Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

KANG TAE SIK, Complainant,	**A.C. No. 13559** **[Formerly CBD Case No. 14-4205]**
	Present:
-versus-	LEONEN, *SAJ., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO JR., *JJ.*
ATTY. ALEX Y. TAN and ATTY. ROBERTO S. FEDERIS, Respondents.	**Promulgated:**
	MAR 13 2023

x----------x

DECISION

LAZARO-JAVIER, *J.*:

The Case

Complainant Kang Tae Sik (complainant) charged respondents Atty. Alex Y. Tan (Atty. Tan) and Atty. Roberto S. Federis (Atty. Federis) with violations of Canon 15,[1] Rule 15.03[2] and Canon 17[3] of the Code of

---

1 Canon 15 of the CPR.
Canon 15. A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

2 Rule 15.03 of the CPR.
Rule 15.03. – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

3 Canon 17 of the CPR.

Professional Responsibility (CPR) for double-dealing and for filing complaints against their client.[4]

Antecedents

Complainant is a Korean national[5] engaged in the importation of Korean goods in the Philippines.[6] He engaged Atty. Tan's firm, A. Tan, Zoleta & Associates Law Firm (firm), as his retained counsel and entrusted them with information regarding his personal life and business, among others. He also authorized them to deal with his problems in courts and several government agencies like the Bureau of Customs (BOC), National Bureau of Investigation (NBI), Bureau of Immigration and Deportation (BID) and to settle troubles with his Korean business associates.[7] In exchange for their services, he paid the firm hundreds of thousands of pesos upon Atty. Tan's demand.[8]

The firm represented him in the following cases: (1) **Criminal Case No. 94-133989-90** involving violation of Batas Pambansa Blg. 22 before the Regional Trial Court, Branch 13 of Manila City **(Manila Case)** for which he paid PHP 200,000.00 as professional fee;[9] (2) **Criminal Case No. 46356** involving violation of Batas Pambansa Blg. 22 before the Metropolitan Trial Court, Branch 69 of Pasig City **(First Pasig Case)** where Atty. Tan and his associates entered their appearance and filed a motion to revive case;[10] and (3) **Civil Case No. 7230** involving a complaint for sum of money against him before Regional Trial Court, Branch 157 of Pasig City (**Second Pasig Case**) for which he paid PHP 300,000.00 as fees.[11]

The firm however deliberately neglected these cases. On one occasion, they made him sign documents that he did not understand but which turned out to be a Withdrawal of Appearance. As such, after only a year, the firm withdrew its appearance in both Pasig Cases. Atty. Tan and his associates' intentional neglect was part of a ploy to obtain information from these cases which they used to blackmail him.[12]

On April 21, 2014, he received an order from the BID to file a counter-affidavit vis-à-vis a letter-complaint filed by Atty. Tan positing that he (complainant) violated immigration laws and was convicted for two counts of

---

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

4 *Rollo*, Vol. II, p. 2.
5 *Id.*, Vol. I, p. 1.
6 *Id.*
7 *Id.*, Vol. II, pp. 2–3.
8 *Id.* at 3.
9 *Id.*
10 *Id.*
11 *Id.* at 4.
12 *Id.* at 4.

violation of Batas Pambansa Blg. 22 in the Manila Case. Attached thereto was another letter signed by Atty. Federis which was filed with the NBI using the letterhead "*Roberto S. Federis,* attorney-at-law," albeit Atty. Federis' name still appeared as one of the associates of A. Tan, Zoleta & Associates Law Firm.[13] These letter-complaints, however, were groundless since the warrant of arrest and hold departure order against him which were mentioned therein had already been lifted.[14]

Atty. Tan and Atty. Federis used information acquired during their lawyer-client relationship, such as the records in the Manila case, to circulate letters maligning his person within the Korean community. Too, they used the same to file the deportation case before the NBI, in violation of their duties under the CPR. More, after gaining mastery of his business operations, respondents established a similar business which directly competes with his own. They filed the letter-complaints to blackmail and eliminate him as a business competitor since they are now the counsel of rival businesses.[15]

Complainant presented copies of the letter-complaints filed by respondents, relevant pleadings in the Manila and Pasig Cases including respondents' entries of appearance and motions to withdraw appearance, handwritten acknowledgment of the PHP 200,000.00 fee by Atty. Tan, certifications that the hold departure order against complainant had been lifted, and Articles of Incorporation of L&K Beverage listing Atty. Tan as one of its stockholders.[16]

Respondents countered that they did not represent complainant in the Manila Case.[17] His counsel therein were Atty. Redentor S. Viaje (Atty. Viaje) and Atty. Aguedo Gepte III who were not affiliated with A. Tan, Zoleta & Associates Law Firm.[18] The firm was engaged to handle the First Pasig Case only 11 years after complainant had already been convicted in the Manila Case.[19]

