



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

SALVACION C. ROMO,
Complainant,

A.C. No. 12833

Present:

-versus-

ATTY. ORHEIM T. FERRER,
Respondent.

PERALTA, *CJ.*, Chairperson,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GISMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,*
INTING,*
ZALAMEDA,*
LOPEZ,
DELOS SANTOS,
GAERLAN, and
ROSARIO, *JJ.*

Promulgated:

November 10, 2020

Done. At the P.O. of [Signature]

X-----X

R E S O L U T I O N

LOPEZ, J.:

A lawyer is a trustee of all client's funds and properties, which may come into his possession. The failure to render an accounting upon demand deserves administrative sanctions.

* On official leave.

[Signature]

ANTECEDENTS

In 2006, Salvacion Romo (Salvacion) engaged the legal services of Atty. Orheim Ferrer (Atty. Ferrer) in prosecuting an action for violation of Batas Pambansa Bilang (BP) 22 against Amada Yu (Amada).¹ Thereafter, Amada settled the case and gave a total amount of ₱375,000.00 to Atty. Ferrer on different dates, to wit: (a) ₱50,000.00 on March 6, 2006;² (b) ₱50,000.00 on March 15, 2006;³ (c) ₱20,000.00 on June 6, 2006;⁴ (d) ₱50,000.00 on October 6, 2006;⁵ (e) ₱5,000.00 on November 16, 2006;⁶ (f) ₱10,000.00 on December 9, 2006;⁷ (g) ₱50,000.00 on December 18, 2006;⁸ (h) ₱10,000.00 on January 10, 2007;⁹ (i) ₱10,000.00 on February 19, 2007;¹⁰ and (j) ₱120,000.00 on March 15, 2007.¹¹

Yet, Atty. Ferrer remitted only ₱80,000.00 to Salvacion. As such, Salvacion demanded from Atty. Ferrer the balance of ₱295,000.00.¹² Atty. Ferrer agreed to pay his obligation on or before October 15, 2012 and promised to deliver a land title as collateral.¹³ However, Atty. Ferrer did not comply with his undertakings. Salvacion sent a final demand letter¹⁴ to Atty. Ferrer but was ignored. Thus, Salvacion filed an administrative complaint against Atty. Ferrer for failure to account the funds entrusted to him docketed as Commission on Bar Discipline (CBD) Case No. 13-3782.¹⁵ As supporting evidence, Salvacion submitted the special power of attorney, acknowledgment receipts signed by Atty. Ferrer, the memorandum of agreement and the demand letters.

On the other hand, Atty. Ferrer countered that he remitted ₱120,000.00 to Salvacion, and not only ₱80,000.00. The other payments from Amada were given personally to Salvacion's daughter. Atty. Ferrer did not issue receipts because he trusted Salvacion and her daughter. Moreover, Atty. Ferrer claimed that the acknowledgement receipts showing various amounts that he allegedly received from Amada were fabricated. Atty. Ferrer likewise argued that he signed the memorandum of agreement because Salvacion threatened him with the filing of a disbarment suit. As evidence, Atty. Ferrer presented the affidavits¹⁶ of his employees in the law office. Lastly, Atty. Ferrer manifested to return the funds and humbly asked to settle the amounts in partial periodic payments.¹⁷

¹ *Rollo*, p. 9.

² *Id.* at 15.

³ *Id.* at 14.

⁴ *Id.*

⁵ *Rollo*, p. 13.

⁶ *Id.*

⁷ *Rollo*, p. 12.

⁸ *Id.*

⁹ *Rollo*, p. 11.

¹⁰ *Id.*

¹¹ *Rollo*, p. 15.

¹² *Id.* at 10.

¹³ *Id.* at 16-17.

¹⁴ *Id.* at 18-19.

¹⁵ *Id.* at 1 and 4-8.

¹⁶ *Id.* at 89-90.

¹⁷ *Id.* at 86-88.

On March 15, 2017, the Commission on Bar Discipline (the Commission) of the Integrated Bar of the Philippines (IBP) recommended to suspend Atty. Ferrer from the practice of law for a period of two years. The Commission noted that Atty. Ferrer abused his client's confidence, with evident intent to misappropriate the funds. Atty. Ferrer admitted that he received ₱295,000.00 from Amada but failed to substantiate his claim that he remitted the money to Salvacion's daughter. The Commission also found that Atty. Ferrer voluntarily signed the memorandum of agreement and cannot later assail it on the ground of threat or intimidation,¹⁸ to wit:

Complainant has overwhelming [sic] shown that Respondent has received the various amounts from Amada Yu the total amount of P375,000.00. With the admission by herein Complainant that she only received the amount of Php80,000.00, Respondent is still under obligation to remit the amount of Php295,000.00 to the Complainant.

Respondent however raised the defense that the amount of Php295,000.00 has already been collected by Complainant and/or the latter's daughter at the Office of the Respondent.

We are not persuaded by the Respondent's claim. **Respondent has shown no document that the amount of Php295,000.00 had in fact been remitted to the Complainant.** In fact, in the Memorandum of Agreement, which Respondent has voluntarily executed, Respondent has clearly admitted that the amount of Php295,000.00 remains unremitted. In fact, Respondent has promised to pay said amount on or before October 15, 2012. **We have absolutely no doubt that Respondent's claim depicts his evident intention to misappropriate his client's funds. Incidentally, with the admission by Respondent of his failure to turn over the funds to herein Complainant, Respondent's insinuation that the acknowledgment receipts presented by Complainant as fabricated or manufactured is baseless, if not a clear evidence of bad faith and a gross violation of the trust and confidence reposed upon by complainant to his lawyer, herein Respondent.**

x x x x

As a lawyer, Respondent knows or ought to know that Complainant's threat of a disbarment case against him is not a legal ground to prove that he was unduly influenced, forced or intimidated into signing the Memorandum of Agreement. x x x **"A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent."**

x x x x

Other than Respondent's bare claim and that of his witnesses x x x, no document or sufficient proof has been presented or shown by the Respondent that indeed complainant had received such amounts. x x x This simply means that Respondent has tried to evade the obligation of remitting the amount he received from Amada Yu to the Complainant. **Respondent's conduct of first, initially denying having received from Amada Yu; second, of admitting the receipt after being confronted with the acknowledgment receipt; and thirdly, after convincing complainant to agree to a settlement,**

¹⁸ *Id.* at 151-165.

Respondent thereafter assailed the Memorandum of Agreement which he freely executed x x x. Moreover, in his Counter-Affidavit, Respondent's defenses are clearly contradictory. While Respondent is humbly asking Complainant to pay in partial periodic installments the amounts which he has misappropriated, Respondent is also claiming that the acknowledgment receipts which Amada Yu has provided to herein Complainant, have been manufactured or fabricated. These actions of herein Respondent depict the moral depravity of herein Respondent. x x x.

x x x x

Respondent's plain abuse of the confidence reposed in him by complainant rendered him liable for violations of Rule 1.01, Canon 16, Rules 16.1, 16.02 and 16.03 and Canon 17 of the Code of Professional Responsibility x x x.

x x x x

In this case however, considering that this administrative case is the first offense of the Respondent and is humbly asking for the payment of amount misappropriated in periodic installments and considering further that there may still be a room for the reformation of the Respondent's actuations, it is respectfully recommended that a two (2) year suspension from the practice of law may be the appropriate penalty for the Respondent instead of the harsh penalty of disbarment.

x x x x

WHEREFORE, premises considered, this Commission hereby respectfully recommends that Respondent ATTY. ORHEIM T. FERRER be suspended for two (2) years from the practice of law, with a stern warning that similar violations in the future shall be dealt with more severely.

It is further recommended that Respondent be further ordered to return to Complainant the total amount of Php295,000.00 which he has unjustly misappropriated with 6% interest from demand on November 16, 2012.

RESPECTFULLY SUBMITTED.¹⁹ (Emphases supplied.)

On September 28, 2017, the IBP Board of Governors adopted the Commission's factual findings and recommendations,²⁰ viz.:

*RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon the Respondent the penalty of SUSPENSION from the practice of law for a period of two (2) years and Ordered to Return the amount of P295,000.00 with 6% interest from demand.*²¹ (Emphasis and italics in the original.)

RULING

The Court adopts the IBP's findings with modification as to the penalty.

¹⁹ *Id.* at 158-165.

²⁰ *Id.* at 149-150.

²¹ *Id.* at 149

A lawyer shall account for all money or property collected or received for or from the client.²² The duty to render an accounting is absolute. The failure to do so upon demand amounts to misappropriation which is a ground for disciplinary action not to mention the possible criminal prosecution.²³ Here, convincing evidence exists that Atty. Ferrer represented Salvacion in a criminal case and that he received funds for her in the total amount of ₱375,000.00. However, Atty. Ferrer remitted only ₱80,000.00 and unjustifiably refused to return the balance of ₱295,000.00, despite repeated demands. The special power of attorney, acknowledgment receipts, the memorandum of agreement and the demand letters established these findings. In stark contrast, Atty. Ferrer did not disprove these evidence but merely argued that he gave the amounts to Salvacion's daughter. Yet, Atty. Ferrer failed to substantiate this theory. We stress that bare assertion is not evidence.²⁴ As the IBP aptly observed, Atty. Ferrer should know the law better than his client, and there is no other person to blame but him for not requiring receipts. At any rate, Atty. Ferrer admitted his obligation and promised to return the funds on a specific date. The acknowledgment of debt is voluntary and Salvacion's supposed threat to file a disbarment case to enforce her legal claim against Atty. Ferrer does not vitiate his consent to the agreement. Atty. Ferrer even subsequently offered to pay his obligation on installment basis.

Verily, Atty. Ferrer breached Salvacion's trust when he failed to render an account of her funds upon demand. In determining the imposable penalty against an erring lawyer, the purpose of disciplinary proceedings must be considered, which is to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable men in whom courts and clients may repose confidence. While the assessment of disciplinary sanction is primarily addressed to the Court's sound discretion, the penalty should neither be arbitrary or despotic, nor motivated by personal animosity or prejudice. Rather, it should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar.²⁵

In several instances, we penalized lawyers for violating their duty to account the funds or properties of their clients despite demand. In *Campos, Jr. v. Atty. Estebal*,²⁶ the respondent did not secure the tourist visas on behalf of the clients and failed to return their money.²⁷ In *Medina v. Atty. Lizardo*,²⁸ the respondent refused to surrender the clients' certificates of title. In *Yuzon v. Atty. Agleron*,²⁹ the respondent received money from his client for the purchase of a house and lot. The respondent failed to return the money after the sale did not materialize. In *Ong v. Meris*,³⁰ the respondent did not return the money entrusted for the transfer and registration of real property in his client's name. In all these

²² THE CODE OF PROFESSIONAL RESPONSIBILITY, Rule 16.0.

²³ Eldrid C. Antiquiera, *Comments on Legal and Judicial Ethics*, Second Edition (2018), p. 90.

²⁴ See *Dra. Dela Llana v. Biong*, 722 Phil. 743, 762 (2013).

²⁵ *Ting-Dumali v. Torres*, 471 Phil. I (2004).

²⁶ 792 Phil. 542 (2016).

²⁷ *Id.* at 543.

²⁸ A.C. No. 10533, January 31, 2017.

²⁹ A.C. No. 10684, January 24, 2018.

