

CESAR V. ROCES, COMPLAINANT, VS. ATTY. JOSE G. APORTADERA, RESPONDENT.*Adm. Case No. 2936. March 31, 1995*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3b070982498d/>**PER CURIAM:**

This case arose from the purported sale of a parcel of land located in Dingle, Iloilo by the late Isabel Roces to a certain Gregorio Licauan, as evidenced by a Deed of Sale, dated January 4, 1980. The document was notarized on even date by respondent Atty. Jose G. Aportadera, and contained the following subscription:

In the City of Iloilo, Philippines, this 4th day of January, 1980, personally appeared before me, Isabel Roces with Residence Certificate No. A-9079133 issued at Manila on February 1, 1980 known to me to be the same person who executed the foregoing instrument known as Deed of Sale, consisting of two (2) pages signed by her and and (sic) her instrumental witnesses, each and every page thereof and she acknowledged to me that the same is her true, free and voluntary act and deed."

On September 30, 1986, a verified Complaint for Disbarment was filed with this Court against respondent alleging, inter alia, that he caused the execution of the Deed of Sale and made it appear that Isabel had participated therein by forging her signature thereon, and notarizing it through the use of a fictitious Residence Certificate. Complainant's averments were supported by the findings of the National Bureau of Investigation (NBI), Western Visayas Regional Office. As embodied in a report, dated April 1, 1986, the NBI found that: (1) respondent admitted he notarized the deed although it was not signed by Isabel Roces in his presence, and although he knew she was hospitalized at that time; (2) handwriting examinations showed that the signature of Isabel Roces appearing in the deed is a forgery; (3) when the deed was notarized in Iloilo on January 4, 1980, Isabel Roces was confined at the Hospital de San Juan de Dios in Pasay City, and could not have personally appeared before respondent in Iloilo City; and (4) Residence Certificate No. A-9079133, listed in the subscription portion of the Deed of Sale as that presented by Isabel Roces to respondent at the time of notarization, was fictitious as it was issued on February 1, 1980, at which time Isabel Roces had already passed away.

In a Resolution, dated November 24, 1986, respondent was required by this Court to comment on the charges levied against him. He did not comply. On April 13, 1987, the case was referred to the Office of the Solicitor General (OSG) for investigation report and recommendation.

The OSG set the case for hearing several times, from September, 1987 through March, 1988, but these were postponed at the instance of respondent. The case was eventually transferred from the OSG to the Integrated Bar of the Philippines (IBP) by virtue of this Court's Resolution, dated April 12, 1988.

On August 23, 1988, respondent received notice from the IBP Commission on Bar Discipline (National Grievance Investigation Office) of a hearing set for the afternoon of September 29, 1988. On the morning of the hearing, the IBP received a telegram from respondent requesting resetting to October 17, 1988, for the reason that he "is busy in election case as party intervenor and has hearing in *People vs. Gamgam*, RTC Iloilo." The hearing officer, IBP Commissioner Ernesto L. Pineda, allowed the rescheduling "with a warning that no further postponement shall be

entertained." Despite the caveat, respondent was again granted a second resetting from October 17, 1988[1] to November 25, 1988.

On November 25, 1988, respondent again failed to appear before the IBP Commission on Bar Discipline. On even date Commissioner Pineda ordered the case submitted for resolution, viz.:

"When this case was called for hearing, only the complainant appeared. The respondent, Atty. Jose Aportadera, did not appear although it was he who chose the date November 25, 1988 as the date of the hearing. His telegram to this effect is attached to the record of the case.

"This case was filed on September 30, 1986 and despite receipt by respondent of the copy of the complaint and the annexes thereto, the said respondent to date has not filed his answer. He is deemed therefore to have waived his right to file his answer.

"Considering that the complaint is supported by documentary evidence submitted by the National Bureau of Investigation consisting of 55 pages and acting upon the motion of the complainant that the case be deemed submitted for resolution, the instant case is now considered so submitted on the basis of the documentary evidence forming part of the record of the case.

"SO ORDERED."

Two weeks later, or on December 9, 1988, respondent moved for reconsideration of the Order by way of a telegram, which motion was opposed by complainant, through counsel. Without acting on the telegraphic motion, Commissioner Pineda, on September 4, 1989, forwarded to the IBP Board of Governors his Report finding respondent guilty of malpractice and gross negligence, and recommending his indefinite suspension from the practice of law. The Commissioner noted in the Report, dated August 28, 1989, that:

"After going minutely over the records particularly the findings of the NBI, the following appears undisputed —

"1) The subject deed of sale xxx of sub-lot no. 12-C-2-B in favor of Gregorio Licauan is a FORGERY. The supposed seller, Isabel Rocas did not sign the Deed of Sale.

"2) The deed of sale was notarized by the respondent on January 4, 1980 at which date Isabel Rocas was confined at the San Juan de Dios Hospital.

"3) The number of the Residence Certificate (No. A-9079133 purportedly issued at Manila on February 1, 1980) used (by) the supposed seller Isabel Rocas is fictitious because the date of issue is February 1, 1980 and Isabel Rocas was already dead at that time, she having died on January 21, 1980 at the San Juan de Dios Hospital. xxx

"In his Sworn Statement before the NBI Regional Director in Iloilo City, the respondent puts up the defense of lack of knowledge of the forgery of the signature of the supposed seller Isabel Rocas. Thus:

`26.

Q: For your information, we have established in the course of this investigation that the signature of ISABEL ROCES appearing in the Deed of Sale dated January 4, 1980 in favor of GREGORIO LICAUAN covering Lot No. 12-C-2-B was a complete forgery. May I have your comment on this?

A:

I knew of the alleged forgery when I came to the office of the NBI that one (of the) heirs of ISABEL ROCES complained that the signature of ISABEL ROCES was forged. Before that time, I fully believed that the signature appearing on the document is the signature of ISABEL ROCES that is why I notarized the document. And believing that the consideration of the sale was fully received by ISABEL ROCES or her representative."

"The respondent's defense of good faith is untenable.

"As a notary public, he should not have notarized the deed of sale without seeing first the signatory parties — particularly the seller — sign or affix their signatures on a serious document of conveyance of a real property.

"In the subscription part of the deed of sale, the respondent represented that Isabel Roces, 'personally appeared' before him with Residence Certificate No. A-9079133. As stated elsewhere, the residence certificate is fictitious.

"At the time of the notarization of the deed of sale in Iloilo City on January 4, 1980, Isabel Roces was confined at the San Juan de Dios Hospital as per the Certification of the Medical Records Clerk in said Hospital. xxx Isabel Roces died in said Hospital on January 21, 1980 per the Certification of Dra. Amalia M. Villanueva. xxx"

On the basis of Commissioner Pineda's report and recommendation, the IBP Board of Governors, on March 26, 1994:

"RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report of the Investigating Commissioner in the above entitled case (referring to the case at bench), herein made part of this Resolution/Decision as Annex "A"; however, after a consideration of the findings of facts, the evidence on record and the applicable law and rules, the respondent is hereby SUSPENDED from the practice of law for TWO (2) YEARS, instead of indefinite suspension as recommended in the Report."

A copy of the IBP Order/Decision and Commissioner Court Pineda's Report were received by this Court on June 29, 1994.

Dissatisfied with the IBP ruling, respondent, on July 15, 1994, filed a "Motion for Reconsideration and/or to Allow the Respondent to Present His Evidence." He alleged that he was not given a fair hearing or accorded due process by the IBP when the case was deemed submitted for resolution without letting him adduce his evidence. Furthermore, he averred that suspension is too harsh a penalty for his one-time infraction of the notarial law. He claims that he deserves no more than a reprimand for his actions.

After a review of the case at bench, we affirm respondent's two-year suspension.

Commissioner Pineda did not deprive respondent of his right to procedural due process in ordering the case at bench submitted for decision on November 25, 1988. His actions were in accord with the provisions of Sec. 8, Rule 139-B of the Revised Rules of Court, as follows:

"Sec. 8. Investigation. — Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte.

"The Investigator shall terminate the investigation within three (3) months from the date of its commencement, unless extended for good cause by the Board of Governors upon prior application.

"Willful failure or refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of Court. The correspondent charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary, in accordance with the procedure set forth in this Rule for hearings before the Investigator. Such hearing shall as far as practicable be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a like period of fifteen (15) days issue a resolution setting forth its findings and recommendations,

which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of penalty."

