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[A.C. No. 10897; January 4, 2022]

TONY PETER PARTSCH, *Complainant*, *v.* **ATTY. REYNALDO A. VITORILLO,** *Respondent*.

D E C I S I O N

HERNANDO, *J.*:

Before this Court is complainant Tony Peter Partsch's (Partsch) administrative complaint[1] seeking the disbarment of respondent Atty. Reynaldo A. Vitorillo (Atty. Vitorillo).

Partsch's complaint:

In March 2012, Partsch, a Swiss national, desired to purchase a piece of beachfront real property located in Bayabas, Cagayan de Oro. Upon information of the adjacent land owners, Partsch sought Atty. Vitorillo in the latter's law office in Cagayan de Oro City.[2]

Atty. Vitorillo claimed ownership over 800 square meters of the said beachfront lot (subject property). He represented to Partsch that 100 square meters of the subject lot were already titled under his name. The remaining 700 square meters of the subject lot were still pending registration, but will allegedly be completed in three months' time.[3] Atty. Vitorillo offered to sell to Partsch the 800 square-meter subject property for the total amount of ₱2,500,000.00, ten percent (10%) of which shall constitute down payment and the balance shall be paid upon delivery of the two titles within three months.[4]

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[1] *Rollo*, pp. 1-3.

[2] Id. at 1.

[3] Id.

[4] Id.

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On April 4, 2012, Partsch tendered a check in the amount of ₱230,000.00 and ₱20,000.00 in cash to Atty. Vitorillo as partial payment for the subject property. While Atty. Vitorillo gave Partsch a receipt for the transaction, no deed of absolute sale was executed. Instead, Atty. Vitorillo promised Partsch to draw the deed of absolute sale along with the land titles after three months.[5]

After three months, or in July 2012, Partsch followed up the written contract and the land titles. Partsch also inquired on the title over the 100-square-meter portion that Atty. Vitorillo represented to have been already registered in his name, and other documentary proof of Atty. Vitorillo's ownership over the other 700-square-meter portion of the subject property.[6]

Atty. Vitorillo, however, only offered the following excuses: (1) he cannot give the title to the 100-square-meter portion as it is his only access thereto; and (2) the 700-square-meter portion was given to him by his clients as compensation for legal services and which was still under litigation before the regional trial courts of Cagayan de Oro City. Atty. Vitorillo assured Partsch that his client's pending case shall soon be resolved and be granted in their favor, and that the title over the 700-square-meter portion shall be released in September 2012. Atty. Vitorillo also rescheduled his undertaking to deliver all the documents for the purchase to September 2012.[7]

In September 2012, Partsch again asked about Atty. Vitorillo's promise. Atty. Vitorillo answered that the case over the 700-square-meter portion of the subject property was not yet done, and thus, the titles could not still be delivered to Partsch. Atty. Vitorillo further advised Partsch to just possess the subject property and fence it. Partsch did not heed the advice, believing that he has no right to do so without the titles and the deed of absolute sale, and because there already existed a wooden structure on the subject property belonging to another person.[8]

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[5] Id. at 1-2.

[6] Id. at 2.

[7] Id.

[8] Id.

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On November 24, 2012, Atty. Vitorillo informed Partsch that he is no longer selling the subject property. As alternative, Atty. Vitorillo proposed for sale another lot located in the highlands. Partsch rejected the offer and demanded instead the reimbursement of his down payment plus interests. Atty. Vitorillo refused, saying he needed to dispose of the land first and promising anew to prepare a deed of rescission of contract to sell. Partsch also asked for a promissory note for the return of Partsch's down payment.[9]

Like before, these promises only dried up. On November 26, 2012, Partsch sent Atty. Vitorillo a letter[10] formally demanding the reimbursement of ₱250,000.00 plus one percent (1%) monthly interest from receipt of the letter under pain of legal action.

Atty. Vitorillo responded to the formal demand. In his November 29, 2012 letter[11] to Partsch, Atty. Vitorillo told Partsch that, while he was vexed by Partsch letter and actions, they could proceed with the original sale transaction under the condition that Partsch pays in full the balance of ₱2,250,000.00 as they have initially stipulated.

Partsch declined Atty. Vitorillo's condition. On December 7, 2012, the parties ended up in a mediation proceeding before the *Katarungang Pambarangay* of Cugman, Cagayan de Oro City.[12] During the hearing, Atty. Vitorillo scolded Partsch for sending him the formal demand letter. He further intimidated Partsch with a criminal case for unjust vexation unless the latter apologizes then and there. Afraid to jeopardize his visiting status in the country, Partsch did as he was told. He was also compelled to again grace Atty. Vitorillo with more time to reimburse his money without resorting to any court action.[13]

Two years passed and another formal demand letter to pay[14] was sent to Atty. Vitorillo. The reimbursement, however,

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[9] Id. at 3.

[10] Id. at 27.

[11] Id. at 28.

[12] Id. at 29.

[13] Id. at 3.

[14] Id. at 30-31.

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remained unpaid. Thus, on September 1, 2015, Partsch filed this complaint[15] for disbarment against Atty. Vitorillo.

On December 9, 2015, the Court required Atty. Vitorillo to comment on the complaint.[16]

Atty. Vitorillo's comment:[17]

Atty. Vitorillo admitted that he entered into a written contract to sell[18] the 800-square-meter subject property with Partsch but denied that he undertook to deliver the land titles within three months. It was Partsch who proposed the sale and enticed him with the 10% down payment of ₱250,000.00. Partsch knew of the nature and the status of the subject property beforehand. Atty. Vitorillo had not been dishonest as Partsch painted him to be and that he acted in utmost good faith in informing Partsch that the subject property was under litigation. Atty. Vitorillo attributed the delay in the delivery of the title to the 700-square-meter portion of the subject property to the trial court's eventual dismissal of the case.[19]

Atty. Vitorillo held himself responsible for the return of Partsch's ₱250,000.00 but not for the interest claimed. His reasons were that he was likewise unable to use the subject property since April 2012 when he allowed Partsch to enter the premises, and that his inability to deliver the title over the 700-square-meter portion was neither deliberate nor malicious.[20]

On August 1, 2016, the Court ordered Partsch to file a reply to Atty. Vitorillo's comment.[21]

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[15] Id. at 1-6.

[16] Id. at 40.

[17] Id. at 47-48.

[18] Id. at 44-45.

[19] Id. at 47-48.

[20] Id.

[21] Id. at 54.

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Partsch's reply:[22]

Partsch maintained that Atty. Vitorillo had never furnished him a copy of any written contract to sell, much less had he signed any such contract. Atty. Vitorillo's omission to provide Partsch the requisite documents for the purchase of the 800-square-meter subject property allegedly meant that Atty. Vitorillo had never intended to be bound by their verbal agreement to sell the subject property, for which Partsch has already paid the down payment.[23]

It was also Atty. Vitorillo who had enticed Partsch to the transaction. Partsch had completely relied on Atty. Vitorillo's representations that the latter was the absolute owner of the subject property. The latter even advised Partsch that a foreigner like him can own a beach lot in the Philippines after he pays its price in full. Only after he paid the down payment and followed up on Atty. Vitorillo's promises did Partsch discover the fraud. Had he known the falsity of Atty. Vitorillo's statements, Partsch would never have given Atty. Vitorillo a single cent.[24]

Partsch insisted on Atty. Vitorillo's liability for payment of interest on the reimbursement owing to him, as well as moral damages and attorney's fees. Atty. Vitorillo acted in bad faith as he knew that he cannot deliver the subject property to Partsch, cancelled the sale, and now continues to refuse to return his down payment.[25]

On April 24, 2017,[26] the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

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[22] Id. at 57-61.

[23] Id. at 58.

[24] Id. at 58-59.

[25] Id. at 60.

[26] Per Report and Recommendation of the IBP Investigating Commissioner, p. 3 thereof, id. at 90.

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Report and Recommendation of the Integrated Bar of the Philippines:[27]

In ignoring the constitutional prohibition against alienation of private lands to foreigners and by continuously refusing to return the money he received from Partsch, Atty. Vitorillo was deemed to have seriously impaired his status as a member of the Bar. The Investigating Commissioner of the IBP Commission on Bar Discipline (CBD) determined that Atty. Vitorillo's actuations and misrepresentations have ripened into willful and Gross Dishonesty and Gross Misconduct and deemed him guilty of violating Rule 1.01 of Canon 1 and Rule 7.01 of Canon 7 of the Code of Professional Responsibility (CPR).

The Investigating Commissioner recommended the imposition of the following penalty:

WHEREFORE, premises considered, it is recommended that Respondent, **ATTY. REYNALDO A. VITORILLO** be suspended from the practice of law for two (2) years.

RESPECTFULLY SUBMITTED.[28] (Citation omitted.)

Per its June 18, 2019 Resolution,[29] the IBP Board of Governors adopted the findings of fact and recommendation of the Investigating Commissioner.

Our Ruling

Atty. Vitorillo is suspended for three years from the practice of law.

The following provisions under the CPR are pertinent:

CANON 1 - A LAWYER SHALL **UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES**.

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[27] Id. at 88-104.

[28] Id. at 104.

[29] Id. at 87.

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Rule 1.01 - **A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct**.

Rule 1.02 - **A lawyer shall not counsel or abet activities aimed at defiance of the law** or at lessening confidence in the legal system.

x x x x

CANON 7 - A LAWYER SHALL AT ALL TIMES **UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION** AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

x x x x

Rule 7.03 - **A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law**, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. (Emphasis supplied.)

One's admission to the Bar is by no means a license to gloss over the loopholes in legislation, to hijack the legal processes, or to manipulate the technical decisions of those unlearned in law.[30] Among the sworn obligations of attorneys upon taking the Lawyer's Oath is to uphold the Constitution and obey the laws of the land *at all times*, never to waver even if vices of luxury, convenience, and worldly excesses tempt them so.[31]

Of course, accusations remain mere allegations if unsupported by the requisite quantum of proof. In disciplinary cases involving members of the Bar, substantial evidence is necessary to justify the imposition of administrative penalty.[32] Substantial evidence means "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[33] It is "more in keeping with the primodial purpose of and essential considerations attending this type of cases."[34]

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[30] *Manalang v. Buendia*, A.C. No. 12079, November 10, 2020.

[31] Id.

[32] *Spouses Nocuenca v. Bensi*, A.C. No. 12609, February 10, 2020.

[33] Id.

[34] Id.

Records, however, easily establish that Atty. Vitorillo gave in to the indulgent vices of the profession.

The Court finds Atty. Vitorillo guilty of deceitful conduct proscribed by Canon 1, Rule 1.01 of the CPR. In the contract to sell[35] that Atty. Vitorillo himself submitted before the Court, Atty. Vitorillo expressly named himself as the *seller* and *absolute owner* of the subject property.[36] The verity of such contractual status rests upon a single fact—that Atty. Vitorillo held absolute ownership over the *entire* 800-square-meter subject property at the time he offered it for sale to Partsch. The facts at hand reveal that he did not.

Atty. Vitorillo had never denied the grave accusations of his non-ownership in the complaint despite the opportunity to do so in his comment. His clients may have agreed to compensate Atty. Vitorillo's legal services in kind, but only to the following extent and subject to the highlighted caveats, per the stipulations in their deed of partition & assignment[37] executed before the questioned sale:[38]

KNOW ALL MEN BY THESE PRESENTS:

This Deed, made and executed by and among the heirs of Eufracio and Pilar Cailo namely Eufracio Cailo, Jr., Charito Burlat, Amor Cailo, Eden Cailo, Juana Anislag, Ciolar Mabalacad, Josephine Cailo, Regina Cailo and Efren Cailo x x x

WITNESSETH:

WHEREAS, Eufracio Cailo, Jr., Charito Burlat, Amor Cailo, Eden Cailo, Juana Anislag, Ciolar Mabalacad, Josephine Cailo, Regina Cailo and Efren Cailo are the substituted appellants [in] a civil case entitled, 'Rodrigo T. Caingin vs. Eufracio Cailo, Jr., Charito Burlat, Amor Cailo, Eden Cailo, Juana Anislag, Ciolar Mabalacad and Efren Cailo' docketed as CA-G.R. CV NO. 72424-MIN decided by the x x x

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[35] *Rollo*, pp. 44-45.

[36] Id. at 44.

[37] Id. at 14-24.

[38] Id. at 14-22.

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Court of Appeals and affirmed by the x x x Supreme Court in G.R. No. 193223 dated October 4, 2010;

WHEREAS, **subject of the case is the erroneous Free Patent award of Lot 35797, Cad-237** [hereinafter, *main lot*] x x x **in favor of Rodrigo Caingin and the issuance of O.C.T. No. P-2521**; in effect, the possession and ownership of Lot 35797, Cad-237 by Eufracio Cailo, Jr., Charito Burlat, Amor Cailo, Eden Cailo, Juana Anislag, Ciolar Mabalacad, Josephine Cailo, Regina Cailo and Efren Cailo as substituted appellants, are recognized;

WHEREAS, **in defending the rights of appellants, they have engaged the services of the law office of Atty. Reynaldo A. Vitorillo for a fee <u>of a portion</u> of the recovered Lot 35797, Cad 237**.

WHEREAS, the parties have agreed to partition among themselves Lot 35797, Cad-237 with an area of 2,561 square meters into fourteen (14) Lots x x x

x x x x

That for and in consideration of the legal services rendered, the parties hereby cede and assign unto Atty. Reynaldo A. Vitorillo x x x *Lot 35797-C* and *35797-D* more particularly described as follows:

x x x x

Lot 35797-C, PSD-10-_____ Portion of lot 35797, CAD. 237

x x x x

Area: Five Hundred **(500)** square meters, more or less.

x x x x

Lot 35797-D, PSD-10-_____ Portion of lot 35797, CAD. 237

x x x x

Area: Two Hundred **(200)** square meters, more or less.

That <u>the Lot herein partitioned is not registered in the name of the heirs of Eufracio Cailo and Pilar L. Cailo</u>, the parties have agreed to register the instrument under Act 3344.[39] (Emphasis, underscoring, and items in brackets supplied.)

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[39] Id.

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Atty. Vitorillo failed to show the factual bases of his absolute ownership, *i.e.*, that the 800-square-meter subject property has already been transferred to him in any legal manner, indicative of a dishonest intent.

First, deeds of transfer in Atty. Vitorillo's favor, certificates of title in his possession, or at least any affidavit from the true registered owners constituting him as the new owner of the *entire* 800-square-meter subject property would have sufficed as proof. Suspiciously, Atty. Vitorillo was unbothered to provide these despite repeated requests from Partsch.

Second, the litigated main lot that included the subject property was still unregistered in the names of Atty. Vitorillo's clients.

Records disclose that the earlier case for quieting of title involving the main lot had been ruled against Roberto T. Caingin (Caingin), the party adverse to Atty. Vitorillo's clients. Nevertheless, a free patent in Caingin's name still existed over the main lot. Thus, Atty. Vitorillo's clients filed a petition seeking to cancel the existing free patent. The petition, however, was ordered dismissed by the trial courts,[40] as affirmed by the Court of Appeals (CA),[41] since it was determined to be a case for reversion to the government of lands of the public domain, and Atty. Vitorillo's clients had no personality to institute it. They had even been advised by the CA in the quieting of title case to "legalize their claim over the land through the filing of the proper judicial or administrative remedy."[42] Hence, Atty. Vitorillo's clients cannot automatically declare their possession over and legal entitlement to the main lot.

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[40] Id. at 49-50; August 16, 2013 Order of the Regional Trial Court, Branch 18 of Cagayan de Oro City in Civil Case No. 2012-111; penned by Presiding Judge Dennis Z. Alcantar.

[41] Id. at 51-53; September 9, 2015 Court of Appeals (CA) Resolution in CA-G.R. CV No. 03639-MIN; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Henri Jean Paul B. Inting (now a Member of this Court) and Rafael Antonio M. Santos.

[42] Per Atty. Vitorillo's clients' Amended Petition for Cancellation of Free Patent Decree, p. 4 thereof; citing p. 18 of the Decision of the Court of Appeals dated January 28, 2010. (Id. at 11.)

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This is more so with Atty. Vitorillo, as his assertions of ownership is only derivative from the title of his clients. Faced with the fact that the cancellation of the free patent over the main lot including the subject property was still under active litigation, Atty. Vitorillo's statements that he is the owner thereof cannot simply be taken as bible truth.

Third, even if Atty. Vitorillo's clients truly had in their names the 800-square-meter subject property, only 700 square meters were clearly assigned to Atty. Vitorillo in the Deed of Partition and Assignment.

In all, the Court is inclined to view Atty. Vitorillo's claims of ownership over the 800-square-meter subject property as specious.

In taking the Lawyer's Oath, Atty. Vitorillo swore "to do no falsehood, nor consent to its commission." Above circumstances show that he broke this honored pledge. There is proof that Atty. Vitorillo truly misrepresented himself as the subject property's owner to Partsch, who fully relied thereon and readily agreed to the transaction. What Atty. Vitorillo had was at best an inchoate right, anchored on mere *hope* that the subject property shall someday be transferred to his name. A person possessing only expectancies of ownership over a piece of property cannot and should not legally hold oneself out as the *absolute owner* thereof.[43] This carries heftier relevance if such person is one well-versed in law like Atty. Vitorillo.[44]

This expectancy was admittedly conditioned on the issuance of a final court ruling cancelling the title over the main lot in favor of his clients, who were the ones directly claiming ownership over the subject property in their own right. However, Atty. Vitorillo conveniently forgot that courts decide cases depending on the relevant law and evidence presented. He fed Partsch false assurances that the trial court would grant his cause. He even openly blamed the trial court's supposed delay in resolving the pending ownership dispute over the main lot and its eventual dismissal of

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[43] *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019.

[44] *Manalang v. Buendia*, supra note 29.

the case that prejudiced his expectancy. In so doing, Atty. Vitorillo demeaned the integrity of legal processes and tarnished the image of impartiality of the courts that he had professionally vowed to espouse, per Canon 7, Rule 7.03 of the CPR.

Furthermore, for Atty. Vitorillo to gaslight Partsch, in that the latter should have been more circumspect in transacting with real property in the Philippines, is irrelevant in negating Atty. Vitorillo's administrative transgressions.

The prohibition against foreign ownership of Philippine private lands is too basic a rule for even non-attorneys to be unaware of. As a lawyer, Atty. Vitorillo is presumed to know this. Despite being equipped with such knowledge, Atty. Vitorillo still marketed the subject property for sale to Partsch, a Swiss national. More telling of Atty. Vitorillo's ethical obliquity is his questionable instruction to Partsch to just proceed with the fencing of the subject property without any acceptable guarantee of Atty. Vitorillo's title thereto. Again, Atty. Vitorillo had not refuted this serious allegation. He is deemed to have acted in contravention of Canon 1, Rule 1.02 — CPR's proscription against counseling activities aimed at defiance of the law.

Section 27, Rule 138 of the Rules of Court provides that a member of the Bar may be disbarred or suspended from his office as attorney by the Court for any deceit, gross misconduct in such office, or violation of the Lawyer's Oath.[45] The Investigating Commissioner recommended the penalty of suspension for two years, which the IBP-Board of Governors approved.

In light of recent jurisprudence most akin to the present case, the Court increases Atty. Vitorillo's suspension to three years.

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[45] *Madria v. Atty. Rivera*, 806 Phil. 774, 783-784 (2017), declared that "[u]nder Section 27, Rule 138 of the Rules of Court, a lawyer may be disbarred on any of the following grounds, namely: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do."

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In *Andaya v. Atty. Tumanda*,[46] respondent lawyer therein borrowed ₱500,000.00 from his complainant. To convince complainant to part with his money, respondent issued a post-dated check, which the bank dishonored on its maturity date as the account was closed. Complainant demanded payment, to which respondent counter-offered his Mercedez Benz. While he executed a deed of absolute sale over the car in favor of complainant, respondent failed to give complainant the certificate of registration. He did not even turn over to complainant physical possession over the car. Complainant later learned that the Mercedes Benz already belonged to another person. The Court saw respondent in bad faith when, aside from issuing a bum check, he sold to a third person the Mercedes Benz that he had previously sold to complainant. In so doing, respondent committed deceitful conduct and gross misconduct; showed lack of honesty and good moral character; and violated Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the CPR. Respondent lawyer was suspended for three years.

The Court's reminder to the Bar in *Nakpil v. Valdes*[47] bears reiteration:

> **Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the bar**. Thus, a lawyer should determine his conduct by acting in a manner that would promote public confidence in the integrity of the legal profession.[48] (Emphasis supplied.)

As regards the reimbursement of the down payment plus interests and damages claimed by Partsch and disputed by Atty. Vitorillo, the Court agrees with the recommendation of the investigating Commissioner that raising it in the present case is misplaced:

> x x x [Partsch]'s demand for the refund of the payment of Php250,000.00 which was paid to [Atty. Vitorillo] by virtue of a defective "Contract to Sell" is beyond and is not within the ambit of the delegated

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[46] A.C. No. 12209, February 18, 2020.

[47] 350 Phil. 412 (1998).

[48] Id. at 430.

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authority of the IBP-CBD. More importantly is the pronouncement of the Supreme Court in this regard in A.C. No. 6955, July 22, 2006, entitled "*Mar Yuson v. Atty. Jeremias R. Vitan*,"

> "This Court will not act as a collection agency from faltering debtors, when the amount of the indebtedness is indefinite and disputed. x x x"[49]

WHEREFORE, respondent Atty. Reynaldo A. Vitorillo is found **GUILTY** of deceitful conduct, gross misconduct, violation of Canons 1 and 7, Rules 1.01, 1.02, and 7.03 of the Code of Professional Responsibility, and violation of the Lawyer's Oath. Respondent Atty. Reynaldo A. Vitorillo is **SUSPENDED** for three years, effective upon receipt of this Decision. Atty. Vitorillo is **STERNLY WARNED** that a repetition of the same or a similar act shall be dealt with more severely.

Respondent Atty. Vitorillo is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to: (1) the Office of the Bar Confidant to be appended to Atty. Vitorillo's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and (3) the Office of the Court Administrator for circulation to all Philippine courts.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Caguioa, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, and *Marquez, JJ.*, concur.

APPEARANCES OF COUNSEL

Paayas Law Office for complainant.

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[49] *Rollo*, p. 99.