

SECOND DIVISION

[Adm. Case No. 5020, December 18, 2001]

ROSARIO JUNIO, COMPLAINANT, VS. ATTY. SALVADOR M. GRUPO, RESPONDENT.

DECISION

MENDOZA, J.:

This is a complaint for disbarment filed against Atty. Salvador M. Grupo for malpractice and gross misconduct.

Complainant Rosario N. Junio alleged that -

3. Sometime in 1995, [she] engaged the services of [respondent], then a private practitioner, for the redemption of a parcel of land covered by Transfer Certificate of Title No. 20394 registered in the name of her parents, spouses Rogelio and Rufina Nietes, and located at Concepcion, Loay, Bohol.
4. On 21 August 1995, [complainant] entrusted to [respondent] the amount of P25,000.00 in cash to be used in the redemption of the aforesaid property. Respondent received the said amount as evidenced by an acknowledgment receipt, a copy of which is being hereto attached as Annex "A".
5. Notwithstanding the foregoing and for no valid reason, respondent did not redeem the property; as a result of which the right of redemption was lost and the property was eventually forfeited.
6. Because of respondent's failure to redeem the property, complainant had demanded [the] return of the money which she entrusted to the former for the above-stated purpose.
7. Despite repeated demands made by the complainant and without justifiable cause, respondent has continuously refused to refund the money entrusted to him.^[1]

In his Answer, petitioner admitted receiving the amount in question for the purpose for which it was given. However, he alleged that-

6. The subject land for which the money of complainant was initially intended to be applied could really not be redeemed anymore . . . ;
7. Complainant knew the mortgage agreement between her parents and the mortgage-owner had already expired, and what respondent was trying to do was a sort of [a] desperate, last-ditch attempt to

persuade the said mortgagee to relent and give back the land to the mortgagors with the tender of redemption; but at this point, the mortgagee simply would not budge anymore. For one reason or another, he would no longer accept the sum offered;

8. By the time that complainant was to return to Manila, it was already a foregone matter that respondent's efforts did not succeed. And so, when transaction failed, respondent requested the complainant that he be allowed, in the meantime, to avail of the money because he had an urgent need for some money himself to help defray his children's educational expenses. It was really a personal request, a private matter between respondent and complainant, thus, respondent executed a promissory note for the amount, a copy of which is probably still in the possession of the complainant.

9. . . . [T]he family of the complainant and that of the respondent were very close and intimate with each other. Complainant, as well as two of her sisters, had served respondent's family as household helpers for many years when they were still in Manila, and during all those times they were treated with respect, affection, and equality. They were considered practically part of respondent's own family.

That is why, when complainant requested . . . assistance regarding the problem of the mortgaged property which complainant wanted to redeem, respondent had no second-thoughts in extending a lending hand

Respondent did not ask for any fee. His services were purely gratuitous; his acts [were] on his own and by his own. It was more than pro bono; it was not even for charity; it was simply an act of a friend for a friend. It was just lamentably unfortunate that his efforts failed.

. . . .

Of course, respondent accepts his fault, because, indeed, there were occasions when complainant's sisters came to respondent to ask for the payment in behalf of complainant, and he could not produce the money because the circumstances somehow, did not allow it. [I]t does not mean that respondent will not pay, or that he is that morally depraved as to wilfully and deliberately re[nege] in his obligation towards the complainant.^[2]

Complainant filed a reply denying that respondent informed her of his failure to redeem the property and that respondent requested her to instead lend the money to him.^[3]

The case was thereafter referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. However, while two hearings were set for this purpose, both were postponed at the instance of respondent. For this reason, on August 28, 2000, complainant asked the Investigating Commissioner^[4] to consider the case submitted for decision on the basis of the pleadings theretofore

filed. Respondent was required to comment on complainant's motion, but he failed to do so. Consequently, the case was considered submitted for resolution.

In his report, dated January 5, 2001, the Investigating Commissioner found respondent liable for violation of Rule 16.04 of the Code of Professional Responsibility which forbids lawyers from borrowing money from their clients unless the latter's interests are "protected by the nature of the case or by independent advice." The Investigating Commissioner found that respondent failed to pay his client's money. However, in view of respondent's admission of liability and "plea for magnanimity," the Investigating Commissioner recommended that respondent be simply reprimanded and ordered to pay the amount of P25,000.00 loan plus interest at the legal rate.

In its Resolution No. XIV-2001-183, dated April 29, 2001, the IBP Board of Governors adopted and approved the Investigating Commissioner's findings. However, it ordered -

[R]espondent . . . suspended indefinitely from the practice of law for the commission of an act which falls short of the standard of the norm of conduct required of every attorney and . . . ordered [him] to return to the complainant the amount of P25,000.00 plus interest at the legal rate from the time the said amount was misappropriated, until full payment; provided that the total suspension shall be at least one (1) year from the date of said full payment.

On July 4, 2001, respondent filed a motion for reconsideration alleging that -

- (a) there was no actual hearing of the case wherein respondent could have fully ventilated and defended his position;
- (b) the subject Resolution gravely modified the Report and Recommendation of the Trial Commissioner, Hon. Pedro Magpayo, Jr., . . . such that the resultant sanctions that are ordered imposed are too leonine, unjust and cruel;
- (c) that the factual circumstances attending the matter which gave rise to the complaint were not rightly or fairly appreciated.^[5]

He argues that the Court should adopt the report and recommendation of the IBP Investigating Commissioner.

In its resolution of August 15, 2001, the Court resolved to treat respondent's motion for reconsideration as a petition for review of IBP Resolution No. XIV 2001-183 and required complainant to comment on the petition.

In her comment, complainant states that her primary interest is to recover the amount of P25,000.00 with interest and that she is leaving it to the Court to decide whether respondent deserves the penalty recommended by the IBP.^[6]

The Court resolves to partially grant the petition. In his report and recommendation, Investigating Commissioner Magpayo, Jr. made the following findings: