



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

GRACITA P. DOMINGO-AGATON,
Complainant,

A.C. No. 11023

Present:

GESMUNDO, C.J.,
 PERLAS-BERNABE,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 DELOS SANTOS,
 GAERLAN,
 ROSARIO, and
 LOPEZ, J., JJ.

- versus -

Promulgated:

ATTY. NINI D. CRUZ,
Respondent.

May 4, 2021

Antonio Barredo

X-----X

DECISION

PER CURIAM:

The Case

This is a Disbarment Complaint¹ filed by Gracita P. Domingo-Agaton (complainant) before the Office of the Bar Confidant against Atty. Nini D. Cruz (respondent), for Grave Misconduct, constitutive of qualified theft, *estafa*, and betrayal of trust, defined and penalized under the Revised Penal Code.

¹ Rollo, pp. 1-7.

On February 3, 2016, the Court issued a Resolution² requiring respondent to file comment on the complaint. Respondent, however, repeatedly failed to comply with the Court's directive and subsequent resolutions. In the Resolutions³ dated January 9, 2017 and September 11, 2017, the Court "deemed as served" on respondent the February 3, 2016 Resolution and the January 9, 2017 Resolution, respectively.

On August 19, 2019, the Court issued another Resolution⁴ requiring respondent to "show cause" why she should not be disciplinarily dealt with for failure to comply with the February 3, 2016 Resolution.

On February 24, 2020, the Court issued a Resolution⁵ dispensing with respondent's comment, and considered the case submitted for resolution on the basis of the pleadings filed and attached documents.

Complainant's Allegations

Sometime in 2013, complainant engaged the services of respondent lawyer for the reacquisition of an ancestral home located in West Bajac-bajac, Olongapo City (the property), which was foreclosed by the Philippine National Bank (PNB). Complainant informed respondent that the Regional Trial Court (RTC), Branch 72 of Olongapo City rendered a decision pertaining to the property, which was then pending appeal before the Court of Appeals (CA). Complainant personally negotiated with PNB for the repurchase of the property. Upon being informed by complainant that the property was already sold to a third person, respondent proposed that complainant could still buy-back the property from PNB. Respondent then drafted and signed a Letter of Intent⁶ for the repurchase of the property from PNB for ₱2.5 Million.⁷

After a few weeks, respondent informed complainant that PNB refused their offer. Nevertheless, respondent told complainant that the property was not yet sold, but was merely endorsed to a third party who acted as PNB's broker. Respondent then assured complainant that upon advice of the Head of the Asset Acquired Department of the PNB, complainant had a good chance of buying back the property by filing a petition for consignation with the RTC.⁸

² Id. at 69.

³ Id. at 90-91; 110-111.

⁴ Id. at 113.

⁵ Id. at 121.

⁶ Id. at 11-12.

⁷ Id. at 1.

⁸ Id. at 2.

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Accordingly, respondent instructed complainant to prepare the amount of ₱2.5 Million to be posted as bond in favor of PNB. The bond was purportedly to remain effective until PNB's acceptance of her offer. Convinced, complainant gave respondent ₱100,000.00, as filing fee for the petition, and ₱50,000.00, as her professional fee.⁹

On July 19, 2013, respondent filed a Complaint¹⁰ for judicial consignment (consignment complaint) with the RTC, Branch 74 of Olongapo City, docketed as Civil Case No. 86-0-2013.

On September 7, 2014, respondent informed complainant that the RTC approved her bond in the amount of ₱2 Million.¹¹ Pursuant to respondent's instruction, complainant purchased a manager's check, Union Bank Manager's Check No. 0000300714¹² dated September 8, 2014, designating the RTC as payee for the amount of ₱2 Million.

