

FIRST DIVISION

**[A.C. No. 6238 (Formerly CBD Case No. 00-762),
November 04, 2004]**

**LINDA VILLARIASA-RIESENBECK, COMPLAINANT, VS. ATTY.
JAYNES C. ABARRIENTOS, RESPONDENT.**

RESOLUTION

QUISUMBING, J.:

In a **Verified Letter-Complaint**^[1] filed with the Integrated Bar of the Philippines (IBP) on September 11, 2000, complainant Linda Villarias-Riesenbeck charged respondent Atty. Jaynes C. Abarrientos with professional misconduct and neglect of duty.

Complainant alleges that respondent was her lawyer in CA-G.R. CV No. 45655, a case she had elevated to the Court of Appeals. The case was unfortunately decided against her, so she asked respondent to prepare a Motion for Reconsideration.^[2] She paid him P5,000 for the motion, with the understanding that if it became necessary to file a petition for review with the Supreme Court, she will pay him another P5,000 for the petition. Nevertheless, without first waiting for a resolution of the motion and barely a day after the Motion for Reconsideration was filed, she paid respondent the P5,000.^[3]

Respondent, who anticipated a denial of the motion, then asked her to get certified true copies of the Court of Appeals' adverse decision. She went to Manila on March 23, 2000, and got what respondent had requested. But after she had given him the copies of the decision, respondent failed to apprise her about the status of her case. Respondent never even called her at her landlady's phone number which she left with him.^[4]

Fearful that the period to appeal might lapse, she and her husband, Johannes, visited respondent several times in May 2000 to ask if a resolution on the motion had already arrived. In June 2000, she made the inquiries by herself while Johannes, who had meanwhile left the country, continued to write and call respondent from Holland.^[5]

When she heard that a resolution had arrived, it was not from respondent but from Johannes. In the first week of June 2000, when Johannes called from Holland, respondent told Johannes that a copy of a Resolution denying the motion had already arrived. Respondent also said that a Motion for Extension of Time to File the Petition had also been filed with the Supreme Court. She was surprised to hear this because respondent never told her about the Resolution or the Motion for Extension of Time he supposedly filed, despite her follow-up visits to him in the last week of May and early in June.^[6]

She returned to respondent's law office on June 23, 27, and 30, 2000,^[7] to ask for a copy of the Resolution and to follow up on the petition, which she expected respondent was preparing already. Respondent, who never gave her a copy of the Resolution, kept assuring her that the petition would be filed on time.^[8]

On July 3, 2000, respondent told her that the petition was ready to be filed the next day.^[9] When she arrived at his office on July 4, 2000, however, respondent astounded her with the truth that the period to file the petition had already expired. Respondent confessed that he received the denial of the Motion for Reconsideration on April 18, 2000. She burst into tears because she knew that because of respondent, she had lost all her hopes concerning the case.^[10]

In his **Answer** filed on November 14, 2000, respondent insists he was diligent in the performance of his duties. He claims that after he received the denial of the Motion for Reconsideration on April 18, 2000, he tried to reach complainant. He had his secretaries call her several times at the phone number she gave and even repeatedly sent a messenger to her house at Humay-humay, Lapu-lapu City. Despite the messages they left for her, complainant never showed up.^[11]

When complainant did go to his office, it was only on June 23, 2000, long after the period to appeal had lapsed.^[12] He blamed her for coming late, and told her that even if she came on time, he would tell her to look for another lawyer, as he was convinced that filing the petition was futile. He also told her that filing a petition that merely reiterates the arguments in the motion for reconsideration would render him liable for contempt. He advised her to tell her husband these things.^[13]

Complainant had agreed with him, according to respondent, adding that she had lost interest in her case. She said that she was only there because her husband, Johannes, had been pressing her to pursue the case even when she lacked the money to do as he wished.^[14]

The next time he saw complainant was a few days after, on June 27, 2000. Although she knew that the period to appeal had expired, respondent said she pleaded with him to file the petition. He refused. On June 30, 2000, she returned to his office and reiterated her request. At that point, he said that he returned the records to her.^[15]

Respondent further alleges that from the very start, he made it clear to complainant and her husband that she stood to lose the case even before the Supreme Court.^[16] Still, complainant and her husband insisted that the adverse Decision of the Court of Appeals be appealed.^[17]

His apprehension to appeal the case notwithstanding, he agreed to file the Motion for Reconsideration. He did not, however, categorically agree to file the petition. Accordingly, he apprised complainant that the P5,000 for the petition will only be paid if he decided to file one.^[18]

Respondent admits instructing complainant to secure certified true copies of the

adverse decision of the Court of Appeals, but denies instructing her to go to Manila to get it.^[19] He likewise denies ever telling Johannes in the first week of June 2000 that a Motion for Extension of Time to File a Petition for Review had been filed.^[20]

In her **Reply**^[21] to respondent's answer, complainant points to the Joint Affidavit^[22] of Nesa Y. Bentulan, her landlady, and Marilyn Baay, the latter's housemaid, who both averred that neither of them received any phone call or visit from respondent or any of his personnel. Complainant avers that they are the ones with whom respondent's personnel would have to talk to because the phone number she left with respondent belonged to Bentulan. They are also the ones with whom respondent's messenger would have to talk to in the compound where she lived.^[23]

After investigating the matter, the Investigating Commissioner of the IBP Committee on Bar Discipline found respondent to have violated Canons 17 and 18 of the Code of Professional Responsibility.^[24] In Resolution No. XVI-2003-173, issued on September 27, 2003, the IBP Board of Governors adopted the CBD findings, and recommended to this Court that respondent be suspended for four months. It was likewise recommended that respondent be ordered to refund the P5,000 complainant alleges she paid for the petition.^[25]

We are in full accord with the recommendations of the IBP Board of Governors.

The proven facts of this case are contrary to respondent's assertion that his sole obligation to complainant was to file the Motion for Reconsideration. The description of legal services in the official receipts that he himself issued for the two partial payments complainant made shows the extent of legal services he contracted to render. The first receipt reads as follows:

Received from LINDA RIESENBECK the sum of FIVE THOUSAND PESOS (P5,000.00) representing the following:

<u>PARTICULARS</u>	<u>AMOUNT</u>
Re: Partial Payment for Preparation of Motion for Reconsideration & eventually Petition for Review to the Supreme Court case of Linda Riesenbeck vs. MAGICCORP – CA-G.R. CV-45655	- - - P5,000.00

Balance Remaining:
P5,000.00 to be paid upon filing of the Motion
for Reconsideration;
P5,000.00 to be paid on or before
October 30, 2000.

(SGD.)
ATTY. JAYNES C. ABARRIENTOS

Cebu City, Philippines, February 24,
2000.^[26]

The second reads as follows:

Received from LINDA RIESENBECK the sum of FIVE THOUSAND PESOS (P5,000.00) representing the following:

<u>PARTICULARS</u>	<u>AMOUNT</u>
Re: Additional Partial Payment for the Preparation of Motion for Reconsideration & Petition for Review case of Linda Riesenbeck vs. MAGICCORP	- - - P5,000.00

Balance Remaining:
P5,000.00 to be paid **upon submission of the Petition for Review to the Supreme Court.**

(SGD.)
ATTY. JAYNES C. ABARRIENTOS

Cebu City, Philippines, March 04, 2000.
[27]

As the first receipt shows, respondent bound himself to file not only the Motion for Reconsideration, but also the petition for review. This is clear from the words "*Partial Payment for Preparation of Motion for Reconsideration & eventually Petition for Review to the Supreme Court*" in the first receipt. The second receipt, on its face, bears the words "*Balance Remaining: P5,000.00 to be paid upon submission of the Petition for Review to the Supreme Court.*" The tenor of these words, which respondent himself had written, clearly shows the respondent's obligations concerning complainant's case.

That respondent was supposed to elevate complainant's case is consistent with the fact that as early as March 2000, during the pendency of the Motion for Reconsideration with the Court of Appeals, respondent instructed complainant to secure certified true copies of the adverse decision to be attached to the petition.

[28] Not only is his action proof that he was obliged to elevate complainant's case, his action is also proof he considered her cause meritorious. Respondent's present claim that he apprised complainant from the very start that further appeal or petition would be unmeritorious is, therefore, clearly a ruse.

Likewise unbelievable is respondent's claim that he repeatedly sent his messenger and had his secretaries call complainant several times. Respondent alleges that complainant could not be reached in time for him to withdraw his services while allowing complainant sufficient time to hire other counsel. We note, however, that respondent never attempted to write complainant to apprise her that he had already received the denial of the Motion for Reconsideration. Sending a letter to her by registered mail would have been the simplest thing he could have done to protect himself from liability if it were true that complainant could not be found in time.

What is more, complainant's landlady and the latter's housemaid averred in a joint affidavit that none of respondent's personnel ever visited or called and left a