The essence of due process is simply an opportunity to be heard.[2] There is no violation of due process even if no hearing was conducted, where the party was given a chance to explain his side of the controversy and he waived his right to do so.[3] In the case at bench, respondent first failed to file his Comment to the Complaint with this Court; and then, when the case was referred to the OSG and IBP for investigation, report and recommendation, he moved to postpone and reset the hearing on the case several times over a span of more than a year. Respondent as lawyer is presumed to understand the gravity of the disbarment proceedings filed against him. His failure to ventilate his side of the controversy, inspite of all the opportunities for him to do so, constitutes a waiver by him to exercise such right.

Respondent's contention that he should have been, if at all, only reprimanded for his actions in respect of the Deed of Sale over Isabel's property deserves scant consideration. His dubious involvement in the preparation and notarization of the falsified sale of his client's property merits the penalty of suspension imposed on him by the IBP Board of Governors.

On its face, the subscription part of the questioned deed bears eloquent testimony to respondent's knowing falsification thereof, for it stated that Isabel appeared before him on January 4, 1980, while it listed her Residence Certificate as having been issued on February 1, 1980. Respondent's misconduct is also shown by his statement to NBI Regional Director Federico H. Opinion, Jr. on September 6, 1985, to wit:

"15.

Q:

Were you the one who prepared the Deeds of Sale executed in favor of the four buyers you mentioned?

A:

Yes, your honor. After I was advised by the Hontiveros Realty that full payments of the lots sold were received by JOHN HONTIVEROS.

"16.

Q:

I am showing to you xerox copies of the following Deeds of Sale: 1) Deed of Sale dated January 4, 1980 executed by ISABEL ROCES as Vendor in favor of GREGORIO LICAUAN married to FELIZA DALDE as Vendee covering Lot No. 12-C-2-B with an area of 835 square meters more or less for a consideration of P6,930.00; 2) Deed of Sale executed by ISABEL ROCES in favor of RAYMUNDO SEROPIA married to MYRNA MUYCO covering Lot No. 12-C-2-C with an area of 299 square meters more or less for a consideration of P5,400.00 dated January 5, 1979; 3) Deed of Sale executed by ISABEL ROCES in favor of FLORENTINA MUYCO married to MANUEL ORTIZO and LOURDES VDA. DE CAMANAY for Sub-Lot No. 12-C-2-D with an area of 300 square meters more or less for a consideration of P5,100.00 dated November 3, 1976; 4) Deed of Sale executed by ISABEL ROCES in favor of ELIZA DAYOT covering Sub-Lot No. 12-C-2-E with an area of 342 square meters more or less for a consideration of P5,472.00 dated November 4, 1976, all notarized before JOSE G. APORTADERA, Notary Public. Will you please examine these and tell me what relation do these documents have to the Deeds of Sale you claimed to have been prepared?

A:

This first sale refers to the sale in favor of GREGORIO LICAUAN and states that the consideration is P6,930.00, but the amount actually received by ISABEL ROCES or her representative is only P4,620.00 minus

deduction of one percent notarial fee and expenses in securing the Manager's Check or Telegraphic Transfer to Manila. Because according to the Authority to Sell this Lot No. 12-C-2-B should be sold for P12.00 per square meter. So the Hontiveros Realty has an overprice of 6% and 10% from P4,620.00 as agreed in the Authority to Sell. After the Hontiveros Realty received the full amount of P6,930.00 and the remaining amount after deducting the commission (10%) and overprice and other expenses which amount is due to ISABEL ROCES, JOHN HONTIVEROS advised me to prepare the documents to be signed by ISABEL ROCES. So I prepared this document and considering that ISABEL ROCES was an old woman, rich and aristocratic, she seldom went to my office, but somebody instructed me instead to bring the document to her house in front of the Colegio del Sagrado, Corazon de Jesus, Iloilo City, used to do that because ISABEL ROCES had been my old client before and during this transaction. So, several days after I received this document and believing in all honesty and good faith that it is the signature of ISABEL ROCES and furthermore believing that the consideration of this sale which were received by me were turned over to Hontiveros Realty and upon advise of Hontiveros Realty, I notarized this document. With respect to the three other Deeds of Sale, believing to be the true signatures of ISABEL ROCES, I notarized them after I was advised by Hontiveros Realty. And from those amounts appearing are deductible 10% commission and overprice of 6% because the authorized sale as stated in the Authority to Sell is 12% your honor.

"17.

Q:

Were you the one who personally delivered these Deeds of Sale to the house of ISABEL ROCES for the purpose of letting her affix her signatures on these documents?

A:

Several days after I was called by somebody to go to the house of ISABEL ROCES and believing that it is the true signature of ISABEL ROCES and that the consideration of the sale was duly received by Hontiveros Realty, I notarized said documents, your honor. As for the other three Deeds of Sale, when I got those copies it was already signed by ISABEL ROCES.

"18.

Q:

In other words, do I understand you correctly that the purported signatures of ISABEL ROCES appearing in these four Deeds of Sale were affixed therein not in your presence, and that you subscribed or notarized these documents without the presence of ISABEL ROCES?

A:

In the case of the first three documents not including the sale of LICAUAN because that was the last document I notarized. Several days after I received those three documents, I went to the house of ISABEL ROCES and asked her to confirm whether those three documents were signed by her and whether the money representing the proceeds of the sale were received by her. She answered yes. That was before she died and when she was in Iloilo City. With regard to the last document, I was not able to meet her anymore to ask for confirmation because when I went to her house, I was informed that she was in Manila and she died there later.

"19.

Q:

Who gave you this Deed of Sale in favor of Gregorio Licauan with the signature of ISABEL ROCES already affixed therein?

A:

I do not remember the name of the person who gave that document to me. xxx may be a member of the household of ISABEL ROCES.

"20.

Q:

Did you get this Deed of Sale in favor of LICAUAN from the house of ISABEL ROCES or was it delivered to you?

A:

The document of LICAUAN, first I received a telephone call to get the document so I went there first to ask ISABEL ROCES whether she received the amount, and also to renew the Authority to Sell. But when I arrived there, somebody gave me this document and I was informed that ISABEL ROCES was in Manila.

"xxx xxx xxx

"26.

Q:

For your information, we have established in the course of this investigation that the signature of ISABEL ROCES appearing in the Deed of Sale dated January 4, 1980 in favor of GREGORIO LICAUAN covering Lot No. 12-C-2-B was a complete forgery. May I have your comment on this?

"A:

I knew of the alleged forgery when I came to the office of the NBI that: one (of the) heirs of ISABEL ROCES complained that the signature of ISABEL ROCES was forged. Before that time, I fully believed that the signature appearing on the documents is the signature of ISABEL ROCES that is why I notarized the document. And believing that the consideration of the sale was fully received by ISABEL ROCES or her representative."

Furthermore, the NBI investigation reveals that: (1) respondent misrepresented himself to Gregorio Licauan as being duly-authorized by Isabel Rocés to sell her property; (2) it was respondent who prepared the various deeds of sale over Isabel's subdivision lots; (3) Isabel was already confined at a hospital in Metro Manila on January 4, 1980, the deed's date of execution; (4) respondent knew that Isabel was hospitalized in Metro Manila when he subscribed the deed; (5) he knew that Isabel died in Metro Manila soon after her confinement; and (6) he did not give the seller a copy of the questioned deed of sale.

In the face of all the evidence, this Court cannot accept respondent's claim that he notarized the questioned Deed of Sale in good faith, without knowledge of any defect therein. He undoubtedly knew that Isabel Rocés could not have executed the deed in Iloilo City on January 4, 1980 because she was hospitalized in Metro Manila. Nevertheless, he notarized the same, expressly subscribing that Isabel had appeared before him in Iloilo City on January 4, 1980 exhibiting a Residence Certificate issued on February 1, 1980 (at which time Isabel was already dead) and acknowledging to him that it was her free and voluntary act. Clearly, respondent's conduct is not in accord with the Canons of Professional Ethics.

PREMISES CONSIDERED, respondent **ATTY. JOSE G. APORTADERA** is found **GUILTY** of malpractice and gross misconduct, and is **SUSPENDED** from the practice of law for a period of two (2) years.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

[1] At about this time, typhoon Yumang was battering the Visayas, and all trips from there to Manila by air and water were suspended.

[2] See *Stayfast Sunset View Condominium Corporation v. NLRC*, 228 SCRA 466 (1993); *Villareal v. Court of Appeals*, 219 SCRA 292 (1993); *Philippines Corporation v. NLRC*, 218 SCRA 596 (1993).

[3] See *Palagpag v. NLRC*, 218 SCRA 510 (1993); *Esber v. Sto. Tomas*, 225 SCRA 664 (1993).

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