



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MILA VIRTUSIO,
Complainant,

A.C. No. 6753

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
PEREZ,* and
MENDOZA, JJ.

ATTY. GRENALYN V. VIRTUSIO,
Respondent.

Promulgated:

05 September 2012

X -----

Alfonso
X

DECISION

ABAD, J.:

This administrative case concerns a lawyer who failed to use the money given by another to fund the checks she issued as accommodation party in payment for the property that was purchased by such person and performed a notarial act without commission.

The Facts and the Case

On June 14, 2005, Mila Virtusio (Mila) filed with this Court a complaint¹ for disbarment against her husband's distant relative, Atty. Grenalyn V. Virtusio.

* Designated Acting Member, per Special Order 1299 dated August 28, 2012.

¹ Rollo, pp. 1-5.

P

Mila alleged that sometime in 1999 Atty. Virtusio convinced her to buy a house and lot at North Olympus Subdivision in Novaliches, Quezon City, from its developer, Stateland Investment Corporation (Stateland). Mila agreed for Atty. Virtusio to use her personal checks in paying the seller with Mila reimbursing her. Under this arrangement, Mila gave Atty. Virtusio the following amounts: ₱95,000.00, ₱25,000.00, ₱65,000.00, ₱64,000.00 and ₱64,000.00. All of these were properly receipted except for the ₱95,000.00 for which she got a receipt from her for only ₱90,000.00.² On October 25 and November 24, 1999, Mila deposited identical amounts of ₱64,000.00 each in Atty. Virtusio's checking account with Equitable Bank.³ In all, Mila gave her ₱441,000.00.

To her surprise, however, Mila began receiving letters from Stateland, demanding that she make good the dishonored checks that it got. When she confronted Atty. Virtusio regarding this, the latter assured her that she would take care of the problem. But the demand letters persisted.

For fear of losing the property, Mila directly dealt with Stateland in January 2000. She then found out that her arrearages had come close to ₱200,000.00, inclusive of penalty and interest. In order not to lose the property, Mila and her husband decided to settle their overdue obligation with money they borrowed at high interest.⁴ In turn, Stateland turned over to her three checks of Atty. Virtusio, each for ₱71,944.97, with the notation "DAIF."⁵

Mila further alleged that Atty. Virtusio declined to return to her the money the latter misappropriated despite demand. Only when Mila threatened to file a case against her did Atty. Virtusio agree to pay her on February 20, 2001 by executing a deed of sale in her favor covering her Mazda car. Despite the sale, however, Atty. Virtusio pleaded with Mila and

² Id. at 7-10.

³ Id. at 1-2, 90-91.

⁴ Id. at 2-3, 91.

⁵ Id. at 13 (including dorsal side).

her husband to let her keep the car meanwhile since she needed it in her work. When she refused to give up the car, Mila filed a replevin case against Atty. Virtusio that the court eventually decided in Mila's favor.⁶ But, as it turned out, Atty. Virtusio had managed to register the car in her children's name and sold it to a third person. Mila filed a case of estafa against Atty. Virtusio⁷ apart from the present disbarment case.

Mila claimed that Atty. Virtusio evaded the return of money she misappropriated, impeded the execution of a final judgment, and engaged in conduct that discredits the legal profession, all in violation of the Code of Professional Responsibility, rendering her unfit to remain a member of the bar.⁸

In a July 27, 2005 Resolution,⁹ the Court required Atty. Virtusio to comment on the complaint. She asked for extension of time to comply but did not file her comment just the same.¹⁰ On Mila's motion,¹¹ the Court again required Atty. Virtusio to file her comment and to show cause why she had not complied with its previous orders.¹² Still, she did not file any comment, prompting the Court to impose on her on November 15, 2006 a ₱500.00 fine. The court again reiterated its order for her to file her comment.¹³

With no response, on August 1, 2007, the Court directed the Clerk of Court to resend its November 15, 2006 Resolution to Atty. Virtusio¹⁴ but this was returned unserved with the notation, "RTS-Person moved out." On December 3, 2007 the Court ordered the resending of the May 3 and November 15, 2006 Resolutions to Atty. Virtusio, this time at an address in

⁶ Id. at 16-20.

⁷ Id. at 3-5, 92.

⁸ Id. at 5, 98.

⁹ Id. at 21.

¹⁰ Id. at 23-24, 26.

¹¹ Id. at 29.

¹² Resolution dated May 3, 2006, id. at 31.

¹³ Id. at 39.

¹⁴ Id. at 60.

