



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 11, 2023**, which reads as follows:*

“A.C. No. 13908 [Formerly CBD Case No. 19-6080] (Emelyn D. Yatoc v. Atty. Roland E. Pay). – This resolves the verified complaint¹ filed by Emelyn D. Yatoc (complainant) against respondent Atty. Roland E. Pay for violation of the Lawyer’s Oath and Canon 16 of the Code of Professional Responsibility (CPR).

Complainant alleged that sometime in March 2018, respondent prepared for her a Deed of Absolute Sale² for the purchase of a portion of the 1,500 square meter land in Palawan owned by Spouses Benjamin and Jasmin Jardin (Spouses Jardin). Considering that the land had not yet been subdivided and the portion purchased by complainant had not yet been titled separately, complainant and Spouses Jardin agreed to give the signed Deed of Absolute Sale and the certificate of title to respondent for safekeeping.³ Complainant paid ₱650,00.00 to Spouses Jardin as partial payment for the land, and ₱45,000.00 to respondent for his professional fee, all of which were evidenced by signed acknowledgment receipts.⁴

Sometime in November 2018, complainant received word from her real estate broker that Spouses Jardin changed their mind about the sale and that they already gave the ₱650,00.00 partial payment to respondent for its return to complaint. Complainant met with respondent to demand the return of the money but the latter refused to do so, claiming that the same was

¹ *Rollo*, pp. 2-10.

² *Id.* at 11.

³ *Id.* at 3.

⁴ *Id.* at 12-15.

payment for his legal fees. Complainant then met with Mr. Jardin, who confirmed giving respondent the ₱650,00.00 with instruction for the money to be delivered to complainant. Mr. Jardin also paid ₱50,000.00 to respondent for the return of the certificate of title and the Deed of Absolute Sale. Complainant and Spouses Jardin sent a demand letter to respondent on 15 November 2018, which the latter received on the same date. Respondent, however, ignored the demand. On 02 December 2018, Mr. Jardin again met with respondent. The latter tried to convince the former to sign a document stating that Mr. Jardin was rescinding the Deed of Absolute Sale and that the partial payment of complainant would be treated as damages and attorney's fees.⁵

To support her claims, complainant attached Spouses Jardin's *Sinumpaang Salaysay*,⁶ the notarized acknowledgement receipts evidencing respondent's receipt from Mr. Jardin of the ₱650,000.00 refund money and ₱50,000.00 payment for the return of the certificate of title and the Deed of Absolute Sale,⁷ the demand letter,⁸ and the draft rescission document prepared by respondent.⁹

In his Answer, respondent countered that the ₱650,000.00 given to him by Mr. Jardin was his professional fee to effect an extrajudicial rescission of sale in relation to the subject lot, and the ₱50,000.00 was part of his attorney's fees.¹⁰ Interestingly, respondent offered a different defense in his position paper. He claimed that for his services in relation to the sale, complainant agreed to pay him twenty percent (20%) of the ₱5,000,000.00 Million purchase price of the subject lot, and the ₱650,000.00 was a portion of said attorney's fees.¹¹

Report and Recommendation of the Integrated Bar of the Philippines (IBP)

After the mandatory conference and submission by the parties of their respective position papers, Investigating Commissioner Art Bernard D. Bernales recommended that respondent be suspended from the practice of law for a period of two (2) years, and ordered to deliver to complainant ₱650,000.00 with interest at the rate of six percent (6%) per annum

⁵ Id. at 4-5.

⁶ Id. at 16-17.

⁷ Id. at 18-19.

⁸ Id. at 20.

⁹ Id. at 21.

¹⁰ Id. at 26.

¹¹ Id. at 153.

computed from 15 November 2018 until full payment of the principal.¹²

The Investigating Commissioner found that respondent violated his fiduciary obligation to his client inscribed under Canon 16 and Rule 16.03 of the CPR when he failed to remit to complainant the partial payments refunded by Spouses Jardin.¹³ In rejecting respondent's defense, the Investigating Commissioner observed that: (1) respondent did not present a written agreement to establish the claim that Mr. Jardin engaged his services; (2) the extrajudicial rescission described by respondent would not justify the charging of ₱650,000.00, which was coincidentally the same amount the complainant delivered to Spouses Jardin; and (3) respondent offered conflicting defenses.¹⁴ As to respondent's alleged right to retain the ₱650,000.00 for his services to complainant, the Investigating Commissioner pointed out the lack of evidence to prove the alleged services he provided to complainant that would justify the payment of such fee.¹⁵

In its Resolution No. CBD-XXV-2023-03-12 dated 11 March 2023,¹⁶ the IBP Board of Governors resolved to modify the recommendation of the Investigating Commissioner. It reduced the penalty of respondent to a one (1) year suspension from practice of law taking into account the lack of prior infraction as a mitigating circumstance.

Issues

The sole issue for this Court's resolution is whether respondent should be held administratively liable for his unjustified refusal to return complainant's money.

Ruling of the Court

Upon careful review of the records of this case, the Court adopts the findings and recommendations of the IBP. There is substantial evidence that respondent indeed violated Canon 16 and Rule 16.03 of the CPR.

The fiduciary obligation of a lawyer in relation to his or her client's money is stated in Canon 16 of the CPR, to wit:

¹² Id. at 173.

¹³ Id. at 168-169.

¹⁴ Id. at 165.

¹⁵ Id. at 166.

¹⁶ Id. at 158-159.

CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

RULE 16.03 A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

In view of said fiduciary obligation, a lawyer is mandated to account for the client's money and deliver the same when due or upon demand. As such, it has been held that a "lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client."¹⁷

Here, respondent admittedly received ₱650,000.00 from Mr. Jardin. He claims, however, that such amount was given as payment for his services.

Respondent's defense fails to convince. The veracity of respondent's assertion in his Answer that the ₱650,000.00 was Mr. Jardin's payment for his services for the extrajudicial rescission of the sale is refuted by his claim in his position paper that said amount represents a portion of his attorney's fees for his services to complainant.

Worse, records of this case do not even support either claim. As aptly observed by the Investigating Commissioner, respondent did not provide evidence to prove that Mr. Jardin engaged his services for the extrajudicial rescission of the sale or that the complainant agreed to the payment of attorney's fees equivalent to twenty percent (20%) of the ₱5,000,000.00 Million purchase price.

Respondent's attempt to justify his refusal to deliver the ₱650,000.00 to complainant by invoking Rule 16.03 of the CPR is also untenable.

Jurisprudence instructs that a valid retaining lien has the following elements: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) unsatisfied claim for attorney's fees.¹⁸ Respondent did not satisfy said elements. As mentioned earlier, aside from his bare assertion, respondent did not produce any evidence to prove that

¹⁷ *Yuzon v. Agleron*, 824 Phil. 321, 326 (2018). See also *Francia v. Sagario*, 865 Phil. 237 (2019).

¹⁸ *Spouses San Pedro v. Mendoza*, 749 Phil. 540, 549 (2014) citing *Miranda v. Carpio*, 673 Phil. 665 (2011).

complainant agreed to the twenty percent (20%) attorney's fees. In justifying the reasonableness of said attorney's fees, respondent averred that he performed the following services for complainant: (1) securing a certified photocopy of the title, a vicinity map, a tax map, and tax clearance; (2) making sure the property was untenanted; and (3) advising complainant to ensure that the source of her money was legitimate. However, there is no proof that respondent indeed performed these services. Even if he did, We agree with the Investigating Commissioner that "such services are remarkable only in their ordinariness"¹⁹ and a fee of ₱650,000.00 for the same would not necessarily be fair and reasonable *sans* allegation and evidence of "any complex legal question regarding the sale that would require respondent's specialized knowledge or skill, or of how much time was spent performing these services, or of any opportunity lost as a result of such performance."²⁰

Further, respondent has no right to retain or unilaterally appropriate, as lawyer's lien, the sum of ₱650,000.00.²¹ Respondent cannot appropriate for himself his client's funds without the proper accounting and notice to complainant.²² While a lawyer's lien is recognized under Rule 16.03 of the CPR, "it is essential that the client consent to the application of his [or her] property or funds to the legal fees, in which case the lawyer may deduct what is due him [or her] and return the excess to the client. Absent the client's consent, the lawyer must return the funds to the client, without prejudice to the filing of a case to recover the unpaid fees."²³

As to the penalty, violations of Canon 16 of the CPR have been previously sanctioned with penalties ranging from suspension from practice for six (6) months to two (2) years, or even disbarment, depending on the circumstances of each case.²⁴ In one case, respondent-lawyer was suspended for one (1) year for his failure to return the money received from his client for the purchase of a property after the sale did not materialize in consideration of, among others, respondent-lawyer's 50 years of service *sans* any disciplinary records.²⁵ Considering that this is respondent's first offense, the Court, in its exercise of its compassionate judicial discretion, agrees with the IBP Board of Governors that a penalty of suspension for one (1) year is a sufficient sanction.²⁶

¹⁹ *Rollo*, p. 166.

²⁰ *Id.*

²¹ See *Aldovino v. Pujalte, Jr.*, 467 Phil. 556 (2004).

²² See *Spouses San Pedro v. Mendoza*, 749 Phil. 540 (2014).

²³ *Home Guaranty Corp. v. Tagayuna*, A.C. No. 13131, 23 February 2022, citing *Spouses Cuña, Sr. v. Elona*, A.C. No. 5314, 23 June 2020. See also CPRA, Secs. 45 and 47.

²⁴ *Luna v. Galarrita*, 763 Phil. 175, 188 (2015).

²⁵ *Supra* note 17.

²⁶ See *Palencia v. Linsangan*, A.C. No. 10557, 10 July 2018; *Viray v. Sanicas*, 744 Phil. 247 (2014); and *Cerdan v. Gomez*, 684 Phil. 418 (2012).

It bears noting at this point that misappropriating a client's funds is considered a serious offense under Section 33(g) of the Code of Professional Responsibility and Accountability (CPRA), the penalty for which is, among others, suspension from the practice of law for a period exceeding six (6) months.²⁷ Unlike in cases decided under the CPR, however, the mitigating circumstance of first offense can no longer be appreciated when the charge is misappropriation of client's funds as provided in Section 38(a)(1)²⁸ of the CPRA. As such, the Court deems it proper not to apply the CPRA retroactively as it would work injustice to respondent.²⁹

WHEREFORE, premises considered, respondent Atty. Roland E. Pay is hereby found **GUILTY** of violating Canon 16 and Rule 16.03 of the Code of Professional Responsibility and is meted the penalty of **SUSPENSION** from the practice of law for a period of one (1) year, effective immediately, with a **STERN WARNING** that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty. Respondent is also ordered to **DELIVER** to complainant Emelyn D. Yatoc the amount of ₱650,000.00 with interest of six percent (6%) *per annum* reckoned from 15 November 2018 until full payment, within ninety (90) days from the finality of this Resolution.

Respondent Atty. Roland E. Pay is **DIRECTED** to file a Manifestation to this Court that his suspension has started and to copy furnish all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent Atty. Roland E. Pay as an attorney-at-law; to the Integrated Bar of the Philippines for circulation to all its branches; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

The Notice of Resolution No. CBD-XXV-2023-03-12 dated March 11, 2023 of the Integrated Bar of the Philippines' Board of Governors, transmitted by Letter dated May 17, 2023 of Atty. Avelino V. Sales, Jr.,

²⁷ CPRA, Section 37.

²⁸ SECTION 38. *Modifying Circumstances*. — In determining the appropriate penalty to be imposed, the Court may, in its discretion, appreciate the following mitigating and aggravating circumstances:

(a) Mitigating circumstances:

(1) **First offense, except in charges of gross misconduct, bribery or corruption, grossly immoral conduct, misappropriating a client's funds or properties, sexual abuse, and sale, distribution, possession and/or use of illegal drugs or substances; (Emphasis supplied).**

²⁹ CPRA, General Provisions, Section 1 provides: "The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern."

Director for Bar Discipline, Integrated Bar of the Philippines, together with the records and flash drive file, is **NOTED**.

SO ORDERED.” *Hernando, J., on leave.*

By authority of the Court:



MARIA TERESA B. SIBULO
Division Clerk of Court 

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