



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 4, 2023**, which reads as follows:*

“A.C. No. 11658 (Formerly CBD Case No. 18-5576) – MARY B. BESTOYONG, Complainant, versus ATTY. NOEL B. MAGALGALIT, respondent.

This is an administrative case filed by Mary B. Bestoyong (complainant) against Atty. Noel B. Magalgalit (respondent) for violation of Canon 1, Rule 1 of the Code of Professional Responsibility¹ (CPR) which is now found in Canon II (Propriety), Section 1 of the Code of Professional Responsibility and Accountability,² (CPRA) to wit:

**CANON II
PROPRIETY**

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal profession consistent with the highest standards of ethical behavior.

SECTION 1. Proper conduct. – A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

At the outset, the Court clarifies that the recently enacted CPRA shall be applied to the case at hand pursuant to the CPRA’s transitory provision, which reads:

... 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.

¹ Canon 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

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

² A.M. No. 22-09-01 dated April 11, 2023 and published on May 14, 2023. (Date of effectivity: May 30, 2023).

Facts

As culled from the records, complainant, who was then engaged in the business of informally lending money, used to be a regular client of respondent. Sometime in May 2015, respondent referred to complainant his other client, Bernadette Mayos Hirsch (Hirsch), who was then in need of money to pay off a car loan. Based on the Affidavit-Complaint,³ complainant lent Hirsch ₱324,000.00 after respondent assured her that Hirsch, who owned a poultry business and had been receiving monthly allowance of ₱120,000.00 from her husband, had capacity to pay.

Sometime in June 2015, respondent called complainant once more to say that Hirsch again needed money in the amount of ₱1,500,000.00, this time as additional capital for her poultry business.⁴ As security for the loan, respondent supposedly offered to complainant a lot located in Cuyapo, Nueva Ecija (subject lot) that Hirsch bought from a certain Leonida Cardenas (Cardenas) for ₱1,800,000.00.⁵ Complainant avers that respondent disclosed to her that he notarized the June 8, 2015 Deed of Absolute Sale between Hirsch and Cardenas, and had in his possession the owner's duplicate of the title over the subject lot since he was then working on the transfer thereof to the name of Hirsch.⁶

Eventually, complainant agreed to again lend Hirsch money, and in return, Hirsch issued post-dated checks.⁷ On June 25, 2015, complainant and Hirsch executed a Deed of Real Estate Mortgage (Mortgage Contract) at the office of respondent, who also notarized the document.⁸ In said Mortgage Contract, it is expressly indicated that the owner's duplicate of the title of the subject lot shall remain in the possession of respondent for safekeeping while the loan is still subsisting.⁹

The relationship between the parties began to turn sour when all the checks issued by Hirsch bounced. This triggered complainant to confer with respondent if he had already affected the transfer of the subject lot to the name of Hirsch, so she could already enforce her rights over the property.¹⁰ At that point, complainant discovered that respondent no longer had custody of the owner's duplicate of the title since Hirsch allegedly borrowed it for photocopying, but never returned the same.¹¹

To make things worse, complainant later on discovered thru Cardenas that the subject lot was not sold to Hirsch on June 8, 2015, but only on July 7,

³ *Rollo*, pp. 1-4.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

2015.¹² Complainant claims that as it was, Hirsch did not yet own the property at the time the Mortgage Contract was executed.¹³

To support her allegations, complainant attached the affidavits of Cardenas¹⁴ and Hirsch,¹⁵ the latter attesting that at the time the Mortgage Contract was executed, there was no duplicate title in her or respondent's possession before July 7, 2015 as she had yet to purchase the property before.¹⁶ Complainant also appended a copy of the Deed of Absolute Sale dated July 7, 2015.¹⁷

For his part, respondent narrates in his Answer¹⁸ that a Deed of Absolute Sale over the subject lot was indeed executed by Hirsch and Cardenas on June 8, 2015. As proof thereof, respondent presented a copy of the document, as witnessed by a certain Romeo Oya-an (Oya-an) and Andrew Mache C. Teres (Teres).¹⁹ Respondent likewise insists that on even date, Cardenas gave the owner's duplicate of the title to Hirsch, who then gave the same to respondent for safekeeping.²⁰ To support respondent's defenses, he attached the affidavits of Cardenas, Oya-an and Teres, among others.²¹

To clarify the existence of the July 7, 2015 Deed of Absolute Sale, respondent explained that on even date, Hirsch went to his office and requested that another deed be executed since she could not find her copy. Respondent complied and even ordered Hirsch to contact Cardenas to sign the document.²² Accordingly, respondent maintains that he should not be held liable for dishonest conduct.

Anent lending the owner's duplicate of the title to Hirsch in violation of the stipulation in the Mortgage Contract, respondent admitted that he relied on his trust and confidence that Hirsch would return the same. To respondent's dismay, Hirsch never returned the copy, and worse, again used the same as security for another loan.²³

The IBP's Ruling

On June 28, 2019, the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD) resolved to dismiss the instant complaint.²⁴ In all, the IBP-CBD found from the evidence submitted by respondent that there

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 20.

¹⁶ *Id.*

¹⁷ *Id.* at 15–16.

¹⁸ *Id.* at 32–42.

¹⁹ *Id.* at 35.

²⁰ *Id.*

²¹ *Id.* at 59–66.

²² *Id.* at 36.

²³ *Id.*

²⁴ *Id.* at 252–256, Report and Recommendation.

was indeed a Deed of Absolute Sale dated June 8, 2015. Therefore, respondent did not engage in unlawful, dishonest, immoral or deceitful conduct.²⁵

In its Extended Resolution²⁶ dated April 5, 2021, the IBP – Board of Governors (IBP–BOG) did not adopt the findings and recommendation of the IBP–CBD and recommended instead that respondent be suspended from the practice of law for six (6) months. The IBP–BOG explained that while they agree that respondent did not engage in dishonest conduct, there is substantial evidence showing that respondent acted negligently in safekeeping the owner’s duplicate of the title in favor of complainant because of conflict of interest.²⁷

Respondent filed a Motion for Reconsideration, but the same was denied by the IBP–BOG in its resolution dated March 18, 2022.²⁸

The Court’s Ruling

The Court affirms the findings of facts and conclusions of law of the IBP–BOG, with certain modifications.

As correctly observed by the IBP–BOG, respondent should not be held liable for making untruthful statements or misrepresentations as there is, indeed, overwhelming evidence to prove the existence of the June 8, 2015 Deed of Absolute Sale. Respondent did not just present the document, but more importantly, he also submitted the affidavits of the seller and the witnesses to the sale in order to support his claim.

Notably, respondent was also able to convincingly explain and prove the circumstances behind the existence of the subsequent Deed of Absolute Sale involving the same parties and the same property.

In light of the foregoing, the Court cannot hold respondent liable for violation of Canon II (Propriety), Section 1 of the CPRA.

Be that as it may, the Court agrees that respondent should be held liable for failing to diligently discharge his duties to complainant as his client due to conflict of interest.

Respondent is guilty of representing conflicting interests

Every matter accepted or handled by a member of the Bar deserves full attention, diligence, skill, and competence. Thus, Section 13 of Canon III (Fidelity) of the CPRA proscribes lawyers from representing conflicting

²⁵ *Id.*

²⁶ *Id.* at 257–260.

²⁷ *Id.* at 258–259.

²⁸ *Id.* at 277.

interests, except by written informed consent of all concerned given after a full disclosure of the facts. The case of *Jumalon v. Atty. Dela Rosa*²⁹ explains:

The fiduciary duty of every lawyer towards his or her client requires the lawyer to conscientiously act in advancing and safeguarding the latter's interest. The lawyer owes his or her client entire devotion to the latter's genuine interest, and warm zeal in the maintenance and defense of his or her rights. A lawyer is expected to exert his or her best efforts and ability to preserve his or her client's cause, for the unwavering loyalty displayed to his or her client, likewise, serves the ends of justice. The lawyer's failure or neglect to safeguard the cause of his or her clients constitutes a serious breach of the Lawyer's Oath and the canons of professional ethics and renders him or her liable for gross misconduct.³⁰

There are three separate tests used to determine if a lawyer is representing conflicting interests, to wit:

. . . (1) when, in representation of one client, a lawyer is required to fight for an issue or claim, but is also duty-bound to oppose it for another client; (2) when the acceptance of the new retainer will require an attorney to perform an act that may injuriously affect the first client or, when called upon in a new relation, to use against the first one any knowledge acquired through their professional connection; or (3) when the acceptance of a new relation **would prevent the full discharge of an attorney's duty to give undivided fidelity and loyalty to the client** or would invite suspicion of unfaithfulness or double dealing in the performance of that duty.³¹ (Emphasis supplied)

To be sure, the rule against representing conflicting interest is not limited to representing opposing parties in litigation. It encompasses any form of legal work or service by a lawyer, such as the drafting and notarizing of a contract in favor of a party whose interest is in conflict with that of his or her client.³² Verily, "the test to determine whether there is a conflict of interest in the representation is *probability not certainty of conflict*."³³ In fact, as held in *Nakpil v. Valdez*,³⁴ the proscription against representing conflicting interest applies however slight the extent of such adverse interest may be.

In the instant case, it cannot be disputed that both complainant and Hirsch were respondent's clients, and that respondent represented both parties, and even prepared the Mortgage Contract for both of them. As aptly found by the IBP-BOG, respondent indicated in the Mortgage Contract that he will keep custody of the owner's duplicate of the title while the loan is subsisting in order to protect the rights of complainant, as mortgagee and his client. Yet, when his other client borrowed the document, respondent, seemingly without any hesitation, released the copy of the title to Hirsch,

²⁹ A.C. No. 9288, January 31, 2023.

