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[A.C. No. 2797. October 4, 2002]

ROSAURA P. CORDON, *complainant, vs.* **JESUS BALICANTA,** *respondent.*

SYNOPSIS

A complaint for disbarment was filed by herein complainant against respondent Jesus Balicanta, complainant's legal counsel in the settlement of the estate of her deceased husband. Among others, it was alleged that the respondent enticed complainant and her daughter to organize a corporation; that respondent, through deceit and machinations, convinced complainant and her daughter to assign their real properties to the corporation and to execute a voting trust agreement; that the respondent single-handedly ran the affairs of the corporation in his capacity as Chairman of the Board, President, General Manager and Treasurer; that the respondent succeeded in making complainant sign a special power of attorney to sell and mortgage some of the parcels of land she inherited from her deceased husband; that using spurious board resolutions, respondent contracted an LBP loan, mortgaged the properties of the corporation, sold to another the right of redemption over the foreclosed properties and sold the complainant's ancestral home; that the respondent failed to account for the proceeds of the loan and the sale; that the respondent failed to render an accounting of the records and revenues of the corporation. On his part, respondent denied the allegations against him.

The Code of Professional Responsibility mandates upon each lawyer, as his duty to society, the obligation to obey the laws of the land and promote respect for law and legal processes. Specifically, he is forbidden to engage in unlawful, dishonest, immoral; or deceitful conduct. In the case at bar, the Court found that the respondent committed grave and serious misconduct that casts dishonor on the legal profession. His misdemeanors revealed a deceitful scheme to use the corporation as a means to convert for his own personal benefit properties left to him in trust by complainant and her daughter. Not even his deviousness could cover up the wrongdoings he

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committed. The documents he thought could exculpate him were the very same documents that revealed his immoral and shameless ways. These documents were extremely revealing in that they unmasked a man who knew the law and abused it for his personal gain without any qualms of conscience. They painted an intricate web of lies, deceit and opportunism beneath a carefully crafted smokescreen of corporate maneuvers. Consequently, the Court held that the gravity of respondent's offenses deserve the severe penalty of disbarment.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; GRAVE AND SERIOUS MISCONDUCT;COMMITTED IN CASE AT BAR.**— After a thorough review of the records, we find that respondent committed grave and serious misconduct that casts dishonor on the legal profession. His misdemeanors reveal a deceitful scheme to use the corporation as a means to convert for his own personal benefit properties left to him in trust by complainant and her daughter. Not even his deviousness could cover up the wrongdoings he committed. The documents he thought could exculpate him were the very same documents that revealed his immoral and shameless ways. These documents were extremely revealing in that they unmasked a man who knew the law and abused it for his personal gain without any qualms of conscience. They painted an intricate web of lies, deceit and opportunism beneath a carefully crafted smokescreen of corporate maneuvers.

2. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION TO ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT.**— The Code of Professional Responsibility mandates upon each lawyer, as his duty to society, the obligation to obey the laws of the land and promote respect for law and legal processes. Specifically, he is forbidden to engage in unlawful, dishonest, immoral or deceitful conduct. If the practice of law is to remain an honorable profession and attain its basic ideal, those enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them. Thus, the requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.

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3. ID.; ID.; LAWYERS ARE EXPECTED TO ABIDE BY THE TENETS OF MORALITY, FROM THEIR ADMISSION TO THE BAR AND THROUGHOUT THEIR LEGAL CAREER.— Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain one's good standing in that exclusive and honored fraternity. Good moral character is more than just the absence of bad character. Such character expresses itself in the will to do the unpleasant thing if it is right and the resolve not to do the pleasant thing if it is wrong. This must be so because "vast interests are committed to his care; he is the recipient of unbounded trust and confidence; he deals with his client's property, reputation, his life, his all."

4. ID.; ID.; FAILURE TO PROMPTLY ACCOUNT FOR MONEY OR PROPERTY RECEIVED BY THEM ON BEHALF OF THEIR CLIENTS CONSTITUTES PROFESSIONAL MISCONDUCT.— Indeed, the words of former Presiding Justice of the Court of Appeals Pompeyo Diaz cannot find a more relevant application than in this case: "There are men in any society who are so self-serving that they try to make law serve their selfish ends. In this group of men, *the most dangerous is the man of the law who has no conscience.* He has, in the arsenal of his knowledge, the very tools by which he can poison and disrupt society and bring it to an ignoble end." Good moral standing is manifested in the duty of the lawyer "to hold in trust all moneys and properties of his client that may come into his possession." He is bound "to account for all money or property collected or received for or from the client." The relation between an attorney and his client is highly fiduciary in nature. Thus, lawyers are bound to promptly account for money or property received by them on behalf of their clients and failure to do so constitutes professional misconduct.

5. ID.; ID.; RESPONDENT CANNOT USE THE CORPORATE VEIL TO DEFEAT HIS FIDUCIARY OBLIGATION TO HIS CLIENT.— This Court holds that respondent cannot invoke the separate personality of the corporation to absolve him from exercising these duties over the properties turned over to him by complainant. He blatantly used the corporate veil to defeat his fiduciary obligation to his client, the complainant. Toleration of such fraudulent conduct was never the reason for the creation

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of said corporate fiction. The massive fraud perpetrated by respondent on the complainant leaves us no choice but to set aside the veil of corporate entity. For purposes of this action therefore, the properties registered in the name of the corporation should still be considered as properties of complainant and her daughter. The respondent merely held them in trust for complainant (now an ailing 83-year-old) and her daughter. The properties conveyed fraudulently and/or without the requisite authority should be deemed as never to have been transferred, sold or mortgaged at all. Respondent shall be liable, in his personal capacity, to third parties who may have contracted with him in good faith.

6. **ID.; ID.; PENALTY FOR DISHONEST ACTS.**— This Court believes that the gravity of respondent's offenses cannot be adequately matched by mere suspension as recommended by the IBP. Instead, his wrongdoings deserve the severe penalty of disbarment, without prejudice to his criminal and civil liabilities for his dishonest acts.

APPEARANCE OF COUNSEL

Jimeno Jalandoni & Cope Law Offices for complainant.

RESOLUTION

***PER CURIAM*:**

On August 21, 1985, herein complainant Rosaura Cordon filed with this Court a complaint for disbarment, docketed as Administrative Case No. 2797, against Atty. Jesus Balicanta. After respondent's comment to the complaint and complainant's reply thereto, this Court, on March 29, 1995 referred the matter to the Integrated Bar of the Philippines (IBP, for brevity) for investigation, report and recommendation within 90 days from notice. Commissioner George Briones of the IBP Commission on Bar Discipline was initially tasked to investigate the case. Commissioner Briones was later on replaced by Commissioner Renato Cunanan. Complainant filed a supplemental complaint which was duly admitted and, as agreed upon, the parties filed their respective position papers.

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Based on her complaint, supplemental complaint, reply and position paper, the complainant alleged the following facts:

When her husband Felixberto C. Jaldon died, herein complainant Rosaura Cordon and her daughter Rosemarie inherited the properties left by the said decedent. All in all, complainant and her daughter inherited 21 parcels of land located in Zamboanga City. The lawyer who helped her settle the estate of her late husband was respondent Jesus Balicanta.

Sometime in the early part of 1981, respondent enticed complainant and her daughter to organize a corporation that would develop the said real properties into a high-scale commercial complex with a beautiful penthouse for complainant. Relying on these apparently sincere proposals, complainant and her daughter assigned 19 parcels of land to Rosaura Enterprises, Incorporated, a newly-formed and duly registered corporation in which they assumed majority ownership. The subject parcels of land were then registered in the name of the corporation.

Thereafter, respondent single-handedly ran the affairs of the corporation in his capacity as Chairman of the Board, President, General Manager and Treasurer. The respondent also made complainant sign a document which turned out to be a voting trust agreement. Respondent likewise succeeded in making complainant sign a special power of attorney to sell and mortgage some of the parcels of land she inherited from her deceased husband. She later discovered that respondent transferred the titles of the properties to a certain Tion Suy Ong who became the new registered owner thereof. Respondent never accounted for the proceeds of said transfers.

In 1981, respondent, using a spurious board resolution, contracted a loan from the Land Bank of the Philippines (LBP, for brevity) in the amount of Two Million Two Hundred Twenty Pesos (₱2,220,000) using as collateral 9 of the real properties that the complainant and her daughter contributed to the corporation. The respondent ostensibly intended to use the money to construct the Baliwasan Commercial Center (BCC, for brevity). Complainant later on found out that the structure

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was made of poor materials such as *sawali,* coco lumber and bamboo which could not have cost the corporation anything close to the amount of the loan secured.

For four years from the time the debt was contracted, respondent failed to pay even a single installment. As a result, the LBP, in a letter dated May 22, 1985, informed respondent that the past due amortizations and interest had already accumulated to Seven Hundred Twenty-nine Thousand Five Hundred Three Pesos and Twenty-five Centavos (₱729,503.25). The LBP made a demand on respondent for payment for the tenth time. Meanwhile, when the BCC commenced its operations, respondent started to earn revenues from the rentals of BCC's tenants. On October 28, 1987, the LBP foreclosed on the 9 mortgaged properties due to non-payment of the loan.

Respondent did not exert any effort to redeem the foreclosed properties. Worse, he sold the corporation's right to redeem the mortgaged properties to a certain Hadji Mahmud Jammang through a fake board resolution dated January 14, 1989 which clothed himself with the authority to do so. Complainant and her daughter, the majority stockholders, were never informed of the alleged meeting held on that date. Again, respondent never accounted for the proceeds of the sale of the right to redeem. Respondent also sold to Jammang a parcel of land belonging to complainant and her daughter which was contiguous to the foreclosed properties and evidenced by Transfer Certificate of Title No. 62807. He never accounted for the proceeds of the sale.

Sometime in 1983, complainant's daughter, Rosemarie, discovered that their ancestral home had been demolished and that her mother, herein complainant, was being detained in a small nipa shack in a place called Culianan. Through the help of Atty. Linda Lim, Rosemarie was able to locate her mother. Rosemarie later learned that respondent took complainant away from her house on the pretext that said ancestral home was going to be remodeled and painted. But respondent demolished the ancestral home and sold the lot to Tion Suy Ong, using another spurious board resolution designated as Board Resolution

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No. 1, series of 1992. The resolution contained the minutes of an alleged organizational meeting of the directors of the corporation and was signed by Alexander Wee, Angel Fernando, Erwin Fernando and Gabriel Solivar. Complainant and her daughter did not know how these persons became stockholders and directors of the corporation. Respondent again did not account for the proceeds of the sale.

Complainant and her daughter made several demands on respondent for the delivery of the real properties they allegedly assigned to the corporation, for an accounting of the proceeds of the LBP loan and as well as the properties sold, and for the rentals earned by BCC. But the demands remained unheeded. Hence, complainant and her daughter, in a letter dated June 4, 1985, terminated the services of respondent as their lawyer and repeated their demands for accounting and turn-over of the corporate funds, and the return of the 19 titles that respondent transferred to the corporation. They also threatened him with legal action in a letter dated August 3, 1985.

Soon after, complainant found out from the Securities and Exchange Commission (SEC, for brevity) that Rosaura Enterprises, Inc., due to respondent's refusal and neglect, failed to submit the corporation's annual financial statements for 1981, 1982 and 1983; SEC General Information Sheets for 1982, 1983 and 1984; Minutes of Annual Meetings for 1982, 1983 and 1984; and Minutes of Annual Meetings of Directors for 1982, 1983 and 1984.

Complainant also discovered that respondent collected rental payments from the tenants of BCC and issued handwritten receipts which he signed, not as an officer of the corporation but as the attorney-at-law of complainant. Respondent also used the tennis court of BCC to dry his *palay* and did not keep the buildings in a satisfactory state, so much so that the divisions were losing plywood and other materials to thieves.

Complainant likewise accused respondent of circulating rumors among her friends and relatives that she had become insane to prevent them from believing whatever complainant said. According to complainant, respondent proposed that she legally

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separate from her present husband so that the latter would not inherit from her and that respondent be adopted as her son.

For his defense, respondent, in his comment and position paper, denied employing deceit and machination in convincing complainant and her daughter to assign their real properties to the corporation; that they freely and voluntary executed the deeds of assignment and the voting trust agreement that they signed; that he did not single-handedly manage the corporation as evidenced by certifications of the officers and directors of the corporation; that he did not use spurious board resolutions authorizing him to contract a loan or sell the properties assigned by the complainant and her daughter; that complainant and her daughter should be the ones who should render an accounting of the records and revenues inasmuch as, since 1984 up to the present, the part-time corporate book-keeper, with the connivance of the complainant and her daughter, had custody of the corporate records; that complainant and her daughter sabotaged the operation of BCC when they illegally took control of it in 1986; that he never pocketed any of the proceeds of the properties contributed by the complainant and her daughter; that the demolition of the ancestral home followed legal procedures; that complainant was never detained in Culianan but she freely and voluntarily lived with the family of P03 Joel Constantino as evidenced by complainant's own letter denying she was kidnapped; and that the instant disbarment case should be dismissed for being premature, considering the pendency of cases before the SEC and the Regional Trial Court of Zamboanga involving him and complainant.

Based on the pleadings and position papers submitted by the parties, Commissioner Renato Cunanan, in his report[1] dated July 1, 1999, recommended respondent's disbarment based on the following findings:

"A. The complainant, Rosaura Jaldon-Cordon and her daughter, Rosemarie were stockholders of a corporation, together with respondent, named Rosaura Enterprises, Inc.

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[1] *Rollo*, pp. 334-357.

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"Per the Articles of Incorporation marked as Annex 'A' of Complainant's Position Paper, complainant's subscription consists of 55% of the outstanding capital stock while her daughter's consists of 18%, giving them a total of 73%. Respondent's holdings consist of 24% while three other incorporators, Rosauro L. Alvarez, Vicente T. Mañalac and Darhan S. Graciano each held 1% of the capital stock of the corporation.

"B. On April 5, 1981, complainant and her daughter Rosemarie Jaldon executed two Deeds of Transfer and Assignment conveying and transferring to the corporation 19 parcels of land in exchange for shares of stock in the corporation.

"xxx xxx xxx

"C. Both Deeds of Assignment particularly page 3 thereof indicate that respondent accepted said assignment of properties and titles in behalf of the corporation as Treasurer. The deeds were signed on April 5, 1981.

"xxx xxx xxx

"Together, therefore, complainant and her daughter owned 1,711 shares of the 1,750 shares comprising the authorized capital stock of the corporation of 97% thereof.

"No increase in capitalization was applied for by the corporation.

"F. Respondent claims in his Comment, his Answer and his Position Paper that on April 4, 1981 he was elected as Chairman and Director and on April 5, 1981 he was elected President of the corporation. Respondent's own Annexes marked as 'G' and 'G-1' of his Comment show that on April 4, 1981 he was not only elected as Chairman and Director as he claims but as 'Director, Board Chairman and President.' The purported minutes was only signed by respondent and an acting Secretary by the name of Vicente Mañalac.

"Said Annex does not show who was elected Treasurer.

"Respondent's Annex 'H' and 'H-1' shows that in the alleged organizational meeting of the directors on April 5, 1981 a certain Farnacio Bucoy was elected Treasurer. Bucoy's name does not appear as an incorporator nor a stockholder anywhere in the documents submitted.

"The purported minutes of the organizational meeting of the directors was signed only by respondent Balicanta and a Secretary named Verisimo Martin.

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"G. Since respondent was elected as Director, Chairman and President on April 4, 1981 as respondent's own Annexes 'G' to 'G-1' would show, then complainant's claim that respondent was likewise acting as Treasurer of two corporations bear truth and credence as respondent signed and accepted the titles to 19 parcels of land ceded by the complainant and her daughter, as Treasurer on April 5, 1981 after he was already purportedly elected as Chairman, President and Director.

"H. Respondent misleads the Commission into believing that all the directors signed the minutes marked as Exhibit 'H' to 'H-1' by stating that the same was 'duly signed by all the Board of Directors' when the document itself shows that only he and one Verisimo Martin signed the same.

"He also claims that 'all the stockholders signed' the minutes of organizational meeting marked as Annexes 'G' and 'G-1' of his Comment yet the same shows that only the acting Chairman and acting Secretary signed.

"I. Respondent claims that the Board or its representative was authorized by the stockholders comprising 2/3 of the outstanding capital stock, as required by law, to mortgage the parcels of land belonging to the corporation, which were all assigned to the corporation by complainant and her daughter, by virtue of Annex 'I' and 'I-1': attached to his Comment.

"The subject attachment however reveals that only the following persons signed their conformity to the said resolution: respondent Balicanta who owned 109 shares, Vicente Mañalac (1 share), Daihan Graciano (1 share).

"Complainants who collectively held a total of *1,711* shares out of the *1,750* outstanding capital stock of the corporation were not represented in the purported stockholders' meeting authorizing the mortgage of the subject properties.

"The 2/3 vote required by law was therefore not complied with yet respondent proceeded to mortgage the subject 9 parcels of land by the corporation.

"J. Respondent further relies on Annex 'J' of his Comment, purportedly the minutes of a special meeting of the Board of Directors authorizing him to obtain a loan and mortgage the properties of the corporation dated August 29, 1981. This claim is baseless. The required ratification of 2/3 by the stockholders of records was not

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met. Again, respondent attempts to mislead the Commission and Court.

"K. Further, the constitution of the Board is dubious. The alleged minutes of the organizational meeting of the stockholders electing the members of the Board, have not been duly signed by the stockholders as shown in respondent's annex 'G' which was purportedly the organizational meeting of the stockholders.

"L. Also, Annex 'J' of respondent's Comment which purportedly authorized him to obtain a loan and to mortgage the 9 parcels of land was only signed by himself and a secretary.

"M. In said Annex 'J' of respondent's Comment he stated that complainant Rosaura Cordon was on leave by virtue of a voting trust agreement allegedly executed by complainant 'in his favor covering all her shares of stock.' The claim is baseless. The voting trust referred to by respondent (annex 'D' of his Comment), even if it were assumed to be valid, covered only 266 shares of complainants yet she owned a total of 1,039 shares after she and her daughter ceded in favor of the corporation 19 parcels of land.

"Being a former lawyer to complainant, respondent should have ensured that her interest was safeguarded. Yet, complainant was apparently and deliberately left our (sic) on the pretext that, she had executed a voting trust agreement in favor of respondent.

"It is suspicious that complainant was made to sign a voting trust agreement on 21 August 1981 and immediately thereafter, the resolutions authorizing respondent to obtain a loan and to mortgage the 9 parcels of land were passed and approved.

"N. It is also highly irregular for respondent who is a lawyer, to allow a situation to happen where, with the exclusion of complainant as director the result was that there remained only 4 members of the Board,.

"*O. Respondent's own pleadings submitted to the Commission contradict each other.*

> "1. For instance, while in his Comment respondent DENIES that he employed deceit and machination in convincing the complainant and her daughter to sign the articles of incorporation of Rosaura Enterprises and in ceding to the corporation 19 parcels of land in Zamboanga City, because

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'they freely, intelligently and voluntarily signed' the same, yet, in his Position Paper, respondent took another stance.

"In paragraphs 1.1 and 1.2 of his Position Paper which was submitted 12 years later, respondent claimed that 'it was actually the idea of Atty. Rosaura L. Alvarez' that a corporation be put up to incorporate the estate of the late Felixberto D. Jaldon.

"2. Likewise, respondent claimed that complainant and her daughter were not directors, hence they were not notified of meetings, in paragraph 2-6 (c) of his Comment he blamed the other stockholders and directors for the corporation's inability to comply with the Land Bank's demands saying that they 'have consistently failed since 1982 to convene (1.) for the annual stockholders' meetings and (i.i) for the monthly board meeting.'

"His own pleadings claim that he had been the Chairman/ President since 1981 to the present. If (*sic*) so, it was his duty to convene the stockholders and the directors for meetings.

"Respondent appeared able to convene the stockholders and directors when he needed to make a loan of ₱2.2 million; when he sold the corporation's right of redemption over the foreclosed properties of the corporation to Jammang, when he sold one parcel of land covered by TCT 62,807 to Jammang in addition to the 9 parcels of land which were foreclosed, and when he sold the complainant's ancestral home covered by TCT No. 72,004.

"It is thus strange why respondent claims that the corporation could not do anything to save the corporation's properties from being foreclosed *because the stockholders and directors did not convene.*

"This assertion of respondent is clearly evident of dishonest, deceitful and immoral conduct especially because, in all his acts constituting conveyances of corporate property, respondent used minutes of stockholders' and directors' meetings signed only by him and a secretary or signed by him and persons who were not incorporators much less stockholders.

"It is worthy of note that in respondent's Exhibits 15, 16, 17 and 18 of his position paper, there were 7 new stockholders and complainant appeared to have only 266 shares to her name while her daughter Rosemarie had no shares at all. Respondent

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did not present any proof of conveyance of shares by complainant and her daughter.

"It is further worth noting that complainant's voting trust (annex 'D' of respondent's Comment) where she allegedly entrusted 266 shares to respondent on August 21, 1981 had only a validity of 5 years. Thus, she should have had her entire holdings of 1,283 shares back in her name in August 1986.

"Respondent's purported minutes of stockholders' meeting (Exhs. '15' and '17') do not reflect this.

"There was no explanation whatsoever from respondent on how complainant and her daughter lost their 97% control holding in the corporation.

"3. As a further contradiction in respondent's pleadings, we note that in paragraph 2.7.C of his Comment he said that 'only recently, this year, 1985, the complainant and her aforenamed daughter examined said voluminous supporting receipts/documents which had previously been examined by the Land Bank for loan releases, during which occasion respondent suggested to them that the corporation will have to hire a full-time bookkeeper to put in order said voluminous supporting receipts/documents, to which they adversely reacted due to lack of corporate money to pay for said bookkeeper.' But in respondent's Position Paper par. 6.3 he stated that:

'Anyway, it is not the respondent but rather the complainant who should render a detailed accounting to the corporation of the corporate records as well as corporate revenues/income precisely because since 1994 to the present:

'(a). The corporate part-time bookkeeper Edilberto Benedicto, with the indispensable connivance and instigation of the complainant and her daughter, among others, has custody of the corporate records, xxx'

"4. In other contradictory stance, respondent claims in par. 7.3 of his position paper that 'complainant and her daughter sabotaged the BCC operations of the corporation by illegally taking over actual control and supervision thereof sometime in 1986, xxx'

"Yet respondent's own exhibits in his position paper particularly Exhibit 15 and 16 where the subject of the

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foreclosed properties of the corporation comprising the Baliwasan Commercial Center (BCC) was taken up, *complainant and her daughter were not even present nor were they the subject of the discussion,* belying respondent's claim that the complainant and her daughter illegally took actual control of BCC.

"5. On the matter of the receipts issued by respondent evidencing payment to him of rentals by lessees of the corporation, attached to the complaint as Annexes 'H' to 'H-17', respondent claims that the receipts are temporary in nature and that subsequently regular corporate receipts were issued. On their face however the receipts clearly appear to be official receipts, printed and numbered duly signed by the respondent bearing his printed name.

"It is difficult to believe that a lawyer of respondent' stature would issue official receipts to lessees if he only meant to issue temporary ones.

"6. With regard to respondent's claim that the complainant consented to the sale of her ancestral home, covered by TCT No. T-72,004 to one Tion Suy Ong for which he attached as Exhibit 22 to his Position Paper the minutes of an annual meeting of the stockholders, it behooves this Commission why complainant's signature had to be accompanied by her thumb mark. Furthermore, complainant's signature appears unstable and shaky. This Office is thus persuaded to believe complainant's allegation in paragraph 3b of her position paper that since *September 1992 up to March 1993 she was being detained by one PO# (sic) Joel Constantino and his wife under instructions from respondent Balicanta.*

"This conclusion is supported by a letter from respondent dated March 1993, Annex 'H' of complainant's position paper, where respondent ordered Police Officer Constantino 'to allow Atty. Linda Lim and Rosemarie Jaldon to talk to Tita Rosing.'