³⁰ *Ong v. Meris*, A.C. No. 9702 (Notice), April 4, 2018.



cases, the respondents were suspended from the practice of law for a period of one year. Considering that this is Atty. Ferrer's first infraction and that he manifested to pay his obligation, we deem it proper to impose the penalty of suspension from the practice of law for a period of six months.

We remind that all lawyers, as trustees of their clients' funds and properties, must render a prompt and proper accounting, thus:

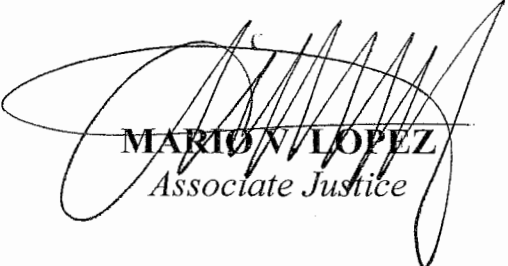
The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics.³¹

FOR THESE REASONS, Atty. Orheim T. Ferrer is **SUSPENDED** from the practice of law for a period of six months which shall take effect immediately upon receipt of this Resolution. He 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. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Orheim T. Ferrer is also **ORDERED** to return to complainant within ten (10) days from notice the sum of ₱295,000.00 with interest of six percent (6%) *per annum* from receipt of this Resolution until the full amount is satisfied. Atty. Orheim T. Ferrer shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with this directive shall warrant the imposition of a more severe penalty.³²

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be entered into Atty. Orheim T. Ferrer's records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

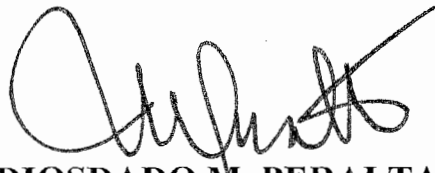
SO ORDERED.


MARIO N. LOPEZ
Associate Justice

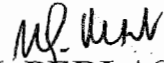
³¹ *Egger v. Atty. Duran*, 795 Phil. 9, 17 (2016).

³² *Gabriel v. Sempo*, A.C. No. 12423, March 26, 2019. See also *Caballero v. Pilapil*, A.C. No. 7075, January 21, 2020.

WE CONCUR:



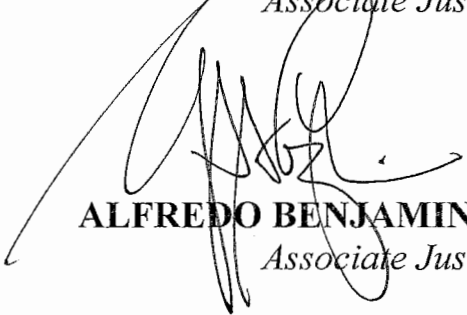
DIOSDADO M. PERALTA
Chief Justice



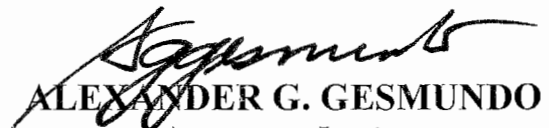
ESTELA M. PERLAS-BERNABE
Associate Justice



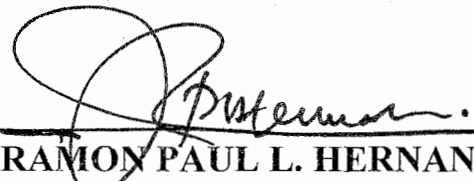
MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



ROSMARIE D. CARANDANG
Associate Justice


(On official leave)
AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
HENRI JEAN PAUL B. INTING
Associate Justice

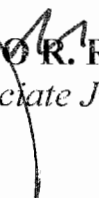
(On official leave)
RODIL V. ZALAMEDA
Associate Justice



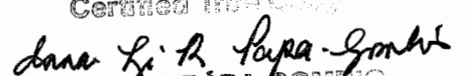
EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice

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ANNA-LI R. PAPA-GOMBI
Deputy Clerk of Court En Banc
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