



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JOHNNY M. PESTO,
Complainant,

ADM. CASE NO. 9612

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

- *versus* -

Promulgated:

MARCELITO M. MILLO,
Respondent.

MAR 13 2013

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DECISION

BERSAMIN, J:

An attorney who conceals his inefficiency and lack of diligence by giving wrong information to his client regarding the matter subject of their professional relationship is guilty of conduct unbecoming an officer of the Court. He thereby violates his Lawyer's Oath to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his client. He also thereby violates Rule 18.03, Canon 18 of the Code of Professional Responsibility, by which he is called upon to serve his client with competence and diligence.

Antecedents

In this administrative case, Johnny Pesto (Johnny), a Canadian national, charged Atty. Marcelito M. Millo with conduct unbecoming an officer of the Court, misleading his client, bungling the transfer of title, and incompetence and negligence in the performance of his duty as a lawyer.

Johnny averred that in May 1990, his wife Abella Pesto (Abella) retained the services of Atty. Millo to handle the transfer of title over a parcel of land to her name, and the adoption of her niece, Arvi Jane Dizon;¹ that Johnny and Abella gave to Atty. Millo the amounts of ₱14,000.00 for the transfer of title² and ₱10,000.00 for the adoption case;³ that Atty. Millo thereafter repeatedly gave them false information and numerous excuses to explain his inability to complete the transfer of title; that Atty. Millo likewise made them believe that the capital gains tax for the property had been paid way back in 1991, but they found out upon their return to the country in February 1995 that he had not yet paid the tax; that when they confronted him, Atty. Millo insisted that he had already paid the same, but he could not produce any receipt for the supposed payment; that Atty. Millo reluctantly returned to Abella the amount of ₱14,000.00 only after he stormed out of Atty. Millo's office in exasperation over his stalling tactics; and that Atty. Millo then further promised in writing to assume the liability for the accrued penalties.⁴

Likewise, Johnny blamed Atty. Millo for letting the adoption case be considered closed by the Tarlac office of the Department of Social Welfare and Development (Tarlac DSWD) due to two years of inaction. He stated that Atty. Millo made him and his wife believe that an interview with the Tarlac DSWD had been scheduled on February 14, 1995, but when they arrived at the Tarlac DSWD they were dismayed to be told that no such interview had been scheduled; that adding to their dismay, Atty. Millo could not be reached at all; that it was only upon reaching home in Quezon City when he received word from Atty. Millo that a hearing had again been scheduled on February 23, 1995 at 10:00 a.m.; that when they went to the hearing, Atty. Millo could not be found; and that they learned after an hour of waiting in the courthouse in Tarlac that Atty. Millo had requested the hearing to be moved to the afternoon without their knowledge.⁵

Exasperated by Atty. Millo's neglect and ineptitude, Johnny brought this administrative complaint in the Integrated Bar of the Philippines (IBP) on March 14, 1995, praying for disciplinary action to be taken against Atty. Millo, and seeking the refund of ₱15,643.75 representing the penalties for the non-payment of the capital gains tax, and of the ₱10,000.00 given for the adoption case. Being a resident of Canada, he constituted one Tita Lomotan as his attorney-in-fact to represent him during his and his wife's absence from the country.

¹ *Rollo*, p. 2.

² *Id.* at 8.

³ *Id.* at 9.

⁴ *Id.* at 3.

⁵ *Id.*

On July 10, 1995, the IBP ordered Atty. Millo to file his answer.⁶ Although an extension of the period to file was granted at his instance,⁷ he filed no answer in the end.⁸ He did not also appear at the hearings despite due notice.⁹

In the meantime, the IBP required Johnny through Lomotan to engage a counsel. The proceedings were held in abeyance to await the appropriate motion from Johnny's counsel.¹⁰

The administrative matter did not move for several years. The long delay prompted Johnny to write to the President of the IBP on October 28, 1998.¹¹ It was only on April 2, 2001, however, that the IBP Commission on Bar Discipline (IBP-CBD) scheduled another hearing on June 29, 2001.¹² At that hearing, Atty. Millo appeared through a representative, and presented a manifestation/motion,¹³ whereby he claimed that Johnny had meanwhile died, and that Abella would be withdrawing the complaint against him.

On October 11, 2001, the IBP-CBD, through Commissioner Victoria Gonzalez-De los Reyes, deemed the case submitted for resolution.¹⁴

On October 4, 2010, Investigating Commissioner Victor C. Fernandez, to whom the case had been meanwhile transferred, submitted a report and recommendation, whereby he found Atty. Millo liable for violating Canon 18 of the Code of Professional Responsibility, and recommended his suspension from the practice of law for six months.¹⁵

In Resolution No. XX-2011-235 adopted on November 19, 2011,¹⁶ the IBP Board of Governors affirmed the findings of Investigating Commissioner Fernandez, but lowered the suspension to two months; and ordered Atty. Millo to return the amount of ₱16,000.00, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and finding respondent guilty of the charges

⁶ Id. at 15.

⁷ Id. at 16-17.

⁸ Id. at 34.

⁹ Id. at 34, 35 and 43.

¹⁰ Id. at 43.

¹¹ Id. at 55-57.

¹² Id. at 59.

¹³ Id. at 60.

¹⁴ Id. at 70.

¹⁵ Id. at 73-80.

¹⁶ Id. at 82.

level(led) against him, Atty. Marcelito Millo is hereby SUSPENDED from the practice of law for a period of two (2) months and is ordered to return the amount of ₱16,000.00 to complainant.

On March 27, 2012, Atty. Millo moved for a reconsideration, stating that he had honestly believed that Abella had already caused the withdrawal of the complaint prior to her own death; that he had already caused the preparation of the documents necessary for the transfer of the certificate of title, and had also returned the ₱14,000.00 paid by Johnny; that the adoption case had been finally granted by the trial court; that he had lost contact with Johnny and Abella who resided in Canada; that Juan Daquis, Abella's brother, could have confirmed that the charge had arisen from a simple misunderstanding, and that Abella would cause the withdrawal of the complaint, except that Daquis had meanwhile died in November 2011.¹⁷

On June 9, 2012, the IBP Board of Governors denied Atty. Millo's motion for reconsideration.¹⁸

Ruling

We affirm Resolution No. XX-2011-235, but modify the penalty.

Every attorney owes fidelity to the causes and concerns of his clients. He must be ever mindful of the trust and confidence reposed in him by the clients. His duty to safeguard the clients' interests commences from his engagement as such, and lasts until his effective release by the clients. In that time, he is expected to take every reasonable step and exercise ordinary care as his clients' interests may require.¹⁹

Atty. Millo's acceptance of the sums of money from Johnny and Abella to enable him to attend to the transfer of title and to complete the adoption case initiated the lawyer-client relationship between them. From that moment on, Atty. Millo assumed the duty to render competent and efficient professional service to them as his clients. Yet, he failed to discharge his duty. He was inefficient and negligent in going about what the professional service he had assumed required him to do. He concealed his inefficiency and neglect by giving false information to his clients about having already paid the capital gains tax. In reality, he did not pay the capital gains tax, rendering the clients liable for a substantial financial liability in the form of penalties.

¹⁷ Id. at 81-83.

¹⁸ Id. at 87.

¹⁹ *Dizon v. Laurente*, A.C. No. 6597, September 23, 2005, 470 SCRA 595, 600-601.

Without doubt, Atty. Millo had the obligation to serve his clients with competence and diligence. Rule 18.03, Canon 18 of the Code of Professional Responsibility, expressly so demanded of him, to wit:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH
COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

A serious administrative complaint like this one should not be taken for granted or lightly by any respondent attorney. Yet, Atty. Millo did not take the complaint of Johnny seriously enough, and even ignored it for a long period of time. Despite being given several opportunities to do so, Atty. Millo did not file any written answer. He thereby forfeited his right and chance to reasonably explain the circumstances behind the charges against him. Had the complaint been untrue and unfair, it would have been quite easy for him to refute it quickly and seasonably. Indeed, a refutation was the requisite response from any worthy and blameless respondent lawyer. His belated and terse characterization of the charge by claiming that the charge had emanated from a mere “misunderstanding” was not sufficient. He did not thereby refute the charge against him, which omission indicated that the complaint had substance. It mattered little now that he had in the meantime returned the amount of ₱14,000.00 to the clients, and that the application for adoption had been eventually granted by the trial court. Such events, being not only *post facto*, but also inevitable from sheer passage of time, did not obliterate his liability based on the neglect and ineptitude he had inflicted on his clients. The severe lesson that he must now learn is that he could not ignore without consequences the liberal opportunity the Court and the IBP allowed him to justify his neglect and ineptitude in serving his clients’ concerns. Towards him the Court now stays its hand of leniency, lest the Court be unfairly seen as too willing to forego the exaction of responsibility upon a lawyer as neglectful and inept as he had been towards his clients.

It even seems very likely that Atty. Millo purposely disregarded the opportunity to answer the charges granted to him out of a desire to delay the investigation of the complaint until both Johnny and Abella, being residents in Canada, would have already lost interest in prosecuting it, or, as happened here, would have already departed this world and be no longer able to rebut whatever refutations he would ultimately make, whether true or not. But the Court is not about to condone such selfish disregard. Let it be emphasized to him and to others similarly disposed that an attorney who is made a respondent in a disbarment proceeding should submit an explanation, and should meet the issue and overcome the evidence against him.²⁰ The obvious

²⁰ *Camara v. Reyes*, A.C. No. 6121, July 31, 2009, 594 SCRA 484, 488-489.

reason for the requirement is that an attorney thus charged must thereby prove that he still maintained that degree of morality and integrity expected of him at all times.

Atty. Millo made his situation even worse by consistently absenting himself from the scheduled hearings the IBP had set for his benefit. His disregard of the IBP's orders requiring his attendance in the hearings was not only irresponsible, but also constituted utter disrespect for the Judiciary and his fellow lawyers. Such conduct was absolutely unbecoming of a lawyer, because lawyers are particularly called upon to obey Court orders and processes and are expected to stand foremost in complying with orders from the duly constituted authorities.²¹ Moreover, in *Espiritu v. Ulep*,²² the Court saw the respondent attorney's odious practice of repeatedly and apparently deliberately not appearing in the scheduled hearings as his means of wiggling out from the duty to explain his side. A similar treatment of Atty. Millo's disregard is justified. Indeed, he thereby manifested evasion, a bad trait that no worthy member of the Legal profession should nurture in himself.

Surprisingly, Atty. Millo claimed that his belated response to the charge was due to the assurances of Abella that she would be withdrawing the complaint. The Court disbelieves him, however, and treats his claim as nothing but a belated attempt to save the day for himself. He ought to remember that the withdrawal of an administrative charge for suspension or disbarment based on an attorney's professional misconduct or negligence will not furnish a ground to dismiss the charge. Suspension or disbarment proceedings that are warranted will still proceed regardless of the lack or loss of interest on the part of the complainant. The Court may even entirely ignore the withdrawal of the complaint, and continue to investigate in order to finally determine whether the charge of professional negligence or misconduct was borne out by the record.²³ This approach bespeaks the Court's consistent view that the Legal Profession is not only a lofty and noble calling, but also a rare privilege reserved only for the deserving.

Verily, disciplinary proceedings against attorneys are unlike civil suits where the complainants are the plaintiffs and the respondent attorneys are the defendants. They neither involve private interests nor afford redress for private grievances. They are undertaken and prosecuted solely for the public welfare, for the purpose of preserving the courts of justice from the official ministrations of persons unfit to practice law before them. Every attorney is called to answer for every misconduct he commits as an officer of the Court. The complainant or any other person who has brought the attorney's misconduct to the attention of the Court is in no sense a party, and has

²¹ *Gone v. Ga*, A. C. No. 7771, April 6, 2011, 647 SCRA 243, 249-250.

²² A.C. No. 5808, May 4, 2005, 458 SCRA 1, 9-10.

²³ *Camara v. Reyes*, supra note 20, at 484, 489.

generally no interest in the outcome except as all good citizens may have in the proper administration of justice.²⁴

The IBP Board of Governors recommended suspension from the practice of law for two months as the penalty to be imposed. The recommended penalty is not well taken. We modify the penalty, because Atty. Millo displayed no remorse as to his misconduct, and could not be given a soft treatment. His professional misconduct warranted a longer suspension from the practice of law because he had caused material prejudice to the clients' interest.²⁵ He should somehow be taught to be more ethical and professional in dealing with trusting clients like Johnny and Abella, who were innocently too willing to repose their utmost trust in his abilities as a lawyer and in his trustworthiness as a legal professional. He should remember that misconduct has no place in the heart and mind of a lawyer who has taken the solemn oath to delay no man for money or malice, and to conduct himself as a lawyer according to the best of his knowledge and discretion. Under the circumstances, suspension from the practice of law for six months is the condign and commensurate penalty for him.

The Court notes that Atty. Millo already returned the ₱14,000.00 received for the transfer of title. Although he ought also to refund the amount of ₱15,643.75 representing the penalty for the late payment of the capital gains tax, the Court cannot order him to refund that amount because it is not a collection agency.²⁶ The Court may only direct the repayment of attorneys fees received on the basis that a respondent attorney did not render efficient service to the client. Consequently, Atty. Millo should refund the ₱10,000.00 given in connection with the adoption case, plus interest of 6% *per annum*, reckoned from the finality of this decision.

WHEREFORE, the Court **FINDS** and **HOLDS** **Atty. MARCELITO M. MILLO** guilty of violating Canon 18, Rule 18.03 of the Code of Professional Responsibility and the Lawyer's Oath; **SUSPENDS** him from the practice of law for a period of six months effective from notice, with the **STERN WARNING** that any similar infraction in the future will be dealt with more severely; **ORDERS** him to return to the heirs of Johnny and Abella Pesto within ten days from notice the sum of ₱10,000.00, plus legal interest of 6% *per annum* reckoned from the finality of this decision until full payment; and **DIRECTS** him to promptly submit to this Court written proof of his compliance within thirty days from notice of this decision.

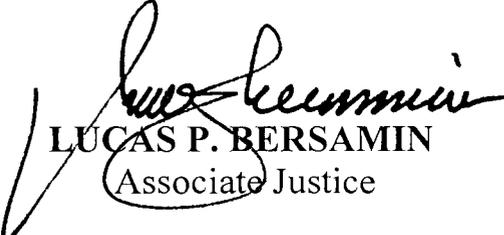
²⁴ *Bautista v. Bernabe*, A.C. No. 6963, February 9, 2006, 482 SCRA 1, 8, citing *Rayos-Ombac v. Rayos*, A.C. No. 2884, January 28, 1998, 285 SCRA 93, 101.

²⁵ Agpalo, *Legal Ethics*, 2009 ed., p. 518.

²⁶ *Hanrieder v. De Rivera*, A.M. No. P-05-2026, August 2, 2007, 529 SCRA 46, 52.

Let copies of this decision be furnished to the Office of the Bar Confidant, to be appended to Atty. Marcelito M. Millo's personal record as an attorney; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

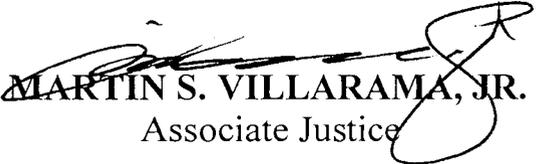
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice