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THIRD DIVISION

[Adm. Case No. 3066. October 26, 1999]

J.K. MERCADO AND SONS AGRICULTURAL ENTERPRISES, INC., and SPOUSES JESUS and ROSARIO K. MERCADO, *complainants, vs.* **EDUARDO DE VERA and JOSE RONGKALES BANDALAN,** *respondents.*

[Adm. Case No. 4438. October 26, 1999]

ATTY. EDUARDO C. DE VERA, *petitioner-complainant, vs.* **ATTY. MERVYN G. ENCANTO, ATTY. NUMERIANO G. TANOPO, JR., ATTY. JOSE AGUILA GRAPILON, ATTY. BEDA G. FAJARDO, ATTY. RENE C. VILLA, THE INTEGRATED BAR OF THE PHILIPPINES, thru its COMMISSION ON BAR DISCIPLINE, as represented by ATTY. MERVYN G. ENCANTO, incumbent National President; ATTY. CARMEN LEONOR P. MERCADO-ALCANTARA; SPOUSES JESUS K. MERCADO and ROSARIO P. MERCADO; and J.K. MERCADO AND SONS AGRICULTURAL ENTERPRISES, INC.,** *respondents.*

SYNOPSIS

In Civil Case 17215, where R. Mercado was represented by Atty. De Vera, Judge Bandalan awarded the former the sum of a little over ₱9 million. A total amount of ₱1,270,734.56 was later garnished and Mrs. Mercado, assisted by De Vera, withdrew the same. De Vera convinced Mrs. Mercado to give him the money for safekeeping but later, De Vera refused to turn over the money alleging that he is entitled to an estimated 2.250 million attorney's fees. In the disbarment proceedings filed against De Vera and Judge Bandalan, the IBP Board of Governors adopted Resolution No. X-93-41 recommending the suspension of De Vera from the practice of law for one year, and dismissing

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the case against Judge Bandalan for lack of jurisdiction. De Vera questioned the validity of said resolution.

In case of a disagreement with the client, the proper remedy of the lawyer is to file the necessary action. And on the alleged irregularity in the adoption of Resolution No. X-93-41, respondents were able to adequately show why the assailed resolution of the Board of Governors' recommendation could not have been accomplished on the same day of the meeting. Evidently, it was not an uncommon practice for board resolutions to be signed on different days by the members of the Board of Governors.

SYLLABUS

LEGAL ETHICS; PRACTICE OF LAW; COMPENSATION FOR SERVICES RENDERED WHERE THERE IS DISAGREEMENT BETWEEN THE LAWYER AND CLIENT; PROPER REMEDY. — While, indeed, the practice of law is not a business venture, a lawyer, nevertheless, is entitled to be duly compensated for professional services rendered. So, also, he must be protected against clients who wrongly refuse to give him his just due. Correlatively, a lawyer is entitled to a "lien over funds, documents and papers of his client which have lawfully come into his possession." Under Canon 16, Rule 16.03 of the Code of Professional Responsibility he may "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client." In both cases, however, it is to be assumed that the client agrees with the lawyer in the amount of attorney's fees. In case of a disagreement, or when the client disputes the amount claimed by the lawyer for being unconscionable, the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees; instead, it should behoove the lawyer to file, if he still deems it desirable, the necessary action or the proper motion with the proper court to fix the amount of his attorney's fees.

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APPEARANCES OF COUNSEL

Alcantara & Alcantara Law Office for complainants in AC No. 3066.

Arthur D. Lim and Jose Amor M. Amorado for respondents IBP Officials.

RESOLUTION

VITUG, *J.*:

The petition for disbarment filed by J.K. Mercado and Sons Agricultural Enterprises, Inc. ("Mercado and Sons"), and the spouses Jesus K. Mercado and Rosario P. Mercado against Atty. Eduardo C. De Vera and Atty. Jose Rongkales Bandalan, the former Regional Trial Court Judge of Davao City, Branch 14, is an offshoot of Civil Case No. 17215, an action for "dissolution/liquidation of conjugal partnership, accounting, support with support *pendente lite*, annulment of contract, reconveyance or recovery of possession of conjugal share, partition, damages, and attorneys fees" filed by Rosario P. Mercado ("R. Mercado") against Jesus K. Mercado ("J. Mercado"), Mercado and Sons, and Standard Fruits Corporation ("Stanfilco"). The case was assigned to the *sala* of then Judge Bandalan. Representing R. Mercado was Atty. De Vera.

On 15 December 1986, Judge Bandalan decided the case in favor of R. Mercado. She was awarded the sum of a little over ₱9 million. On 19 December 1986, J. Mercado and Mercado and Sons filed a timely notice of appeal. Stanfilco, for its part, filed a motion for reconsideration. On 05 January 1987, Judge Bandalan granted the motion for execution pending appeal filed by Atty. De Vera. On even date, the judge likewise granted Atty. De Vera's "motion to note plaintiff's counsel's statement of claim of Attorney's lien (charging and retaining) and motion to direct Provincial Registry of Deeds of Davao to annotate such liens on the certificates of titles of (the) Mercado spouses." On 12 January 1998, a writ of execution was issued. Two days later or on 14 January 1987, notices of garnishment under

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execution pending appeal were served by Sheriff Aquillo Angon on the respective managers of RCBC, Claveria, Davao City; RCBC, Tagum, Davao Del Norte; Traders Royal Bank, City Hall Drive, Davao City; and Traders Royal Bank, R. Magsaysay Ave., Davao City. It would appear that a total amount of ₱1,270,734.56 was garnished.

On 26 February 1987, R. Mercado terminated the services of Atty. De Vera, offering the amount of ₱350,000.00 by way of attorney's fees. She, at the same time, demanded an accounting and the turn-over of the money still in the possession of Atty. De Vera. The latter refused to heed the demand, claiming that pursuant to the decision, he should, in fact, be entitled to ₱2,254,217.00 by way of attorney's fees. Failing to recover what she had felt was lawfully due to her, R. Mercado filed disbarment proceedings against Atty. de Vera. The matter was initially referred to the Office of the Solicitor General for investigation, report and recommendation; however, upon the approval and implementation of Rule 139-B of the Rules of Court, the case was transferred to the Integrated Bar of the Philippines ("IBP") and assigned to Commissioner Ernesto L. Pineda.

Assailing the conduct of the proceedings, Atty. De Vera filed with this Court a petition for *certiorari*, prohibition and injunction, docketed G.R. No. 96333, to enjoin Commissioner Pineda from continuing with the investigation. The petition was dismissed by the Court, in its resolution[1] of 02 September 1992, and Commissioner Pineda was directed to proceed and to submit his report to the Court within ten (10) days from notice. Prior to his receipt of the resolution, however, Commissioner Pineda had ceased to be the IBP hearing officer; consequently, the case was re-assigned to Commissioner Plaridel C. Jose.

Noting that the proper forum of complaints against Justices and judges of lower courts is the Supreme Court, Commissioner Jose dismissed the case against Judge Bandalan for lack of

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[1] *De Vera vs. Pineda,* 213 SCRA 434.

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jurisdiction. In his report, dated 04 November 1992, Commissioner Jose recommended the dismissal of the disbarment case "without prejudice to the rights of the parties to ventilate the question of attorney's fees that should be due to Atty. Eduardo C. de Vera before the proper forum." It would appear that a clarificatory addendum report, dated 06 December 1993, was later submitted by Commissioner Jose.

