



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 10, 2021 which reads as follows:

“A.C. No. 12934 [Formerly CBD Case No. 15-4832] (Philip See, Complainant, v. Atty. Justinian E. Adviento, Respondent). – This is a Complaint¹ for disbarment filed by Philip See (complainant) against Atty. Justinian E. Adviento (respondent) charging the latter with violation of Rule 1.01 of the Code of Professional Responsibility.

Antecedents

The present disbarment case stems from a criminal case filed against respondent for violation of the Bouncing Checks Law (BP 22). Complainant alleged that he was a former client of respondent. Sometime in September 2000, complainant was convinced by respondent to invest in his business, Healthy Food, Inc. Complainant issued a postdated check for Php3,600,000.00 with an option to backout within 90 days. After some time, complainant exercised this option, thus, respondent issued a post-dated check in the amount of Php3,600,000.00 since respondent does not have cash at the time. The check bounced after presentment. On 04 March 2005, complainant sent a demand letter notifying the respondent that the check was dishonored due to “Account Closed” and ordering the latter to make good the check within five (5) days from receipt of the demand letter.² No payment was made by the respondent, thus, complainant filed a case with the Metropolitan Trial Court (MeTC) of Quezon City, Branch 32, against respondent for violation of BP 22. Eventually, the MeTC rendered a decision³ acquitting respondent for failure to prove he received the notice of dishonor. Respondent, however, was held

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¹ *Rollo*, pp. 01-02.

² *Id.* at 60.

³ *Id.* at 69 to 78; dated 29 April 2015, penned by Presiding Judge Janet Abergos-Samar.

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civily liable to pay complainant the amount of his investment or Php3,600,000.00 plus damages and interest.⁴ Despite this, respondent still refused to pay the said amount, hence, this disbarment case against him.

For his part, respondent claimed that the amount given by complainant was an investment which would represent 30% of the equity in both Healthies Food Corporation and SRJ Foods Corporation. Complainant was very much aware of this since he even took part in the affairs of the business.⁵ Unfortunately, the business failed sometime in 2002. It was likewise an inopportune time for complainant since he was having personal financial and family problems. Thus, complainant requested from respondent a blank check which he can show to his (complainant's) wife. Respondent acceded subject to the condition that complainant will return the check within fifteen (15) days. But despite demands, complainant failed to return the check. Three (3) years later, complainant filled up the check and presented it for payment. The check bounced because the account against which it was drawn was already closed. Respondent argued that the check would naturally bounce since the company has been closed for several years and that the check should not have been encashed in the first place.

Recommendation of the IBP Commissioner

In her Report and Recommendation⁶ dated 25 May 2015, the Investigating Commissioner recommended the dismissal of the disbarment case against respondent for insufficiency of evidence. What transpired between the complainant and respondent are regular business dealings which cannot be categorized as unlawful, deceitful, dishonest, or immoral.

Recommendation of the IBP Board of Governors

On 07 September 2019, the IBP Board of Governors resolved to approve and adopt the Report and Recommendation of the Investigating Commissioner and dismiss the case for lack of merit.⁷

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⁴ *Id.* at 78.

⁵ *Id.* at 16.

⁶ *Rollo*, pp. 121-125; Suzette A. Mamon.

⁷ *Rollo*, p. 119.

Ruling of the Court

The Court adopts the findings and recommendations of the IBP that the complaint for disbarment should be dismissed for lack of merit.

It is well-settled that in disbarment proceedings, the burden of proof rests upon the complainant. An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath.⁸ It is fundamental that the quantum of proof in administrative cases such as disbarment proceedings is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.⁹

Complainant insists that respondent engaged in unlawful, dishonest, immoral and deceitful conduct. He premised his allegations based on respondent's issuance of a bum check and by evading payment of a debt validly incurred.¹⁰ But the MeTC already exonerated respondent of any criminal liability that may arise from the issuance of the bum check.¹¹ Likewise, it cannot be said with certainty that respondent is merely evading payment of a debt. Although the MeTC had ruled that respondent's liability is only civil in nature, there is nothing in Our records that indicates this has become final and executory. Definitely, respondent may do so if he wants but he cannot be legally compelled to pay the judgment debt which has not attained finality. In fact, respondent is free to exploit all the legal remedies available to him in order to defend himself. But until such order becomes final and executory, respondent cannot be said to have engaged in unlawful, dishonest, immoral and deceitful conduct by refusing to pay the judgment debt.

Neither does it appear that complainant was deceived into making an investment with the respondent. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."¹² Other

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⁸ *Tan v. Alvarico*, A.C. No. 10933, 03 November 2020 [Per CJ. Peraltal].

⁹ *Zamora v. Mahinay*, A.C. No. 12622, 10 February 2020 [Per J. Caguioa].

¹⁰ *Id.* at p. 2.

¹¹ *Supra.* at note 4.

¹² *Batac v. People*, G.R. No. 191622, 06 June 2018 [Per J. Martires].

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than his bare allegations that he was deceived to make the investment, no further evidence was given that would elucidate and give a complete picture on how respondent deliberately misled him. In the absence of such evidence, We are of the impression that complainant may have been persuaded, but not deceived, to make the investment.

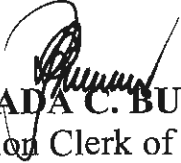
Clearly, complainant cannot vent all his frustrations towards respondent for making an investment on a business that did not fare well. A failed business does not automatically make it a sham, absent proof that respondent actually orchestrated it. Thus, We are inclined to uphold the findings of the IBP that the transactions between the complainant and respondent are regular business dealings which cannot be classified as unlawful, deceitful, dishonest, or immoral.¹³ Perforce, the disbarment complaint must be dismissed.

WHEREFORE, the disbarment complaint against respondent, **ATTY. JUSTINIAN E. ADVIENTO** is hereby **DISMISSED** for lack of merit.

The Notice of Resolution dated September 7, 2019 of the Integrated Bar of the Philippines' Board of Governors, transmitted by letter dated October 8, 2020 of Director Randall C. Tabayoyong, Integrated Bar of the Philippines' Commission on Bar Discipline, together with the records and compact disc containing the PDF file of the case, is **NOTED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
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by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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¹³ *Supra.* at note 7

Mr. Philip See
Complainant
No. 1, N. Domingo Street
1100 Quezon City

Atty. Justinian E. Adviento
Respondent
No. 301 Purok 3, Centro 1
Gen. Luna Street, Sanchez Mira
3518 Cagayan
- and/or -
No. 244 Gen. Luna Street, Centro 1
Sanchez Mira, 3518 Cagayan

Integrated Bar of the Philippines
1605 Pasig City

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