



Republic of the Philippines
Supreme Court
Manila

EN BANC

KIMELDES GONZALES,
Complainant,

A.C. No. 10178

- versus -

ATTY. PRISCO B. SANTOS,
Respondent.

Present:
CARPIO, *Senior Associate Justice*,*
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:

June 19, 2018

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DECISION

JARDELEZA, J.:

This resolves the petition¹ filed by Kimeldes Gonzales (complainant) against Atty. Prisco B. Santos (respondent) before the Integrated Bar of the Philippines (IBP) for dishonesty and abuse of trust and confidence of his client.

On November 5, 2001, complainant bought a parcel of land in Tumaga, Zamboanga City. As she was then living in Quezon City, complainant appointed her sister, Josephine Gonzales (Josephine), to act as her representative in matters concerning said property. Josephine thereafter

* Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.

¹ *Rollo*, pp. 2-4.

engaged the services of respondent to: (1) register the title in complainant's name; and (2) commence an ejectment suit against the occupants of the property. Josephine gave respondent a total of ₱60,000.00—₱40,000.00 as fee for the transfer of title and the remaining ₱20,000.00 as filing fee for the ejectment case.² Respondent signed two receipts acknowledging complainant's payments: (1) on June 12, 2007 for ₱15,000.00 as partial payment for the transfer of title; and (2) on June 22, 2007 for ₱25,000.00 as full payment for the transfer of title, and ₱20,000.00 as partial payment, the purpose of which was not indicated.³

Complainant then entrusted the owner's duplicate copy of the Transfer Certificate of Title (TCT) to respondent for its cancellation. On August 2, 2007, a new title was issued in complainant's name. This, however, was never surrendered to Josephine, despite her efforts to claim it.⁴

Later, complainant discovered that her property had been mortgaged to A88 Credit Corporation by one Norena F. Bagui (Norena), who turned out to be respondent's relative. It appears that Norena used a forged special power of attorney to effect said mortgage.⁵

Moreover, complainant learned that respondent never filed an ejectment case against the occupants of her property despite receipt of the corresponding filing fees.⁶

Respondent, in his answer,⁷ denied having any participation in Norena's act. He narrated that after obtaining the new title to the property, he instructed his niece, Nemalyn Falcasantos, to deliver it to Josephine. He was surprised to learn that the title had not been delivered to Josephine and worse, that Norena had used it to mortgage the property. He claimed that when he confronted Norena about it, the latter assured him that she did so upon complainant's instruction. According to Norena, complainant is her close friend in Manila, and that she made similar transactions for complainant whenever the latter needed cash.⁸

Respondent also denied having been engaged to file an ejectment suit against the occupants of complainant's property. According to respondent, he was shocked to discover an additional ₱20,000.00 in his bank account. Nevertheless, he insisted that he never agreed to file an ejectment suit, citing the fact that some of the occupants are his friends.⁹

² *Id.* at 2.

³ *Id.* at 2, 6.

⁴ *Id.* at 2-3.

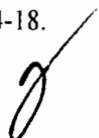
⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Rollo*, pp. 14-18.

⁸ *Id.* at 14-15.

⁹ *Id.* at 15-16.



Acting on the complaint, Investigating Commissioner Oliver A. Cachapero (Investigating Commissioner Cachapero) found that respondent was complicit in the constitution of a real estate mortgage over complainant's property. The mortgage was executed only five days after complainant's title over the parcel of land had been issued. Hence, respondent's failure to deliver the title to complainant's sister, Josephine, despite repeated follow-ups, tends to no other conclusion—that respondent participated in the fraudulent transaction.¹⁰

Investigating Commissioner Cachapero also found it suspicious that respondent would readily accept Norena's alleged narrative of the events. According to the Investigating Commissioner, it is unthinkable that respondent's nieces, who are from Zamboanga City, would be able to secure complainant's signature within five days. Commissioner Cachapero added that the fact that complainant had not seen the title—and that Josephine had been repeatedly demanding for its surrender—is inconsistent with respondent's claim that complainant authorized the mortgage.¹¹