Contrary to the charges, Atty. Tan's firm was hired to represent complainant only in two of the four cases that were endorsed to the firm for which he was paid PHP 200,000.00 or PHP 50,000.00 acceptance fee for each case. As for him (Atty. Tan), he represented complainant only in the First Pasig Case. His engagement therein lasted only for two years because complainant advised him to withdraw therefrom as he (complainant) allegedly had an NBI friend who could help him in criminal cases. At any rate, his withdrawal of appearance was with complainant's full consent.[20]

---

13 *Id.* at 3.
14 *Id.* at 4.
15 *Id.*
16 *Id.* at 5–7.
17 *Id.* at 7.
18 *Id.* at 8.
19 *Id.*
20 *Id.*

It is not true that he was complainant's business consultant who assisted with the latter's matters involving the NBI, BID, and BOC, nor did complainant disclose his past criminal conviction or other cases except the First Pasig Case.[21] After the termination of the firm's engagement, he no longer maintained communication with complainant. In fact, he already forgot his name and only recalled him as a former client when the present disbarment case was filed against him.[22]

In September 2013, he was invited by Mr. Kevin Lee (Mr. Lee), another Korean national, to incorporate L&K Beverage Corporation, which was appointed by Lotte Chilsung, one of the largest beverage manufacturers in Seoul, Korea, as its sole distributor in the Philippines of a popular wine in Korea, *Chumchurum sojo*. They eventually discovered, however, that complainant, through his NBI friends, initiated an NBI investigation on their shipments, alleging undervaluation thereof.[23]

Complainant is known for harassing business competitors and even caused some of them to be deported. Atty. Tan received life-threatening text messages from him, which prompted him to report complainant to the NBI and the Philippine National Police and to file a deportation case against him.[24] His allegations therein were supported by records in the Manila Case which were public records.[25]

In any case, Atty. Tan maintains he is not guilty of violating the CPR since his duty to a former client does not extend to transactions beyond his engagement. He is not required to protect the client's interest after the lawyer-client relationship has been terminated. In the same vein, conflict of interest only arises if the lawyer used confidential information, which was acquired during the engagement, against his client while their relationship is subsisting. At any rate, the rule on "conflicted interest" prescribes in five years. It has been 18 years since complainant's conviction. Finally, he was only discharging his duty to report any violation of immigration laws when he filed the letter-complaint.[26]

Respondents offered as evidence copies of relevant pleadings in the cases involving complainant and the NBI investigations.[27]

---

21 *Id.* at 8.
22 *Id.* at 9.
23 *Id.*
24 *Id.*
25 *Id.* at 10.
26 *Id.*
27 *Id.* at 11–12.

On May 6, 2015, Atty. Tan informed the Integrated Bar of the Philippines (IBP) that Atty. Federis had passed away in April 2015.[28] He was thus dropped from the case.

Report and Recommendation of the IBP

Initially, both the IBP Commission on Bar Discipline[29] and Board of Governors (BOG)[30] recommended the dismissal of the complaint. They essentially found that complainant failed to prove that the Manila Case, which was used as basis to file the NBI letter-complaints, was among those handled by Atty. Tan during the firm's engagement. In any case, nine years had already passed since complainant was convicted, and seven years since the deportation complaints were filed.

On complainant's Motion for Reconsideration, the IBP BOG[31] reversed and recommended that Atty. Tan be suspended from the practice of law for six months. Under its Extended Resolution[32] dated June 2, 2022, it explained that Atty. Tan violated the proscription against conflict of interest when he filed the deportation complaints against his former client, complainant, by using information and documents entrusted to his firm by virtue of their lawyer-client relationship.

Issue

Did Atty. Tan violate the proscription against conflict of interest?

Ruling

We dismiss the complaint for lack of merit.

Canon 17 of the CPR states:

> CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed upon him.

---

28 *Id.*, Vol. II (of Vol. I folder), p. 180.

29 See the IBP Commission on Bar Discipline Report dated June 16, 2015, penned by Commissioner Maria Angela N. Esquivel, *rollo*, Vol. II, pp. 2–15.

30 See IBP Board of Governors Notice of Resolution dated June 20, 2015, signed by National Secretary Nasser A. Marohomsalic; *id.* at 1.

31 See the IBP Board of Governors Notice of Resolution dated April 20, 2017, signed by National Secretary Patricia-Ann T. Prodigalidad.

32 See the IBP Commission on Bar Discipline Extended Resolution dated June 2, 2022, penned by Commissioner Donna Jane Mercader-Alagar.

The relationship between a lawyer and client is strictly personal and highly confidential and fiduciary. In engaging the services of an attorney, the client reposes upon him or her special powers of trust and confidence. The relation is of such delicate, exacting and confidential nature that is required by necessity and public interest. Only then can the public be encouraged to entrust their confidence in lawyers. Thus, the duty of a lawyer to preserve his or her client's secrets and confidences *outlasts the termination* of an attorney-client relationship.[33]

As such, the CPR prohibits lawyers from representing interests that conflict with that of his or her client. Rule 15.03 of Canon 15 of the CPR provides, *viz.*:

> CANON 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
>
> xxx
>
> Rule 15.03 – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

This rule against conflict of interest applies even if the relation of lawyer-client had already been terminated[34] and covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. The rule holds even if the inconsistency is remote, merely probable, or the lawyer has acted in good faith and with no intention to represent conflicting interests.[35]

On this score, Atty. Tan's argument that his duty of fidelity to clients only subsists while the lawyer-client relationship has not yet been terminated, thus, fails. To stress, the proscription against conflict of interest and inviolability of client confidences are equally-binding as regards former clients, in keeping with the highly fiduciary nature of attorney-client relations.

Too, his argument that the rule against conflict of interest prescribes in five years is *misplaced*. The case he cited as basis, *PCGG v. Sandiganbayan*,[36] pertained to the duration of prohibition against retired or separated lawyers in government service from taking part in cases involving matters they handled in their former government positions. In fine, the same is *inapplicable* here where the respondent is a private practitioner.

---

33 See *Mercado v. Vitriolo*, 498 Phil. 49 (2005) [Per J. Puno, Second Division].

34 See *Nombrado v. Atty. Hernandez*, 135 Phil. 5 (1968) [Per J. Makalintal, En Banc].

35 See *Tan-Te Seng v. Atty. Pangan*, A.C. No. 12830, September 16, 2020 [Per J. Lazaro-Javier, First Division], citing *Heirs of Falame v. Atty. Baguio*, 571 Phil. 428, 442 (2008) [Per J. Tinga, Second Division].

36 495 Phil. 485 (2005) [Per J. Puno, En Banc].

Complainant, however, failed to substantiate his charges against Atty. Tan.

In *Hornilla v. Salunat*,[37] we explained that there is a conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. Since then, jurisprudence has developed **three tests** to determine the existence of conflict of interest: ***first,*** whether a lawyer is duty-bound to fight for an issue or claim on behalf of one client, and at the same time, to oppose that claim for the other client; ***second,*** whether acceptance of a new relation would prevent the discharge of the lawyer's duty of undivided fidelity and loyalty to the client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty; and ***third,*** whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[38]

This case falls under the **third test**.

In *Parungao v. Atty. Lacuanan,*[39] the Court explained that the third test specifically applies to a situation wherein the professional engagement with the former client was already terminated when the lawyer entered into a new engagement with the present client. It bears to stress that the test explicitly requires the lawyer's use against the former client of "confidential information acquired through their connection or previous employment."

The following circumstances must thus concur: *first*, the lawyer is called upon in his or her present engagement to make use against a former client confidential information which was acquired through their connection or previous employment; and *second*, the present engagement involves transactions that occurred during the lawyer's employment with the former client and matters that the lawyer previously handled for the said client.[40]

We focus on the first circumstance, i.e., the lawyer used confidential information against the former client which was acquired when their relationship was still subsisting. Here, complainant insists that the Manila Case, which Atty. Tan used to file the deportation case against him, was a matter he previously handled as his counsel, hence, confidential information.

We are not persuaded.

The records are bereft of sufficient evidence to make this categorical finding. Though Atty. Tan did admit that he received PHP 200,000.00 as

---

37 453 Phil. 108 (2003) [Per J. Ynares-Santiago, First Division].
38 See *Pilar v. Atty. Ballicud*, A.C. No. 12792, November 16, 2020 [Per J. Lopez, Second Division], citing *Aniñon v. Atty. Sabitsana, Jr.*, 685 Phil. 322, 327 (2012) [Per J. Brion, Second Division].
39 A.C. No. 12071, March 11, 2020 [Per J. Hernando, Second Division].
40 *Id.*

consideration for *four* cases he was endorsed to handle for complainant, or PHP 50,000.00 for each case,[41] it was not clearly shown whether the Manila Case was one of these. To be sure, complainant did not submit any pleading or other document which may evince this Court to ordain otherwise. Notably, only the pleadings relating to the two Pasig Cases were signed by Atty. Tan, while the pleadings relating to the Manila Case were signed by complainant's counsel therein, Atty. Viaje.[42] Neither did he allege, much less adduce evidence to show, that Atty. Tan was privy to the hold departure order mentioned in the letter-complaint against him.

The Court may not simply rely on mere allegations, conjectures, and suppositions in making its ruling.[43] More important, it is well-settled that in disbarment cases, a lawyer enjoys the legal presumption of innocence until the contrary is proved. The burden of proof rests with the complainant who must establish the charges against the lawyer with the requisite quantum of proof, i.e., substantial evidence. In fine, complainant must adduce the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[44]

This, complainant utterly failed to do.

ACCORDINGLY, the Court **RESOLVES** to **DISMISS** the case against Atty. Alex Y. Tan for utter lack of merit.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

---

41 Vol. II (of Vol. I Folder) pp. 153–154.
42 *Rollo*, Vol. II, p. 6.
43 See *Zara v Atty. Joyas*, A.C. No. 10994, June 10, 2019 [Per J. Peralta, Third Division].
44 See *Tan v. Atty. Alvarico*, A.C. No. 10933, November 3, 2020 [Per C.J. Peralta, First Division].

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice