



Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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FREDERICK U. DALUMAY,

*Complainant,*

A.C. No. 12836

Present:

LEONEN, J.,

Chairperson,

HERNANDO,

INTING,

DELOS SANTOS, and

LOPEZ, J., JJ.

- versus -

ATTY. FERDINAND M.  
AGUSTIN,

*Respondent.*

Promulgated:

March 17, 2021

*Mis-DC Batt*

X-----X

DECISION

DELOS SANTOS, J.:

The Court resolves this Administrative Complaint<sup>1</sup> filed by complainant, Frederick U. Dalumay (Dalumay), against respondent Atty. Ferdinand M. Agustin (Agustin), for violations of Canon 16 and Rule 16.04 of the Code of Professional Responsibility (CPR).

Factual Antecedent

Agustin served as counsel for Dalumay and his family in several cases lodged in different courts in Ilocos Norte. Initially, the parties herein were good friends and maintained an attorney-client relationship imbued with trust and confidence, so much so that Dalumay entrusted Agustin with the

<sup>1</sup> Rollo, pp. 2-5.

handling of several of his financial transactions and access to the bank accounts related thereto.<sup>2</sup>

During this period, Agustin was able to borrow money from Dalumay on different occasions. In particular, Dalumay loaned money to Agustin in the amounts of ₱300,000.00 and US\$9,000.00. Due to the confidence initially reposed in Agustin, Dalumay dispensed with the necessity of executing written agreements to cover said loans.<sup>3</sup>

Sometime in 2014, Agustin became remiss in his duties as counsel — missing his attendance in numerous hearings without informing the court, Dalumay, or his representatives, of the cause of his absence. Dalumay even claimed that he was advised by the court to look for another counsel to avoid further delay of his case.<sup>4</sup>

Eventually, Dalumay confronted Agustin and expressed his intention to sever their attorney-client relationship. Dalumay then demanded Agustin to pay him the money he owed and execute the necessary written agreement, but the latter refused to do so at first.<sup>5</sup> However, Agustin later on drafted an agreement, in his own handwriting, to pay his loans in installments. The handwritten agreement is reproduced *verbatim* below for reference:

21 August 2014

Dear Atty. Agustin,

Please acknowledge this letter that you will be depositing on my peso and dollar account every month until you completed the full payment of your debt.

In Phil. Peso  
₱300,000.00

In US Dollars  
US\$9,000.00

Peso Account  
BPI Sampaloc Branch  
Frederick U. Dalumay  
Account No. 3096368793

Dollar Account  
BPI Harrison Plaza  
Frederick U. Dalumay  
Account No. 4944012147

Truly yours,  
[Signed]  
Frederick U. Dalumay

Acknowledged by:  
[Signed]  
Atty. Ferdinand M. Agustin<sup>6</sup>

<sup>2</sup> Id. at 2.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id. at 3.

<sup>6</sup> Id. at 5.

Despite the above agreement, Agustin failed to pay his loans up until the present notwithstanding numerous demands from Dalumay and his mother. Agustin even challenged Dalumay and his mother to file a case against him if they cannot wait for his payment. Hence, in the present complaint, Dalumay charged Agustin with “*unjustified abandonment of the cause of his client, blatant disregard of the rules on prohibition on borrowing money from a client and the willful refusal to pay his loan.*”<sup>7</sup>

In his Answer,<sup>8</sup> Agustin denied the charges against him, particularly on the fact of receiving the stated amounts from Dalumay as loans, and disputed the genuineness and due execution of the handwritten agreement attached to the complaint bearing his signature.

### **IBP Report and Recommendation**

In her Report and Recommendation<sup>9</sup> dated February 27, 2018, the Integrated Bar of the Philippines (IBP) Investigating Commissioner Maria Editha A. Go-Biñas (Investigating Commissioner) found Agustin to have clearly violated Canons 7 and 16, and Rule 16.04 of the CPR, which state that:

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.

x x x x

CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

x x x x

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.

The Investigating Commissioner found that the similarity and identity of the signatures appearing in the handwritten agreement and Agustin’s Answer contradict the denial made by the latter on the genuineness and due execution of the handwritten agreement, and in fact shows that Agustin willingly signed the same and recognized his obligation.<sup>10</sup> The Investigating

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<sup>7</sup> Id. at 3.

<sup>8</sup> Id. at 17-29.

<sup>9</sup> Id. at 143-146.

<sup>10</sup> Id. at 145.

Commissioner also noted the similarity of the said signature with those Agustin affixed in the pleadings submitted before the IBP Commission on Bar Discipline during the administrative proceedings. Furthermore, the Investigating Commissioner found the transaction records attached by Agustin to his Answer to be self-serving as these were merely computer encoded in his own office.<sup>11</sup>

Thus, the Investigating Commissioner recommended that Agustin be meted with the penalty of suspension for six months from the practice of law and to return the sums of money he owes Dalumay.<sup>12</sup> In a Resolution<sup>13</sup> dated May 3, 2018, the IBP Board of Governors adopted the recommended penalty with the clarification that Agustin be required to return the amounts of ₱300,000.00 and US\$9,000.00 to Dalumay.

Thereafter, Agustin filed a Motion for Reconsideration<sup>14</sup> dated September 17, 2018, mainly arguing that all financial transactions he had handled for Dalumay were well recorded, accounted for, and supported by evidence, which makes the handwritten document fictitious or spurious by circumstance.

In a Resolution<sup>15</sup> dated June 17, 2019, the IBP Board of Governors denied Agustin's Motion for Reconsideration for its failure to raise new reasons or arguments to justify the reversal of its previous resolution.

### **Our Ruling**

The Court concurs with the findings of the IBP except for its recommended penalty and its directive to Agustin to return the amounts of ₱300,000.00 and US\$9,000.00 to Dalumay.

In seeking to absolve himself of the charge of violating Rule 16.04 of the CPR, Agustin merely offered a specific, although unsubstantiated, denial of the genuineness and due execution of the handwritten loan agreement bearing his signature. Also, he presented numerous transaction records to support the notion that he had handled the financial matters entrusted to him by Dalumay well. His mind would somehow disprove the existence and validity of the loans he had obtained.

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<sup>11</sup> Id.

<sup>12</sup> Id. at 146.

<sup>13</sup> Id. at 88.

<sup>14</sup> Id. at 93-129.

<sup>15</sup> Id. at 139.

However, Agustin failed to dispute the similarity of the signature appearing on the loan agreement with those affixed in the pleadings he submitted before the IBP, nor did he allege that the signature on the agreement was forged. Rationally, the Court is compelled to recognize the validity of the handwritten loan agreement and to find that Agustin had indeed borrowed ₱300,000.00 and US\$9,000.00 from Dalumay while having served as his counsel.

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this “trust and confidence” is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer’s ability to use all the legal maneuverings to renege on his obligation.<sup>16</sup> In the present case, it is clear that Agustin had violated Rule 16.04 of the CPR.

Likewise, the Court sustains the finding that Agustin also violated Canon 7 of the CPR. In unduly borrowing money from his client and by blatantly refusing to pay the same, Agustin abused the trust and confidence reposed in him, and in so doing, failed to uphold the integrity and dignity of the legal profession.<sup>17</sup>

As regards the penalty to be imposed considering the foregoing violations, the Court, however, takes exception to the recommendation of the IBP based on established precedent. In the case of *Spouses Concepcion v. Atty. Dela Rosa*,<sup>18</sup> the respondent was sanctioned with the penalty of suspension of three years from the practice of law for borrowing ₱2,500,000.00 from his client and violating Canon 7 and Rule 16.04 of the CPR. In arriving at such penalty, the Court took due consideration of the case of *Frias v. Atty. Lozada*,<sup>19</sup> where the respondent was suspended from the practice of law for two years under similar charges, but the amount involved was less. As the amount involved in the instant case is less than that in *Frias* and considering that this is Agustin’s first transgression of the CPR, the Court deems it appropriate to modify the period of suspension to one year.

Furthermore, the Court cannot order or require Agustin to return the money he loaned from Dalumay under these same proceedings. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the

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<sup>16</sup> *Mitchell v. Atty. Amistoso*, A.C. No. 10713, September 8, 2020; *Spouses Concepcion v. Atty. Dela Rosa*, 752 Phil. 485, 495 (2015).

<sup>17</sup> See *Spouses Concepcion v. Atty. Dela Rosa*, *id.* at 491.

<sup>18</sup> *Id.*

<sup>19</sup> 513 Phil. 512 (2005).

Bar. Thus, the Court is not concerned with the erring lawyer's civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement.<sup>20</sup> Thus, the directive to return the amounts of ₱300,000.00 and US\$9,000.00 under the IBP recommendation cannot be sustained.

**WHEREFORE**, respondent Atty. Ferdinand M. Agustin is found liable of violating Canons 7 and 16, and Rule 16.04 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for a period of **ONE (1) YEAR**. Respondent is also **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to the records of respondent, and to the Integrated Bar of the Philippines and Office of the Court Administrator for circulation and dissemination to all courts concerned.

Finally, respondent is directed to file a Manifestation before the Court upon serving his suspension and to furnish all courts and quasi-judicial bodies, where he has entered an appearance, a copy of this Decision.

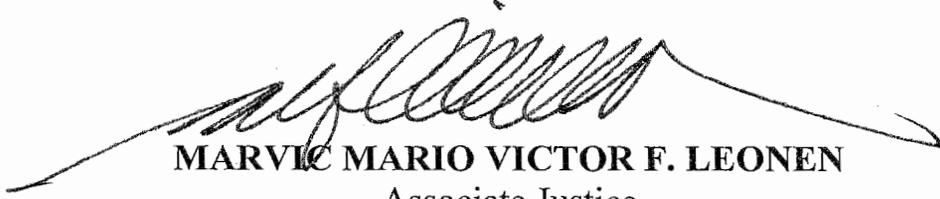
**SO ORDERED.**

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

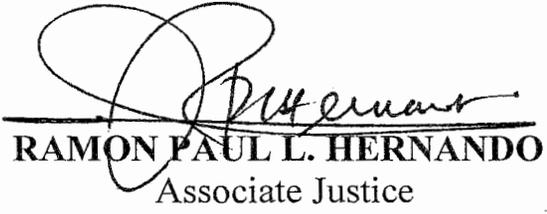
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<sup>20</sup> *Spouses Concepcion v. Atty. Dela Rosa*, supra note 16, at 497.

**WE CONCUR:**



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson



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**RAMON PAUL L. HERNANDO**  
Associate Justice



**HENRI JEAN PAUL B. INTING**  
Associate Justice



**JHOSEP Y. LOPEZ**  
Associate Justice