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THIRD DIVISION

[A.C. No. 5235. March 22, 2000]

FERNANDO C. CRUZ AND AMELIA CRUZ, *complainants, vs.* **ATTY. ERNESTO C. JACINTO,** *respondents.*

SYNOPSIS

A complaint for disbarment was filed before the IBP Commission on Bar Discipline by spouses Fernando and Amelia Cruz against Atty. Ernesto C. Jacinto. The evidence of the complainant showed that sometime in June 1990 herein respondent, their lawyer in an unrelated case, requested the complainants for a loan in behalf of a certain Concepcion G. Padilla for the amount of PHP285,000.00 payable after 100 days for the amount of PHP360,000.00 and to be secured by a real estate mortgage on a parcel of land located at Quezon City. Complainants granted the request because of the trust and confidence to respondent and the assurance given by him that the debtor was a good risk. Upon maturity of the loan, the complainants demanded payments from Padilla by going to the address given by respondent, but there was no person by that name living therein. Also, when they verified the genuineness of the title, they found out that the title was fake and spurious. Further efforts to locate the debtor likewise proved futile. Because of this, the complainants, through the help of the NBI, filed a case of estafa through falsification of the public documents against the respondents, which however, was dismissed due to the voluntary desistance of the complainants. The complainants then filed this case. On February 28, 1998, the Board of Governors of the IBP approved the findings and recommendation of the investigating commissioner suspending herein respondent from the practice of law for six (6) months for his unlawful, fraudulent or dishonest act.

The Court found respondent's contention devoid of merit. The Court found the resolution of the IBP correct as the respondent utterly failed to perform his duties and responsibilities faithfully and well to protect the rights and interest of his client, and by his deceitful actuation constituting

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violations of the Code of Professional Responsibility he must be subjected to disciplinary measures for his own good, as well as for the good of the entire membership of the bar as a whole. Accordingly, the Court adopted the resolution of the IBP and ordered the suspension of herein respondent from the practice of law for six months with the warning that a repetition of the same or similar offense will be dealt with more severely.

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; LAWYERS; MERE EXECUTION OF AFFIDAVIT OF VOLUNTARY DESISTANCE AND QUITCLAIM DOES NOT DIVEST THE COURT OF ITS CONSTITUTIONALLY ORDAINED PREROGATIVE WHICH INCLUDES THE AUTHORITY TO DISCIPLINE, SUSPEND OR DISBAR ANY UNFIT AND UNWORTHY MEMBER OF THE BAR.** — The practice of law is so intimately affected with public interest that it is both a right and a duty of the State to control and regulate it in order to promote the public welfare. The Constitution vests this power of control and regulation in this Court. Since the practice of law is inseparably connected with the exercise of its judicial power in administration of justice, the Court cannot be divested of its constitutionally ordained prerogative which includes the authority to discipline, suspend or disbar any unfit and unworthy member of the Bar by a mere execution of affidavits of voluntary desistance and quitclaim (par. [5], Sec. 5, 1987 Constitution).

2. **ID.; ID.; A LAWYER MAY BE DISCIPLINED OR SUSPENDED FOR ANY MISCONDUCT, WHETHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY.** — A lawyer may be disciplined or suspended for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, in probity and good demeanor, thus rendering unworthy to continue as an officer of the court (*Maligsa vs. Cabanting,* 272 SCRA 408 [1997]), and the complainants who called the attention of the Court to the attorney's alleged misconduct are in no sense a party, and have generally no interest in the outcome except as all good

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citizens may have in the proper administration of justice (*Rayos-Ombac vs. Rayos,* 285 SCRA 93 [1998]).

3. ID.; ID.; **BUSINESS TRANSACTIONS BETWEEN AN ATTORNEY AND HIS CLIENT ARE DISFAVORED AND DISCOURAGED BY THE POLICY OF THE LAW.** — As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith. However, the measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard than is required in business dealings where the parties trade at arms length. Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to be sure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor (*Nakpit vs. Valdes,* 286 SCRA 758 [1998]). Further, his fidelity to the cause of his client requires him to be evermindful of the responsibilities that should be expected of him.

4. ID.; ID.; **RESPONDENT IS SUSPENDED FROM PRACTICE OF LAW FOR SIX MONTHS FOR THE ACTS COMPLAINED OF.** — Respondent utterly failed to perform his duties and responsibilities faithfully and well as to protect the rights and interests of his clients and by his deceitful actuations constituting violations of the Code of Professional Responsibilities must be subjected to disciplinary measures for his own good, as well as for the good of the entire membership of the Bar as a whole. WHEREFORE, the Court hereby adopts the resolution of the Board of Governors of the Integrated Bar of the Philippines and orders respondent Atty. Ernesto C. Jacinto suspended from the practice of law for six (6) months with the warning that a repetition of the same or similar offense will be dealt with more severely.

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RESOLUTION

MELO, *J.*:

In their sworn complaint, spouses Fernando C. Cruz and Amelia Manimbo Cruz seek the disbarment of Atty. Ernesto C. Jacinto. The Integrated Bar of the Philippines, through Commissioner Jesulito A. Manalo of the Commissioner on Bar discipline, conducted an investigation. Thereafter, he submitted his Findings and Recommendation, thusly:

> This is a disbarment case filed by the spouses Fernando and Amelia Cruz against Atty. Ernesto C. Jacinto. This case was filed with the Commission on Bar Discipline last 30 January 1991.
>
> The evidence of the complainants show that sometime in June 1990, Atty. Ernesto Jacinto, lawyer of the couple in an unrelated case, requested the Cruz spouses for a loan in behalf of a certain Concepcion G. Padilla, who he claimed to be an old friend as she was allegedly in need of money. The loan requested was for PhP 285,000.00 payable after 100 days for PhP 360,000 to be secured by a real estate mortgage on a parcel of land located at Quezon City.
>
> The spouses, believing and trusting the representations of their lawyer that Padilla was a good risk, authorized him to start preparing all the necessary documents relative to the registration of the Real Estate Mortgage to secure the payment of the loan in favor of the Cruz spouses.
>
> On 4 July 1990, the complainants agreed to the request of Atty. Jacinto and were presented by the latter with a Real Estate Mortgage Contract and a Transfer Certificate of Title No. 127275 in the name of Concepcion G. Padilla. The amount of PhP285,000.00 was given by the spouses to the respondent in cash (PhP270,000.00) and a PBCom check no. 713929 for PhP15,000.00.
>
> Upon maturity of the loan on 15 October 1990, the spouses demanded payment from Concepcion G. Padilla by going to the address given by the respondent but there proved to be no person by that name living therein. When the complainants verified the genuineness of TCT No. 127275 with the Register of Deeds of Quezon City, it was certified by the said office to be a fake and

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spurious title. Further efforts to locate the debtor-mortgagor likewise proved futile.

In their sworn affidavits given before the National Bureau of Investigation (NBI), the spouses claim that they relied much on the reassurances made by Atty. Jacinto as to Concepcion G. Padilla's credit, considering that he was their lawyer. It was also their trust and confidence in Atty. Jacinto that made them decide to forego meeting the debtor-mortgagor.

The complainants' evidence also included the sworn statements of Estrella Ermino-Palipada, the secretary of the respondent at the Neri Law Office, and Avegail Payos, a housemaid of Atty. Jacinto. Ms. Palipada stated that:

1. she was the one who prepared the Real Estate Mortgage Contract and the Receipt of the loan upon the instruction of the respondents;
2. she was a witness to the transaction and never once saw the person of Concepcion G. Padilla, the alleged mortgagor; and that
3. *she was instructed by Atty. Jacinto to notarize the said contract by signing the name of one Atty. Ricardo Neri.*

Avegail Payos, the housemaid of the respondent, in turn stated that she was the one who simulated the signature of one Emmanuel Gimarino, the Deputy Register of Deeds of Quezon City upon the instruction of Atty. Jacinto. This was done to make it appear that the real estate mortgage was registered and the annotation to appear at the back of the TCT as an encumbrance.

On 14 November 1997, a case for Estafa thru Falsification of Public documents under Art. 315 was filed against Atty. Jacinto. He was arrested and detained by the NBI.

The defense of the respondent, on the other hand, was embodied in his Answer with Motion to Dismiss filed with the Commission on Bar Discipline. Therein, he alleged that the criminal information for estafa thru falsification filed against him had already been dismissed because of the voluntary desistance of the complainants.

In his version of the facts, Atty. Jacinto averred that while he indeed facilitated the loan agreement between the Cruz spouses and Concepcion G. Padilla, he had no idea that the latter would give a

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falsified Certificate of Title and use it to obtain a loan. He claimed that he himself was a victim under the circumstances.

Respondent further alleged that he had not been remiss nor negligent in collecting the proceeds of the loan; that in fact, he had even advanced the full payment of the loan due to the complainants from his own savings, even if Concepcion G. Padilla had not yet paid, much less found.

RECOMMENDATIONS

It is every lawyer's sworn duty to obey the laws of the land to promote respect for law and legal processes. The Code of Professional Responsibility command that he shall not engage in unlawful, dishonest, immoral or deceitful conduct. (Rule 1.01, Code of Professional Responsibility)

In the instant case, there was a clear yet unrebutted allegation in the complaint that the Respondent had ordered his secretary and housemaid to falsify the signatures of the notary public and the Deputy Register of Deeds respectively to make it appear that the real estate mortgage contract was duly registered and thus binding.

While it may be true that the complaint for Estafa thru Falsification filed against the Respondent had been dismissed, the dismissal was because of the complainant's voluntary desistance and not a finding of innocence. It neither confirms nor denies Respondent's non-culpability. Furthermore, it is well-settled that disciplinary proceedings are "sui generis," the primary object of which is not so much to punish the individual attorney himself, as to safeguard the administration of justice by protecting the court and the public from the misconduct of lawyers, and to remove from the professions persons whose disregard of their oath have proven them unfit to continue discharging the trust reposed in them as members of the bar. Thus, disciplinary cases may still proceed despite the dismissal of civil and/or criminal cases against a lawyer.

A lawyer who does any unlawful fraudulent or dishonest act may and should be held administratively liable therefor. In the case at bar, the Respondent should not be made an exception. While it may be shown that he indeed advanced the payment due to his erstwhile clients, such will not exempt him from administrative liability. At

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best it can only mitigate. Respondent is recommended to be suspended for six (6) months from the practice of law.

(Findings and Recommendation, pp. 1-4)

On February 28, 1998, the Board of Governors of the IBP passed Resolution XIII-97-199 adopting and approving the Findings and Recommendation of the Investigating Commissioner, which reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution/Decision as Annex "A" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, respondent Atty. Ernesto C. Jacinto is SUSPENDED from the practice of law for six (6) months for his unlawful, fraudulent or dishonest act.

(Notice of resolution [dated Feb. 28, 1998]).

In his Comment and Answer with Motion to Dismiss, respondent averred that complainants have no cause of action against him as the same has been waived, settled, and extinguished on account of the affidavits of voluntary desistance and quitclaim executed by them in the criminal case filed against him.

The assertion must necessarily fail. The practice of law is so intimately affected with public interest that it is both a right and a duty of the State to control and regulate it in order to promote the public welfare. The Constitution vests this power of control and regulation in this Court. Since the practice of law is inseparably connected with the exercise of its judicial power in administration of justice, the Court cannot be divested of its constitutionally ordained prerogative which includes the authority to discipline, suspend or disbar any unfit and unworthy member of the Bar by a mere execution of affidavits of voluntary desistance and quitclaim (par. [5], Sec. 5, 1987 Constitution).

A lawyer may be disciplined or suspended for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, in probity

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and good demeanor, thus rendering unworthy to continue as an officer of the court *(Maligsa vs. Cabanting,* 272 SCRA 408 [1997]), and the complainants who called the attention of the Court to the attorney's alleged misconduct are in no sense a party, and have generally no interest in the outcome except as all good citizens may have in the proper administration of justice (*Rayos-Ombac vs. Rayos,* 285 SCRA 93 [1998]).

Undeniably, respondent represented complainants in the loan transaction. By his own admission, he was the one who negotiated with the borrower, his long-time friend and a former client. He acted not merely as an agent but as a lawyer of complainants, thus, the execution of the real estate mortgage contract, as well as its registration and annotation on the title were entrusted to him. In fact, respondent even received his share in the interest earnings which complainants realized from the transaction. His refusal to recognize any wrongdoing or carelessness by claiming that he is likewise a victim when it was shown that the title to the property, the registration of the real estate mortgage contract, and the annotation thereon were all feigned, will not at all exonerate him.

As a rule, a lawyer is not barred from dealing with his client but the business transaction must be characterized with utmost honesty and good faith. However, the measure of good faith which an attorney is required to exercise in his dealings with his client is a much higher standard than is required in business dealings where the parties trade at arms length. Business transactions between an attorney and his client are disfavored and discouraged by the policy of the law. Hence, courts carefully watch these transactions to be sure that no advantage is taken by a lawyer over his client. This rule is founded on public policy for, by virtue of his office, an attorney is in an easy position to take advantage of the credulity and ignorance of his client. Thus, no presumption of innocence or improbability of wrongdoing is considered in an attorney's favor (*Nakpit vs. Valdes,* 286 SCRA 758 [1998]). Further, his fidelity to the cause of his client requires him to be evermindful of the responsibilities that should be expected of him.

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Verily, a lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his former client. The reason for the prohibition is found in the relation of attorney and client, which is one of trust and confidence at the highest degree (*Maturan vs. Gonzales,* 287 SCRA 943 [1998]).

Respondent utterly failed to perform his duties and responsibilities faithfully and well as to protect the rights and interests of his clients and by his deceitful actuations constituting violations of the Code of Professional Responsibilities must be subjected to disciplinary measures for his own good, as well as for the good of the entire membership of the Bar as a whole.

WHEREFORE, the Court hereby adopts the resolution of the Board of Governors of the Integrated Bar of the Philippines and orders respondent Atty. Ernesto C. Jacinto suspended from the practice of law for six (6) months with the warning that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Vitug, Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.