Meanwhile, on 23 March 1993, the IBP Board of Governors adopted Resolution No. X-93-41 recommending to the Supreme Court the suspension of Atty. De Vera from the practice of law for one (1) year and dismissing the case against Judge Bandalan for lack of jurisdiction. This action of the IBP Board of Governors prompted Atty. De Vera to file Administrative Case No. 4438 seeking the disbarment of Attorneys Mervyn G. Encanto, Numeriano G. Tanopo, Jr., Jose Aguila Grapilon, Beda G. Fajardo, Rene C. Villa, and Carmen Leonor P. Mercado-Alcantara for grave misconduct, violation of the lawyer's oath, and malpractice. Atty. De Vera averred that the resolution of 23 March 1993 was not formally discussed, deliberated upon, actually adopted nor passed upon during, and before the expiration of, the term of office of the members of the IBP Board of Governors. He also accused Atty. Alcantara of conspiring with the IBP officers in the preparation, rendition and release of the resolution, citing the latter's motions for early resolutions filed on 12 October 1993 and 26 July 1994. He, finally, alleged that a copy of the resolution was sent to him only on 09 June 1995.

Atty. Numeriano G. Tanopo, Jr., explained that Resolution No. X-93-41 was adopted at a special meeting convened on 23 March 1993 by Executive Vice President Mervyn Encanto during which Governors Jose Aguila Grapilon, Ma. Zita C. Valera, Beda G. Fajardo, Rene C. Villa and Teodoro D. Nano, Jr., were in attendance. The resolution was placed in the charge of the Directorate for Bar Discipline for the procurement of the signatures of the members of the IBP Board of Governors. Since the members from the nine different IBP regions would normally visit the National Office only once a month, it was not unusual for the signing of resolutions to take place a month or so following board meetings. The adoption of the assailed

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resolution, according to Atty. Tanopo, had no taint of irregularity at all, asserting that the term of office of the aforenamed members of the Board of Governors expired only on 30 June 1993. Atty. Tanopo himself expressed surprise why the "Addendum Report," dated 06 December 1993, had surfaced nine months after the adoption of the resolution of the Board of Governors in A.C. No. 3066. He explained that the newly-elected members of the IBP Board of Governors, in a special meeting held on 18 December 1993, noted that "the previous Board under President Tanopo already rendered a decision in the above-entitled case as embodied under Resolution No. X-93-41 dated March 23, 1993, except that the same has not been forwarded to the Supreme Court inasmuch as some members of the previous Board had not affixed their signatures on the copy of the decision." Hence, he said, Resolution No. XI-93-170 was passed directing Governor Agustinus Gonzaga, Chairman of the Committee on Bar Discipline, "to require the members of the immediately preceding Board of Governors to affix their signatures on their decision in the above-entitled case," and that, therefore, it was not possible for Atty. De Vera to be informed sooner of the resolution of his case.

Attorneys Mervyn G. Encanto, Jose Aguila Grapilon, Beda G. Fajardo, Rene C. Villa and Ma. Zita C. Valera added that the adoption of Resolution No. X-93-41 was duly taken up and considered in the Special Meeting held on 23 March 1993. Attorneys Grapilon, Tanopo, Encanto and Fajardo were able to sign the resolution before the expiration of their term on 30 June 1993. Atty. Valera affixed his signature in the early part of 1994 while Atty. Villa also did so sometime in October 1994 or thereabouts. Attorneys Estenzo and Nano were unable to sign the resolution at all. Atty. Encanto said that he could not have given a copy of the resolution to Atty. De Vera when the latter went to his office in May 1994 since the resolution was not yet ready for release at the time nor could he then discuss the matter with Atty. De Vera because of the rule on confidentiality of pending proceedings.

Atty. Alcantara, in her case, denied the charge that she had conspired with the IBP officers in the issuance of the IBP Board

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resolution and pointed out that the motions for early resolution she filed would show nothing more than an adherence to the regular procedure adopted in resolving A.C. No. 3066.

Atty. De Vera, in his reply, contended that the Minutes could not be taken to be a true and faithful recording of the proceedings. He cited, for instance, the absurdity that while on page four thereof, the minutes indicated that Commissioner Plaridel Jose was asking for thirty days from *21 October 1992* within which to submit his report in A.C. No. 3066, Resolution No. X-93-37 approved the request granting Commissioner Jose a period of thirty days from *21 October 1993* within which to submit the report. For another, the request for extension of time to submit the report was granted on the same day the report was taken up. He likewise questioned why the IBP Board of Governors evidently failed to consider that Commissioner Jose had actually submitted two reports.

In A.C. No. 3066 —

While, indeed, the practice of law is not a business venture, a lawyer, nevertheless, is entitled to be duly compensated for professional services rendered. So, also, he must be protected against clients who wrongly refuse to give him his just due. In *Albano vs. Coloma*,[2] this Court has said:

"Counsel, any counsel, who is worthy of his hire, is entitled to be fully recompensed for his services. With his capital consisting solely of his brains and with his skill, acquired at tremendous cost not only in money but in the expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of a client to escape payment of his fees. It is indeed ironic if after putting forth the best that is in him to secure justice for the party he represents, he himself would not get his due. Such an eventuality this Court is determined to avoid. It views with disapproval any and every effort of those benefited by counsel's services to deprive him of his hard-earned honorarium. Such an attitude deserves condemnation."[3]

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[2] 21 SCRA 411.

[3] At p. 420.

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Correlatively, a lawyer is entitled to a "lien over funds, documents and papers of his client which have lawfully come into his possession."[4] Under Canon 16, Rule 16.03 of the Code of Professional Responsibility[5] he may "apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client."[6] In both cases, however, it is to be assumed that the client agrees with the lawyer in the amount of attorney's fees. In case of a disagreement, or when the client disputes the amount claimed by the lawyer for being unconscionable, the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees; instead, it should behoove the lawyer to file, if he still deems it desirable, the necessary action or the proper motion with the proper court to fix the amount of his attorney's fees.[7] If a lawyer were allowed to unilaterally apply the funds in his hands in payment of his claimed compensation even when there is a disagreement between him and his client would not only be violative of the trust relationship between them but can also open the door to possible abuse by those who are less than mindful of their fiduciary duty.

The Court cannot ignore the findings made by the IBP Board of Governors, in its resolution of 23 March 1993, hereunder reproduced; *viz.*:

"The records show that complainant Mrs. Mercado, assisted by her erstwhile counsel, respondent de Vera was able to withdraw garnished funds from the banks in the total amount of ₱1,270,734.56 on January 14, 1987 and January 16, 1987 (Exhs. 'CC' and DD', '30' and '31'). Said withdrawals were in consequence of an Order dated January 12, 1987 issued by Judge Bandalan (Exh. 'K' or '15'). As prayed for by complainant Mrs. Mercado per motion for execution pending appeal (Exh. 'G' or '14') filed in her behalf by respondent

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[4] Section 37, Rule 138 of the Rules of Court.

[5] The Code of Professional Responsibility took effect on 21 June 1988, almost a year after the institution of this case on 26 June 1987.

[6] Italics supplied.

[7] See *In Re: Booram*, 39 Phil. 247.

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de Vera, she was almost 73 years old, in poor health and needed the amount for her daily subsistence and medical needs.

"There was an open admission by respondent de Vera as borne by his entire testimony, that he was with Mrs. Mercado in the banks to assist her to withdraw the garnished funds.

"Complainant Mrs. Mercado's testimony on June 13, 1989 that she was staying in a boarding house (TSN, June 13, 1989, page 14) and that the money, then about ₱911,374.95 out of the garnished amount of ₱1,223,874.95 after depositing ₱300,000.00 with Metro Bank and TRB (TSN, September 5, 1989, pages 31 to 36, Exhs. 'MM' & 'NN') are more than enough reasons not to withdraw or encash the garnished amounts in the form of Manager Checks. If not only for respondent de Vera's prodding and insistence, complainant Mrs. Mercado would not have withdrawn and encashed such a huge amount of money, only to bring it to an unsafe boarding house which understandably could not provide a guarded and safer depository of such huge amount of money, as in banks. Why would complainant Mrs. Mercado withdraw from the banks the whole amount of ₱1,223,873.95, and on the same day, deposit ₱300,000.00 in other banks and carry with her ₱911,374.95?

"The scheming plot of respondent de Vera is too obvious to escape notice.

"With so much money contained in six bags, respondent de Vera invited the aging complainant Mrs. Mercado to his house, convinced the old lady to leave the money with him as accordingly, she did not have a room in her boarding house and that it would be safe if she left the money with him.

"x x x x x x x x x

"That respondent de Vera was, upon his unilateral estimation, entitled to about ₱2.250 Million in attorney's fees, would not exculpate him from the condemnable act of infidelity in the custody of his client's funds. He was duty bound to turn over and render a full accounting of what he received in satisfaction of the judgment rendered in favor of complainant Mrs. Mercado in Civil Case No. 17215. The relation between client and attorney is one of trust and confidence."

Regrettably, Atty. De Vera would appear to have indeed gone over the bounds of propriety when he refused to turn-over to

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his client the amount in excess of the ₱350,000.00 he was, in effect, allowed to retain. His disagreement with the client, of course, entitled him to take proper legal steps in order to recover what he might feel to be his just due but, certainly, it was not a matter that he could take into his own hands.

The Court is not prepared to conclude, however, that the circumstances detailed by the IBP would create an impression, as so suggested in the resolution of 23 March 1993, that respondent lawyer somehow had much to be responsible for in the turn of events that led to his possession of the funds of his client. In any event, the proven actuations of Atty. De Vera, in the view of the Court, would sufficiently warrant a commensurate disciplinary action.

In A.C. No. 4438 —

A close review of the IBP proceedings, substantially reflected in the Minutes of Meeting of the Board of Governors, would indicate to the Court that no serious irregularity attended the adoption of Resolution No. X-93-41 insofar, particularly, as it recommended the suspension of Atty. De Vera from the practice of law. Respondents were able to adequately show why the assailed resolution of the Board of Governors' recommendation could not have been accomplished on the same day of the meeting. Evidently, it was not an uncommon practice for board resolutions to be signed on different dates by the members of the Board of Governors. While Resolution No. X-93-41 had been signed by some of the previous members of the Board of Governors after the expiration of their term of office, the action attested to by the resolution, nevertheless, would unquestionably disclose that it was adopted during their tenure. In fact, the succeeding members of the Board of Governors affirmed, in their meeting of 18 December 1993, that the *"previous Board x x x already rendered a decision x x x as embodied under Resolution No. X-93-41 dated March 23, 1993 x x x"* but that only some members of the previous Board had yet to affix their signatures thereat. There might have been some inconsistencies in the assailed minutes of the meeting of the Board of Governors, but these incongruences hardly would establish convincingly, a concerted

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effort on the part of respondents to manipulate the outcome of the case against Atty. De Vera.

The charge against Atty. Alcantara likewise has nothing much to stand on. The allegation that she has been bragging about the fact that she could have Atty. De Vera disbarred because of her influence in the IBP is not substantiated. Her motions for the early resolution of the case, after the IBP Board of Governors adopted Resolution No. X-93-41, only confirm the long delay in the release of the resolution and, indeed, her apparent lack of knowledge of the final resolution theretofore reached by the Board of Governors.

WHEREFORE, in Administrative Case No. 3066, Resolution No. X-93-41, dated 23 March 1993, of the IBP Board of Governors, is AFFIRMED with MODIFICATION. Atty. Eduardo C. De Vera is hereby *SUSPENDED* from the practice of law for six (6) months and he is further DIRECTED to return to Rosario K. Mercado the amount in his possession in excess of ₱350,000.00, without prejudice to whatever judicial action he may take to recover his unsatisfied attorney's fees, if any. His suspension stands until he has satisfactorily shown to the Court his compliance therewith. Copies of this resolution shall be circulated to all Courts of the country and spread on the personal record of Atty. De Vera.

Administrative Case No. 4438 is DISMISSED for lack of merit.

SO ORDERED.

Melo (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.