

EN BANC

A.C. No. 10557 (*Jerry M. Palencia vs. Atty. Pedro L. Linsangan, Atty. Gerard M. Linsangan, and Atty. Glenda M. Linsangan-Binoya*)

Promulgated:

July 10, 2018

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DISSENTING OPINION

VELASCO, JR., J.:

I dissent on the penalty imposed upon respondents Atty. Pedro L. Linsangan and Atty. Gerard M. Linsangan as I am of the view that a two (2)-year suspension from the practice of law is too harsh under the circumstances of the case.

In the Attorney-Client Contract¹ executed by the parties, complainant agreed to pay the respondents' firm and its collaborating Singapore counsels, Gurbani & Co., attorney's fees equivalent to thirty-five percent (35%) of any recovery or settlement obtained. A case was thereafter filed before the High Court of Singapore wherein the total amount of US\$95,616.90 was awarded to complainant. From the said amount, Gurbani & Co. deducted US\$27,587.67 covering their fees and expenses, US\$8,398.33 that they paid to Papadopoulos, Lycourgos & Co., and remitted to respondents the net amount of US\$59,608.40.²

Thereafter, respondents promptly informed complainant that they have received the settlement amount from the Singapore case and requested the former to come to their office to get his net share. When complainant went to respondents' office, Atty. Pedro L. Linsangan explained to him the fees and expenses deducted by Gurbani & Co, thus leaving the balance of US\$59,608.40 remitted to them. Atty. Pedro L. Linsangan further explained that after deducting their attorney's fees and expenses from US\$59,608.40, complainant's net share amounted to US\$18,132.43.³ Atty. Pedro L. Linsangan then tendered the total amount of US\$20,756.05⁴ (including the US\$18,132.43) to complainant, which the latter refused as he contested the fees and expenses deducted by Gurbani & Co. and respondents.

Through a letter dated August 3, 2005, respondents, again, asked complainant to come to their office to receive the amount of US\$20,756.05 within ten (10) days from receipt; otherwise, respondents will file an action

¹ *Rollo*, pp. 21-22.

² *Id.* at 151-152.

³ *Id.* at 35, 808.

⁴ *Id.*

for consignment.⁵ However, as complainant found the amount being tendered by respondents erroneous and unacceptable, civil actions ensued between the parties. Thus, complainant filed an action for Accounting, Remittance of Settlement Amounts and Damages (Civil Case No.10678) while respondents filed a complaint for Preliminary Mandatory Injunction to compel complainant to receive the said amount offered. Respondents' case was dismissed with finality while the trial court ruled in favor of complainant and ordered respondents to make proper accounting, among others. The CA affirmed the trial court's ruling but reduced the rate of attorney's fees to 10%.⁶ The said ruling had also attained finality and has been set for execution.⁷

Based on the foregoing facts, it cannot be denied that respondents gave prompt notice to complainant of the receipt of money collected in the latter's favor. It is also clear that respondents made several attempts to immediately pay complainant after deducting what they believe is the correct amount due them as attorney's fees and disbursements.

What respondents failed to do, however, is to promptly provide complainant with a detailed and accurate accounting of the fees and expenses incurred in pursuing the Singapore case. Nonetheless, I am of the view that such indiscretion did not equate to a gross violation of Canons 16⁸ and 17⁹ of the CPR.

Gross violation connotes a flagrant and/or malicious refusal to comply¹⁰ with a certain set of rules, in this case the CPR. To exemplify, in *Del Mundo v. Capistrano*,¹¹ despite collecting several fees from his client, respondent lawyer Atty. Capistrano neglected to inform the former of the status of her case and to file the agreed petition for declaration of nullity of marriage. Worse, Atty. Capistrano failed to account for and return the funds entrusted to him. Thus, the Court ruled that the conversion of funds entrusted to Atty. Capistrano constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession. Yet, he was meted a penalty of suspension from the practice of law for one (1) year only.

⁵ Id. at 161-162.

⁶ Id. at 856-871.