"The complainant's thumb mark together with her visibly unstable shaky signature lends credence to her claim that she was detained in the far flung barrio of Culianan under instructions of respondent while her ancestral home was demolished and the lot sold to one Tion Suy Ong.

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"It appears that respondent felt compelled to over-ensure complainant's consent by getting her to affix her thumb mark in addition to her signature.

"7. Respondent likewise denies that he also acted as Corporate Secretary in addition to being the Chairman, President and Treasurer of the corporation. Yet, respondent submitted to this commission documents which are supported to be in the possession of the Corporate Secretary such as the stock and transfer book and minutes of meetings.

"The foregoing findings of this Commission are virtual smoking guns that prove on no uncertain terms that respondent, who was the legal counsel of complainant in the latter part of the settlement of the estate of her deceased husband, committed unlawful, immoral and deceitful conduct proscribed by Rule 1.01 of the code of professional responsibility.

"Likewise, respondent clearly committed a violation of Canon 15 of the same code which provides that 'A lawyer should observe candor fairness and loyalty in all his dealings and transactions with his client.'

"Respondent's acts gravely diminish the public's respect for the integrity of the profession of law for which this Commission recommends that he be meted the penalty of disbarment.

"The pendency of the cases at the SEC and the Regional Trial Court of Zamboanga filed by complainant against respondent does not preclude a determination of respondent's culpability as a lawyer.

"This Commission cannot further delay the resolution of this complaint filed in 1985 by complainant, and old widow who deserves to find hope and recover her confidence in the judicial system.

"The findings of this office, predominantly based on documents adduced by both parties lead to only one rather unpalatable conclusion. That respondent Atty. Jesus F. Balicanta, in his professional relations with herein complainant did in fact employ unlawful, dishonest, and immoral conduct proscribed in no uncertain terms by Rule 1.01 of the Code of Professional Responsibility. In addition, respondent's actions clearly violated Canon 15 to 16 of the same Code.

"It is therefore our unpleasant duty to recommend that respondent, having committed acts in violation of the Canons of Professional

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Responsibility, thereby causing a great disservice to the profession, be meted the ultimate sanction of disbarment."[2]

On September 30, 1999, while Commissioner Cunanan's recommendation for respondent's disbarment was pending review before Executive Vice-President and Northern Luzon Governor Teofilo Pilando, respondent filed a motion requesting "for a full-blown investigation and for invalidation of the entire proceedings and/or remedial action under Section 11, Rule 139-B, Revised Rules of Court," alleging that he had evidence that Commissioner Cunanan's report was drafted by the lawyers of complainant, Attys. Antonio Cope and Rita Linda Jimeno. He presented two unsigned anonymous letters allegedly coming from a disgruntled employee of Attys. Cope and Jimeno. He claimed to have received these letters in his mailbox.[3]

Respondent's motion alleging that Attys. Antonio Cope and Rita Linda Jimeno drafted Commissioner Cunanan's report was accompanied by a complaint praying for the disbarment of said lawyers including Commissioner Cunanan. The complaint was docketed as CBD Case No. 99-658. After Attys. Cope and Jimeno and Commissioner Cunanan filed their answers, a hearing was conducted by the Investigating Committee of the IBP Board of Governors.

On May 26, 2001, the IBP Board of Governors issued a resolution[4] dismissing for lack of merit the complaint for disbarment against Attys. Cope and Jimeno and Commissioner Cunanan. And in Adm. Case No. 2797, the Board adopted and approved the report and recommendation of Commissioner Cunanan, and meted against herein respondent Balicanta the penalty of suspension from the practice of law for 5 years "for commission of acts of misconduct and disloyalty by taking undue and unfair advantage of his legal knowledge as a lawyer to gain material benefit for himself at the expense of complainant

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[2] *Rollo*, pp. 345-357.

[3] *Rollo*, pp. 314-317.

[4] *Rollo*, pp. 264-332.

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Rosaura P. Jaldon-Cordon and caused serious damage to the complainant."[5]

To support its decision, the Board uncovered respondent's fraudulent acts in the very same documents he presented to exonerate himself. It also took note of respondent's contradictory and irreconcilable statements in the pleadings and position papers he submitted. However, it regarded the penalty of disbarment as too severe for respondent's misdeeds, considering that the same were his first offense.[6]

Pursuant to Section 12 (b), Rule 139-B of the Rules of Court,[7] the said resolution in Administrative Case No. 2797 imposing the penalty of suspension for 5 years on respondent was automatically elevated to this Court for final action. On the other hand, the dismissal of the complaint for disbarment against Attys. Cope and Jimeno and Commissioner Cunanan, docketed as CBD Case No. 99-658, became final in the absence of any petition for review.

This Court confirms the duly supported findings of the IBP Board that respondent committed condemnable acts of deceit against his client. The fraudulent acts he carried out against his client followed a well thought of plan to misappropriate the corporate properties and funds entrusted to him. At the very outset, he embarked on his devious scheme by making himself the President, Chairman of the Board, Director and Treasurer of the corporation, although he knew he was prohibited from assuming the position of President and Treasurer at the same time.[8] As Treasurer, he accepted in behalf of the corporation

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[5] *Rollo*, pp. 167-168.

[6] *Rollo*, pp. 329-331.

[7] Sec. 12. *Review and decision by the Board of Governors. xxx*

(b) If the Board, by the vote of 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.

[8] Sec. 25, PD 902-A (The Corporation Code of the Philippines).

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the 19 titles that complainant and her daughter co-owned. The other treasurer appointed, Farnacio Bucoy, did not appear to be a stockholder or director in the corporate records. The minutes of the meetings supposedly electing him and Bucoy as officers of the corporation actually bore the signatures of respondent and the secretary only, contrary to his claim that they were signed by the directors and stockholders.

He likewise misled the IBP investigating commission in claiming that the mortgage of 9 of the properties of the corporation previously belonging to complainant and her daughter was ratified by the stockholders owning two-thirds or 67% of the outstanding capital stock when in fact only three stockholders owning 111 out of 1,750 outstanding shares or 6.3% assented thereto. The alleged authorization granting him the power to contract the LBP loan for Two Million Two Hundred Twenty Pesos (₱2,220,000) was also not approved by the required minimum of two-thirds of the outstanding capital stock despite respondent's claim to the contrary. In all these transactions, complainant and her daughter who both owned 1,711 out of the 1,750 outstanding shares of the corporation or 97.7% never had any participation. Neither were they informed thereof.

Clearly, there was no quorum for a valid meeting for the discussion and approval of these transactions.

Respondent cannot take refuge in the contested voting trust agreement supposedly executed by complainant and her daughter for the reason that it authorized respondent to represent complainant for only 266 shares.

Aside from the dishonest transactions he entered into under the cloak of sham resolutions, he failed to explain several discrepancies in his version of the facts. We hereby reiterate some of these statements noted by Commissioner Cunanan in his findings.

First, respondent blamed the directors and the stockholders who failed to convene for the required annual meetings since 1982. However, respondent appeared able to convene the stockholders and directors when he contracted the LBP debt,

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when he sold to Jammang the corporation's right of redemption over the foreclosed properties of the corporation, when he sold one parcel of land covered by TCT No. 62807 to Jammang, when he mortgaged the 9 parcels of land to LBP which later foreclosed on said mortgage, and when he sold the complainant's ancestral home covered by TCT No. 72004.

Second, the factual findings of the investigating commission, affirmed by the IBP Board, disclosed that complainant and her daughter own 1,711 out of 1,750 shares of the outstanding capital stock of the corporation, based on the Articles of Incorporation and deeds of transfer of the properties. But respondent's evidence showed that complainant had only 266 shares of stock in the corporation while her daughter had none, notwithstanding the fact that there was nothing to indicate that complainant and her daughter ever conveyed their shares to others.

Respondent likewise did not explain why he did not return the certificates representing the 266 shares after the lapse of 5 years from the time the voting trust certificate was executed in 1981.[9]

The records show that up to now, the complainant and her daughter own 97% of the outstanding shares but respondent

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[9] Sec. 59 of PD 902-A (The Corporation Code of the Philippines) provides that:

Sec. 59. *Voting trusts.* — One or more stockholders of a stock corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for a period not exceeding five *(5)* years at any time: *Provided,* That in the case of a voting trust specifically required as a condition in 'a loan agreement, said voting trust may be for a period exceeding five *(5)* years but shall automatically expire upon full payment of the loan.

xxx xxx xxx

Unless expressly renewed, all rights granted in a voting trust agreement shall automatically expire at the end of the agreed period, and the voting trust certificates as well as the certificates of stock in the name of the trustee or trustees shall thereby be deemed cancelled and new certificates of stock shall be reissued in the name of the transferors.(Italics supplied)

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never bothered to explain why they were never asked to participate in or why they were never informed of important corporate decisions.

Third, respondent, in his comment, alleged that due to the objection of complainant and her daughter to his proposal to hire an accountant, the corporation had no formal accounting of its revenues and income. However, respondent's position paper maintained that there was no accounting because the part-time bookkeeper of the corporation connived with complainant and her daughter in keeping the corporate records.

Fourth, respondent's claim that complainant and her daughter took control of the operations of the corporation in 1986 is belied by the fact that complainant and her daughter were not even present in the alleged meeting of the board (which took place after 1986) to discuss the foreclosure of the mortgaged properties. The truth is that he never informed them of such meeting and he never gave control of the corporation to them.

Fifth, Commissioner Cunanan found that:

"5. on the matter of the receipts issued by respondent evidencing payment to him of rentals by lessees of the corporation, attached to the complaint as Annexes 'H' to 'H-17', respondent claims that the receipts are temporary in nature and that subsequently regular corporate receipts were issued. On their face however the receipts clearly appear to be official receipts, printed and numbered duly signed by the respondent bearing his printed name.

"It is difficult to believe that a lawyer of respondent's stature would issue official receipts to lessees if he only meant to issue temporary ones."[10]

Sixth, respondent denies that he acted as Corporate Secretary aside from being the Chairman, President and Treasurer of the corporation. Yet respondent submitted to the investigating commission documents which were supposed to be in the official possession of the Corporate Secretary alone such as the stock and transfer book and minutes of meetings.

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[10] *Rollo*, pp. 354-355.

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Seventh, he alleged in his comment that he was the one who proposed the establishment of the corporation that would invest the properties of the complainant but, in his position paper, he said that it was a certain Atty. Rosauro Alvarez who made the proposal to put up the corporation.

After a thorough review of the records, we find that respondent committed grave and serious misconduct that casts dishonor on the legal profession. His misdemeanors reveal a deceitful scheme to use the corporation as a means to convert for his own personal benefit properties left to him in trust by complainant and her daughter.

Not even his deviousness could cover up the wrongdoings he committed. The documents he thought could exculpate him were the very same documents that revealed his immoral and shameless ways. These documents were extremely revealing in that they unmasked a man who knew the law and abused it for his personal gain without any qualms of conscience. They painted an intricate web of lies, deceit and opportunism beneath a carefully crafted smokescreen of corporate maneuvers.

The Code of Professional Responsibility mandates upon each lawyer, as his duty to society, the obligation to obey the laws of the land and promote respect for law and legal processes. Specifically, he is forbidden to engage in unlawful, dishonest, immoral or deceitful conduct.[11] If the practice of law is to remain an honorable profession and attain its basic ideal, those enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them.[12] Thus, the requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.[13] Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain one's

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[11] Rule 1.01, Canon 1, Code of Professional Responsibility.

[12] *Docena vs. Limon,* 295 SCRA 262, 266 (1998).

[13] *In Re: Al C. Argosino,* 246 SCRA 14(1995).

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good standing in that exclusive and honored fraternity.[14] Good moral character is more than just the absence of bad character. Such character expresses itself in the will to do the unpleasant thing if it is right and the resolve not to do the pleasant thing if it is wrong.[15] This must be so because "vast interests are committed to his care; he is the recipient of unbounded trust and confidence; he deals with his client's property, reputation, his life, his all."[16]

Indeed, the words of former Presiding Justice of the Court of Appeals Pompeyo Diaz cannot find a more relevant application than in this case:

> "There are men in any society who are so self-serving that they try to make law serve their selfish ends. In this group of men, *the most dangerous is the man of the law who has no conscience.* He has, in the arsenal of his knowledge, the very tools by which he can poison and disrupt society and bring it to an ignoble end."[17]

Good moral standing is manifested in the duty of the lawyer "to hold in trust all moneys and properties of his client that may come into his possession."[18] He is bound "to account for all money or property collected or received for or from the client."[19] The relation between an attorney and his client is highly fiduciary in nature. Thus, lawyers are bound to promptly account for money or property received by them on behalf of their clients and failure to do so constitutes professional misconduct.[20]

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[14] *Villanueva vs. Sta. Ana, 245* SCRA 707, 709(1995).

[15] *Supra*, note 13.

[16] *Id.*

[17] Commencement address to the 1981 graduating class of the Ateneo Law School on March 25, 1981.

[18] Canon 16, Code of Professional Responsibility.

[19] Rule 16.01, Canon 16, Code of Professional Responsibility.

[20] *Penticostes v. Ibañez,* 304 SCRA 281, 284 (1999).

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This Court holds that respondent cannot invoke the separate personality of the corporation to absolve him from exercising these duties over the properties turned over to him by complainant. He blatantly used the corporate veil to defeat his fiduciary obligation to his client, the complainant. Toleration of such fraudulent conduct was never the reason for the creation of said corporate fiction.

The massive fraud perpetrated by respondent on the complainant leaves us no choice but to set aside the veil of corporate entity. For purposes of this action therefore, the properties registered in the name of the corporation should still be considered as properties of complainant and her daughter. The respondent merely held them in trust for complainant (now an ailing 83-year-old) and her daughter. The properties conveyed fraudulently and/or without the requisite authority should be deemed as never to have been transferred, sold or mortgaged at all. Respondent shall be liable, in his personal capacity, to third parties who may have contracted with him in good faith.

Based on the aforementioned findings, this Court believes that the gravity of respondent's offenses cannot be adequately matched by mere suspension as recommended by the IBP. Instead, his wrongdoings deserve the severe penalty of disbarment, without prejudice to his criminal and civil liabilities for his dishonest acts.

WHEREFORE, respondent Attorney Jesus T. Balicanta is hereby *DISBARRED*. The Clerk of Court is directed to strike out his name from the Roll of Attorneys.

SO ORDERED.

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, and *Callejo, Sr., JJ.,* concur.

Davide, Jr., C.J., Mendoza, and *Sandoval-Gutierrez, JJ.,* on leave.