P30,000.00.<sup>[9]</sup>

On 27 November 2003, IBP Commissioner Acerey C. Pacheco submitted his report and recommendation to the IBP Board of Governors. As per the report, respondent's agreement to represent complainant in the partition case intended to be filed was established.<sup>[10]</sup> Likewise, the report pointed out the inconsistency between respondent's statement in his Answer denying that he obligated himself to file the case upon receipt of P30,000.00 and complainant's dilly-dallying in giving him the amount for filing fees, as against his assurances to complainant that the case was already filed.<sup>[11]</sup> The report noted that respondent's failure to reply to or deny complainant's allegation in her letter terminating his services was an admission that he miserably failed to diligently attend to the latter's case.<sup>[12]</sup> Finally, the report stated that respondent failed to comply with his commitment to return the P30,000.00. Considering that the amount was paid by the complainant for his professional services which he miserably failed to perform, the same must be returned to complainant without delay.<sup>[13]</sup> The report recommended that respondent be reprimanded and admonished to be more careful in the performance of his duty to his clients.<sup>[14]</sup>

On 27 February 2004, the IBP Board of Governors issued a resolution adopting and approving the Report and Recommendation of the Investigating Commissioner,<sup>[15]</sup> to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, 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, considering that a lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client, Atty. Jeremi[as] P. Vitan is hereby REPRIMANDED and ADMONISHED to be, henceforth, more careful in the performance of his duty to his clients and Ordered to Immediately Return the amount of P30,000.00 to complainant.

After a careful consideration of the record of the instant case, the Court agrees with the IBP in its findings and conclusion that respondent has been remiss in his responsibilities. However, this Court holds that the appropriate sanction should be a suspension for a period of six (6) months.

Canon 17 of the Code of Professional Responsibility provides: "A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." In the case of *Aromin v. Atty. Boncavil*,<sup>[16]</sup> this Court held:

Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client save, by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.<sup>[17]</sup>

The trust and confidence necessarily reposed by clients require in a lawyer a high standard and appreciation of his duty to them. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty, and integrity of the legal profession.<sup>[18]</sup>

A perusal of the records of the case reveals that complainant wanted to partition a parcel of residential land owned in part by her deceased husband, Simeon Tahaw, Sr.<sup>[19]</sup> Allegedly, Simeon owed complainant sums of money which the former failed to pay, as a result of which, complainant filed a case against him. To settle the case, the spouses entered into an agreement<sup>[20]</sup> dated 27 May 1987 wherein Simeon Tahaw, Sr. and complainant agreed that a specific forty (40) square meter portion of the same parcel of land "shall pass on to complainant as her exclusive property to the exclusion of all other heirs."<sup>[21]</sup> When Simeon died, complainant went to respondent to seek the partition of the same parcel of land with the forty (40) square meter portion thereof awarded to her.

It is an elementary principle in civil law that every donation between the spouses during the marriage is void.<sup>[22]</sup> The agreement relied upon by complainant for the proposed partition case partakes the nature of a donation by Simeon of a part of his undivided share in the property. Hence, the agreement is void and cannot be the source of any right in favor of complainant. The partition case was premised on a void agreement and thus could not prosper.