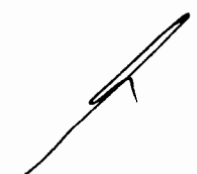
⁷ Id. at 1188.

⁸ Particularly Rule 16.03 thereof, which provides: "A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court."

⁹ Canon 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence in him.

¹⁰ *University of Santo Tomas Faculty Union v. University of Sto. Tomas*, G.R. No. 203957, July 30, 2014.

¹¹ A.C. No. 6903, April 16, 2012.



In *Egger v. Duran*,¹² respondent lawyer Atty. Duran breached his duty when he failed to prepare, much less file, the appropriate pleading to initiate therein complainant's case before the proper court. He also did not return complainant's money despite demand and earlier promise to do so. Further, Atty. Duran exhibited a patent lack of respect for the Commission and its proceedings through his repeated and deliberate failure to appear in the scheduled hearings in an attempt to wiggle away from having to explain and ventilate his side. Worse, he did not file an answer to controvert the allegations in the complaint. As such, Atty. Duran is found guilty of violating Rules 16.01 and 16.03, Canon 16 and Rule 18.03, Canon 18 of the CPR. Despite the foregoing violations, however, the penalty imposed upon him was suspension from the practice of law for a period of six (6) months only.

Clearly, the foregoing cases illustrate a wrongful intention on the part of the erring lawyers therein. Their acts were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules.¹³ Nevertheless, the respective penalties imposed upon the erring lawyers therein were lighter than the two-year (2-year) suspension imposed by the *ponencia* in the instant case.

In this case, respondents did not demonstrate the same callous and disdainful disregard of the law. They showed fidelity to complainant's cause by pursuing his claims against his employers which resulted in a successful settlement. Thereafter, respondents promptly notified complainant of their receipt of the settlement amount and attempted to deliver the net proceeds due to complainant. Respondents' indiscretion lies in their erroneous computation and application of attorney's fees which they already rectified by filing their Compliance¹⁴ with the trial court's order for accounting and submission of receipts in connection with the final decision in Civil Case No. 10678. Given these circumstances, I believe that respondents are entitled to some measure of forbearance.


As for their alleged violation of Canon 2¹⁵ of the CPR, the facts of the case indicate a strong possibility that respondents committed ambulance chasing by soliciting legal business through agents. At any rate, considering that this is respondents' first administrative case and they fully participated in the proceedings before the IBP, I find the penalty of two-year (2-year) suspension too harsh. Accordingly, I urge the Court to show compassion to respondents in light of the mitigating circumstances above pointed out.

¹² A.C. No. 11323, September 14, 2016.

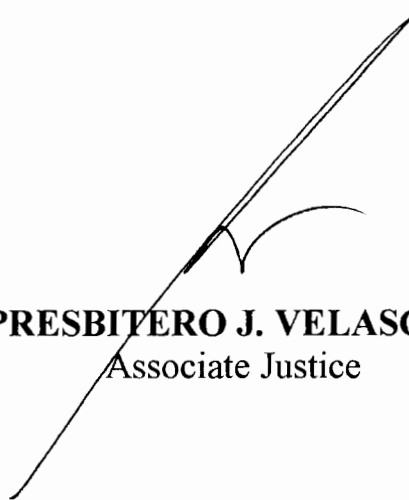
¹³ *Nevada v. Casuga*, A.C. No. 7591, March 20, 2012.

¹⁴ *Rollo*, pp. 1150-1152.

¹⁵ Canon 2 - A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

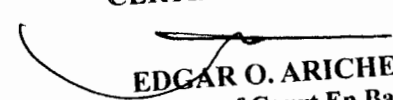


IN VIEW OF THE FOREGOING, for committing infractions and professional misconduct in violation of the Code of Professional Responsibility, I vote to impose upon respondents Atty. Pedro L. Linsangan and Atty. Gerard M. Linsangan the penalty of **SUSPENSION from the practice of law for a period of SIX (6) MONTHS** with a **STERN WARNING** that a repetition of the same or similar acts in the future shall be dealt with more severely.



PRESBITERO J. VELASCO, JR.
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court