Sta. Mesa that Mila furnished. When this last resolution was returned unserved with the notation, “RTS-Unclaimed,” the Court issued a Resolution¹⁵ on April 30, 2008 that considered Atty. Virtusio to have waived her right to file a comment considering that she filed none despite having sought an extension from the Court. The Court also referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP Investigating Commissioner directed Atty. Virtusio to file a position paper. She filed a motion for extension of time to file the same but did not.¹⁶

Based on the pleadings on hand, the IBP Investigating Commissioner reported having found that Atty. Virtusio appropriated portions of the money that Mila gave her for payment to Stateland, thus evidencing her moral unfitness to practice the profession. The Commissioner recommended the imposition of the penalty of one year suspension from the practice of law¹⁷ with a two-year disqualification from reappointment as Notary Public, given that she had notarized documents despite the expiration of her notarial commission.¹⁸ The IBP Board of Governors approved the report and recommendation.¹⁹

Atty. Virtusio filed a motion for reconsideration of the IBP Investigating Commissioner’s action on April 30, 2009.²⁰ She explained that her failure to file her position paper was brought about by her belief that she needed to wait for the IBP’s action on her motion for extension of time to file the same. Thus, she prayed that her attached position paper be admitted and considered in resolving her motion for reconsideration.²¹

¹⁵ Id. at 74.

¹⁶ Id. at 372-373.

¹⁷ Id. at 367-369.

¹⁸ Id. at 52, 56-58, 369.

¹⁹ Resolution XVIII-2008-626 dated December 11, 2008, id. at 359.

²⁰ Id. at 370-394.

²¹ Id. at 372-373.

In her version of the facts, Atty. Virtusio wants to convince the Court that she committed no intentional wrongs and that she was but a victim of circumstances. Although she admitted using Mila's money rather than pay Stateland with it, she explained that, having been busy attending to her sick son in Manila, she failed to monitor her check disbursements, entrusting it to an office staff. Only in December 1999 was she able to audit the same and discover the mismanagement of her funds and its co-mingling with office funds, resulting in overlapping of accountabilities and non-funding of the checks for Stateland when they fell due.²²

On becoming aware of the lapses, however, Atty. Virtusio borrowed ₱165,000.00 from Engr. Marciano de Guzman so she could pay Mila but, having failed to pay him as well, he went after Mila who was co-maker of the loan. When Atty. Virtusio tried to make further arrangements to pay what she owed Mila, the latter refused to negotiate and did not acknowledge the past payments she had already made. When Atty. Virtusio refused to yield to Mila's demand for payment of the entire ₱165,000.00, she filed a replevin case, a complaint for estafa, and disbarment charge against her.²³

Atty. Virtusio averred that in October 2006 she and Mila entered into a verbal agreement whereby she would pay her ₱200,000.00, with ₱87,500.00 up front, in exchange for Mila's dismissal of all her actions. Notwithstanding that the compromise agreement had not been formalized, Atty. Virtusio claimed that it obliterated her liabilities, given that she substantially settled her obligations to Mila.²⁴

Atty. Virtusio also pointed out, that the charges against her were not born of some professional relation between Mila and her. She had acted as an accommodation party, allowing Mila to make use of her personal checks

²² Id. at 374, 418-419.

²³ Id. at 375-379, 419-422.

²⁴ Id. at 380-381, 388, 422.

to facilitate the purchase of a property from Stateland. And, assuming that the predicament she finds herself in has a bearing on her professional conduct, the same does not amount to grossly immoral conduct since she owned up to her responsibilities and exerted tireless effort to settle her accounts.²⁵

Further, Atty. Virtusio claimed that she should not be penalized for violation of the notarial law since this offense did not form part of the original complaint to which she was required to respond. At any rate, she merely committed an oversight. She had religiously renewed her notarial commission yearly since May 1995. When she notarized the questioned documents, she believed in good faith that she had renewed her notarial commission for 2006 and 2007 just as before. She asked not to be punished for her mistake since it was brought about by her sincere commitment to extend free legal service to the disadvantaged.²⁶

Lastly, Atty. Virtusio asked the Court to reconsider the harsh penalty imposed on her in the light of the peculiar circumstances of her case and the good faith she showed.²⁷

On June 26, 2011, the IBP Board of Governors issued Resolution XIX-2011-477²⁸ denying the motion despite an affidavit of desistance that Mila filed in the meantime.²⁹ As provided in Section 12(b),³⁰ Rule 139-B of the Rules of Court, the IBP forwarded the instant case to this Court for final action.

²⁵ Id. at 384-389.

²⁶ Id. at 389-391.

²⁷ Id. at 391-393.

²⁸ Id. at 360.

²⁹ Id. at 150, 152.

³⁰ Sec. 12. *Review and decision by the Board of Governors.* —

x x x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

Questions Presented

The questions presented in this case are:

1. Whether or not the IBP erred in finding Atty. Virtusio guilty of grave misconduct in her dealings with Mila and in notarizing documents without a renewed commission; and
2. Assuming Atty. Virtusio was guilty of some offenses, whether or not the IBP imposed the appropriate penalties on her.

