Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROMMEL N. REYES,
Complainant,

- versus -

ATTY. GERALD Z. GUBATAN,
Respondent.

A.C. No. 12839

Present:

PERALTA, *C.J.*, *Chairperson*,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

NOV 03 2020

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RESOLUTION

CAGUIOA, *J.*:

The instant disbarment complaint stemmed from a complaint-affidavit[1] filed before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD) by Rommel N. Reyes (Reyes) against Atty. Gerald Z. Gubatan (Atty. Gubatan) for violation of the Code of Professional Responsibility (CPR).

Reyes alleged that he is the President and Chairman of Integra Asia Konstruct, Inc. (Corporation). He and Atty. Gubatan have been friends since they were schoolmates in college and because of this friendship, he agreed to lend money to Atty. Gubatan on six different occasions.[2]

On October 3, 2006, Reyes agreed to lend Atty. Gubatan the sum of ₱88,000.00 which was payable in 30 days. The loan is evidenced by a promissory note.[3]

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1 *Rollo*, pp. 2-7.
2 Id. at 206.
3 Id. at 206-207.

On November 20, 2006, despite the lapse of the 30-day period without paying the first loan he contracted, Atty. Gubatan again borrowed ₱150,000.00 with an interest of 2% per month. This second loan was evidenced by an Acknowledgment/Agreement where he promised to pay Reyes immediately after the release of his loan with Banco de Oro.[4]

On November 24, 2006, Atty. Gubatan borrowed from Reyes the amount of ₱17,000.00 payable in 30 days, as evidenced by a promissory note.[5]

After these three loan transactions, Atty. Gubatan went to Reyes and tried to borrow money again. Because Reyes claimed that he no longer had personal funds to lend him, Atty. Gubatan persuaded him to be allowed to borrow from the Corporation.[6]

On December 19, 2006, Atty. Gubatan borrowed from the Corporation the amount of ₱200,000.00 with 2% interest per month. This was evidenced by a promissory note.[7]

Thereafter, on August 12, 2007, Atty. Gubatan again asked Reyes for a loan, this time amounting to ₱57,676.00 payable in 30 days. This was likewise evidenced by a promissory note.[8]

Despite the fact that the foregoing promissory notes and an acknowledgment/agreement were all duly signed and executed by Atty. Gubatan, he failed and refused to pay his obligations to Reyes and the Corporation.[9]

On March 13, 2009, Reyes sent a demand letter to Atty. Gubatan demanding the settlement of his loans amounting to ₱769,014.00 inclusive of interest. Atty. Gubatan still failed to pay. Hence, on September 15, 2009, Reyes filed the instant complaint. In addition, Reyes and the Corporation also filed two complaints against Atty. Gubatan for collection of sum of money with damages before the Metropolitan Trial Court in Quezon City (MTC).[10]

In his Answer, Atty. Gubatan claimed that he was employed by the Corporation and retained as Legal Consultant and Special Assistant to the Chairman and President. By virtue of said employment, Atty. Gubatan, who is based in Dagupan City, was required by Reyes to be at the office of the Corporation in Quezon City at least once a week.[11]

Aside from his work in the Corporation, Atty. Gubatan claimed that he was asked by Reyes to handle the latter's numerous personal cases. Since

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4 Id. at 207.
5 Id.
6 Id.
7 Id.
8 Id.
9 Id. at 207-208.
10 Id. at 208.
11 Id.

Atty. Gubatan only started his law practice in 2006, he claimed that Reyes graciously volunteered to give him several loans as evidenced by promissory notes and an acknowledgment/agreement. Moreover, he claimed that when these instruments of indebtedness were signed, he and Reyes agreed that the amounts stated therein would set off against the former's compensation and professional fees for services rendered to Reyes and the Corporation.[12]

Atty. Gubatan averred that there was no issue in the settlement of the loans as well as the handling of cases assigned to him. However, this all changed when he declined Reyes' request to prepare and execute an affidavit in support of the latter's complaint against the officials of Region I Medical Center (RIMC) and other officials of the Department of Health. The supposed affidavit would accuse the Director of the RIMC and the members of the Bids and Awards Committee of demanding sums of money from Reyes in consideration of the contracts already awarded to the Corporation.[13]

According to Atty. Gubatan, he declined the request because there was no factual basis for the alleged demand of money on the part of the RIMC officials. Because of his refusal, Reyes sent a demand letter for payment of the loans and eventually filed the instant complaint.[14]

Both parties attended the mandatory conference and submitted their respective position papers.[15]

Findings by the IBP-CBD

In his Report and Recommendation [16] dated October 25, 2011, Investigating Commissioner Oliver A. Cachapero recommended that Atty. Gubatan be censured for violating Rule 16.04 of the CPR which prohibits lawyers from borrowing money from their client unless the latter's interests are fully protected by the nature of the case or by independent advice.[17] Here, the Investigating Commissioner found that Atty. Gubatan's indebtedness to Reyes was duly proven by the promissory notes and Reyes' act of filing civil cases for sum of money against Atty. Gubatan.[18]

On February 13, 2013, the IBP Board of Governors issued a Resolution[19] which states in part:

> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED AND APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case x x x and finding the*

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12 Id.
13 Id. at 209.
14 Id.
15 Id.
16 Id. at 182-185.
17 Id. at 184-185.
18 Id. at 184.
19 Id. at 181.

> *recommendation fully supported by the evidence on record and the applicable laws and rules, the case is hereby* ***DISMISSED****.*[20]

Reyes moved to reconsider,[21] claiming that the IBP Board erred in dismissing the case after adopting and approving the Resolution of the Investigating Commissioner which imposed the penalty of censure.[22] Reyes also insisted that the IBP Board should have modified the penalty imposed by the Investigating Commissioner to disbarment.[23]

On March 22, 2014, the IBP Board granted Reyes' Motion for Reconsideration, to wit:

> *RESOLVED to GRANT Complainant's Motion for Reconsideration. Thus, considering Respondent's violation of Rule 16.04 of the Code of Professional Responsibility, [the] Resolution x x x dated February 13, 2013 is hereby* ***SET ASIDE*** *and accordingly Atty. Gerald Z. Gubatan [is]* ***REPRIMANDED****.*[24]

On June 18, 2019, the IBP Board issued an Extended Resolution[25] to expound on its earlier Resolution granting Reyes' Motion. The IBP Board stated that there is no dispute that Atty. Gubatan obtained several loans from Reyes and the Corporation. However, he abused the trust and confidence reposed on him by the latter through his persistent refusal to settle his obligations despite demands.[26]

The IBP Board also emphasized that there is a lawyer-client relationship in this case as Atty. Gubatan was retained as a lawyer for the Corporation and as Reyes' counsel for his personal cases. Despite this, Atty. Gubatan still borrowed money from his clients whose interests, by the lack of any security on the loan, were not fully protected. Reyes and the Corporation relied solely on Atty. Gubatan's word that he would return the money plus interest.[27]

The IBP Board also found no sufficient evidence of any subsequent agreement to set-off the loans with Atty. Gubatan's compensation for professional services. Further, the very act of Reyes and the Corporation in filing cases for collection of sum of money with damages against Atty. Gubatan counters his allegation of offsetting of credit.[28]

Neither party filed a Motion for Reconsideration of the June 18, 2019 Resolution nor a Petition for Review before the Court.[29]

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20 Id.
21 Id. at 186-191.
22 Id. at 187.
23 Id. at 188
24 Id. at 203.
25 Id. at 205-215.
26 Id. at 211.
27 Id. at 212.
28 Id. at 213.
29 Id. at 221.

RULING

The Court affirms the IBP's finding of administrative liability against Atty. Gubatan, with modification as to the recommended penalty.

The relationship between lawyers and their clients is inherently imbued with trust and confidence — and as true as any natural tendency goes, this trust and confidence is susceptible to abuse.[30] The rule prohibiting lawyers from borrowing from their clients is intended to prevent the lawyer from taking advantage of his influence over the client as the rule presumes that the client is disadvantaged by the lawyer's ability to use all legal maneuverings to renege on his obligation.[31]

In this case, as correctly found by the IBP, there is no doubt that Atty. Gubatan obtained several loans from Reyes and the Corporation, which are evidenced by promissory notes and an acknowledgment/agreement. These loans appear to have been contracted during the existence of a lawyer-client relationship among the parties, when Atty. Gubatan was employed by the Corporation and retained as legal consultant and special assistant to the president. Consequently, Atty. Gubatan clearly violated the following provisions of the CPR:

> CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
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> x x x x
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> RULE 16.04 **A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice.** Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client. (Emphasis supplied)

Further, in unduly borrowing money from Reyes and the Corporation and refusing to pay the same, Atty. Gubatan abused the trust and confidence reposed in him by his clients. In doing so, he failed to uphold the integrity and dignity of the legal profession, in contravention of Canon 7 of the CPR,[32] which provides:

> 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.

Atty. Gubatan himself does not deny the existence of these loans and the fact that they remain unpaid. In his defense, he claims that when the instruments of indebtedness were signed, he and Reyes agreed that the amounts stated therein would be set off against his compensation and

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30 *HDI Holdings Philippines, Inc. v. Cruz*, A.C. 11724, July 31, 2018, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64489>.

