



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**SPOUSES BYRON and MARIA
LUISA SAUNDERS,**
Complainants,

A.C. No. 8708
(CBD Case No. 08-2192)

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ*.

**ATTY. LYSSA GRACE S.
PAGANO-CALDE,**
Respondent.

Promulgated:

AUG 12 2015

X ----- X

DECISION

SERENO, CJ:

Before us is a Complaint filed by spouses Byron and Maria Luisa Saunders (complainants) against Atty. Lyssa Grace S. Pagano-Calde (respondent) for allegedly misappropriating ₱530,000.

THE FACTS

The antecedent facts of the case as shown by the records are as follows:

Complainants obtained the services of respondent in relation to the sale of a property located at 1 Tacay Road, Quezon Hill, Baguio City (subject property), registered in the name of Virgilio J. Gaerlan (Virgilio). Respondent also represented complainants in the case involving the partition of the subject property.

On 12 January 2005, a Deed of Conditional Sale was supposedly entered into by complainant Maria Luisa with her brother Virgilio who was represented by their mother, Adelia J. Gaerlan (Adelia), as his attorney-in-fact. In view of this transaction, complainants gave respondent the following amounts: 1) ₱500,000 representing partial payment of the purchase price and to be held in trust for Adelia;¹ and 2) ₱60,000 for various expenses such as ₱30,000 for the publication of summons, ₱15,000 for commissioner's fee, and ₱15,000 for the last will and testament of Adelia.²

The sale did not push through. A case for partition of the subject property was then instituted.

Subsequently, sometime in 2007, complainants demanded the return of ₱500,000, ₱15,000 for commissioner's fee, and ₱15,000 for the last will and testament of Adelia.

According to complainants, when they demanded the return of the money, respondent told them that it was in a term deposit. She failed, though, to present any detail such as proof of deposit. She also failed to meet with complainants to discuss matters on the pending civil case related to the sale of the subject property.

On the other hand, respondent claimed that the money had already been turned over to Adelia on 14 November 2005. She presented an Acknowledgment Receipt³ allegedly signed by Adelia. It was contended that respondent merely complied with the provisions of the Deed of Conditional Sale, in which the parties agreed “[t]hat in the event that the vendee shall not make full payment of the purchase price on or before 31 October 2005, then the partial payment made shall be forfeited in favor of the vendor.”⁴ Complainants failed to pay the purchase price on 31 October 2005, so respondent gave Adelia the ₱500,000 being held in trust in accordance with the parties' agreement.

Receipt of the money was, however, denied by Adelia. The continued refusal of respondent to return the money prompted complainants to file a criminal case for *estafa*. They claimed that respondent produced the dubious Acknowledgment Receipt supposedly signed by Adelia only after the filing of the criminal case. A copy of the case records was also attached to the Position Paper of complainants. The documents include, among others: 1) the Affidavit of Adelia denying receipt of ₱500,000 from respondent;⁵ 2) the Resolution of the Prosecutor's Office finding probable cause for the prosecution of respondent for the crime of *estafa*;⁶ and 3) a Questioned

¹ *Rollo*, p. 8; Acknowledgment Receipt.

² *Id.* at 9.

³ *Id.* at 66; Annex “B,” respondent's Position Paper.

⁴ *Id.* at 65; Annex “A.”

⁵ *Id.* at 148; Annex “G” complainants' Position Paper.

⁶ *Id.* at 150-152; Annex “H.”

Documents Report dated 28 October 2008 issued by the National Bureau of Investigation (NBI) stating that a comparative examination of the specimen signatures of Adelia and the signature on the Acknowledgment Receipt dated 14 November 2005 revealed that they were not written by one and the same person.⁷

Spouses Saunders filed a complaint with the Integrated Bar of the Philippines (IBP), Baguio-Benguet Chapter. This complaint was referred to the IBP – Commission on Bar Discipline (IBP-CBD). However, the parties failed to attend the mandatory conference set by the Commission despite repeated postponements and resettings. Commissioner Waldo G. Rebolos gave them an order to file their respective Position Papers, instead, to which they complied.

THE IBP-CBD’S REPORT AND RECOMMENDATION

The IBP-CBD, through Commissioner Waldos, finds that complainants and respondent had diametrically opposed allegations that led to the filing of a criminal case for *estafa* against her in Baguio City. Because of the pendency of the criminal case and the fact that the main issue in this administrative case is whether respondent actually delivered the amount of ₱500,000 to Adelia Gaerlan, the issue of whether the former has in fact misappropriated the funds she held in trust for her client cannot yet be resolved.

The IBP-CBD recommends that the case be dismissed without prejudice to the outcome of the criminal case for *estafa* against respondent.

In a Resolution dated 26 February 2010,⁸ the Board of Governors of the IBP adopted and approved the Report and Recommendation by the IBP-CBD after finding that the same is fully supported by evidence on record and applicable laws and rules.

THE COURT’S RULING

This Court does not agree with the recommendation of the IBP Commission on Bar Discipline.

Disbarment proceeding is separate and distinct from a criminal action filed against a lawyer even if they involve the same set of facts.⁹ A finding of guilt in the criminal case will not necessarily result in a finding of liability

⁷ *Rollo*, pp. 155-156; Annex “K.”

⁸ See *rollo*, no pagination.

⁹ *Bengco v. Bernardo*, A.C. No. 6368, 13 June 2012, 672 SCRA 8, 19.

in the administrative case. Conversely, the acquittal does not necessarily exculpate one administratively.¹⁰

In *Yu v. Palaña*,¹¹ the Court held:

Respondent, being a member of the bar, should note that administrative cases against lawyers belong to a class of their own. They are distinct from and they may proceed independently of criminal cases. A criminal prosecution will not constitute a prejudicial question even if the same facts and circumstances are attendant in the administrative proceedings. Besides, it is not sound judicial policy to await the final resolution of a criminal case before a complaint against a lawyer may be acted upon; otherwise, this Court will be rendered helpless to apply the rules on admission to, and continuing membership in, the legal profession during the whole period that the criminal case is pending final disposition, when the objectives of the two proceedings are vastly disparate. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and for preserving courts of justice from the official ministrations of persons unfit to practice law. The attorney is called to answer to the court for his conduct as an officer of the court.

The pendency of the criminal case should not be a reason to dismiss the complaint of the client against the lawyer. The Court must make a separate determination of the administrative liability of the lawyer to preserve the integrity of the legal profession.

At this point, we cannot yet ascertain the full liability of respondent with respect to the money entrusted to respondent, as this proceeding should not preempt the outcome of the factual determination of the *estafa* case. Nonetheless, a determination of whether a violation of the lawyer's oath was committed by respondent may still be made.

This Court finds the following pertinent provisions of the Code of Professional Responsibility applicable to this case, to wit:

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

CANON 17 — A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him.

The Complaint was triggered by allegations regarding how respondent had dealt with complainants' money. There is evidence that she fell short of her undertakings to her clients. She does not deny their allegation that she failed to meet with them on several instances, making them wonder about the status of the money they had entrusted to her.

¹⁰ *Gatchalian Promotions Talents Pools, Inc. v. Atty. Naldoza*, 374 Phil. 1, 10 (1999).

¹¹ A.C. No. 7747, 14 July 2008, 558 SCRA 21, 28.

The claim of respondent that the money was already delivered to Adelia following the terms of the Deed of Conditional Sale is not believable. A reading of the statements of respondent herself would reveal that she did not personally apprise complainants about the alleged delivery of ₱500,000 to Adelia despite their persistent pleas for the return of the amount. It took a while for respondent to respond to the queries of complainants. In fact, she did not rebut their allegation that the Acknowledgment Receipt dated 14 November 2005 purportedly signed by Adelia was produced only after the *estafa* case had been filed against the former. Neither did respondent explain why complainants were not furnished a copy of the Acknowledgment Receipt.

If respondent's claim of delivery is true, we find it strange that the money was still delivered to Adelia on 14 November 2005, despite respondent's knowledge of Virgilio's revocation of the power of attorney as early as January 2005. Respondent admitted in her Reply to Complainant's Position Paper¹² that complainants discovered the revocation when the Deed of Sale was denied registration upon its presentation to the Register of Deeds on January 2005.¹³ From her own statement, she was aware that Virgilio had already revoked the power of attorney given to Adelia as early as January 2005. Adelia did not have the authority to sign, much less to receive, the partial payment on behalf of Virgilio. As lawyer for complainants, she ought to have protected her clients' cause and not have given the money to Adelia.

The supposed Deed of Conditional Sale provided for the forfeiture of the partial payment in favor of the vendor if the vendee failed to pay on or before 31 October 2005. It is worth emphasizing that respondent was representing complainants who were the vendees in the transaction. Had she fulfilled her duty, respondent should have pointed out to her clients that Adelia did not have the authority to sign on behalf of Virgilio as he had already revoked Adelia's authority as early as December 2004. The Deed of Conditional Sale had therefore no force and effect as far as Virgilio, the registered owner of the subject property, is concerned, and Adelia therefore had no right to demand the money.

Simply stated, respondent cannot take cover behind the supposed required compliance with the provisions of the Deed of Conditional Sale, since it was incumbent upon her to raise concerns regarding the execution of that document. The revocation of the authority of Adelia and the subsequent filing of a Petition for Partition, in which complainants were also represented by respondent, are clear indications that there were issues in the conditional sale that should have prompted respondent to withhold the money from Adelia to protect the interest of complainants, the former's clients.

¹² *Rollo*, pp. 161-167.

¹³ *Id.* at 162; Paragraph 1.2.

Lawyers have the duty to apprise their client of the status and developments of the account they are handling. They must be consistently mindful of their obligation to respond promptly, should there be queries or requests for information from the client.¹⁴ The Code exacts from lawyers not only a firm respect for law, legal processes and the courts, but also mandates the utmost degree of fidelity and good faith in dealing with the moneys entrusted to them pursuant to their fiduciary relationship. Respondent clearly fell short of the demands required of her as a member of the bar. Her inability to properly discharge her duty to her clients makes her answerable not just to them, but also to this Court, to the legal profession, and to the general public. Given the crucial importance of her role in the administration of justice, her misconduct diminishes the confidence of the public in the integrity and dignity of the profession.¹⁵

Lawyers are bound to protect their client's interest to the best of their ability and with utmost diligence. Respondent should know that every case that lawyers accept deserves their full attention, diligence, skill and competence regardless of its importance. It is their sworn duty to protect the interest of their client and to defend it within the authority of the law.

The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.¹⁶ Considering, that this is the first offense of respondent, the Court resolves to reprimand her, with the admonition that she must observe a higher degree of fidelity and diligence in the practice of her profession.¹⁷

WHEREFORE, respondent **ATTY. LYSSA GRACE S. PAGANO-CALDE** is given the penalty of **REPRIMAND**, with a **STRONG WARNING** to observe a higher degree of fidelity in the practice of her profession.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

¹⁴ *Penilla v. Alcid, Jr.*, A.C. No. 9149, 4 September 2013, 705 SCRA 1, 14.

¹⁵ *Rollon v. Naraval*, 493 Phil 24 (2005).

¹⁶ *Heirs of Ballesteros, Sr. v. Apiag*, 508 Phil 113 (2005).

¹⁷ *Heirs of Falame v. Baguio*, 571 Phil 428 (2008).

WE CONCUR:

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice