

## EN BANC

[ A.C. No. 5829, October 28, 2003 ]

**DANIEL LEMOINE, COMPLAINANT, VS. ATTY. AMADEO E. BALON, JR., RESPONDENT.**

### DECISION

#### PER CURIAM:

On December 17, 1999, complainant Daniel Lemoine, a French national, filed a verified complaint<sup>[1]</sup> against respondent Atty. Amadeo E. Balon, Jr., for estafa and misconduct before the Integrated Bar of the Philippines. The case, docketed as CBD Case No. 99-679, was referred by the Commission on Bar Discipline to an Investigator for investigation, report and recommendation.

The facts that spawned the filing of the complaint are as follows:

In early 1998, complainant filed a car insurance claim with the Metropolitan Insurance Company (Metropolitan Insurance), the insurer of his vehicle which was lost. As complainant encountered problems in pursuing his claim which was initially rejected,<sup>[2]</sup> his friend, a certain Jesus "Jess" Garcia (Garcia), arranged for the engagement of respondent's services.

By letter<sup>[3]</sup> of October 21, 1998 addressed to Elde Management, Inc., "ATTN: Mr. Daniel Lemoine," under whose care complainant could be reached, respondent advised complainant, whom he had not before met, that for his legal services he was charging "25% of the actual amount being recovered. . . payable upon successful recovery;" an advance payment of P50,000.00 "to be charged [to complainant] to be deducted from whatever amount [would] be successfully collected;" P1,000.00 "as appearance and conference fee for each and every court hearings, conferences outside our law office and meetings before the Office of the Insurance Commission which will be also charged to our 25% recovery fee;" and legal expenses "such as but not limited to filing fee, messengerial and postage expenses . . . and other miscellaneous but related expenses," to be charged to complainant's account which would be reimbursed upon presentation of statement of account.

The letter-proposal of respondent regarding attorney's fees does not bear complainant's conformity, he not having agreed therewith.

It appears that Metropolitan Insurance finally offered to settle complainant's claim, for by letter<sup>[4]</sup> of December 9, 1998 addressed to it, respondent confirmed his acceptance of its offer to settle the claim of complainant "in an *ex-gratia* basis of 75% of his policy coverage which is therefore FIVE HUNDRED TWENTY FIVE THOUSAND (P525,000.00) PESOS."

A day or a few days before December 23, 1998 when complainant left for France,<sup>[5]</sup> he, on the advice of respondent, signed an already prepared undated Special Power of Attorney<sup>[6]</sup> authorizing respondent and/or Garcia to bring any action against Metropolitan Insurance for the satisfaction of complainant's claim as well as to "negotiate, sign, compromise[,], encash and receive payment" from it. The Special Power of Attorney was later dated December 23, 1998 on which same date Metropolitan Insurance issued a Chinabank Check No. 841172 **payable to complainant** in the amount of P525,000.00 as full settlement of the claim.<sup>[7]</sup> The check was received by respondent.

In the meantime, complainant returned to the Philippines in early January 1999 but left again on the 24th of the same month.<sup>[8]</sup> On inquiry about the status of his claim, Garcia echoed to complainant what respondent had written him (Garcia) in respondent's letter<sup>[9]</sup> of March 26, 1999 that the claim was still pending with Metropolitan Insurance and that it was still subject of negotiations in which Metropolitan Insurance offered to settle it for P350,000.00 representing fifty percent thereof. In the same letter to Garcia, respondent suggested the acceptance of the offer of settlement to avoid a protracted litigation.

On December 6, 1999, on complainant's personal visit to the office of Metropolitan Insurance, he was informed that his claim had long been settled via a December 23, 1998 check given to respondent the year before.<sup>[10]</sup> Complainant lost no time in going to the law office of respondent who was not around, however, but whom he was able to talk by telephone during which he demanded that he turn over the proceeds of his claim.<sup>[11]</sup>

Respondent thereupon faxed to complainant a December 7, 1999 letter<sup>[12]</sup> wherein he acknowledged having in his possession the proceeds of the encashed check which he retained, however, as attorney's lien pending complainant's payment of his attorney's fee, equivalent to fifty percent (50%) of entire amount collected. In the same letter, respondent protested what he branded as the "uncivilized and unprofessional behavior" complainant "reportedly demonstrated" at respondent's office. Respondent winded up his letter as follows, quoted *verbatim*:

We would like to make it clear that **we cannot give you the aforesaid amount until and unless our attorney's fees will be forthwith agreed and settled.** In the same manner, should you be barbaric and uncivilized with your approached, **we will not hesitate to make a proper representation with the Bureau of Immigration and Deportation for the authenticity of your visa, Department of Labor and Employment for your working status, Bureau of Internal Revenue for your taxation compliance and the National Bureau of Investigation [with] which we have a good network...**

While it [is your] prerogative to file a legal action against us, it is also our prerogative to file a case against you. We will rather suggest if you could request your lawyer to just confer with us for the peaceful settlement of this matter. (Underscoring and emphasis supplied)

As despite written demands,<sup>[13]</sup> respondent refused to turn over the proceeds of the insurance claim and to acknowledge the unreasonableness of the attorney's fees he

was demanding, complainant instituted the administrative action at bar on December 17, 1999.

In his Complaint-Affidavit, complainant alleged that "[i]t appears that there was 'irregularity' with the check," it having been issued payable to him, but "and/or AMADEO BALON" was therein intercalated after his (complainant's) name.<sup>[14]</sup>

Maintaining that respondent was entitled to only P50,000.00 in attorney's fees,<sup>[15]</sup> complainant decried respondent's continued possession of the proceeds of his claim<sup>[16]</sup> and his misrepresentations that the recovery thereof was fraught with difficulties.<sup>[17]</sup>

In his Counter-Affidavit<sup>[18]</sup> of February 18, 2000, respondent asserted that his continued retention of the proceeds of complainant's claim is in lawful exercise of his lien for unpaid attorney's fees. He expressed readiness, however, to account for and turn them over once he got paid fifty percent (50%) thereof, he citing the so called contingent fee billing method of "no cure, no pay" adopted by practicing lawyers in the insurance industry as the basis of the amount of his attorney's fees,<sup>[19]</sup> which to him was justified in the absence of an attorney-client contract between him and complainant, the latter having rejected respondent's letter-proposal of October 21, 1998.<sup>[20]</sup>

Respondent also highlighted the value of the time and efforts he extended in pursuing complainant's claim and the expenses he incurred in connection therewith. He went on to assert that his inability to contact complainant whose whereabouts he did not know prompted him to encash the check and keep the proceeds thereof in conformity with the Special Power of Attorney executed in his favor.<sup>[21]</sup>

During the hearings conducted by the IBP Investigator, complainant echoed his allegations in his Complaint-Affidavit and stressed that he turned down as unreasonable respondent's proposal in his October 21, 1998 letter that he be paid 25% of the actual amount collected for his legal services.<sup>[22]</sup> And he presented documentary evidence, including the March 26, 1999 letter of respondent informing his co-attorney-in-fact Garcia of the supposedly still unrecovered claim and suggesting acceptance of the purported offer of Metropolitan Insurance to settle complainant's claim at P350,000.00.

Explaining how his above-mentioned March 26, 1999 letter to Garcia came about, respondent declared that it was made upon Garcia's request, intended for a certain Joel Ramiscal (Ramiscal) who was said to be Garcia's business partner.<sup>[23]</sup>

Respondent later submitted a June 13, 2001 Supplement<sup>[24]</sup> to his Counter-Affidavit reiterating his explanation that it was on Garcia's express request that he wrote the March 26, 1999 letter, which was directed to the fax number of Ramiscal.

Additionally, respondent declared that in the first week of May 1999, on the representation of Garcia that he had talked to complainant about respondent's retention of fifty percent (50%) of the insurance proceeds for professional fees less expenses,<sup>[25]</sup> he gave Garcia, on a staggered basis, the total amount of

P233,000.00 which, so respondent averred, is the amount of insurance claim complainant is entitled to receive less attorney's fees and expenses.<sup>[26]</sup> Thus, respondent claimed that he gave Garcia the amount of P30,000.00 on May 31, 1999 at Dulcinea Restaurant in Greenbelt, Makati; the amounts of P50,000.00, P20,000.00 and P30,000.00 on different occasions at his (respondent's) former address through his executive secretary Sally I. Leonardo; the amount of P20,000.00 at the office of his (respondent's) former employer Commonwealth Insurance Company through his subordinate Glen V. Roxas; and several other payments at Dulcinea, and at Manila Intercontinental Hotel's coffee shop sometime in October 1999.<sup>[27]</sup> Respondent submitted the separate sworn statements of Leonardo and Roxas.<sup>[28]</sup>

Explaining why no written memorandum of the turn over of various payments to Garcia was made, respondent alleged that there was no need therefor since he very well knew Garcia who is a co-Rotarian and co-attorney-in-fact and whom he really dealt with regarding complainant's claim.<sup>[29]</sup>

Respondent furthermore declared that he rejected complainant's offer to pay him P50,000.00 for his services, insisting that since there had been no clear-cut agreement on his professional fees and it was through him that Metropolitan Insurance favorably reconsidered its initial rejection of complainant's claim, he is entitled to a contingent fee of 50% of the net proceeds thereof.<sup>[30]</sup>

Finally, respondent declared that he, in connection with his follow-up of the insurance claim, incurred representation expenses of P35,000.00, entertainment and other representation expenses on various occasions of P10,000.00, and transportation and gasoline expenses and parking fees of P5,000.00;<sup>[31]</sup> and that his retention of complainant's money was justified in light of his apprehension that complainant, being an alien without a valid working permit in the Philippines, might leave the country anytime without settling his professional fees.<sup>[32]</sup>

The Investigating Commissioner, by Report and Recommendation<sup>[33]</sup> of October 26, 2001, found respondent guilty of misconduct and recommended that he be disbarred and directed to immediately turn over to complainant the sum of P475,000.00 representing the amount of the P525,000.00 insurance claim less respondent's professional fees of P50,000.00, as proposed by complainant.

The Board of Governors of the Integrated Bar of the Philippines, acting on the Investigator's Report, issued Resolution No. XV-2002-401<sup>[34]</sup> on August 3, 2002, reading:

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/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, **with modification**, and considering respondent's dishonesty which amounted to grave misconduct and grossly unethical behavior which caused dishonor, not merely to respondent but the noble profession to which he belongs, Respondent is hereby **SUSPENDED** from the practice

of law for six (6) months with the directive to turn over the amount of Five Hundred Twenty Five Thousand (P525,000.00) Pesos to the complainant without prejudice to respondent's right to claim attorney's fees which he may collect in the proper forum. (Underscoring supplied)

The records of the case are before this Court for final action.

Respondent, by a Motion for Reconsideration<sup>[35]</sup> filed with this Court, assails the Investigating Commissioner's Report and Recommendation as not supported by clear, convincing and satisfactory proof. He prays for the reopening of the case and its remand to the Investigator so that Garcia can personally appear for his (respondent's) confrontation.

There is no need for a reopening of the case. The facts material to its resolution are either admitted or documented.

This Court is in full accord with the findings of the IBP Investigator that respondent violated the following provisions of the Code of Professional Responsibility, to wit:

RULE 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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CANON 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

RULE 15.06 - A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

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CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

RULE 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

RULE 16.02 - A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

RULE 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

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CANON 17 - A lawyer owes fidelity to the cause of his client and he shall