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[A.C. No. 8380. November 20, 2009]

ARELLANO UNIVERSITY, INC., *complainant, vs.* **ATTY. LEOVIGILDO H. MIJARES III,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT OR SUSPENSION OF LAWYER; GROUNDS.— Section 27, Rule 138 of the Revised Rules of Court provides for the disbarment or suspension of a lawyer for the following: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) willfully appearing as an attorney for a party without authority to do so.

2. ID.; ATTORNEYS; HAVE THE RESPONSIBILITY TO PROTECT THE INTERESTS OF THEIR CLIENT SUCH THAT THEY MUST PROMPTLY ACCOUNT FOR MONEY OR PROPERTY THE CLIENT HAS ENTRUSTED TO THEM.— Every lawyer has the responsibility to protect and advance the interests of his client such that he must promptly account for whatever money or property his client may have entrusted to him. As a mere trustee of said money or property, he must hold them separate from that of his own and make sure that they are used for their intended purpose. If not used, he must return the money or property immediately to his client upon demand, otherwise the lawyer shall be presumed to have misappropriated the same in violation of the trust reposed on him. A lawyer's conversion of funds entrusted to him is a gross violation of professional ethics.

APPEARANCES OF COUNSEL

Frederick G. Dedace for complainant.

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D E C I S I O N

PER CURIAM:

This disbarment case is about the need for a lawyer to account for funds entrusted to him by his client.

The Facts and the Case

The facts are taken from the record of the case and the report and recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP).

Sometime in January 2004, complainant Arellano University, Inc. (the University) engaged the services of respondent Leovigildo H. Mijares III, a member of the Bar, for securing a certificate of title covering a dried up portion of the Estero de San Miguel that the University had been occupying. The property was the subject of a Deed of Exchange dated October 1, 1958 between the City of Manila and the University.

In its complaint for disbarment against Mijares, the University alleged that it gave him all the documents he needed to accomplish his work. Later, Mijares asked the University for and was given ₱500,000.00 on top of his attorney's fees, supposedly to cover the expenses for "facilitation and processing." He in turn promised to give the money back in case he was unable to get the work done.

On July 5, 2004 Mijares informed the University that he already completed Phase I of the titling of the property, meaning that he succeeded in getting the Metro Manila Development Authority (MMDA) to approve it and that the documents had already been sent to the Department of Environment and Natural Resources (DENR). The University requested Mijares for copies of the MMDA approval but he unjustifiably failed to comply despite his client's repeated demands. Then he made himself scarce, prompting the University to withdraw all the cases it had entrusted to him and demand the return of the ₱500,000.00 it gave him.

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On November 23, 2005 the University wrote Mijares by registered letter, formally terminating his services in the titling matter and demanding the return of the ₱500,000.00. But the letter could not be served because he changed office address without telling the University. Eventually, the University found his new address and served him its letter on January 2, 2006. Mijares personally received it yet he did not return the money asked of him.

In his answer to the complaint, Mijares alleged that he and the University agreed on a number of courses of action relating to the project assigned to him: first, get the University's application for a survey plan which the DENR-NCR approved for a "facilitation cost" of ₱500,000.00; second, get a favorable MMDA endorsement for a "facilitation cost" of another ₱500,000.00; and, third, the titling of the property by the Land Registration Authority for a "facilitation cost" of still another ₱500,000.00.

Mijares also alleged that the DENR-NCR Assistant Regional Director told him that he needed to get a favorable endorsement from MMDA and that the person to talk to about it was Undersecretary Cesar Lacuna. Mijares later met the latter through a common friend. At their meeting, Mijares and Lacuna allegedly agreed on what the latter would get for recommending approval of the application. Later, Mijares said, he gave the ₱500,000.00 to Lacuna through their common friend on Lacuna's instruction.

Mijares next alleged that, after he received the money, Lacuna told him that the University filed an identical application earlier on March 15, 2002. Mijares claimed that the University deliberately withheld this fact from him. Lacuna said that, because of the denial of that prior application, he would have difficulty recommending approval of the present application. It appeared that Lacuna endorsed the previous application to the Mayor of Manila on July 23, 2003 but the latter did not act on it.

Mijares finally alleged that he and Lacuna wanted to bypass the Mayor of Manila in the paper work but they were unable to arrive at a concrete plan. Mijares claimed that the University

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gave him only ₱45,000.00 as his fees and that it was with the University's conformity that he gave the ₱500,000.00 to Lacuna.

The IBP designated Atty. Dennis B. Funa as Commissioner to conduct a formal investigation of the complaint. Despite numerous settings, however, Mijares failed to appear before the Commissioner and adduce evidence in his defense.

On October 17, 2008 Commissioner Funa submitted his Report and Recommendation[1] in the case to the Integrated Bar of the Philippines' Board of Governors. The Report said that the University did not authorize Mijares to give ₱500,000.00 to the then MMDA Deputy Chairman Cesar Lacuna; that Mijares had been unable to account for and return that money despite repeated demands; and that he admitted under oath having bribed a government official.

Commissioner Funa recommended a) that Mijares be held guilty of violating Rules 1.01 and 1.02, Canon 15, Rule 15.05, Canon 16, Rules 16.01 and 16.03, and Canon 18, Rule 18.04 of the Code of Professional Responsibility and meted out the penalty of disbarment; b) that he be ordered to return the ₱500,000.00 and all the pertinent documents to the University; and c) that Mijares' sworn statement that formed part of his Answer be endorsed to the Office of the Ombudsman for investigation and, if warranted, for prosecution with respect to his shady dealing with Deputy Chairman Lacuna.

On December 11, 2008 the IBP Board of Governors passed Resolution XVIII-2008-631, adopting and approving the Investigating Commissioner's recommendation but modifying the penalty from disbarment to indefinite suspension from the practice of law and ordering Mijares to return the ₱500,000.00 and all pertinent documents to the University within six months from receipt of the Court's decision.[2]

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[1] *Rollo*, pp. 80-91.

[2] *Id*. at 78.

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The Question Presented

The only question presented in this case is whether or not respondent Mijares is guilty of misappropriating the ₱500,000.00 that his client, the University, entrusted to him for use in facilitating and processing the titling of a property that it claimed.

The Court's Ruling

Section 27, Rule 138 of the Revised Rules of Court provides for the disbarment or suspension of a lawyer for the following: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) willfully appearing as an attorney for a party without authority to do so.[3]

Every lawyer has the responsibility to protect and advance the interests of his client such that he must promptly account for whatever money or property his client may have entrusted to him. As a mere trustee of said money or property, he must hold them separate from that of his own and make sure that they are used for their intended purpose. If not used, he must return the money or property immediately to his client upon demand, otherwise the lawyer shall be presumed to have misappropriated the same in violation of the trust reposed on him.[4] A lawyer's conversion of funds entrusted to him is a gross violation of professional ethics.[5]

Here, respondent Mijares chose not to be heard on his evidence. Technically, the only evidence on record that the Court can consider is the University's evidence that he got ₱500,000.00 from complainant for expenses in facilitating and processing its

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[3] *Re: Administrative Case Against Atty. Occeña*, 433 Phil. 138, 155 (2002).

[4] *Barnachea v. Quiocho*, 447 Phil. 67, 75 (2003), citing *In Re: David*, 84 Phil. 627, 630 (1949) and *Capulong v. Aliño*, 130 Phil. 510, 512 (1968).

[5] *Id.*, citing *Sipin-Nabor v. Baterina*, 412 Phil. 419, 424 (2001).

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title application; that he undertook to return the money if he did not succeed in his purpose; that he falsely claimed having obtained the MMDA approval of the application; and that he nonetheless refused to return the money despite repeated demands. Unopposed, this evidence supports the finding of guilt of the Investigating Commissioner and the IBP Board of Governors.

Besides, even if the Court were to consider the defense that Mijares laid out in his answer, the same does not rouse sympathy. He claims that he gave the ₱500,000.00 to Undersecretary Lacuna, with the University's conformity, for a favorable MMDA endorsement to the Mayor of Manila. He also claims that, in a complete turnaround, Lacuna later said that he could not provide the endorsement because, as it turned out, the MMDA had previously given such endorsement of the University's earlier application and the Mayor of Manila did not act on that endorsement.

But, if this were so, there was no reason for Mijares not to face the University and make it see that it had no cause for complaint, having given him clearance to pass on the ₱500,000.00 to Lacuna. Instead, Mijares kept silent. He did not deny that the University went all over town looking for him after he could not return the money. Nor did he take any action to compel Lacuna to hand back the money that the University gave him. More, his not showing up to testify on his behalf at the investigation of the case is a dead giveaway of the lack of merit of his defense. No evidence exists to temper the doom that he faces.

Even more unfortunate for Mijares, he admitted under oath having bribed a government official to act favorably on his client's application to acquire title to a dried-up creek. That is quite dishonest. The Court is not, therefore, inclined to let him off with the penalty of indefinite suspension which is another way of saying he can resume his practice after a time if he returns the money and makes a promise to shape up.

The Court is also not inclined to go along with the IBP's recommendation that the Court include in its decision an order directing Mijares to return the ₱500,000.00 that the University

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entrusted to him. The University knowingly gave him that money to spend for "facilitation" and processing. It is not naïve. There is no legitimate expense called "facilitation" fee. This term is a deodorized word for bribe money. The Court will not permit the conversion of a disbarment proceeding into a remedy for recovering bribe money lost in a bad deal.

WHEREFORE, the Court finds respondent Leovigildo H. Mijares III, a member of the Bar, *GUILTY* of violation of Rules 1.01 and 1.02, Canon 15, Rule 15.05, Canon 16, Rules 16.01 and 16.03, and Canon 18, Rule 18.04 of the Code of Professional Responsibility and imposes on him the penalty of *DISBARMENT*. He is, in addition, directed to return to complainant Arellano University, Inc. all the documents in his possession covering the titling matter that it referred to him.

Let the sworn statement of respondent Mijares, forming his Answer, be forwarded to the Office of the Ombudsman for whatever action it deems proper under the circumstances.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Chico-Nazario, Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Corona, Velasco, Jr., and Peralta, JJ., on official leave.