Rulings of the Court

Lawyers are, as officers of the court and instruments for the administration of justice, expected to maintain not only legal proficiency but also a high standard of morality, honesty, and fair dealing. A lawyer's gross misconduct, whether in his professional or private capacity, is ground for suspension or disbarment under the principle that, since good moral character is an essential qualification for the admission to the practice of law, maintaining such trait is a condition for keeping the privilege.³¹

By her own account, Atty. Virtusio admitted misusing the money that Mila entrusted to her for payment to Stateland. Her excuse is that she lost track of her finances and mixed up her office funds with her personal funds. But this excuse is too thin. She admitted misusing ₱165,000.00 of Mila's money, which is not petty cash. Indeed she tried to borrow money from a third person to cover it up rather than just offer her shallow excuse to Mila. Atty. Virtusio's use for personal purpose of money entrusted to her constitutes dishonest and deceitful conduct under the Code of Professional Responsibility. It provides:

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

³¹ *Tomlin II v. Atty. Moya II*, 518 Phil. 325, 330 (2006).

CANON 7 — A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Atty. Virtusio cannot absolve herself of liability by claiming that she failed to attend to her finances because she had to look after a sick child at that time. Assuming she had such a child, the fact is that it was not by mere oversight that she failed to finance the checks for Stateland. For, if this were so, she could have easily rectified her mistake by using her other funds. In truth, she spent the money that Mila entrusted to her because she had no other funds. Indeed, she had to borrow money from a third party later to remedy her financial problems.

What is more, supposedly to cover up for her fault, Atty. Virtusio executed a deed of sale covering her car in Mila's favor rather than return the money she defalcated. But, again acting with guile, she withheld possession of the car and transferred its registration in the name of her children.

Atty. Virtusio is guilty by her above acts of gross misconduct that warrants her suspension for one year from the practice of law following Section 27,³² Rule 138 of the Rules of Court.

The Court cannot also countenance Atty. Virtusio's notarization of documents after her notarial commission had expired. Although the IBP discovered this violation of the notarial law only in the course of the proceedings and was not a subject matter of Mila's complaint, it cannot

³² Section 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 wilful disobedience of any unlawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority to do so.

close its eyes to the same. Besides, Atty. Virtusio had an opportunity to defend herself against this additional charge.³³ Her defense is that she thought that she had renewed her commission.

Again, Atty. Virtusio's defense is unsubstantial. She did not renew her notarial commission for two years, 2006 and 2007, not just one. She could not have missed that fact considering that, as she said, she had been renewing her commission yearly from 1995 to 2005.

A lawyer who notarizes a document without a proper commission violates his lawyer's oath to obey the law. He makes it appear that he is commissioned when he is not. He thus indulges in deliberate falsehood that the lawyer's oath forbids. This violation falls squarely under Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Canon 7 as well.³⁴ A proper sanction is authorized.³⁵

Considering, however, that based on the evidence Atty. Virtusio had notarized only two documents without a proper notarial commission, the Court finds her suspension from notarial practice for one year adequate.³⁶

That Mila had agreed after some financial settlement to withdraw her complaint against Atty. Virtusio cannot exempt the latter from the prescribed sanction. She has outraged the country's professional code and this demands a measure of justice. As the Court said in *Spouses Soriano v. Atty. Reyes*,³⁷ disbarment is a disciplinary action taken for the public good. Consequently, it is as a rule not subject to some compromise entered into

³³ *Bayonla v. Atty. Reyes*, A.C. No. 4808, November 22, 2011, 660 SCRA 490, 504. See also *Cojuangco, Jr. v. Atty. Palma*, 501 Phil. 1, 8-9 (2005).

³⁴ *Uy v. Saño*, A.C. No. 6505, September 11, 2008, 564 SCRA 447, 453.

³⁵ *Saquin v. Atty. Mora*, 535 Phil. 1, 7 (2006).

³⁶ See *Uy v. Saño*, supra note 34, at 453-454.

³⁷ 523 Phil. 1, 12 (2006).

with the complainant. Besides, Mila's evidence is already a matter of record and the Court cannot simply ignore the same.³⁸

WHEREFORE, the Court **FINDS** Atty. Grenalyn V. Virtusio **GUILTY** of gross misconduct and violation of the Code of Professional Responsibility and **IMPOSES** on her the penalty of **SUSPENSION** from the practice of law for one year, effective immediately. In addition, the Court **REVOKES** any Notarial Commission she may presently have and **DISQUALIFIES** her from applying for it for one year also effective immediately. Further, she is **WARNED** of a more severe penalty should she commit a similar infraction in the future.

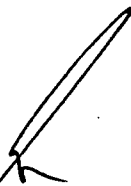
Let copies of this Decision be furnished the Office of the Court Administrator, the Integrated Bar of the Philippines, and the Office of the Bar Confidant. Finally, let this judgment be made part of Atty. Virtusio's personal record in the latter office.

SO ORDERED.




ROBERTO A. ABAD
Associate Justice

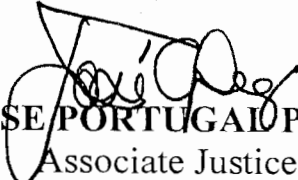
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

³⁸ See *Garrido v. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508, 517.


DIOSDADO M. PERALTA
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice