



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 23, 2020** which reads as follows:*

**“A.C. No. 10620 [formerly CBD Case No. 15-4786] (Lolita R. Martin vs. Atty. Francisco Carandang, Jr.).** - For resolution is a Complaint for Disbarment<sup>1</sup> dated September 26, 2014 filed by complainant Lolita R. Martin against respondent Francisco Carandang, Jr. for dishonesty.

The Report and Recommendation<sup>2</sup> of Investigating Commissioner Dominica L. Dumangeng-Rosario, Integrated Bar of the Philippines – Commission on Bar Discipline (*IBP-CBD*) dated January 18, 2017 are as follows:

**REPORT AND RECOMMENDATION**

**The Charges**

On September 26, 2014, Lolita filed the instant case for disbarment before the Office of the Bar Confidant of the Supreme Court. Respondent Atty. Carandang is the lawyer of Violeta Manuntag (Manuntag) and Perfecto Pole (Pole), both of whom are respondents in various cases filed by Lolita against them, namely:

- 1) HLURB Case No. NCRHOA-043013-1927 entitled: “Lolita Martin, et al. vs. Violeta Manuntag, Perfecto Pole, and Samahang Pagkakaisa ng Upper Banlat Homeowners Association (HOA).” This HLURB case was dismissed for want of merit.
- 2) OMB-C-A-13-0101 entitled: “Lolita Martin vs. Perfecto Pole.” This case before the Office of the Ombudsman is still pending.

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<sup>1</sup> *Rollo*, pp. 7-9.

<sup>2</sup> *Id.* at \_\_\_\_.

Lolita claims that after a conference at the Office of the Ombudsman dated September 25, 2014, Atty. Carandang uttered the following statements, "*Ganun pala bayad na sila, bigay mo na ang titulo, ang fully paid receipt at isalin mo na sa pangalan ng anak niyang si Rafael Martin ang lote ni Edwin Dela Rosa para wala ng problema. At ibigay mo nang lahat ang Statement of Account ng naibayad nila sa iyo.*" Lolita then claims that despite the utterance of this statement, Atty. Carandang allegedly stated in the above-mentioned HLURB case that her children did not pay yet (referring to the abovementioned lots), or in Lolita's own words stated in the complaint-affidavit: "*Pero sa kaso po namin sa HLURB nila Violeta Manuntag at Perfecto Pole, si Atty. Francisco Carandang, Jr. ang abogado nila ang siya din po nagsabi na hindi daw po bayad ang mga anak ko sa amortisasyon, Monthly Association (sic) dues at Real Estate Tax dues. Sa Ombudsman po, sinabi na niyang bayad ang mga anak ko pero bakit sa HLURB ay sinabi niyang hindi pa bayad and mga anak ko?*"

**Version of the complainant:**

Lolita's complaint, filed by herself, alleged that after a conference at the Office of the Ombudsman dated September 25, 2014, Atty. Carandang uttered the following statements, "*Ganun pala bayad na sila, bigay mo na ang titulo, ang fully paid receipt at isalin mo na sa pangalan ng anak niyang si Rafael Martin ang lote ni Edwin Dela Rosa para wala ng problema. At ibigay mo nang lahat ang Statement of Account ng naibayad nila sa iyo.*"

Lolita then claims that despite the utterance of this statement, Atty. Carandang allegedly stated in the above-mentioned HLURB case that her children did not pay yet (referring to the aforementioned lots), or in Lolita's own words stated in the complaint-affidavit: "*Pero sa kaso po naming sa HLURB nila Violeta Manuntag at Perfecto Pole, si Atty. Francisco Carandang, Jr. ang abogado nila ang siya din po nagsabi na hindi daw po bayad ang mga anak ko sa amortisasyon, Monthly Association (sic) dues at Real Estate Tax dues. Sa Ombudsman po, sinabi na niyang bayad ang mga anak ko pero bakit sa HLURB ay sinabi niyang hindi pa bayad and mga anak ko?*"

**Version of the respondent:**

Respondent Atty. Carandang, in his comment to the Supreme Court, and in his position paper, specifically denied having said the above statements alleged by Lolita. Aside from this denial, he presented a joint-affidavit of his clients, which positively affirmed that the respondent and the said clients went out ahead of the complainant after the said conference in the OMB, and that the respondent did not talk to the complainant. The respondent also questioned the credibility of the complainant and her witness, and cited the respondent's failure to comply with the Certificate of Non-Forum shopping.

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**Proceedings:**

The complainant sent a letter containing her complaint to the Office of the President. After receiving the said letter on August 5, 2014, the Presidential Action Center of the Office of the President transmitted the same to the Office of the Court Administrator of the Supreme Court.

After receipt of the letter on August 6, 2014, the Court Administrator indorsed the same to the Office of the Bar Confidant. After receipt of the same letter on August 13, 2014, the Office of the Bar Confidant then sent a letter dated August 26, 2014 addressed to the Complainant requiring the latter to comply with the formal requirements for disbarment proceedings.

After receipt of the complaint on September 26, 2014, the Supreme Court issued a resolution, dated January 14, 2015, requiring the Respondent to file his comment within ten (10) days from notice. Respondent filed his Compliance dated March 12, 2015 and the Supreme Court issued another Resolution dated July 1, 2015 referring the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from receipt of the record. The Supreme Court then further issued a resolution dated August 10, 2015, referring the complainant's letter (reply) to the Supreme Court dated May 10, 2015, to the IBP.

The IBP Commission on Bar Discipline scheduled a Mandatory Conference on December 14, 2015 but none of the parties appeared. The case was reset to February 18, 2016 and both the complainant and respondent appeared when the case was called, however complainant was not assisted by counsel despite the previous advice for her to engage the services of counsel to represent her in the case. The next hearing was set to March 22, 2016 and both complainant and respondent appeared. The next hearing was set to April 15, 2016, but this time both the complainant and respondent had not appeared. The mandatory conference was reset for the last time to May 27, 2016. Respondent Atty. Carandang submitted his Mandatory Conference Brief on April 22, 2016. The hearing scheduled for May 27, 2016 was rescheduled on June 27, 2016 at the instance of the investigating commissioner. On the scheduled conference, the complainant, appeared together with her witness, Emilita (sic) Duenas, while the respondent was not around. The undersigned IBP CBD Commissioner issued an order dated June 27, 2016 terminating the conference and directing the submission of position papers within ten (15) (sic) days from receipt of the order, and the case shall be submitted for report and recommendation. The Order noted that complainant Lolita has failed to avail of counsel despite the several opportunities given to her which caused the several resettings of this case. Only respondent filed his Position Paper, doing so on July 25, 2016.

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**RECOMMENDATION**

It is recommended that this case be dismissed for lack of merit. The material issues in this case are: 1) Whether or not Atty. Carandang did in fact uttered the statements in the complaint-affidavit; and 2) Whether or not the utterance of these statements constitute lying or dishonesty as a ground for disbarment?

**The complainant has not presented substantial evidence to prove her claim.**

The Supreme Court held in the case of *Fernandez v. De Ramos-Villalon* that the burden of proof rests on the complainant in disbarment proceedings. Furthermore, a lawyer may only be disbarred or suspended if there is “clear, convincing, and satisfactory proof that he or she committed transgressions defined by the rules as grounds to strip him or her of his professional license.”

In the case at hand, Complainant Lolita presented no other evidence to prove her allegations aside from the testimony found in her own complaint-affidavit. The only other document that could be considered as evidence is the affidavit of one Emelita Duenas (hereinafter referred to as Duenas), which was furnished by the Respondent in his position paper.

While self-serving statements made out of court are inadmissible evidence, self-serving testimonies made as a witness in court are admissible because the opposing party has an opportunity to cross-examine the said witness. In this case, although the testimony of Lolita is self-serving, it must be admissible as evidence.

However, even if admitted, such self-serving testimonies cannot be given much weight if they are unsubstantiated or uncorroborated. This is where the testimony of Duenas comes into play. The said testimony of Duenas cannot be considered as corroboration to the testimony of Lolita, as the former is not admissible for being hearsay.

It is a general rule that hearsay evidence is not admissible, since all testimonial evidence must be founded upon the personal knowledge of the witness from whom it is elicited. The testimony of Duenas, aside from it being an almost identical rehash of the complainant’s affidavit, cannot be considered as “being founded on personal knowledge” as there is no proof that Duenas was present during the Conference held at the Office of the Ombudsman when the alleged incident happened. Hence, even if this testimony is admitted as evidence, it has no probative value and cannot be given credence as it was not found on personal knowledge.

On the other hand, aside from denying that he uttered the statements averred by the complainant, the respondent also countered the allegations of the complainant by presenting the joint

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affidavit of Perfecto Pole and Violeta Manuntag, both of whom deposed and said that: "After the said conference, we and our counsel went out ahead of the complainant, Lolita Martin, and never did Atty. Carandang talk to her." The said joint-affidavit is not merely a denial, but is a positive affirmation that Lolita Martin could not have probably heard any statement uttered by respondent, as the said respondent and his clients went out ahead of the complainant, and never did the respondent talk to the complainant.

With all the foregoing being said, it is clear that the complainant failed to discharge the burden of proof lodged with her. Disbarment proceedings cannot be allowed due course if the case is only based on self-serving evidence, and hearsay testimony. A lawyer cannot be stripped of his professional license or be suspended based solely on such weak evidence. The recommendation shall then be for the court to dismiss the case.

***The utterance of the statements by the respondent does not constitute dishonest that would entail disbarment.***

Assuming *arguendo* that the allegations in the complaint-affidavit of Lolita is true, the same is not a sufficient ground for disbarment.

Complainant Lolita has not stated any legal basis in her complaint-affidavit nor did she submit any memorandum or position paper that explains her legal basis. However, it is apparent that she is questioning the character, particularly the honesty, of the respondent due to the alleged conflicting statements that she heard from him in different venues.

In her complaint affidavit, Lolita stated that Atty. Carandang uttered the following statement:

*"Ganun pala bayad na sila, bigay mo na ang titulo, and fully paid receipt at isalin mo na sa pangalan ng anak niyang si Rafael Martin ang lote ni Edwin Dela Rosa para wala ng problema. At ibigay mo nang lahat ang Statement of Account ng naibayad sa iyo."*

There was clearly no lying or dishonesty in the statements uttered by Atty. Carandang. The context and the circumstances simply show if in fact such statements were uttered, that Atty. Carandang was giving advice to his clients based on what he had heard in the said conference. Atty. Carandang never claimed that Lolita's children were already paid as a fact. "*Ganun pala*" implies that he merely based his statements on what he heard.

Such advice is commonly given by lawyer to their clients, in light of their duty to discourage litigation as provided in Canon 1, Rule 1.04 of the Code of Professional Responsibility. The said rule provides that: "A lawyer shall encourage his clients to avoid,

end, or settle a controversy if it will admit a fair settlement. The statements uttered, if true, would only reflect that Atty. Carandang was doing his proper duty.

Furthermore, there is no lying by the respondent to the complainant as the statements were clearly addressed to the former's clients, not to the latter. Even if one says that the complainant is actually alleging that the respondent was lying to his own clients, then the said clients should be in a more appropriate position to file this complaint against the respondent, not Lolita, who is an opponent of the respondent's clients. Common sense would dictate that Manuntag and Pole would not even have continued to hire Atty. Carandang as their lawyer if the latter indeed claimed and insisted that the position of Lolita is the correct one.

In fact respondent's clients also executed a joint-affidavit, as mentioned-above, wherein they deposed that: "We execute this joint affidavit to attest the truth that Atty. Carandang never uttered statements against our interest in the cases he handles for us." This shows that the said clients themselves acknowledge the fact that Atty. Carandang never claimed that the contrary position of Lolita (that her children were already paid) as his own. Therefore, since Atty. Carandang never claimed a contrary position to his clients in the HLURB case, and the statements allegedly uttered are evidently just advice given to a client in good faith, there is no lying or dishonesty to speak of that would entail Atty. Carandang to be disbarred or suspended.

As discussed above, it is not sufficiently shown that Atty. Carandang has violated any of his professional duties as a lawyer and therefore it is RECOMMENDED that the complaint against him be DISMISSED.

RESPECTFULLY SUBMITTED.<sup>3</sup>

In Resolution No. XXII-2017-908<sup>4</sup> dated April 19, 2017, the Board of Governors of the IBP resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner, and likewise dismissed the complaint.

Further, in a Resolution<sup>5</sup> dated August 29, 2018, the Board of Governors, likewise, resolved to deny the complainant's motion for reconsideration there being no new reason or argument to justify the reversal of its previous decision.

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<sup>3</sup> *Id.* at 148-153. (Citations omitted.)

<sup>4</sup> *Id.* at 146-147.

<sup>5</sup> *Id.* at 144-145.

In view of the foregoing, finding the recommendation of the Integrated Bar of the Philippines to be fully supported by the evidence on record and applicable laws, the Court **RESOLVES** to **DISMISS** the case against Atty. Francisco Carandang, Jr., and consider the same as **CLOSED** and **TERMINATED**.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court *8/18/20*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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