³⁰ *Jumalon v. Atty. Dela Rosa*, A.C. No. 9288, January 31, 2023.

³¹ *Northwestern University Inc. v. Arquillo*, A.C. No. 6632, August 2, 2005. 465 SCRA 513-514.

³² *Mangubat v. Atty. Herrera*, A.C. No. 9457, April 5, 2022, (En Banc).

³³ *Nakpil v. Valdes*, A.C. No. 2040, March 4, 1998, 286 SCRA 758, 773.

³⁴ *Id.*

regardless of the latter's conflicting interest with complainant. Clearly, respondent was not able to give undivided fidelity and loyalty to complainant because of her conflicting interests with respondent's other client.

The conflict of interest rule applies no matter how good or honest the intentions and motives of respondent.³⁵ Representation of conflicting interests may only be allowed where the parties gave their written informed consent to the representation, after full disclosure of facts.³⁶ The lawyer must explain to his or her clients the nature and extent of conflict and the possible adverse effect so that the same may be properly assessed and thoroughly understood by his or her clients.³⁷

As the records are bereft of any indication that respondent obtained the written informed consent of both complainant and Hirsch, respondent should be held liable for representing conflicting interests.

Respondent is guilty of gross negligence in the performance of duties, or conduct that is reckless and inexcusable

The Mortgage Contract prepared and notarized by respondent himself expressly provides that "the duplicate owner's copy of Transfer Certificate of Title No. N-36873 shall be held by Atty. Noel B. Magalgalit for safekeeping."³⁸ This clause was stipulated mainly to protect the rights of complainant over the subject lot. It cannot be disputed, as even respondent admits, that he breached said provision when he let Hirsch borrow the owner's duplicate of the title. Respondent claims, however, that he should not be held administratively liable therefor because he was also just a victim of Hirsch's broken promises.

Unfortunately for respondent, the Court still finds him liable for gross negligence in the performance of his duties or conduct that is reckless and inexcusable. Gross neglect of duty refers to "negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected."³⁹

While it was not proven that respondent acted in bad faith or in connivance with Hirsch, his failure to comply with the express provision of the Mortgage Contract, which he himself drafted, was voluntary and intentional on his part, and cannot therefore be countenanced by the Court. It

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Rollo*, p. 7.

³⁹ *Re: Eleanor S. Benbinuto*, A.M. No. 2022-03-SC, September 12, 2022.

would also be remiss not to point out that it was also respondent himself who suggested to use the subject lot as security for the loan in order to protect complainant's interest. Clearly therefore, respondent's breach of his obligations was inexcusable. As a lawyer, respondent should have known better before he agreed to release the owner's duplicate of the title to Hirsch. He should have been more cautious of the consequences of his actions, especially its effect to the rights and interest of complainant. Because of respondent's negligence, Hirsch was able to use the title again as security for another loan.

Penalty

The CPRA provides that if the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, the Court shall impose separate penalties for each offense. Canon 6, Section 33 of the CPRA classifies intentional violation of the conflict of interest rules and gross negligence in the performance of duty or conduct that is reckless and inexcusable as serious offenses, which are punishable by: (a) disbarment; (b) suspension from the practice of law for a period exceeding six (6) months; (c) revocation of notarial commission and disqualification as notary public for not less than two (2) years; and/or (d) a fine exceeding ₱100,000.00.

Based on Canon 6, Section 39 of the CPRA, if one (1) or more mitigating circumstances and no aggravating circumstances are present, the Court may impose the penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under the CPRA. Here, the following mitigating circumstances are present: (a) this is respondent's first offense; and (2) respondent has done several measures to try to rectify his wrongdoing — he filed criminal cases against Hirsch, assisted complainant in drafting demand letters, and convinced Hirsch's siblings and mother to execute a Memorandum of Agreement wherein they undertook to pay complainant for the amount loaned by Hirsch.

In line with the foregoing guidelines, respondent is hereby suspended from the practice of law for a period of three (3) months and one (1) day for intentionally representing conflicting interests, and another three (3) months and one (1) day for gross negligence in the performance of duty or conduct that is reckless and inexcusable, or a total of six (6) months and two (2) days.

WHEREFORE, premises considered, the Court finds respondent **ATTY. NOEL B. MAGALGALIT** guilty of intentionally violating the conflict of interest rules and committing gross negligence in the performance of duty or conduct that is reckless and inexcusable. He is hereby **SUSPENDED** from the practice of law for a total period of six (6) months and two (2) days effective upon receipt of this Resolution, and **STERNLY WARNED** that a repetition of the same or similar wrongdoings will be dealt with more severely.

SO ORDERED.” (Dimaampao, J., on official business; Singh, J., on official business but participated in the deliberations.)

By authority of the Court:

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