



REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 DEC 03 2019
 BY: XG
 TIME: 8:35

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **09 October 2019** which reads as follows:*

"A.C. No. 10535 (Zenaida E. Silver v. Atty. Amado L. Cantos)

X-----X
 Complainant Zenaida E. Silver charges respondent Atty. Amado L. Cantos with violation of Rules 1.01¹ and 1.02² Canon 1 of the Code of Professional Responsibility (CPR) for his malicious, dishonest and deceitful conduct, and participation in crimes of carnapping, qualified theft and coercion.³

Complainant's Factual Version

Complainant Zenaida E. Silver essentially alleges:

She is engaged in the buy and sell of imported surplus motor vehicles and accessories under the name "ZSH COMMERCIAL."⁴

On January 26, 2005, she entered her bid of ₱5,790,000.00 for 115 units of imported surplus vehicles and accessories in an auction sale held at the Bureau of Customs (BOC) - General Santos City. She emerged as the winning bidder but had difficulty in paying the full bid price.⁵

While looking for financiers to help her pay the bid price in full, she met respondent Atty. Amado L. Cantos who introduced her to businessman Loreto H. Hao. On February 3, 2005, she signed a Memorandum of Agreement (MOA) with Loreto whereby the latter would extend her the amount she needed to pay the bid price in full. She also signed the deed of absolute sale attached to the MOA wherein she purportedly sold the vehicles to Loreto as collateral for the loan.

The MOA⁶ and attached deed of absolute sale⁷ read in part:

MEMORANDUM OF AGREEMENT

¹ Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

² Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

³ *Rollo* (Vol. II), p. 14.

⁴ IBP Report and Recommendation, p. 2.

⁵ *Id.*

⁶ *Rollo* (Vol. I), pp. 30-31.

⁷ *Id.* at 134-135.

x x x x

WHEREAS, [Zenaida Silver] is the awardee in the January 26, 2005, Bureau of Customs, Gen. Santos City Auction Sale of several vehicles and parts and has approached [Loreto Hao] for financial assistance;

NOW THEREFORE, for their mutual interest and benefit, the parties have thereunto entered into this Agreement, subject to the following terms and conditions:

1. That [Loreto Hao] agrees to advance the payment of ₱5,790,100.00 due to the Bureau of Customs, Port of Dadiangas, as bid price, xxx;
2. That in consideration of said financial assistance, [Zenaida Silver] shall execute the corresponding deed of sale in favor of [Loreto Hao] on the vehicles and spare parts xxx in the amount of ₱7,527,100.00 xxx;
3. That, by way of payment, all sales of vehicles less 5% shall be paid and given to [Zenaida Silver] until the subject amount is fully paid and settled;
4. After the amount has been fully paid, then whatever succeeding sales shall be divided by the parties 30-70 in favor of [Zenaida Silver];

x x x x

9. That, as a gesture of good faith, the [Loreto Hao] shall execute a deed of sale over a land at Malabog, Davao City, which shall answer for the account until full payment (words in brackets added)

x x x x

DEED OF ABSOLUTE SALE
AND ASSIGNMENT OF RIGHTS

x x x x

WHEREAS, [Zenaida Silver], as winning bidder, is the true and absolute owner of all vehicles, trucks and spare parts subject of that Auction Sale conducted by the Bureau of Customs, Port of Dadiangas on February 10, 2005 xxx

NOW, THEREFORE, and in consideration of the amount of SEVEN MILLION FIVE HUNDRED TWENTY SEVEN THOUSAND AND ONE HUNDRED THIRTY PESOS (₱7,527,130.00) in cash in hand paid to me and the receipt of which I hereby acknowledged to my full and complete satisfaction from LORETO HAO, by these presents, the Vendor hereby SELL, CEDE, TRANSFER AND CONVEY unto said [Loreto Hao], his heirs, successors and assigns the aforesaid described property, as well as ASSIGNS and TRANSFERS all her rights and interests as the winning bidder and awardee xxx

That, upon execution of this Instrument, [Loreto Hao] is now the true and absolute owner of said property above described, with full

power and authority to take possession and sell and dispose of the same. [Zenaida Silver] undertakes to turnover to [Loreto Hao] all pertinent papers and documents covering said properties. (words in brackets added)

x x x x

Having obtained the loan from Loreto, she was finally able to pay the full bid amount under the name of ZSH Commercial.⁸

Thereafter, respondent reassured her that as her lawyer, she could trust him and that she should sign every document that he prepares, i.e. the MOA, AGREEMENT, Special Power of Attorney, and Deeds of Absolute Sale with Assignment of Rights, to smoothly facilitate the transactions between her and Loreto. She paid respondent ₱6,000 as attorney's fees.⁹

Among the documents respondent prepared was a Special Power of Attorney (SPA) dated March 17, 2005. Said SPA authorized Loreto's nephew Kenneth Hao to sign, execute, and deliver any sales contracts and other transactions on her behalf. Upon respondent's legal advice, she signed the document. As it turned out, however, said SPA was irrevocable.¹⁰ It read:

SPECIAL POWER OF ATTORNEY

x x x x

I, ZENAIDA E. SILVER, xxx hereby name, constitute and appoint KENNETH HAO, xxx, to be my true and lawful attorney-in-fact for me and in my name, place and stead, and to do and perform the following, to wit:

1. To represent me in all undertakings and to be my sole and exclusive LIAISON OFFICER with the LTO, CUSTOMS and other government officers in connection with and relative to my car/vehicle dealership business, with full power and authority to act and transact on all necessary business matters;
2. To sign, execute and deliver any and all sales contracts, documents and/or writings necessary for the smooth operation of my said business operation and/or whatsoever nature or kind and any and all concerning above;
3. That this Special Power of Attorney is coupled with interest and cannot be revoked without the written consent of my attorney-in-fact as he has spent time, money and efforts, and substantial investments thereon.

HEREBY GIVING AND GRANTING unto my said attorney-in-fact full power and authority to do and perform all and every act and things whatsoever requisites and necessary to be done in and about the premises, as fully to all intent and purposes, as I might or could do if

⁸ IBP Report and Recommendation, pp. 2-3, 5.

⁹ *Id.* at 3.

¹⁰ *Id.* at 4.

personally present and acting in person, and hereby ratifying and confirming all that my said attorney-in-fact shall lawfully do or cause to be done under and by virtue of these presents.

x x x x

After the release of the vehicles, Loreto suggested that the items be brought to the Honasan Compound in Davao City for repair and easier access. She accepted the suggestion and allowed Loreto and Kenneth to access the compound and offer the vehicles for sale to interested buyers.¹¹

Respondent was also able to persuade her to sign another document entitled "AGREEMENT"¹² also dated March 17, 2015. Convinced that respondent fully protected her interest as her lawyer and that the document was advantageous to her, she signed the document without question. She, however, noticed that she was not made to sign respondent's Notarial Register, in violation of the Notarial Rules. Thereafter, she learned that the document reduced her to Loreto's mere sales agent.¹³ The AGREEMENT reads:

AGREEMENT

x x x x

FOR AND IN CONSIDERATION of their mutual interest and benefit, the parties have hereunto entered into this Agreement, subject to the following terms and conditions:

1. That the [Zenaida Silver] hereby confirms and affirms that Deed of Absolute sale with Assignment of Rights she executed in favor of [Loreto Hao] xxx;
2. That the parties hereby revoke and cancel that Memorandum of Agreement they executed xxx;
3. That [Zenaida Silver] hereby declares that [Loreto Hao] is the true and absolute owner of the vehicles and parts subject of that Deed of Sale and that she has no claim or interest of whatever kind or nature over them;
4. That the parties hereby agree that the [Zenaida Silver] is authorized to look for buyers and negotiate to sell for cash said units on condition that final negotiations, sales and payments will be at [Loreto Hao's] place of business xxx
5. That for the efforts of [Zenaida Silver], [Loreto Hao] hereby extend to the [Zenaida Silver] a ₱20,000.00 discount per unit sold, on all her personal sales based on the Price List of said vehicles xxx;
6. xxx

¹¹ *Id.* at 3.

¹² *Rollo* (Vol. I), pp. 129-130.

¹³ IBP Report and Recommendation, p. 4.

7. That [Loreto Hao] undertakes to sign and execute any and all other agreements and documents which might be required by any government offices or banks, and necessary to carry out the objectives of this Agreement and the sale of said units.

x x x x

Becoming apprehensive about the whole set-up, she asked her caretaker to conduct an inventory in the Honasan Compound. They discovered from the inspection that with the help of respondent, Kenneth and Loreto were able to pull out sixty-four (64) units of motor vehicles, parts and accessories worth around ₱10,094,000.00 without her knowledge and consent.¹⁴

On April 19, 2005, she sought the assistance of the local police force to pull out the motor vehicles from the Honasan Compound. But respondent and Kenneth prevented them from actually doing so. To stop respondent, Loreto and Kenneth from further selling the vehicles, she revoked the SPA and rescinded the AGREEMENT. Despite this, Loreto and his cohorts, including respondent, still managed to pull out and dispose the remaining vehicles from the Honasan Compound. They transferred the said vehicles to Loreto's own compound and to unknown warehouses and repair shops. They also took two (2) booklets of ZSH Commercial's Sales Invoice.¹⁵

Thereafter, respondent and Loreto registered eighty-five (85) of the vehicles at Bislig City, Surigao del Sur under the latter's name, using the Deed of Absolute Sale she signed upon respondent's recommendation.¹⁶ In truth, there was no sale to speak of, as the general deed of sale was a mere collateral for the loan she took from Loreto.¹⁷ More, she found the registration dubious because the confirmation certificates with the Official Receipts issued by the Land Transportation Office-Central Office stated that the vehicles should have been registered in Davao City.

For respondent's deceitful acts, she suffered serious damage and prejudice. Thus, on May 10, 2005, she filed cases with the Department of Justice (DOJ) for carnapping, qualified theft, grave coercion and violation of anti-fencing law against respondent, Loreto, Kenneth, and their co-conspirators.¹⁸ By Resolution dated February 20, 2009, the DOJ directed the City Prosecutor of Davao to file an information against them for violation of Article 315 (1)(b) of the Revised Penal Code.¹⁹

Respondent's Version

Respondent ripostes in the main:

¹⁴ *Id.*

¹⁵ *Rollo* (Vol. I), p. 10.

¹⁶ IBP Report and Recommendation, p. 5.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 6; *Rollo* (Vol. II), p. 21.

¹⁹ *Rollo* (Vol. II), pp. 196-203.

On February 1, 2005, he met complainant through one Heidi Park. Park explained that complainant was looking for a financier to help her pay for the vehicles she purchased through an auction sale. He informed complainant that he had a client who might be interested to help her. Thereafter, he introduced complainant to his client, Loreto.²⁰

From the very beginning, complainant knew that he was Loreto's attorney, not her own.²¹ Too, complainant, in the same meeting, promised to give him a 5% commission and a car if the transaction with the BOC materialized. This showed that their relationship was purely on commission basis, not one of attorney-client.²²

They agreed to this set-up because complainant had the necessary accreditation to participate in the public auction of the BOC which Loreto did not have. It was their understanding, nonetheless, that Loreto is the actual owner of the vehicles despite having been paid for under the name of ZSH Commercial.²³ Loreto was, therefore, merely exercising his right of ownership over the vehicles when he disposed them.

Contrary to her claim, it was complainant who had been deceptive from the beginning. He discovered that her bid award had already been cancelled for failure to pay the bid price within forty-eight (48) hours from bidding. They were, however, able to participate in the rescheduled bidding after Loreto agreed to loan her the bid price. More, there was a pending complaint for Estafa filed by one Richard Murphy against complainant for allegedly swindling \$1,520.00 investment in a lobster business.²⁴

The Report and Recommendation of the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD)

By Report and Recommendation dated September 22, 2009, the IBP-CBD found that respondent violated his lawyer's oath and the CPR, but did not specify which provisions. Instead, it based its Report and Recommendation on DOJ Resolution dated February 20, 2009, viz:

The Resolution promulgated on February 20, 2009 by the Hon. Secretary of Justice Raul M. Gonzales found the respondents Loreto Hao, Kenneth Hao, Atty. Amado Cantos, Kim Hao, SG Joel Miras, Ramon Diaz, Jane and John Does liable for violation of Article 315, paragraph 1(b) of the Revised Penal Code in I.S. No. 05-E-2221 to 05-E2223 entitled Zenaida Silver vs. Loreto Hao, Kenneth Hao, Atty. Amado Cantos, Kim Hao, SG Joel Miras, Ramon Diaz.

The Resolution speaks for itself.

It recommended that respondent be suspended for six (6) months from

²⁰ IBP Report and Recommendation, p. 6.

²¹ *Id.*

²² *Id.* at 7.

²³ *Id.* at 9.

²⁴ *Id.* at 8.

the active practice of law, with warning that a repetition of a similar offense shall be dealt with more severely.²⁵

The Resolution of the IBP Board of Governors

By Resolution dated December 29, 2012 in CBD Case No. 08-2322, the IBP Board of Governors modified, increasing respondent's suspension from six (6) months to one (1) year, *viz*:

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 considering Respondent's violation of Article 315, paragraph 1 (b) of the Revised Penal Code, Atty. Amado L. Cantos is hereby SUSPENDED from the practice of law for one (1) year with Warning that repetition of the same or similar act shall be dealt with more severely.²⁶

On March 23, 2014, the Board of Governors denied respondent's motion for reconsideration. Hence, respondent filed a petition for review with this Court.

Present Petition

Respondent now assails the Resolution dated December 29, 2012 of the IPB-CBD on ground that the latter did not conduct its own investigation in this disciplinary case; it merely relied on the DOJ Resolution dated February 20, 2009 that found probable cause to charge him with *estafa*.²⁷ He also argues that the criminal cases filed against him were harassment suits intended to cover up complainant's own illegal acts and devious schemes.²⁸

Threshold Issues

- 1) Is respondent guilty of violating Rules 1.01 and 1.02 of the CPR?
- 2) Is respondent guilty of violating the 2004 Rules on Notarial Practice?

Ruling

Rule 1.01 and Rule 1.02 of the CPR provide:

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

²⁵ IBP Report and Recommendation dated September 22, 2009, by Investigating Commissioner Atty. Salvador B. Hababag.

²⁶ By National Secretary Nasser A. Marohomsalic.

²⁷ *Rollo* (Vol. II), pp. 14-26.

²⁸ *Id.* at 31.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 1.01 of the CPR punishes deceitful conduct of lawyers. Deceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals. 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.²⁹

Meanwhile, the Court ruled in *Guarin v. Atty. Limpin*³⁰ that a lawyer who assists a client in a dishonest scheme or who connives in violating the law, violates Rules 1.01 and 1.02.³¹ Respondent therein transgressed Rule 1.02 of the CPR by allowing her client to conduct unlawful business practice under her counsel. As pronounced, a lawyer should not render any service or give advice to any client which will involve defiance of the laws which he is bound to uphold and obey.³²

Here, complainant alleged that respondent defrauded her into signing the MOA, Deed of Absolute Sale, SPA and AGREEMENT to her prejudice.

We disagree.

Foremost, Rule 8, Section 5 of the Rules of Court requires that in all averments of fraud, the circumstances constituting such fraud must be stated with particularity.³³ Complainant, however, did not provide the details constituting the fraud committed by respondent in making her sign the said documents; she merely maintained that respondent deceived her into thinking that the documents were favorable to her even though they were not. She failed to specify respondent's representations on how the documents were not disadvantageous to her when their plain language clearly shows otherwise.

The Court is of the view that this is a case involving a partnership that has gone awry, not of a businesswoman defrauded. It is hard to believe that complainant would be tricked into thinking that the purposes of the MOA, Deed of Absolute Sale, SPA and AGREEMENT were different from what they purported to be. As a businesswoman, complainant should have been on guard in protecting her own interest instead of blindly relying on another's assurance, as she claimed. Too, she would have been familiar with the consequences of executing the documents respondent presented to her.

The facts of the case do not establish that respondent committed fraud

²⁹ See *San Juan v. Atty. Venida*, 793 Phil. 656, 662-663 (2016); citing *Overgaard v. Atty. Valdez*, 588 Phil. 422 (2008).

³⁰ 750 Phil. 435, 440 (2015).

³¹ *Id.* citing *Donton v. Atty. Tansingco*, 526 Phil. 1 (2006).

³² *Donton v. Atty. Tansingco*, 526 Phil. 1, 5 (2006), citing E. Pineda, *Legal and Judicial Ethics*, pp. 35-36 (1994).

³³ RULES OF CIVIL PROCEDURE, Rule 8, sec. 5:

SEC. 5. Fraud, mistake, condition of the mind. — In all averments of fraud or mistake the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally.

or deceit. The documents signed by the complainant contain no ambiguity on the ensuing roles of the contracting parties. The documents are clear in establishing that complainant took out a loan from Loreto to be able to pay the full bid price. In exchange, she assigned and transferred the ownership of the vehicles and spare parts to Loreto to secure payment for her loan. On the other hand, Loreto gave complainant discounts and commissions for every unit she was able to sell. Essentially, what took place was a buy-and-sell arrangement where complainant bought the items from an auction sale and sold them to Loreto.

Indeed, the subsequent actions of respondent and Loreto did not depart from the clear language of the documents; they merely enforced Loreto's right over the purchased items pursuant to the MOA, Deed of Absolute Sale, SPA and AGREEMENT.

In finding that respondent violated Rule 1.01 and 1.02 of the CPR and recommending the penalty of suspension for one (1) year, the IBP-CBD and Board of Governors simply relied on the Resolution dated February 20, 2009 of the DOJ without further discussion.

In administrative complaints against lawyers, however, the determination of final action lies with the Court exercising exclusive administrative jurisdiction. It is the Supreme Court, not the IBP, which has the constitutionally mandated duty to discipline lawyers.³⁴ The IBP's factual findings, legal conclusions, and proposed penalty are only recommendatory.³⁵ It is the Court, and no other, which ultimately resolves the case on the merits. Here, the Court finds no compelling reason to penalize respondent, finding no violation of Rules 1.01 and 1.02.

Notably, respondent failed to dispute complainant's allegation that he did not make her sign his notarial register³⁶ in clear violation of the 2004 Rules on Notarial Practice, *viz*:

Rule VI Notarial Register

x x x x

SEC. 3. Signatures and Thumbmarks. - At the time of notarization, the **notary's notarial register shall be signed** or a thumb or other mark affixed by each:

- (a) principal;
 - (b) credible witness swearing or affirming to the identity of a principal;
- and

- (c) witness to a signature by thumb or other mark, or to a signing by the notary public on behalf of a person physically unable to sign.
(Emphasis supplied)

³⁴ See *Bernardino v. Santos*, 754 Phil. 52, 70(2015).

³⁵ *Id.* at 71.

³⁶ *Rollo* (Vol. I), p. 13.

This allegation is duly supported by copies of the notarial entries in question,³⁷ showing the absence of complainant's signature in the notarization of the Memorandum of Agreement (4 February, 2005), Deed of Absolute Sale (4 February 2005), Deed of Absolute Sale and Assignment of Rights (3 February, 2005), and another Deed of Absolute Sale and Assignment of Rights (12 February 2005) which had neither complainant's nor Loreto's signatures.

In *Agbulos v. Atty. Viray*,³⁸ the Court noted that a lawyer commissioned as a notary public who fails to discharge his/her duties shall be meted the penalties of revocation of notarial commission, disqualification from being commissioned as a notary public for two years, and suspension from the practice of law of one year.³⁹

So must it be.

Thus, the Court finds that the recommended penalty of one (1) year suspension from the practice of law is in order.

WHEREFORE, Atty. Amado L. Cantos is found **GUILTY** of violating the 2004 Rules on Notarial Practice. He is **SUSPENDED** from the practice of law for one (1) year with stern warning that repetition of a similar offense shall be dealt with more severely. His commission as notary public, if any, is **REVOKED** and he is **PROHIBITED** from being commissioned as a notary public for two (2) years effective immediately.

Let a copy of this Resolution be attached to the respondent's personal record in the Office of the Bar Confidant.

Furnish a copy of this Resolution to the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for dissemination to all courts of the Philippines.

SO ORDERED."

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *whh* 11/27

27 NOV 2019

³⁷ *Id.* at 135-136.

³⁸ A.C. No. 7350, February 18, 2013.

³⁹ *Id.*, citing *Isendhardt v. Atty. Real*, 682 Phil. 19 (2012); *Judge Lopena v. Atty. Cabatos*, 504 Phil. 1, 8 (2005); *Lanuzo v. Bongon*, 587 Phil. 658 (2008); *Bautista v. Atty. Bernabe*, 517 Phil. 236 (2006); *Tabas v. Atty. Mangibin*, 466 Phil. 297 (2004).

ATTY. JORICO FAVOR BAYAUUA (reg)
 Counsel for Complainant
 3/F, Gonzalez Building
 No. 1888 Orense Street
 Guadalupe Nuevo, 1212 Makati City

ATTY. JOSE EDGAR J. ILAGAN (reg)
 Counsel for Respondent
 3rd Floor, Rm 8, TCI Building
 89 Jacinto Street, 8000 Davao City

ATTY. AMADO L. CANTOS (reg)
 Respondent
 Room 8, 2nd Floor, Velerans Building
 Monteverde St., 8000 Davao City

INTEGRATED BAR OF THE PHILIPPINES (reg)
 Doña Julia Vargas Avenue
 Ortigas Center, 1605 Pasig City

*HON. JOSE MIDAS P. MARQUEZ (x)
 Office of the Court Administrator
 Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
 LIBRARY SERVICES (x)
 [For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
 OFFICE OF THE REPORTER (x)
 Supreme Court, Manila

THE BAR CONFIDANT (x)
 Supreme Court, Manila

*Note: For Circularization to all Courts
Please notify the Court of any change in your address.
 AC10535. 10/09/2019(144)URES

MDT

