



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

FADI HASAN MAHMOUD
 SHUMALI,

Complainant,

A.C. No. 13789 [Formerly CBD
 Case No. 19-6041]

Present:

- versus -

CAGUIOA, J., Chairperson,
 INTING,
 GAERLAN,**
 DIMAAMPAO, and
 SINGH, JJ.

ATTY. JAMES BRYAN O.
 AGUSTIN,*

Respondent.

Promulgated:

November 29, 2023

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DECISION

INTING, J.:

The Court resolves the administrative complaint¹ filed by Fadi Hasan Mahmoud Shumali (complainant) against Atty. James Bryan O. Agustin (respondent) before the Integrated Bar of the Philippines (IBP) for withholding his passport in violation of Rule 16.03, Canon 16 of the Code of Professional Responsibility (CPR) which states that “[a] lawyer shall deliver the funds and property of his client when due or upon demand.”

* Erroneously referred to as “San Agustin” in some parts of the *rollo*.
 ** On official leave.
¹ *Rollo*, pp. 2–3.

The Antecedents

Complainant, a citizen of the Kingdom of Jordan, is the holder of Jordanian Passport No. N185220² issued on March 22, 2015, and valid until March 21, 2020 (passport). On the other hand, respondent is the counsel of Al Batra Recruitment Agency (Agency).³

Complainant alleged that he turned over his passport to respondent in May 2018 for the renewal of his Philippine tourist visa; however, the latter was unable to facilitate the processing of the application as the Agency had no available funds at the time. Complainant thereafter made several demands for the return of his passport, but respondent refused to do so because the Agency supposedly had outstanding payables with the latter's law office.⁴

In his Answer,⁵ respondent clarified that complainant turned over his passport for purposes of processing his Alien Employment Permit (AEP) with the Department of Labor and Employment and the extension of his expired tourist visa for another three months.⁶ He explained that complainant's applications for tourist visa extension and AEP were never processed because *first*, complainant never furnished him the needed information and documentary requirements, and *second*, complainant and the Agency did not pay respondent a single centavo for the purposes.⁷

Respondent averred that he simply exercised his right to an attorney's lien and informed complainant *via* email⁸ dated January 17, 2019, that his passport was being retained for failure of the Agency to pay his legal fees as follows: PHP15,000.00⁹ for the processing of complainant's AEP, tourist visa, and working visa; and PHP435,110.00¹⁰ for other legal fees that accrued since 2017.¹¹

Subsequently, respondent agreed to meet the owner of the Agency, complainant's uncle Mohammed M. Al Shomali (Al Shomali), on May 3,

² *Id.* at 5.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 8–21.

⁶ *Id.* at 10.

⁷ *Id.* at 10–11.

⁸ *Id.* at 59.

⁹ *Id.* at 46.

¹⁰ *Id.* at 49.

¹¹ *Id.* at 15.

2019, in order to return complainant's passport and discuss the Agency's pending cases. However, the meeting was rescheduled because Al Shomali got sick. Then, on June 10, 2019, respondent attempted to return the passport to complainant, but the latter refused to sign the acknowledgement receipt. Thus, respondent instead delivered the passport to the Jordanian Honorary Consulate General and informed complainant that he may claim his passport there.¹²

The IBP's Report and Recommendation

In an undated Resolution and Recommendation,¹³ Investigating Commissioner Francis B. Beltran (Investigating Commissioner) found that respondent was not justified in exercising his right of lien over complainant's passport and recommended that he should be reprimanded therefor, viz.:¹⁴

[] While lawyers do have the right to retain a property or belongings of his client when exercising his/her right of lien over unpaid legal services, this right though must be exercised with prudence and with sense of fairness, in the sense that, it must not be used as a tool to cause difficult situations to the client to bring him/her down to his knees. The passport of Mr. Shumali is a very important document to him being an alien of this country, to hold the same as hostage for a collection undertaking would be too harsh as a remedy. Atty. [] Agustin could have selected a different action and for sure there were other options available, such as instituting a collection case in the court of law. Whether or not untoward or damaging incidents actually happened when Mr. Shumali was roaming around the metropolis without a valid passport is immaterial, what is pivotal here is Atty. [] Agustin could have thought about his action in a sense that it will make Mr. Shumali vulnerable to different unfavorable situations without a passport in his possession and as a matter of fact, Atty. [] Agustin knew the importance of this because he gave an advise to both Mr. Shomali and Shumali that the latter cannot be working in the Philippines without the valid passport and or visa as per our POEA rules. Furthermore, when Atty. [] Agustin readily admitted that he extended an apology to Mr. Shumali, it could only mean that he knew that he could have abused and or misused this principle of lawyer's right of lien. x x x.

x x x x

[] Therefore, the undersigned most respectfully recommends that Atty. [] Agustin be merely reprimanded for his misuse of the principle of Attorney's lien.¹⁵

¹² *Id.* at 8-10.

¹³ *Id.* at 122-129.

¹⁴ *Id.* at 127-128.

¹⁵ *Id.* at 126-128.

On November 12, 2022, the IBP Board of Governors passed Resolution No. CBD-XXV-2022-11-20,¹⁶ which adopted and approved the Investigating Commissioner's recommendation to impose upon respondent the penalty of a reprimand, to wit:

RESOLVED, to APPROVE and ADOPT, as it is hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner to impose upon Respondent Atty. James Bryan O. San Agustin the penalty of REPRIMAND.¹⁷ (Emphasis and italics omitted)

The Issue

The issue for the Court's resolution is whether respondent should be held administratively liable for withholding complainant's passport in the exercise of his attorney's lien.

The Court's Ruling

The Court adopts the findings of the IBP but with modifications as to the designation of the offense and the penalty to be imposed upon respondent.

Section 45, Canon III of A.M. No. 22-09-01-SC, or the Code of Professional Responsibility and Accountability (CPRA),¹⁸ which *repealed* the CPR, provides that "[a] lawyer is entitled to prompt payment from the client of attorney's fees." In relation thereto, Section 56, Canon III of the same Code provides that lawyers shall have a retaining lien on the funds, documents, and papers of the client/s that have lawfully come into his/her possession and that he/she may retain the same until his/her legal fees have been paid, *viz.*:

SECTION 56. *Accounting and Turn Over upon Termination of Engagement.* — A lawyer who is discharged from or terminates the engagement shall, *subject to an attorney's lien*, immediately render a full account of and turn over all documents, evidence, funds, and properties belonging to the client.

¹⁶ *Id.* at 120.

¹⁷ *Id.*

¹⁸ Took effect on May 29, 2023.

The lawyer shall cooperate with the chosen successor in the orderly transfer of the legal matter, including all information necessary for the efficient handling of the client's representation.

A lawyer shall have a lien upon the funds, documents, and papers of the client which have lawfully come into his or her possession and may retain the same until the fair and reasonable fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. (Italics supplied)

Jurisprudence dictates that save for one's retaining lien, lawyers generally should *not* withhold the client's funds and/or documents.¹⁹ For a proper exercise of one's retaining lien, the lawyer must establish the following elements: "(1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) unsatisfied claim for attorney's fees."²⁰

After a careful review, the Court finds respondent's exercise of his retaining lien by withholding the return of complainant's passport to be *improper* in the case.

It appears that respondent's client is *not* actually the complainant but the Agency itself, considering that it was Al Shomali, the Agency's owner, that endorsed the subject tasks to him in the first place. In addition, respondent himself stated that he scheduled a meeting with Al Shomali, not complainant, for the return of the latter's passport.

Pertinently, under Philippine law, the holder of a Philippine passport is a *mere possessor* thereof, the Government of the Philippines, being its lawful owner at all times; thus, a Philippine passport may *not* be surrendered to any person or entity other than the government or its representative.²¹ Applying the International Law doctrine of *processual presumption*, which means that if a foreign law is not pleaded/proved, it is presumed to be the same as the laws of the Philippines,²² it necessarily follows that the passport withheld by respondent belongs to the Kingdom of Jordan and that complainant is a mere possessor thereof.

In other words, even though respondent may have come into the possession of complainant's Jordanian Passport for valid purposes, *i.e.*, the processing of AEP and visa applications, such travel document cannot

¹⁹ *Rivera v. Cabalan*, A.C. No. 10941 (Notice), January 25, 2016, citing *Segovia-Ribaya v. Atty. Lawson*, 721 Phil. 44, 51 (2013).

²⁰ *Sps. San Pedro v. Atty. Mendoza*, 749 Phil. 540, 549 (2014).

²¹ Section 11, Republic Act No. (RA) 8239, or the "Philippine Passport Act of 1996."

²² *Kucskar v. Sekito, Jr.*, G.R. No. 237449, December 2, 2020, 965 SCRA 169, 178-180.

be deemed as a proper subject of an attorney's retaining lien because it neither belongs to complainant nor the Agency. To stress, it is highly inappropriate for respondent to have refused to return complainant's passport in order to satisfy the legal fees that the Agency owed him or his law firm in the amount of PHP435,110.00.