31 Id.

32 Id. See also *Spouses Concepcion v. Dela Rosa,* 752 Phil 485, 496 (2015).

professional fees for services rendered to Reyes and the Corporation. These contentions are unmeritorious. On this note, the Court agrees with the IBP Board's pronouncements:

> For his part, the Respondent claims that the Complainant volunteered to extend the period of payment and agreed to offset the loan against his professional fees. These assertions are, however, self-serving. Attention is hereby drawn to several Promissory Notes signed by the Respondent. The last paragraphs thereof [state]: "*I will pay the above-mentioned amount including its interest immediately after the release of my loan from BANCO DE ORO.*" The Respondent's assurance that the release of his loan with the bank is forthcoming and that the said amount will be paid to the Complainant, which was never fulfilled, manifested his intent to mislead the latter into giving a substantial amount. Such actuation did not speak well of him as a member of the Bar.
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> Moreover, no subsequent agreement was shown that the sums sought to be collected by the Complainant from the Respondent will be set-off with his acclaimed compensation for his professional services. Additionally, the very act of the Complainant in filing two (2) cases for Collection of a Sum of Money with Damages against the Respondent counters the allegations of extension and off-setting of credit.[33]

In this regard, the Court notes that when he testified in the collection case before the MTC, Reyes admitted that he did not pay Atty. Gubatan for legal services rendered to him and the Company. He claimed that Atty. Gubatan volunteered his legal services without payment in view of the many favors he extended to the latter.[34] This is belied by Atty. Gubatan, who claims that he should be paid for the services he had rendered to Reyes and the Corporation.[35]

Indeed, a lawyer is entitled to protection against any attempt on the part of a client to escape payment for legal services.[36] However, any disagreement as regards professional fees is not a matter that a lawyer could simply take into his own hands, for there are proper legal steps to be followed in order to recover his just due.[37] Lawyers are not entitled to unilaterally appropriate their clients' money for themselves by the mere fact that the clients owe them attorney's fees.[38] Hence, regardless of the veracity of his claim of non-payment of professional fees, Atty. Gubatan is not justified in refusing to pay his debts to Reyes and the Corporation. In any event, the disposition of the instant administrative case is without prejudice to any action that Atty. Gubatan may institute to collect his professional fees.

As for the penalty, the IBP Board recommended that Atty. Gubatan be reprimanded. The Court disagrees. Jurisprudence holds that the deliberate failure to pay just debts constitutes gross misconduct for which a lawyer may

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33 *Rollo*, pp. 212-213.
34 Id. at 126-130.
35 Id. at 101-102.
36 *Vda. De Fajardo v. Bugaring*, 483 Phil. 170, 184 (2004).
37 See *J.K. Mercado and Sons Agricultural Enteprises, Inc. v. De Vera*, 375 Phil. 766 (1999).
38 *Luna v. Galarrita*, 763 Phil. 175, 194 (2015).

be sanctioned with suspension from the practice of law.[39] Lawyers are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured.[40] They must, at all times, faithfully perform their duties to society, to the bar, the courts, and their clients, which include prompt payment of financial obligations.[41]

In *Junio v. Grupo*,[42] the errant lawyer was found guilty of violating Rule 16.04 of the CPR and was suspended from the practice of law for a period of one (1) month. In *Spouses San Pedro v. Mendoza*,[43] the respondent therein refused to return the money of his clients despite his failure to facilitate the transfer of title to property, claiming that the retention of money was justified owing to his receivables from complainants for services he rendered in various cases. The Court suspended him from the practice of law for three (3) months. In *Spouses Anaya v. Alvarez*,[44] the respondent was suspended for one (1) year for his deliberate failure to pay his debts and for issuing worthless checks. In the more recent case of *Delloro v. Atty. Tagueg*,[45] the respondent therein was suspended from the practice of law for a period of three (3) months for violating Rule 16.04 of the CPR.

In the instant case, the Court finds it proper to impose on Atty. Gubatan the penalty of suspension from the practice of law for three (3) months.

As a final point, the Court notes that the IBP Board was correct in not including an order for the return of the money borrowed by Atty. Gubatan from Reyes and the Corporation since these loans were contracted in his private capacity. In *Tria-Samonte v. Obias*,[46] the Court held that the "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature — meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement — as the same should be threshed out in a proper proceeding of such nature."[47] In any case, the return of the money herein is already the subject of two complaints filed by Reyes and the Corporation against Atty. Gubatan for collection of sum of money with damages.

WHEREFORE, premises considered, Atty. Gerald Z. Gubatan is hereby **SUSPENDED** for three (3) months from the practice of law, effective upon the receipt of this Resolution. He is **WARNED** that a repetition of the same or a similar act will be dealt with more severely.

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39 *Foster v. Agtang,* 749 Phil. 576, 592 (2014).
40 Id. at 592-593.
41 Id. at 593.
42 423 Phil. 808 (2001).
43 749 Phil. 540 (2014).
44 792 Phil. 1 (2016).
45 A.C. 12422, July 17, 2019.
46 719 Phil. 70 (2013).
47 Id. at 81-82.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, to be appended to the personal record of Atty. Gubatan as a member of the Bar; the Integrated Bar of the Philippines, for distribution to all its chapters; and the Office of the Court Administrator, for circulation to all courts in the country for their information and guidance.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice