

MAXIMO SANTIAGO, COMPLAINANT, VS. ATTY. MARTIN B. BUSTAMANTE, RESPONDENT.

Adm. Case No. 827. April 29, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

This is an administrative complaint against respondent Martin Bustamante, a member of the Philippine Bar, for dishonesty and falsification of a notarial document. According to complainant, Maximo Santiago, it was made to appear by respondent that a certain party, Victoriana Santiago, his sister, executed a special power of attorney in the presence of respondent when such was not the case. In the answer of respondent, he specifically denied the allegations of fact made by complainant and asserted that the preparation of the special power of attorney in question took place in the presence of both complainant and his sister, who were introduced to him by the late Mayor Maria Garcia of San Manuel, Isabela. As special defenses, he alleged that he had been a notary for fifteen years in good standing without any complaint having been lodged against him and that complainant, an ex-convict, was motivated to file the charge against him only because of his refusal to testify falsely to help complainant in a pending criminal case.

The matter was referred to the Solicitor General for investigation, report, and recommendation. The case was scheduled for hearing by the then Assistant Solicitor General Antonio G. Ibarra on September 5 and 6, 1968. Before such date, counsel for complainant filed a motion for the postponement of the investigation. Subsequently on September 6, 1973, complainant filed a motion to dismiss attaching thereto an affidavit of desistance, wherein he alleged that he charged respondent with the falsification of a notarial document only as a retaliatory measure, his sister having filed a criminal complaint against him and that with the dismissal of such complaint, he had lost interest in continuing with the administrative case against respondent. As a result, no evidence whatsoever is on record against the latter.

The report of Solicitor General Estelito Mendoza was submitted to this Court on April 30, 1976. The dismissal of the case was recommended.

The Solicitor General saw no reason for proceeding further after a study of the pleadings filed with him. It was apparent that respondent did get involved in the bitter differences between complainant and his sister, which led the latter to prosecute him. When she herself realized that the accusation was without basis, she moved to dismiss. That led complainant, no doubt satisfied with this turn of events, to do the same with respect to the charge against respondent, an affidavit of desistance being filed. The Solicitor General likewise noted as a circumstance in favor of respondent that he had "always been present each time this case was set for hearing and has constantly requested for an early disposition of the case thus filed against him." [1]

It was his considered view therefore "that there can be no valid reason for proceeding with the investigation of the case." [2] Relying further on "the legal presumption that a lawyer is innocent of the charges preferred against him until the contrary is proved and that he regularly performed his duty as an officer of the Court in accordance with

his oath,"[3] he recommended "that the complaint should be dismissed." [4]

Such a recommendation merits approval. That is in accordance with the leading case of *In re Tionko*[5] cited by the Solicitor General. That 1922 opinion of Justice Malcolm had been relied upon subsequently in a number of cases. [6] There is likewise this relevant excerpt from the opinion of the then Justice, now Chief Justice, Castro in *Go v. Candoy*: [7] "It is quite elementary that in disbarment proceedings, the burden of proof rests upon the complainant. To be made the basis for suspension or disbarment of a lawyer, the charge against him must be established by convincing proof. The record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers. The dubious character of the act done as well as of the motivation thereof must be clearly demonstrated." [8]

WHEREFORE, the complaint against respondent Martin B. Bustamante, a member of the Philippine Bar, is dismissed. Let a copy of this resolution be entered on his record.

Barredo, Antonio, Aquino, and Martin, JJ., concur.

Concepcion, Jr., J., is on leave.

[1] Report and Recommendation of the Solicitor General, 5.

[2] *Ibid.*

[3] *Ibid.*, 5-6.

[4] *Ibid.*, 6.

[5] 43 Phil. 191 (1922).

[6] Cf. *Javier v. Cornejo*, 63 Phil. 293 (1936); *De Guzman v. Tadeo*, 68 Phil. 554 (1939); *In re Attorney C. T. Oliva*, 103 Phil. 312 (1958); *Blanza v. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1; *Magno v. Gellada*, Adm. Case No. 767, Dec. 20, 1971, 42 SCRA 549; *Misamin v. San Juan*, Adm. Case No. 1418, Aug. 31, 1976, 72 SCRA 491; *Maderazo v. Del Rosario*, Adm. Case No. 1267, Oct. 29, 1976

[7] L-27516, October 19, 1967, 21 SCRA 438.

[8] *Ibid.*, 442.

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