On this point, it is likewise interesting to note respondent's confusing statements: *first*, that complainant's AEP and visa applications were *never* processed due to the lack of funds for the tasks; and *second*, that neither complainant nor the Agency paid his legal fees for the processing of the applications in the amount of PHP15,000.00. Indeed, if respondent did not facilitate the processing of the AEP and visa applications, then why is he demanding legal fees from complainant and/or the Agency for it?

Besides, respondent knows, or should have known, that a passport cannot be surrendered to any person or entity other than the government or its representative.²³ Worse, the unauthorized withholding of travel documents from workers is considered a form of coercion that constitutes illegal recruitment,²⁴ if not trafficking in persons.²⁵ Simply put, a lawyer *cannot* legally refuse to return a client's passport for the purpose of exercising his or her retaining lien.

Respondent, having no justifiable reason to retain the subject passport, is guilty of the Less Serious Offense of Unjustifiable Failure or Refusal to Render an Accounting of the Funds or Properties of a Client

²³ Section 11, RA 8239.

²⁴ Section 6(k) of RA 8042 or the "Migrant Workers and Overseas Filipinos Act of 1995," as Amended by RA 10022, provides:

SECTION 6. *Definition.* — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. *It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:*

x x x x

(k) *To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations, or for any other reasons, other than those authorized under the Labor Code and its implementing rules and regulations[.]* (Italics supplied)

²⁵ Section 5(f) of RA 9208 or the "Anti-Trafficking in Persons Act of 2003," as amended, provides:

SECTION 5. *Acts that Promote Trafficking in Persons.*— The following acts which promote or facilitate trafficking in persons shall be unlawful:

x x x x.

(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies[.]

under Section 34(n),²⁶ Canon VI of the CPRA – which includes a lawyer’s unjustified refusal to turn over all properties belonging to the client.

Anent the penalty, Section 37(b), Canon VI provides that if the respondent is found guilty of a less serious offense, any of the following sanctions or a combination thereof, shall be imposed: a) suspension from the practice of law for a period within the range of one (1) month to six (6) months; and/or b) a fine within the range of PHP35,000.00 to PHP100,000.00. Relatedly, under Section 39 of the same Canon, “[i]f one (1) or more mitigating circumstances and no aggravating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under the CPRA.”

In the case, the Court deems it proper to suspend respondent from the practice of law for a period of only fifteen (15) days in view of the following mitigating circumstances: (a) absence of bad faith or malice; and (b) expression of remorse, considering that he already turned over the passport to the Jordanian Honorary Consulate General.

In closing, lawyers are reminded to avoid any controversy with a client concerning fees for legal services and to resort to judicial action solely to prevent imposition, injustice, or fraud.²⁷ In case of non-payment of attorney’s fees, a lawyer may resort to the proper enforcement of the attorney’s lien under Section 54, Canon III of the CPRA by filing a notice of enforcement of attorney’s lien with the court, tribunal, or other government agency of origin where the action or proceeding the lawyer rendered service for is pending, without prejudice to other remedies under the law or the Rules of Court.²⁸

WHEREFORE, the Court finds respondent Atty. James Bryan O. Agustin **GUILTY** of the offense of Unjustifiable Failure or Refusal to Render an Accounting of the Funds or Properties of a Client under Section 34(n), Canon VI of the Code of Professional Responsibility and Accountability. He is hereby **SUSPENDED** from the practice of law for a period of fifteen (15) days, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

²⁶ Section 34(n), Canon VI of the CPRA provides:

SECTION 34. Less Serious Offenses. — Less serious offenses include:

x x x x

(n) Unjustifiable failure or refusal to render an accounting of the funds or properties of a client[.]

²⁷ Section 46, Canon III of the CPRA.

²⁸ Section 47, Canon III of the CPRA.

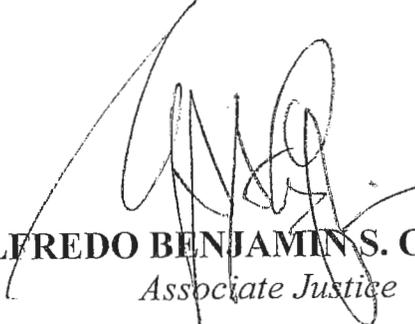
The suspension from the practice of law shall take effect immediately upon Atty. James Bryan O. Agustin's receipt of this Decision. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

On official leave
SAMUEL H. GAERLAN
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

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Microcopy
MICHAEL DOMINGO C. CATFUNG III
Division Clerk of Court
Third Division

JAN 23 2024