In any case, even if it were true that respondent's nieces solely authored the fraudulent transaction, Investigating Commissioner Cachapero finds that it was still respondent's duty to hold his client's property in trust. He should have been more prudent in ensuring that the title would be safely delivered to Josephine.¹²

As regards the second charge, the Investigating Commissioner rejected respondent's argument that he was not contracted to file an ejectment case against the occupants of complainant's property. According to Investigating Commissioner Cachapero, it would seem incredible that respondent would receive ₱20,000.00 from complainant for no reason at all. Indeed, respondent even acknowledged receipt of the same through a handwritten receipt.¹³

Considering these circumstances, Investigating Commissioner Cachapero recommended that respondent be found guilty as charged and suspended from the practice of law for three years.¹⁴

Finding the report and recommendation of Investigating Commissioner Cachapero to be fully supported by the evidence on record and the applicable laws and rules, the IBP Board of Governors, in its Resolution No. XX-2013-390¹⁵ dated March 22, 2013, resolved to approve and adopt the same.

¹⁰ *Id.* at 70-72.

¹¹ *Id.* at 71-72.

¹² *Id.* at 72.

¹³ *Id.*

¹⁴ *Rollo*, p. 73.

¹⁵ *Id.* at 68.

We concur with the report and recommendation of the IBP.

Regarding the first charge, we find respondent administratively liable for failing to deliver within reasonable time the title to complainant or to her sister, Josephine, who acted as her representative. The relationship between a lawyer and his client is highly fiduciary; it demands great fidelity and good faith on the part of the lawyer.¹⁶ Rule 16.01 of the Code of Professional Responsibility (CPR) requires lawyers to account for all money and property collected or received for and from their clients. In addition, Rule 16.03 mandates that a lawyer shall deliver the funds and property of his client when due or upon demand.

In the present case, there is no doubt that respondent's services led to the issuance of a new title in complainant's name. Accordingly, and upon demand by complainant's representative, Josephine, respondent was expected to timely deliver the title to her. This, respondent failed to do.

Respondent's excuse that he neither knew about nor participated in his nieces' scheme also deserves scant consideration.

We give merit to the IBP's findings and conclusion. First, the mortgage was executed only five days after complainant's title had been issued over the parcel of land. At this point, complainant had not even seen the title. In fact, respondent did not deny that Josephine had repeatedly demanded for its surrender. Second, upon his alleged discovery of the fraudulent mortgage, respondent readily accepted Norena's claim. Josephine's repeated follow-ups should have alerted respondent to irregularities attending the mortgage. Respondent's failure to ensure the timely turnover of the title to complainant and/or her representative led to, if not facilitated, the constitution of the fraudulent mortgage. Neither does it appear that respondent took steps to verify his niece's claim. We are thus inclined to agree with the IBP's conclusion that respondent's nieces are used here as mere scapegoats and that respondent had a hand in the fraudulent mortgage.¹⁷

Regarding the second charge, we concur with the IBP and find respondent guilty of abusing his client's trust and confidence. Canon 17 of the CPR directs a lawyer to be mindful of the trust and confidence reposed in him.

In the present case, it is uncontested that respondent received an additional ₱20,000.00 from complainant. Respondent, however, denied that it is payment for the filing of an ejectment suit against the occupants of complainant's property. Nonetheless, he does not proffer any reason to explain why such amount was given him. As this is a "he said, she said"

¹⁶ *Lopez v. Limos*, A.C. No. 7618, February 2, 2016, 782 SCRA 609, 617.

¹⁷ *Rollo*, pp. 71-72.

scenario, we find complainant's version more logical and convincing. We agree with the IBP that it is incredible for respondent to receive an additional ₱20,000.00 without a clear reason for its payment. As complainant stated, respondent received ₱20,000.00 through his ATM account on June 20, 2007 for the ejectment case and even acknowledged its receipt on June 22, 2007.¹⁸ We find it more likely that the amount of ₱20,000.00 was for a given purpose, that is, to file an ejectment suit.

Respondent violated his client's trust when he received said amount despite knowing that he could not file the ejectment suit because some of the occupants of complainant's property are his friends. Indeed, he was not able to file the case but without informing complainant of his reasons.

As for the proper penalty, we adopt the recommendation of the IBP to suspend respondent from the practice of law for three years. In *Lopez v. Limos*,¹⁹ we imposed a similar penalty for violations of Rule 1.01 of Canon 1, Canon 11, Rule 12.04 of Canon 12, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the CPR.²⁰ Moreover, since respondent refused to file the suit requested, we find the return of the amount of ₱20,000.00 to complainant in order. We have previously held that when a lawyer receives money from his client for a particular purpose and the lawyer does not use the money for such purpose, the lawyer must immediately return the money to his client.²¹

WHEREFORE, respondent Atty. Prisco B. Santos is hereby **SUSPENDED** from the practice of law for three years, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely. In addition, he is **ORDERED** to return to complainant the amount of ₱20,000.00 within 90 days upon finality of this Decision.

Respondent is also **DIRECTED** to report to this Court the date of his receipt of this Decision to enable this Court to determine the effectivity of his suspension.

Let a copy of this Decision be attached to respondent's personal record with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice


¹⁸ See *id.* at 3, 15, 49.

¹⁹ *Supra* note 16.

²⁰ *Id.* at 620-621.

²¹ *Anacta v. Resurreccion*, A.C. No. 9074, August 14, 2012, 678 SCRA 352, 365-367.

WE CONCUR:



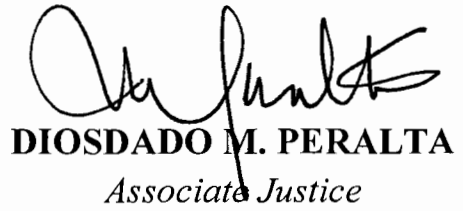
ANTONIO T. CARPIO
Senior Associate Justice



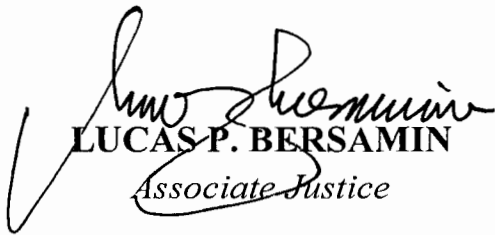
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



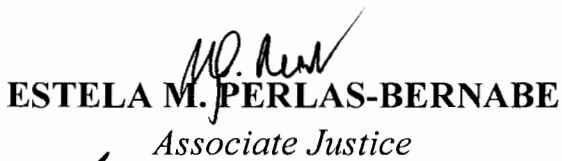
DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



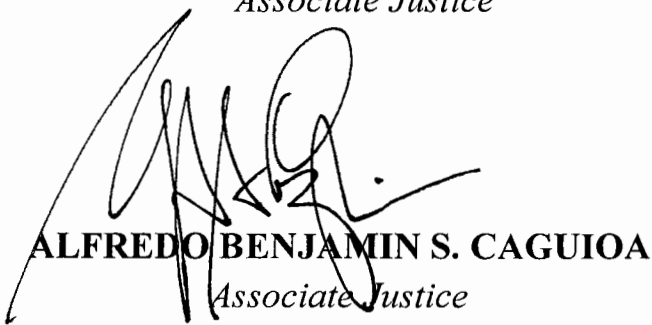
MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M. V. F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



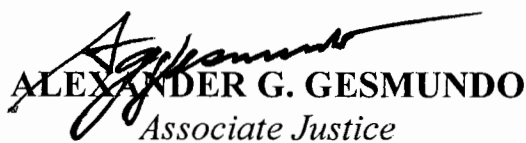
SAMUEL R. MARTIRES
Associate Justice



NOEL GIMENEZ TIJAM
Associate Justice



ANDRES B. REYES, JR.
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

