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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 8382. April 21, 2010]

ALFREDO B. ROA, *complainant, vs.* **ATTY. JUAN R. MORENO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER MAY BE DISCIPLINED FOR MISCONDUCT COMMITTED EITHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY; TEST; CASE AT BAR.— Conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court. In the present case, respondent acted in his private capacity. He misrepresented that he owned the lot he sold to complainant. He refused to return the amount paid by complainant. As a final blow, he denied having any transaction with complainant. It is crystal-clear in the mind of the Court that he fell short of his duty under Rule 1.01, Canon 1 of the Code of Professional Responsibility. We cannot, and we should not, let respondent's dishonest and deceitful conduct go unpunished.

2. ID.; ID.; PRACTICE OF LAW; NOT A RIGHT BUT A PRIVILEGE, ENJOYED ONLY BY THOSE WHO CONTINUE TO DISPLAY UNASSAILABLE CHARACTER;

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CASE AT BAR.— Time and again we have said that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character. Thus, lawyers must conduct themselves beyond reproach at all times, not just in their dealings with their clients but also in their dealings with the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and even disbarment. Respondent's refusal to return to complainant the money paid for the lot is unbecoming a member of the bar and an officer of the court. By his conduct, respondent failed to live up to the strict standard of professionalism required by the Code of Professional Responsibility. Respondent's acts violated the trust and respect complainant reposed in him as a member of the Bar and an officer of the court.

3. ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS; ONLY ISSUE IS WHETHER THE OFFICER OF THE COURT IS STILL FIT TO BE ALLOWED TO CONTINUE AS A MEMBER OF THE BAR.— xxx [W]e cannot sustain the IBP's recommendation ordering respondent to return the money paid by complainant. 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 Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other.

4. ID.; ID.; DISHONEST AND DECEITFUL CONDUCT; PENALTY.— That said, we deem that the penalty of three-month suspension recommended by the IBP is insufficient to atone for respondent's misconduct in this case. We consider a penalty of two-year suspension more appropriate considering the circumstances of this case.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This complaint, filed by Alfredo B. Roa (complainant) against Atty. Juan R. Moreno (respondent), stemmed from a transaction

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involving the sale of a parcel of land. Complainant asks that respondent be disciplined and ordered to return the amount of money paid for the sale.

The Antecedent Facts

Sometime in September 1998, respondent sold to complainant a parcel of land located along Starlite Street in Cupang, Antipolo. Complainant paid respondent ₱70,000 in cash as full payment for the lot. Respondent did not issue a deed of sale. Instead, he issued a temporary receipt[1] and a Certificate of Land Occupancy[2] purportedly issued by the general overseer of the estate in which the lot was located. Respondent assured complainant that he could use the lot from then on.

Complainant learned, not long after, that the Certificate of Land Occupancy could not be registered in the Register of Deeds. When complainant went to see respondent, the latter admitted that the real owner of the lot was a certain Rubio. Respondent also said there was a pending legal controversy over the lot. On 25 February 2001, complainant sent a letter[3] to respondent demanding the return of the ₱70,000 paid for the lot.

Complainant then filed a criminal case against respondent in the Municipal Trial Court (Branch 2) of Antipolo City. On 26 September 2003, the trial court rendered a decision[4] convicting respondent of the crime of other forms of swindling under Article 316, paragraph 1 of the Revised Penal Code. The MTC sentenced respondent to suffer the penalty of imprisonment for one month and one day and ordered him to return the amount of ₱70,000 to complainant.

On appeal, the Regional Trial Court (Branch 74) of Antipolo City set aside the lower court's ruling. For lack of evidence establishing respondent's guilt beyond reasonable doubt, the

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[1] *Rollo*, p. 45.

[2] *Id.* at 48.

[3] *Id.* at 7.

[4] *Id.* at 9-13.

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RTC acquitted respondent in a decision[5] dated 20 December 2005. The decision further stated that the remedy of complainant was to institute a civil action for the recovery of the amount he paid to respondent.

On 23 February 2006, complainant filed with the Integrated Bar of the Philippines (IBP) an Affidavit-Complaint[6] against respondent.

In his Answer,[7] respondent explained that what he sold to complainant was merely the right over the use of the lot, not the lot itself. Respondent maintained he never met the complainant during the negotiations for the sale of said right. Respondent claimed it was a certain Benjamin Hermida who received the purchase price. Respondent further alleged that it was one Edwin Tan, and not the complainant, who paid the purchase price.

At the hearing set on 14 October 2008, complainant narrated that respondent personally sold to him the lot in question. Complainant stated respondent assured him that the papers would be processed as soon as payment was made. Complainant claimed he duly paid respondent ₱70,000, but when he followed up the sales documents, respondent just dismissed him and denied any transaction between them. For his part, respondent did not appear at the hearing despite receipt of notice.

The IBP's Report and Recommendation

In a Report and Recommendation[8] dated 17 October 2008, the IBP Commissioner on Bar Discipline (IBP-CBD) found respondent guilty of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility.

The IBP-CBD recommended that respondent be suspended from the practice of law for three months and ordered to

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[5] *Id.* at 14-16.

[6] *Id.* at 1-4.

[7] *Id.* at 18-22.

[8] *Id.* at 52-56.

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immediately deliver the amount of ₱70,000 to complainant, thus:

> PREMISES CONSIDERED, it is submitted that Respondent is GUILTY of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility and should be given the penalty of THREE (3) MONTHS SUSPENSION.
>
> Respondent is hereby ORDERED to immediately deliver the amount of Seventy Thousand Pesos (₱70,000.00) to herein complainant.[9]

In Resolution No. XVIII-2008-632[10] passed on 11 December 2008, the IBP Board of Governors adopted and approved with modification the recommendation of the Investigating Commissioner. The IBP Board of Governors suspended respondent from the practice of law for three months and ordered him to return the amount of ₱70,000 to complainant within 30 days from receipt of notice. Thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of 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 finding Respondent guilty of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility, Atty. Juan R. Moreno is hereby SUSPENDED from the practice of law for three (3) months and Ordered to Return the Seventy Thousand Pesos (₱70,000.00) to complainant within thirty (30) days from receipt of notice. (Underscoring supplied)

The IBP Board of Governors forwarded the present case to this Court as provided under Section 12(b), Rule 139-B[11] of the Rules of Court.

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[9] *Id.* at 56.

[10] *Id.* at 51.

[11] Sec. 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

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The Ruling of this Court

We sustain the findings of the IBP and adopt its recommendation in part.

Complainant and respondent presented two different sets of facts. According to complainant, respondent claimed to be the owner of the lot and even offered to be his lawyer in case of any legal problem that might crop up from the sale of the lot. On the other hand, respondent denied ever meeting complainant, much less selling the lot he insisted he did not even own. In his answer, he presented the affidavits of Benjamin and Cepriano Hermida who claimed that upon receipt of the payment for the right to use the lot, they immediately removed the improvements on the lot. The Hermidas also claimed they received the payment from one Mr. Edwin Tan, not from complainant.

After a careful review of the records of the case, the Court gives credence to complainant's version of the facts.

Respondent's credibility is highly questionable. Records show that respondent even issued a bogus Certificate of Land Occupancy to complainant whose only fault was that he did not know better. The Certificate of Land Occupancy has all the badges of intent to defraud. It purports to be issued by the "Office of the General Overseer." It contains a verification by the "Lead, Record Department" that the lot plan "conforms with the record on file." It is even printed on parchment paper strikingly similar to a certificate of title. To the unlettered, it can easily pass off as a document evidencing title. True enough, complainant actually tried, but failed, to register the Certificate of Land Occupancy in the Register of Deeds. Complainant readily parted with ₱70,000 because of the false assurance afforded by the sham certificate.

The innocent public who deal in good faith with the likes of respondent are not without recourse in law. Section 27, Rule 138 of the Rules of Court states:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* – **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court**

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for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. x x x (Emphasis supplied)

Further, Rule 1.01, Canon 1 of the Code of Professional Responsibility provides:

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

Conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.[12]

In the present case, respondent acted in his private capacity. He misrepresented that he owned the lot he sold to complainant. He refused to return the amount paid by complainant. As a final blow, he denied having any transaction with complainant. It is crystal-clear in the mind of the Court that he fell short of his duty under Rule 1.01, Canon 1 of the Code of Professional Responsibility. We cannot, and we should not, let respondent's dishonest and deceitful conduct go unpunished.

Time and again we have said that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character. Thus, lawyers must conduct themselves beyond reproach at all times, not just in their dealings with their clients but also in their dealings with the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and even disbarment.[13]

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[12] *Ronquillo v. Cezar*, A.C. No. 6288, 16 June 2006, 491 SCRA 1.

[13] *Id.*

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Respondent's refusal to return to complainant the money paid for the lot is unbecoming a member of the bar and an officer of the court. By his conduct, respondent failed to live up to the strict standard of professionalism required by the Code of Professional Responsibility. Respondent's acts violated the trust and respect complainant reposed in him as a member of the Bar and an officer of the court.

However, we cannot sustain the IBP's recommendation ordering respondent to return the money paid by complainant. 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 Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other.[14]

That said, we deem that the penalty of three-month suspension recommended by the IBP is insufficient to atone for respondent's misconduct in this case. We consider a penalty of two-year suspension more appropriate considering the circumstances of this case.

WHEREFORE, the Court finds Atty. Juan R. Moreno *GUILTY* of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, the Court *SUSPENDS* him from the practice of law for a period of two (2) years effective upon finality of this Resolution.

Let copies of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Resolution be attached to the personal records of respondent.

SO ORDERED.

Puno, C.J., Corona, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

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[14] *Suzuki v. Tiamson,* A.C. No. 6542, 30 September 2005, 471 SCRA 129.