107 Phil. 852

[A.C. No. 275. April 29, 1960]

GERVACIO L. LIWAG, COMPLAINANT, VS. ATTY. GILBERTO NERI, RESPONDENT.

D E C I S I O N

PARAS, C.J.:

The complainant, Gervacio L. Liwag, seeks to disbar the respondent, Atty. Gilberto Neri.

Prior to October 21, 1952, the spouses Enrique and Ursula Pineda requested the complainant to act as counter-indemnitor with the Manila Surety & Fidelity Company in a bond posted for said spouses in favor of the National Rice and Corn Corporation (NARIC). When the Pinedas had failed to liquidate their obligation, the NARIC enforced the bond against the Manila Surety and Fidelity Company and the latter in turn collected from the complainant the sum of P2,951.35. Having failed to recover extra-judicially said amount from the Pinedas, the complainant engaged the services of the respondent who agreed to handle the matter on a contingent fee of forty per cent.

As they were his neighbors, the respondent, acting slowly, tried to talk to the Pinedas, who admitted their indebtedness and pleaded for time to pay the same. On or about July 17, 1956, when no payment had been made, the respondent wrote a letter of demand, threatening to take judicial action if the Pinedas would still not meet their obligation. On the same date, the complainant delivered to the respondent the amount of P30.00 as the filing fee for the necessary complaint. The respondent did not actually file any complaint, for the alleged reason that debtor spouses had given assurances to pay, although he informed the complainant that he had already done so. It did not take long before the truth was discovered and before the complainant was provoked into commencing this administrative case.

It is an established fact that the respondent had received from the complainant P30.00 as filing fee. The respondent argues that his services were not engaged solely "for the purpose of filing the corresponding collection complaint", but to collect from the Pinedas the amount owed; or, in other words, that the respondent was given full discretion as to the means for accomplishing the assignment. Assuming that this was so, the respondent has committed a breach of professional ethics when, contrary to the fact, he made the complainant believe that the Pineda spouses had already been sued in court and did not return the amount intended for the filing fee.

Considering however, that the respondent has not yet received anything for his services and that the complainant has subsequently been paid, disbarment or even suspension of the respondent from the practice of his profession would be too harsh and unwind. We only hereby reprimand him for the offense, with the warning that a repetition of similar misconduct or, for that matter, any violation of his oath will be dealt with more drastically.

So ordered.

Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and *Gutierrez David, JJ.*, concur.

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