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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 8826. March 25, 2015]

SHIRLEY OLAYTA-CAMBA, *complainant, vs*. **ATTY. OTILIO SY BONGON,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; A NEGLECT OF A LEGAL MATTER ENTRUSTED TO A LAWYER CONSTITUTES INEXCUSABLE NEGLIGENCE.— It must be stressed that once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable for violating Rule 18.03, Canon 18 of the CPR. x x x As correctly pointed out by the IBP Investigating Commissioner, complainant engaged the services of respondent for the purpose of titling and/or reconstituting the titles to the real estate properties of the late Bernabe Olayta, as well as preparing the Deed, and in connection therewith, allegedly gave various amounts to respondent, of which the latter admitted the receipt of only ₱55,000.00. Despite the foregoing, respondent failed to comply

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with his undertaking and offered the excuse that the reconstitution of the titles and the preparation of the Deed were delayed due to the Deed's several revisions; and that Bernabe Olayta's surviving heirs were living in different places, making it difficult to secure their presence, much less obtain their signatures to the said Deed.

2. ID.; ID.; RESPONDENT ALSO VIOLATED RULES 16.0, 16.03 AND CANON 16 OF THE CODE OF PROFESSIONAL RESPONSIBILITY WHEN HE FAILED TO REFUND THE AMOUNT HE PERSONALLY RECEIVED FROM COMPLAINANT DESPITE REPEATED DEMANDS; SAID ACT IS INDICATIVE OF LACK OF INTEGRITY.— Respondent also violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to refund the amount of ₱55,000.00 that he personally received from complainant despite repeated demands. x x x Verily, when a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if not used accordingly, the money must be returned immediately to the client. As such, a lawyer's failure to return the money to his client despite numerous demands is a violation of the trust reposed on him and is indicative of his lack of integrity, as in this case. Clearly, respondent failed to exercise such skill, care, and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment and, hence, must be disciplined accordingly.

3. ID.; ID.; SUSPENSION FROM PRACTICE OF LAW IS WARRANTED IN CASE AT BAR.— Jurisprudence provides that in similar cases where lawyers neglected their client's affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin*, the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter. Similarly, in *Meneses v. Macalino*, the same penalty was imposed on a lawyer who failed to render any legal service to his client as well as to return the money he received for such purpose. These

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pronouncements notwithstanding, there have been instances where the Court tempered the penalty imposed upon a lawyer due to humanitarian and equitable considerations. In view of the foregoing, and taking into consideration respondent's advanced age, medical condition, and the fact that this is his first offense, the Court finds it appropriate to sustain the recommended penalty of suspension from the practice of law for a period of one (1) month.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative Complaint[1] dated September 14, 2010 filed by complainant Shirley Olayta-Camba (complainant) against respondent Atty. Otilio Sy Bongon (respondent), praying that the latter be disbarred and be directed to return the amount of ₱112,449.55 that he received from the former.

The Facts

In her complaint, complainant alleged that on March 1, 2000, she engaged the services of respondent for the purpose of titling and/or reconstituting the titles to the real estate properties of the late Bernabe Olayta, situated in the Municipalities of Camalig and Guinobatan, both in the province of Albay. In connection therewith, she claimed to have given the aggregate amount of ₱112,499.55 to respondent, broken down as follows: (*a*) ₱20,000.00 as partial payment for legal services; (*b*) ₱162.00 as payment for certification fees; (*c*) ₱5,000.00 as advance payment for the reconstitution of titles; (*d*) ₱30,000.00 as payment for land taxes and titling of properties; (*e*) ₱10,000.00 as attorney's fees; (*f*) ₱19,337.55 as payment for documentary stamps on the estate of Bernabe Olayta; and (*g*) ₱28,000.00 as payment for Bureau of Internal Revenue (BIR) Taxes. Despite the foregoing, respondent failed to update complainant regarding the status of the matters referred to him. Thus, complainant

[1] *Rollo*, pp. 1-5.

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terminated her engagement with respondent and demanded for the return of ₱112,499.55, but to no avail.[2] Hence, she filed the instant complaint before the Court.

In his defense,[3] respondent asserts, *inter alia*, that he only received ₱55,000.00 and that the rest of the money was received by a certain Rowena Delos Reyes-Kelly who was not an employee of his law firm.[4] Further, respondent averred that he had already offered to return the amount of ₱30,000.00 to complainant, claiming that he already earned the fees for legal services in the amount of ₱20,000.00 for having studied the matter entrusted to him and drafted the Deed of Extrajudicial Partition (Deed) that underwent several revisions.[5]

The Court, in a Resolution[6] dated August 15, 2011, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP's Report and Recommendation

In a Report and Recommendation[7] dated April 17, 2013, the IBP Investigating Commissioner found respondent guilty of violating Rule 16.01 and Rule 16.03, Canon 16 of the Code of Professional Responsibility (CPR) and, accordingly, recommended that he be: (*a*) meted with the penalty of suspension from the practice of law for a period of six (6) months; and (*b*) directed to return the amount of ₱55,000.00 to complainant.[8]

The Investigating Commissioner found that complainant indeed engaged respondent's services for the purpose of reconstituting four (4) titles as well as preparing the Deed, and that the latter

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[2] See *id*. at 1-3.

[3] See Answer dated April 20, 2011; *id*. at 24-29.

[4] *Id*. at 24-25.

[5] See *id*. at 106.

[6] *Id*. at 32.

[7] *Id*. at 104-108. Signed by Commissioner Roland B. Beltran.

[8] See *id*. at 107-108.

received legal fees in connection therewith. Despite this, respondent did not perform his undertaking in accordance with the engagement and likewise failed to return complainant's money despite demands. The foregoing acts were deemed to be in violation of the lawyer's oath, as well as the CPR, thus, rendering respondent administratively liable for the same. However, in view of respondent's old age, his condition of having undergone a triple heart bypass surgery, and considering that this is his first offense, the Investigating Commissioner opted to mitigate the administrative penalties imposed upon respondent.[9]

In a Resolution[10] dated May 11, 2013, the IBP Board of Governors adopted and approved the aforesaid Report and Recommendation, with modification decreasing the recommended penalty to suspension from the practice of law for a period of three (3) months. On motion for reconsideration[11] of respondent, his period of suspension was further decreased to one (1) month in a Resolution[12] dated May 3, 2014. To date, respondent has not filed a petition for review before the Court.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

The Court's Ruling

After a judicious perusal of the records, the Court concurs with the findings and recommendations of the IBP.

It must be stressed that once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust

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[9] See *id*. at 106-108.

[10] See Notice of Resolution No. XX-2013-616 signed by National Secretary Nasser Marohomsalic; *id*. at 103.

[11] See undated motion for reconsideration; *id*. at 109-110.

[12] See Notice of Resolution No. XXI-2014-243; *id*. at 117.

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and confidence reposed upon him.[13] Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable for violating Rule 18.03, Canon 18 of the CPR,[14] which reads:

> CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
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> x x x x x x x x x
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> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
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> x x x x x x x x x

As correctly pointed out by the IBP Investigating Commissioner, complainant engaged the services of respondent for the purpose of titling and/or reconstituting the titles to the real estate properties of the late Bernabe Olayta, as well as preparing the Deed, and in connection therewith, allegedly gave various amounts to respondent, of which the latter admitted the receipt of only ₱55,000.00. Despite the foregoing, respondent failed to comply with his undertaking and offered the excuse that the reconstitution of the titles and the preparation of the Deed were delayed due to the Deed's several revisions; and that Bernabe Olayta's surviving heirs were living in different places, making it difficult to secure their presence, much less obtain their signatures to the said Deed.[15]

Furthermore, respondent also violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to refund the amount of ₱55,000.00 that he personally received from complainant despite repeated demands, *viz.*:

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[13] See *Agot v. Rivera*, A.C. No. 8000, August 5, 2014, citing *Lad Vda. de Dominguez v. Agleron, Sr.*, A.C. No. 5359, March 10, 2014.

[14] *Id.*, citing *Figueras v. Jimenez*, A.C. No. 9116, March 12, 2014 and *Nebreja v. Reonal*, A.C. No. 9896, March 19, 2014.

[15] See *rollo*, p. 106.

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CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

x x x x x x x x x

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

x x x x x x x x x

Verily, when a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if not used accordingly, the money must be returned immediately to the client.[16] As such, a lawyer's failure to return the money to his client despite numerous demands is a violation of the trust reposed on him and is indicative of his lack of integrity,[17] as in this case.

Clearly, respondent failed to exercise such skill, care, and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment[18] and, hence, must be disciplined accordingly.

Having established respondent's administrative liability, the Court now determines the proper penalty to be imposed on him.

Jurisprudence provides that in similar cases where lawyers neglected their client's affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin*,[19] the Court

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[16] See *Small v. Banares*, 545 Phil. 226, 230 (2007), citing *Meneses v. Macalino*, 518 Phil. 378, 385 (2006).

[17] See *id*.

[18] See *Layos v. Villanueva*, A.C. No. 8085, December 1, 2014, citing *Tan v. Diamante*, A.C. No. 7766, August 5, 2014.

[19] A.C. No. 7965, November 13, 2013, 709 SCRA 287.

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suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter.[20] Similarly, in *Meneses v. Macalino*,[21] the same penalty was imposed on a lawyer who failed to render any legal service to his client as well as to return the money he received for such purpose.[22] These pronouncements notwithstanding, there have been instances where the Court tempered the penalty imposed upon a lawyer due to humanitarian and equitable considerations.[23] In view of the foregoing, and taking into consideration respondent's advanced age, medical condition, and the fact that this is his first offense, the Court finds it appropriate to sustain the recommended penalty of suspension from the practice of law for a period of one (1) month.

WHEREFORE, respondent Atty. Otilio Sy Bongon is found **GUILTY** of violating Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of one (1) month, effective upon his receipt of this Resolution, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Furthermore, respondent is **ORDERED** to return to complainant Shirley Olayta-Camba the amount of ₱55,000.00 he received from the latter within ninety (90) days from the finality of this Resolution. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let a copy of this Resolution be furnished the Office of the Bar Confidant to be attached to respondent's personal record in this Court as attorney. Further, let copies of this Resolution

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[20] See *id*. at 292-296.

[21] *Supra* note 16.

[22] See *id*. at 384-387.

[23] See *Gemina v. Madamba*, A.C. No. 6689, August 24, 2011, 656 SCRA 34, 43. See also *Rayos v. Hernandez*, 558 Phil. 228, 230-235 (2007).

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be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 160914. March 25, 2015]

MARCELA M. DELA CRUZ, *petitioner, vs*. **ANTONIO O. HERMANO and his wife REMEDIOS HERMANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY.— Section 1, Rule 70 of the Rules of Court, requires that in actions for forcible entry, it must be alleged that the complainant was deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and that the action was filed anytime within one year from the time the unlawful deprivation of possession took place. This requirement implies that in those cases, possession of the land by the defendant has been unlawful from the beginning, as the possession was obtained by unlawful means. Further, the complainant must allege and prove prior physical possession of the property in litigation until he or she was deprived thereof by the defendant. The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry into the land, except when entry was made through stealth; if so, the one-year period would be counted from the time the plaintiff learned about it. It is not necessary,