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SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ZENaida GONZALES,
Complainant,

A.C. No. 12059 [Formerly CBD
Case No. 09-2535]

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,

- versus -

HERNANDO,
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

ATTY. ALEJANDRO D.
FAJARDO, JR.,
Respondent.

Promulgated:

OCT 06 2021

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DECISION

INTING, J.:

For the Court's consideration is the Petition for Review on *Certiorari* under Rule 45¹ filed by Atty. Alejandro D. Fajardo, Jr. (respondent) assailing the Resolution No. XXI-2014-482² dated August 10, 2014 of the Integrated Bar of the Philippines (IBP) Board of Governors (Board) suspending respondent from the practice of law for six (6) months on the ground of misrepresentation and deceit. The IBP Board reversed the Report and Recommendation³ dated September 2, 2013 of the IBP-Commission on Bar Discipline (CBD) that respondent be reprimanded for neglecting his client's case.

¹ *Rollo*, pp. 277-288.

² *Id.* at 85-86.

³ *Id.* at 87-92; penned by Investigating Commissioner Romualdo A. Din, Jr.

The Antecedents

The case stemmed from a Complaint for Disbarment⁴ filed by Zenaida Gonzales (complainant), who is now deceased and represented by her son, Ariel Gonzales, against respondent grounded on his alleged misrepresentation or deceit in the exaction of attorney's fees.

The Complainant's Position Paper⁵ alleged the following:

Complainant retained the legal services of respondent to handle 12⁶ Land Registration Commission (LRC) cases for the titling of 12 lots which are pending before Branches 78, 79, and 80, Regional Trial Court (RTC), Morong, Rizal. At first, complainant hesitated to engage respondent's services when the latter asked for an unreasonably high acceptance fee of ₱500,000.00. However, upon being assured that the properties under litigation would be titled within three months from payment, complainant agreed and paid the amount. Respondent explained that a portion of the amount would be given as purchase price to the Mantala heirs, the sellers of the subject properties.⁷

To complainant's dismay, three months passed without titles having been issued over the lots.⁸

Complainant paid respondent appearance fees for the eight hearings of the cases. The dispute began when respondent threatened her that he would no longer appear in the subsequent hearings of the cases unless she would pay him the amount of ₱66,000.00 representing his unpaid appearance fees. Unheeded, respondent stopped attending further court hearings. Consequently, complainant engaged the services of a new counsel. However, respondent refused to hand over to the new counsel the records of the cases until his unpaid appearance fees were settled.⁹

Notably, the payment of appearance fee was never agreed upon

⁴ *Id.* at 2-8.

⁵ *Id.* at 45-52.

⁶ In the Complaint for Disbarment filed by complainant, there are 10 cases for judicial titling. However, as raised by the respondent in his Answer and Position Paper, there are 12 cases for judicial titling in Regional Trial Court, Morong, Rizal – two in Branch 78, five in Branch 79 and five in Branch 80, *id.* at 14, 65 and 95.

⁷ *Id.* at 45-46.

⁸ *Id.* at 46.

⁹ *Id.* at 46-47.

with respondent. As such, the ₱500,000.00 acceptance fee she paid to respondent already compensated him.¹⁰

In defense, respondent averred that (1) complainant engaged the legal services of the Galit Law Office for the titling of the subject properties; (2) he is a mere associate of the firm; (3) there had already been past meetings between Atty. Napoleon Galit (Atty. Galit) and complainant relating to the titling of the properties; (4) he never asked complainant the amount of ₱500,000.00 as acceptance fee; (5) Atty. Galit was the one who previously discussed with complainant the fees to be paid which included his ₱3,000.00 appearance fee for every court hearing; and (5) complainant knew that part of the ₱500,000.00 would be paid to Atty. Galit, the Mantala heirs, the sales agent, and respondent.¹¹

Respondent also clarified that it was Atty. Galit who explained to complainant about the timeline for the issuance of the titles over the subject properties, *i.e.*, within three months after the cases are submitted for decision and not three months from the payment of the acceptance fee.¹²

Further, respondent posited that from September 2007 until February 2009, he still attended the hearings despite not having been paid his appearance fees. He denied exercising a retaining lien by allegedly refusing to turn over the records of the cases to the new counsel.¹³

*Report and Recommendation
of the IBP-CBD*

On September 2, 2013, Investigating Commissioner Romualdo A. Din, Jr. (Investigating Commissioner Din, Jr.) recommended that respondent be reprimanded and warned to be circumspect in his future dealings and treatment of his clients.¹⁴ While the CBD found that it was not respondent but Atty. Galit who negotiated for the ₱500,000.00

¹⁰ *Id.* at 47.

¹¹ As culled from the Answer dated November 12, 2009, *id.* at 13-14.