On September 9, 2014, complainant went to the RTC to deposit the check. Thereat, respondent told her that the personnel authorized to receive the check was not around. Respondent then volunteered to personally deliver the check to the RTC personnel, under the following assurance: "*Alam mo naman Manager's Check yan, wala naman akong magagawa diyang hindi ko naman kayang i-cash yan, ang payee ay Regional Trial Court. Ako na ang magbigay sa court para makabalik ka na sa work mo.*"¹³ Persuaded, complainant gave the manager's check to respondent, who, in turn, signed a photocopy¹⁴ thereof indicating her receipt.¹⁵

Several months passed, complainant did not hear any feedback from respondent. Every time complainant would request for a copy of the RTC's acknowledgment receipt of the ₱2 Million representing the value of her manager's check, as well as proof of PNB's acceptance of their offer, respondent would always come up with excuses.¹⁶

Beginning to suspect that something was amiss, complainant verified with the Office of the Clerk of Court of the RTC (COC-RTC), where she learned that in an Order¹⁷ dated July 31, 2014, the RTC dismissed her consignment complaint for violation of the rule against forum shopping,

⁹ Id.

¹⁰ Id. at 13-15.

¹¹ Supra note 8.

¹² *Rollo*, p. 34 (Annex "D").

¹³ Id. at 3.

¹⁴ Id. at 34-35.

¹⁵ Supra note 13.

¹⁶ Id.

¹⁷ *Rollo*, pp. 31-33.

long before she delivered her manager's check to respondent on September 9, 2014.

On August 13, 2015, the parties met, but respondent still failed to show the RTC's acknowledgment receipt of the manager's check. In their subsequent meeting on August 17, 2015, respondent promised to return her money by the end of August 2015. Thereafter, complainant never heard a word from respondent.¹⁸

Upon verification with her bank, complainant learned that her manager's check was cleared and deposited to the RTC's account on September 12, 2014. This was confirmed from the RTC's passbook indicating that complainant's manager's check was encashed on September 12, 2014.¹⁹

On October 6, 2015, complainant went to the COC-RTC, where Atty. John Aquino (Atty. Aquino), Clerk of Court VI, told her that her manager's check was actually withdrawn by a certain Josephine Chua (Chua) of Grand Pillar Development International, Inc. (Grand Pillar), a party to Civil Case No. 119-0-2008. Plaintiff therein, Josephine Lim (Lim), was represented by respondent lawyer. Atty. Aquino's formal Letter-Reply²⁰ to complainant's inquiry pertinently reads:

A verification was made on our Books of Accounts to trace the whereabouts of your Manager's Check. We found out that the Manager's Check you issued and intended for Civil Case No. 86-0-2013 was deposited on 12 September 2014 to Land Bank Account No. 038-0117-96, representing the Court's Fiduciary Trust Fund. The Manager's Check was delivered to the Office of the Clerk of Court of Regional Trial Court, Olongapo City by Christopher T. Perez, Sheriff IV of Regional Trial Court-Branch 74, Olongapo City not by your counsel Atty. Nini Cruz.

We have verified from Sheriff Christopher T. Perez that he received Manager's Check No. 0000300714 from your counsel Atty. Nini Cruz as payment in satisfaction of the Compromise Agreement dated 19 February 2013, where incidentally Atty. Nini Cruz is the counsel of the plaintiff in Civil Case No. 119-0-2008. Sheriff Christopher T. Perez and this office were not aware that Manager's Check No. 0000300714 was issued for Civil Case No. 86-0-2013 and not for Civil Case No. 119-0-2008.

Our office had deposited Manager's Check No. [0]000300714 to the Court's Fiduciary Trust Fund when it was delivered to this office by Sheriff Perez for safekeeping. The afore-mentioned check or its equivalent face value was later withdrawn from the Court's Fiduciary Trust Fund pursuant to the Order of the Court (RTC-Branch 74, Olongapo City) dated

¹⁸ Id. at 4.

¹⁹ Id. at 4-5 (Annexes "F" and "F-1," photocopy of the cleared Manager's Check; id. at 36).

²⁰ Id. at 37 (Annex "G").

15 September 2014 in Civil Case No. 119-0-2008.²¹ (Underscoring supplied)

Accordingly, complainant sent demand letters to respondent, Lim, and Chua, respectively, for the return of the amount of her manager's check.²²

In a Letter²³ dated October 9, 2015, Chua of Grand Pillar, through Atty. Ericson Chang Aguila (Atty. Aguila), replied claiming good faith in receiving the check as settlement for the obligation of Lim, who was represented by respondent lawyer in Civil Case No. 119-0-2008. The letter reads:

Had it not been for the action, representation, and assurance of Atty. Nini D. Cruz that said manager's check was plaintiff Josephine Lim's means of paying or settling the remaining balance of P1,994,769.50, x x x to my client, defendant Grand Pillar International Development, Inc., my client would not have filed an Urgent Motion for Release of Payment involving the same check. x x x [M]y client acted in utmost good faith and without any malice or deceit whatsoever.

If there is anyone who should be held responsible, accountable, and liable criminally, civilly, and administratively x x x it should only be Atty. Nini D. Cruz, and all persons behind her, in knowingly, willfully, and deliberately issuing and tendering said manager's check as plaintiff Josephine Lim's full payment and settlement of the remaining balance of P1,995,769.50 x x x due to my client, Grand Pillar International Development, Inc.

Rest assured that my client is also very seriously contemplating on instituting the necessary criminal, civil, and administrative actions against Atty. Nini D. Cruz x x x.²⁴ (Underscoring supplied)

On November 5, 2015, complainant filed with the Office of the City Prosecutor of Olongapo City a criminal Complaint²⁵ for qualified theft against respondent, Lim, and Chua. In the Information²⁶ dated July 14, 2016, respondent and Lim were charged with qualified theft in Criminal Case No. 2016-1398.

Imputing moral obliquity to respondent's character, complainant refers to the Informations both dated August 17, 1999 docketed as Criminal Case Nos. 25660 and 25661,²⁷ wherein the Office of the Ombudsman (OMB) charged respondent with two counts of falsification of public

²¹ Id.

²² Id. at 38-40 (Annexes "H," "I," and "J").

²³ Id. at 41-45 (Annex "K").

²⁴ Id. at 45.

²⁵ Id. at 48-55 (Annex "L-1").

²⁶ Id. at 77-78.

²⁷ Id. at 56-59 (Annexes "M" and "M-1").

document before the Sandiganbayan. Complainant claims that the criminal cases are now pending with the Municipal Circuit Trial Court, docketed as Criminal Case Nos. 847-04 and 848-04. Complainant also avers that on May 24, 2005, the OMB, through a Joint Decision²⁸ in administrative cases docketed as OMB-L-A-04-0651-J and OMB-L-A-04-0652-J, recommended for the dismissal of respondent, as then 1st Assistant Provincial Prosecutor, from the government service on the ground of dishonesty.

Complainant, therefore, prays that respondent lawyer be disbarred.

The Court's Ruling

Respondent deserves the ultimate penalty of disbarment.

In disbarment cases, complainant bears the burden of proof to satisfactorily prove the allegations in his/her complaint through substantial evidence;²⁹ that is, such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³⁰

In this case, complainant submitted the following documents to prove her allegations: (1) Letter of Intent³¹ dated July 5, 2013 drafted and signed by respondent, offering PNB the amount of ₱2.5 Million for the repurchase of complainant's ancestral home; (2) Complaint³² dated July 18, 2013 for judicial consignment of the subject property filed by respondent with the RTC, docketed as Civil Case No. 86-0-2013; (3) Photocopy of Manager's Check No. 0000300714³³ dated September 8, 2014 designating the RTC as payee, in the amount of ₱2 Million as bond in the consignment complaint; (4) Photocopy³⁴ of Manager's Check No. 0000300714 signed by respondent indicating her receipt of the check on September 14, 2014; (5) Copy of the RTC Order³⁵ dated July 31, 2014 dismissing complainant's consignment complaint on the ground of forum shopping; (6) Atty. Aquino's Letter-Reply³⁶ dated October 7, 2015, clarifying that complainant's Manager's Check was withdrawn by Chua of Grand Pillar for the settlement of the obligation of Lim, who was represented by respondent in Civil Case No. 119-0-2008; (7) Complainant's Demand Letters³⁷ sent to respondent, Chua, and Lim for the return of the amount of her Manager's Check; (8) Atty. Aguila's Letter³⁸ dated October 9, 2015 claiming that Chua received

²⁸ Id. at 60-68 (Annex "N").

²⁹ See *Reyes v. Atty. Nieva*, 794 Phil. 360, 379 (2016).

³⁰ *Dr. De Jesus v. Guerrero III*, 614 Phil. 520, 528-529 (2009).

³¹ Supra note 6.

³² Supra note 10.

³³ Supra note 12.

³⁴ Id.

³⁵ Supra note 17.

³⁶ Supra note 20.

³⁷ Supra note 22.

³⁸ Supra note 23.

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complainant's Manager's Check in good faith from respondent as settlement of Lim's obligation in Civil Case No. 119-0-2008; and (9) Information³⁹ dated July 14, 2016, charging respondent and Lim with qualified theft before the RTC in Criminal Case No. 2016-1398.

The Court finds that the totality of evidence submitted by complainant has clearly, satisfactorily, and convincingly shown that respondent has authored deplorable acts.

Respondent was dishonest when she concealed from complainant that Civil Case No. 86-0-2013 had already been dismissed by the RTC on July 31, 2014. She even went to the extent of instructing complainant to purchase the subject manager's check purportedly as bond for the consignment of the subject property. Indeed, respondent deceived complainant when she impressed upon the latter the need for such bond, despite the prior dismissal of Civil Case No. 86-0-2013. Consistent with her dishonest acts, respondent got hold of complainant's manager's check through deceitful assurances. Respondent, then, defrauded complainant by misappropriating the latter's manager's check as settlement for the obligation of another client in another case. In doing so, she likewise deceived the RTC into believing that complainant's manager's check was issued for Civil Case No. 119-0-2008, to which complainant was not a party.

Interestingly, for reasons only known to her, respondent has opted to remain silent despite such serious charges. After the disbarment case was filed, respondent repeatedly failed to file her comment despite due notice. From the issuance of the Court's first Resolution on February 3, 2016 requiring her to file comment, to the issuance of Resolution dated February 24, 2020 submitting the case for resolution, an overwhelming period of about four years had already passed. During said period, respondent was reasonably accorded a chance to file her comment, and was even issued a "show cause" Order on August 19, 2019 for her repeated failure to do so. Failing to refute the allegations levelled against her despite several opportunities to do so, respondent is either not at all interested in clearing her name or simply has nothing to say in her defense.

Relevant to respondent's reticence is *Grefaldeo v. Judge Lacson*,⁴⁰ wherein the Court said:

The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is almost always construed as implied admission of the truth thereof.

³⁹ Supra note 26.

⁴⁰ 355 Phil 266, 271 (1998).

In this case, respondent has left the Court with no choice, but to deduce her implicit admission of the charges against her. *Qui tacet consentire videtur*. Silence gives consent.⁴¹

In *In Re: Sotto*,⁴² the Court emphasized “possession of good moral character” as a core qualification for members of the bar, thus:

One of the qualifications required of a candidate for admission to the bar is the possession of good moral character, and, when one who has already been admitted to the bar clearly shows, by a series of acts, that he does not follow such moral principles as should govern the conduct of an upright person, and that, **in his dealings with his clients and with the courts, he disregards the rule of professional ethics required to be observed by every attorney, it is the duty of the court, as guardian of the interests of society, as well as of the preservation of the ideal standard of professional conduct, to make use of its powers to deprive him of his professional attributes which he so unworthily abused.** (Emphasis and underscoring supplied)

Rule 1.01 of the Code of Professional Responsibility states that “a lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.” Deceitful conduct involves moral turpitude, including any act contrary to justice, modesty, or good morals.⁴³ “It is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to justice, honesty, modesty, or good morals.”⁴⁴ 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 clients and the moneys entrusted to them pursuant to their fiduciary relationship.”⁴⁵

Section 27, Rule 138 of the Rules of Court imposes the penalty of disbarment or suspension for deceitful and dishonest acts, as follows:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* – **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct,** or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a [willful] disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

⁴¹ Id. at 271.

⁴² 38 Phil. 532, 548-549 (1918).

⁴³ *Overgaard v. Atty. Valdez*, 588 Phil. 422, 430 (2008).

⁴⁴ Id. at 430-431.

⁴⁵ *Berbano v. Atty. Barcelona*, 457 Phil. 331, 342-343 (2003).

Dec

Clearly, in any of the following circumstances, to wit: (1) deceit; (2) malpractice; (3) gross misconduct; (4) grossly immoral conduct; or (5) violation of the lawyer's oath; the Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension.

In *CF Sharp Crew Management, Inc. v. Torres*,⁴⁶ the Court disbarred respondent therein for failing to account for and for misappropriating the various amounts he received from his client. Similarly, in *Arellano University, Inc. v. Mijares III*,⁴⁷ the Court disbarred the lawyer for misappropriating the client's money intended for securing a certificate of title on the latter's behalf.

As discussed earlier, respondent's established deplorable conduct exhibited her unfitness and sheer inability to discharge the bounden duties of a member of the legal profession. Her dishonest, deceitful and fraudulent conduct of misappropriating complainant's manager's check, as well as her act of misleading the RTC in Civil Case No. 119-0-2008, evinces a serious flaw in her moral fiber justifying the extreme penalty of disbarment.

Lastly, respondent is liable to refund complainant the amount of ₱2 Million representing Manager's Check No. 0000300714, plus 6% interest *per annum* from the date of demand, or on October 12, 2015,⁴⁸ until full payment.⁴⁹

WHEREFORE, respondent Atty. Nini D. Cruz, having clearly violated her Lawyer's Oath and the Canons of Professional Responsibility through her dishonest, deceitful and fraudulent conduct, is **DISBARRED** and her name is **ORDERED STRICKEN** from the Roll of Attorneys.

Atty. Nini D. Cruz is **ORDERED** to refund the amount of ₱2 Million representing complainant's manager's check, plus 6% interest *per annum* from October 12, 2015, until full payment.

Let copies of this Decision be served to the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance. Let a copy of this Decision be entered in Atty. Nini D. Cruz's record in this Court.

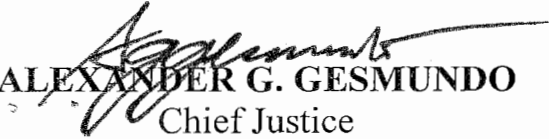
⁴⁶ 743 Phil. 614 (2014).

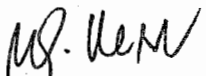
⁴⁷ 620 Phil. 93 (2009).


⁴⁸ *Rollo*, p. 38 (Annex "H").

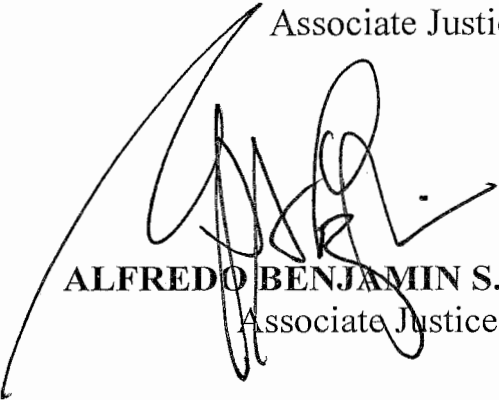
⁴⁹ *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

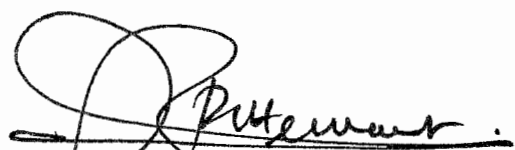
SO ORDERED.

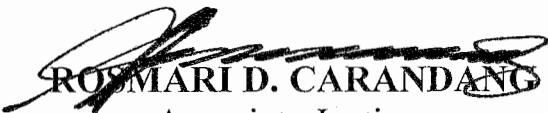

ALEXANDER G. GESMUNDO
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

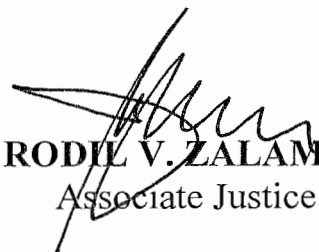

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP L. LOPEZ
Associate Justice