¹² *Id.* at 14-15.

¹³ *Id.* at 20.

¹⁴ *Id.* at 92.

acceptance fee, the CBD found respondent liable for neglecting complainant's cases simply because he was not paid his appearance fees.¹⁵

Resolution of the IBP Board

In the Resolution No. XXI-2014-482¹⁶ dated August 10, 2014, the IBP Board reversed the Report and Recommendation of Investigating Commissioner Din, Jr. and held respondent guilty of misrepresentation and deceit. Consequently, the IBP Board ordered his suspension from the practice of law for six (6) months. The IBP Board also ordered him to return the ₱500,000.00 acceptance fee he received from complainant.

Respondent moved for the reconsideration¹⁷ of the IBP Board Resolution dated August 10, 2014, but the IBP Board denied it in the Resolution No. XXII-2017-1173 dated June 17, 2017.¹⁸

Aggrieved, respondent filed the instant petition praying that he be exonerated from the charge.

Issue

The issues before the Court are (1) whether respondent exacted an acceptance fee of ₱500,000.00 from complainant; and (2) whether respondent misrepresented that he could secure judicial titles of the subject properties within three months from the payment of acceptance fee.

The Court's Ruling

Imputing error to the IBP Board in holding him guilty of misrepresentation and deceit, respondent maintains that it was Atty. Galit who discussed with complainant the payment of the acceptance fee which included his ₱3,000.00 appearance fee. According to respondent,

¹⁵ *Id.*

¹⁶ *Id.* at 85-86.

¹⁷ See Motion for Reconsideration dated February 17, 2016, *id.* at 93-107.

¹⁸ *Id.* at 264.

complainant and Atty. Galit agreed on how the amount of ₱500,000.00 will be apportioned among them.

The contention is meritorious.

The legal presumption is that an attorney is innocent of the charges against him until the contrary is proved. The burden of proof in disbarment and suspension proceedings always rests on the complainant; it is not satisfied when complainant relies on mere assumptions and suspicions. Considering the serious consequences of disbarment and suspension, the Court has consistently held that clear preponderant evidence is necessary to justify the imposition of administrative penalty.¹⁹

In the case, complainant engaged the services of the Galit Law Office to handle the 12 LRC cases pending before Branches 78, 79, and 80, RTC, Morong, Rizal. The cases were formerly handled by one Atty. Teodorico Diesmos (Atty. Diesmos). The 12 untitled properties were purchased by complainant from the Mantala heirs for ₱36,000,000.00. Subsequently, the Mantala heirs and complainant agreed to replace Atty. Diesmos and to engage the legal services of the Galit Law Office. They also stipulated that all the expenses for the new lawyer and the registration or titling of the 12 lots in the amount of ₱500,000.00 shall be deducted from the purchase price of ₱36,000,000.00.

In his Affidavit²⁰ dated February 23, 2010, Atty. Galit declared as follows:

x x x x

2. That one of our clients in my law office, is the Mantala Family, whom Zenaida Gonzales bought parcels of land at Tanay, Rizal and which parcels of land are pending registration for titling before the courts of Morong, Rizal;

3. That sometime in the month of February 2007, a meeting took place between the Mantala Family and Zenaida Gonzales with her children, Atty. Fajardo, and me at Aristocrat Restaurant, Roxas Blvd., Manila City. Thereat the said group had

¹⁹ *Sorreda v. Atty. Kho*, 767 Phil. 709, 714 (2015). Citations omitted.

²⁰ *Rollo*, pp. 79-81.

agreed on legal services for the acceptance fee of the said registration cases at P500,000.00, and per court appearance at P3,000.00 all of which amount however, although advanced by the Gonzalezes, were to be deducted from the Mantala receivables.

4. That after I and Zenaida Gonzales had talked, I introduced Atty. Alejandro D. Fajardo, Jr., the respondent herein, to the Gonzales Family and I told her the former Atty. Fajardo will be the one to handle the case. Zenaida Gonzales asked me when will the registration cases be finished, I answered her on my estimate when all the evidence of the applicants should have been completed and the oppositor could have also finished presenting on their evidence, and the case is submitted for decision, the trial court is mandated under the law to render a decision within three (3) months thereof;

x x x x²¹

As could be gleaned from the foregoing, a meeting took place in February 2007 among Atty. Galit, the Mantala heirs, complainant, her children, and respondent. That respondent only participated after the legal fees had already been agreed upon is clear from Atty. Galit's statement that he introduced respondent to complainant after Atty. Galit talked to complainant and after the legal fees had already been agreed upon. This is precisely the reason why the voucher²² for payment of the acceptance fee was already prepared and typewritten in the name of Atty. Galit and not in the name of respondent, viz.:

"In payment for: Acceptance fee of Atty. Napoleon Galit for the property located Brgy. Cuyambay, Tanay, Rizal." (Typewritten)

It appearing that respondent did not have a hand in the negotiation of the P500,000.00 acceptance fee, it presupposes that he also did not have a say on how the amount was to be divided and shared with Atty. Galit, the Mantala heirs, and the sales agent. Thus, respondent cannot be held liable under Rule 9.02, Canon 9 of the Code of Professional Responsibility (CPR) which proscribes a lawyer from dividing a fee for legal services with persons not licensed to practice law. The division and sharing of the portions of the P500,000.00 acceptance fee to the sales agent and the Mantala heirs were attributable to Atty. Galit, not to respondent, who merely received a portion of the P500,000.00

²¹ *Id.* at 79.

²² See Cash Voucher dated February 26, 2007, *id.* at 10.

acceptance fee, or ₱150,000.00 for agreeing to handle complainant's cases.

Significantly, Atty. Galit also admitted that it was he who explained to complainant the timeline of the issuance of the titles over the subject properties. According to Atty. Galit, he told complainant that the titles over her 12 lots will be issued within three months after the cases are submitted for decision. Complainant, who was around 80 years old at that time, apparently misunderstood and interpreted the timeline as within three months from her payment of the acceptance fee.

Given the admission of Atty. Galit, the Court cannot subscribe to complainant's allegation that it was respondent who told complainant about the false timeline for the titling of her properties. Complainant merely imputes to respondent the explanation made by Atty. Galit pertaining to the timeline. In her Position Paper,²³ complainant alleges:

9. x x x *Respondent through Atty. Galit* assured her that the land will be titled within three (3) months from payment. She was told that part of the ₱500,000.00 acceptance fee will be given to the Mantala heirs as part of their purchase price. x x x²⁴ (Italics supplied.)

Moreover, complainant wants to intimate to the Court that she would not have paid the ₱500,000.00 acceptance fee if not for the assurance that her properties would be titled within three months from the payment of the acceptance fee. According to the complainant, the timeline of the titling of the properties persuaded her to pay the ₱500,000.00 acceptance fee.

As earlier stated, respondent did not have a hand in both the negotiation of the acceptance fee and the assurance pertaining to the timeline for the titling of the properties. Necessarily, he could not have persuaded complainant to pay ₱500,000.00 by way of acceptance fee.

The Court quotes with approval the findings of Investigating Commissioner Din, Jr., viz.:

²³ *Id.* at 45-52.

²⁴ *Id.* at 46.

This Commission is of the conclusion that it was the legal services of Galit Law Office that she retained for purpose of securing title to her property in Tanay, Rizal.

Complainant's very own words in her Complaint states that the Mantala Family expressed displeasure on the legal services of complainant's former counsel. Thus they recommended the termination of the legal services of complainant's former counsel and the latter's replacement by Atty. Napoleon U. Galit. Secondly, the voucher for the Php500,000 clearly shows that the acceptance fee is intended for Atty. Napoleon U. Galit. Thirdly, Atty. Napoleon U. Galit in his affidavit confirms the fact that he was the one who discussed the matter of acceptance fee with complainant. Lastly, the receipt showing the turnover of records pertaining to complainant's land registration demonstrate that Galit Law Office holds or possesses complainant's records.

On account of the foregoing reasons, this Commission finds worthy of belief respondent's contention that he never misrepresented to complainant that he could secure the title for her property in Tanay, Rizal within a period of three (3) months so as to secure a hefty acceptance fee.²⁵

Complainant now denies that there was an agreement as to the payment of respondent's appearance fees and claims that the acceptance fee of ₱500,000.00 already covered respondent's court appearances. Complainant argues that respondent was extorting from her the amount of ₱66,000.00 under the threat that he would no longer attend the court hearings if not paid the amount.²⁶

The Court is not persuaded.

The Court notes the admission made by complainant that she paid respondent's first eight court appearances. This admission supports the conclusion that there was indeed an agreement as to the payment of respondent's appearance fees. To the Court, complainant stopped paying respondent's court appearances from September 2007 until February 2009 not due to the absence of an agreement, but because the titling of her 12 lots was not made according to the timeline she expected. Complainant insists that she was falsely assured that the titling of her

²⁵ *Id.* at 89-90.

²⁶ *Id.* at 551.

properties would only take three months from her payment of the acceptance fee. In contrast, respondent avers that the timeline impressed upon her by Atty. Galit was three months after the cases are submitted for decision.

Records show that before complainant and the Mantala heirs engaged the services of the Galit Law Office, the 12 LRC cases formerly handled by Atty. Diesmos had been pending for two to three years in the different branches of the RTC of Morong, Rizal. Despite such considerably long period of time, the cases were not resolved yet. This predicament led the Mantala heirs and complainant to engage the services of the Galit Law Office.

The Court finds it difficult to believe how Atty. Galit had assured complainant that the 12 LRC cases would be resolved within three months from the payment of the acceptance fee. Such assurance is an unworkable task. The purported "three months from payment assurance" absolutely does not conform to common human experience. Certainly, it would have instilled questions and doubts in the minds of complainant and her son who are not feeble-minded persons. Being able to purchase properties worth ₱36,000,000.00 and enter into like transactions, they are competent in the field of business. Thus, the Court is inclined to give more weight to respondent's version that the timeline given by Atty. Galit to complainant was three months from the cases' submission for decision, not three months from the payment of the acceptance fee.

In fine, there is no basis to conclude that respondent employed misrepresentation or deceit upon complainant in the exaction of fees. Complainant failed to discharge her burden of proof against respondent. To the mind of the Court, the instant case was filed by complainant not because of respondent's alleged exaction of exorbitant attorney's fees or misrepresentation, but primarily because of respondent's act of not attending the subsequent hearings of the cases on account of complainant's nonpayment of his appearance fees.

For not being paid his appearance fees from September 2007 until February 2009, respondent filed a Manifestation/Motion²⁷ praying that complainant be ordered to hire another lawyer to handle the 12 LRC

²⁷ *Id.* at 34-37.

cases. He then ceased to appear in the hearings of the cases.

While the Court understands respondent's predicament, he should have first waited for the RTC to grant his Manifestation/Motion before ceasing to attend the court hearings of the cases, so as not to leave his client hanging. He took the solemn oath to fulfill, not to delay any man for money and to conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to his client.²⁸

Canon 18 of the CPR provides that a lawyer shall serve his client with competence and diligence. Rule 18.03 specifically states:

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Members of the bar, such as respondent, must do nothing that may tend to lessen in any degree the confidence of the public in the fidelity, honesty, and integrity of the profession.²⁹

As the Court held in *Balatbat v. Atty. Arias*,³⁰ "a client must never be left in the dark for to do so would destroy the trust, faith and confidence reposed in the lawyer so retained in particular and the legal profession in general."³¹

The Court holds that respondent breached his duty to conduct himself as a lawyer according to the best of his knowledge and discretion, with all good fidelity to his client. He also disregarded Canon 18 of the CPR, particularly Rule 18.03 thereof.

At any rate, considering the factual milieu of the case, and there being no showing that respondent deceived the complainant to part with her money, the Court finds it proper to merely admonish respondent.

WHEREFORE, the Court finds respondent Atty. Alejandro D.

²⁸ See *Pesto v. Millo*, 706 Phil. 286, 296 (2013)

²⁹ *Burbe v. Atty. Magulta*, 432 Phil. 840, 848 (2002), citing *Sipin-Nabor v. Atty. Baterina*, 412 Phil. 419, 424 (2001).

³⁰ 549 Phil. 517, 526 (2007).

³¹ *Id.* at 526, citing *Edquibal v. Atty. Ferrer, Jr.*, 491 Phil. 1, 6 (2005).

Fajardo, Jr. **GUILTY** of violating the Lawyer's Oath, Canon 18 and Rule 18.03 of the Code of Professional Responsibility and is hereby **ADMONISHED** to be circumspect in his future dealings and treatment of clients. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

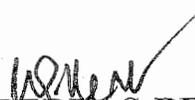
Let a copy of this Decision be furnished the Office of the Bar Confidant to be appended to the personal record of respondent Atty. Alejandro D. Fajardo, Jr. and the Integrated Bar of the Philippines for their information and guidance.

SO ORDERED.

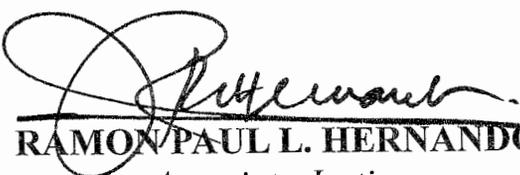


HENRI JEAN PAUL B. INTING
Associate Justice

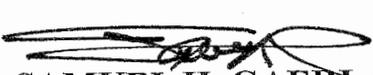
WE CONCUR:



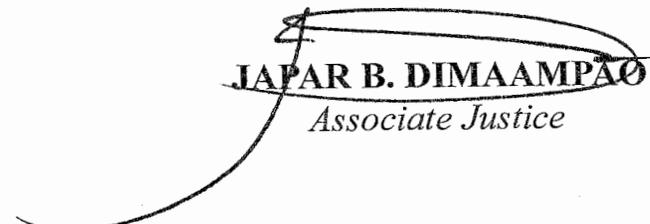
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

