

MENA U. GERONA, COMPLAINANT, VS. ATTY. ALFREDO DATINGALING, RESPONDENT.

Adm. Case No. 4801. February 27, 2003

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint for disbarment filed by Mena U. Gerona against Atty. Alfredo Datingaling for allegedly falsifying a document and notarizing it afterwards.

The complaint, which is in the form of an affidavit, concerns a document entitled “Consent to Quarry” purporting to be an agreement whereby complainant Mena U. Gerona and her party, composed of Lucila Umali Magboo, Feliciano U. Umali, Marife Umali, Jovita Umali Galicia, P.J. Galicia, Wendy Sunshine Umali, and Aurelia Umali Miranda, allegedly agreed to allow Ronald Reagan Hernandez, represented by Engr. Bayani N. Melo, of legal age, Filipino, of Alangilan, Batangas City, his heirs, successors, and assigns, to enter or occupy a portion of their property in Anilao East, Mabini, Batangas and engage in a “QUARRY” business and related activities.[1]

Complainant stated:

- That I am filing a case for disbarment against ATTY. ALFREDO DATINGALING of Batangas City whose house is at the back of the Provincial Jail;
- That I am constrained to file such disbarment case for the reason that the said ATTY. ALFREDO DATINGALING in notarizing the attached document, Annexes A and A-1, he made it appear that I together with my brother and sisters appeared before him on July 2, 1997 when in truth and in fact we did not and in the said document Atty. Alfredo Datingaling said, and I quote:

BEFORE ME, A NOTARY PUBLIC FOR AND IN THE CITY OF BATANGAS PERSONALLY APPEARED THE FOLLOWING PERSONS, NAMELY:

RONALD REAGAN HERNANDEZ, represented by: ENGR.
BAYANI MELO
LUCILLE U. MAGBOO
MENA U. ENRIQUEZ GERONA
FELICIANO UMALI
JOVITA U. GALICIA
WENDY SUNSHINE UMALI
AURELIA UMALI MIRANDA

KNOWN TO ME AND TO ME KNOWN TO [BE] THE SAME PERSONS WHO EXECUTE[D] THE FOREGOING INSTRUMENT AND THEY ACKNOWLEDGED TO [HAVE] MADE THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED.

THE FOREGOING INSTRUMENT RELATES TO A CONSENT TO QUARRY AGREEMENT, CONSIST[ING] OF TWO (2) PAGES, INCLUDING THE PAGE IN WHICH THE ACKNOWLEDGEMENT

[IS] WRITTEN AND HAS BEEN SIGNED BY THE PARTIES TOGETHER WITH THEIR INSTRUMENTAL WITNESSES ON EACH AND EVERY PAGE THEREOF.

WITNESS MY HAND AND SEAL THIS 2[ND] DAY OF JULY 1997 AT BATANGAS CITY, PHILIPPINES.

- That aside from the fact that not one of us appeared before Notary Public Alfredo Datingaling at Batangas City on July 2, 1997 and we have individual daily time records as we are working in Metro Manila, we have signed each and every document of Annexes A and A-1 before him as stated by him in his acknowledgement and clearly page 1 which is Annex A has not been signed by any of us and the name WENDY SUNSHINE UMALI refers to two persons which are my nieces, Wendy is nine (9) years old and Sunshine is twelve (12) years old and both of them have no legal personality to appear before a Notary Public to sign any legal document and moreover RONALD REAGAN HERNANDEZ who appears to have a Residence Certificate No. 8988196 is a son of Elvira Atienza and is only nine (9) years of age and the first page, Annex A has been written on a different typewriter and inserted to the document as the front page and allegedly signed on July 3, 1997 at Batangas City ahead of the notarization of the document which was on July 2, 1997. In short, Atty. Alfredo Datingaling falsified the whole document and he aggravated such act of falsification when he notarized the same; that moreover, it refers to a parcel of land which has never been agreed by the parties;

- That for such acts of falsification, I have filed with the City Fiscal's Office of Batangas City a falsification case against Atty. Alfredo Datingaling and his clients, Elvira Atienza, Bayani Melo and Apolonia Bonado.[2]

Complainant charged that despite knowledge of the falsity of the document, respondent, as notary public for Batangas City, notarized it on July 3, 1997.

This Court required respondent Atty. Alfredo Datingaling to comment on the administrative complaint filed against him. In his counter-affidavit dated March 2, 1998, respondent claimed that the complaint is "baseless, out of focus, an afterthought, childish and in the nature of self-indictment." [3] Respondent denied the allegations against him and claimed that complainant had signed the documents on July 2, 1997 in Quezon City and had it notarized by respondent the next day (July 3, 1997) in Batangas City. Respondent stated in his counter-affidavit:

The document was already prepared when it was brought to my law office by Bayani Melo and company who signed in our office on July 03, 1997. It was my secretary who stamped my name as Notary Public on the bottom of the "Acknowledgement" ready for my signature, but through inadvertence she overlooked that date July 02, 1997 thereof as the date of the actual notarization. It bears emphasis that such date (July 02, 1997) was typewritten beforehand which could easily be reformed if the parties so desire. So why does the complainant want to create trouble?

Explaining a little further, the negotiation or transaction between the group of Ronald Hernandez represented by Bayani Melo on the one hand (my client), and the group of Mena Umali Gerona on the other took place at the residence of Mena Umali Gerona in Quezon City where the document in question was prepared on July 2, 1997, and the parties agreed to meet each other in Batangas City, the following day July 3, 1997 for purposes of notarization at the office of the Notary Public ATTY. ALFREDO R. DATINGALING.[4]

Attached to the counter-affidavit were the affidavits of Bayani Melo and Matias Magnaye (marked Annexes A and B, respectively), [5] corroborating respondent's allegations. Bayani Melo had signed as the representative of Ronald Reagan Hernandez, while Matias Magnaye as a witness to the "Consent to Quarry."

In reply, complainant submitted an affidavit, dated April 23, 1998, received by this Court the following day. Respondent was required to file a rejoinder within 10 days, but he did not do so.

In her reply-affidavit, complainant submitted a copy of the resolution of the provincial prosecutor of Batangas in I.S. No. 97-3353 (for falsification of public document), finding probable cause against respondent and

recommending the filing of an information for falsification of a public document against all the respondents named in the case, including herein respondent Atty. Alfredo Datingaling. The prosecutor stated:

After a painstaking study and careful analysis of the evidence presented by both parties, the undersigned has observed the following striking dissimilarities on the two copies of the document "Consent to Quarry" (Authorization) which would clearly distinguish one from the other, to wit:

Page 1 of the unnotarized consent to quarry dated July 2, 1997 reveals that it has that blank space for the technical description of a parcel of land subject of their agreement; it is undated; it is signed by Bayani Melo at the bottom but unsigned by Lucila Umali Magboo and it has insertions and modifications thereon.

On the other hand, page 1 of the notarized copy of that consent to quarry reveals that the technical description refers to two parcels of land located at Anilao, Mabini, Batangas described in Tax Declaration No. 003-00097 and in the approved plan/"Application for Small Scale Mining Permit for Quarry"; it is dated July 3, 1997, it has two signatures of Bayani Melo and one signature of Ronald Reagan Hernandez and it is also unsigned by Lucila Umali Magboo.

Page 2 of the unnotarized consent to quarry dated July 2, 1997 shows the signatures of Mena U. Gerona, Feliciano Umali and Aurelia Miranda as well as the signatures of witnesses Rosemarie, Matias, Geronimo and Apolonia before the acknowledgment portion; a signature of Lucila N. Magboo at the acknowledgment portion; blank as to the Notary Public and the Doc., Page No., Book No., and Series of.

Page 2 of the notarized copy of the Consent to Quarry bears the signatures of Mena, Feliciano, and Aurelia as well as the witnesses before the acknowledgment portion; it is dated July 2, 1997 and signed by Notary public A.R. Datingaling and it is docketed as Doc. No. 3473, Page No. 67, Book No. XXVII, Series of 1997.

It has been also established that the said document was brought to Mena's residence on July 2, 1997 ready for signatures and in fact it was signed there by Mena, Feliciano, Aurelia and Bayani Melo in the presence of those witnesses. After the signing of said document, a copy was left with Mena and the other copies were brought by the group of Bayani Melo, which copies were notarized by Atty. Alfredo R. Datingaling on July 3, 1997. The issue now is whether the crime of falsification has been committed by the respondents?

From the glaring dissimilarities between the copies of the document consent to quarry and the testimony of the complainant and his brother Feliciano, the undersigned honestly believes that indeed the crime of falsification had been committed by the respondents in conspiracy with one another. The evidence is clear that Mena Umali and her brother and sisters had not presented themselves or appeared before said Notary Public for the acknowledgment of said document as their free act and voluntary deed and that the lots described in the notarized document are different from the lot they intended to be the subject of their agreement. From the unnotarized copy dated July 2, 1997 which bears the proposed insertions/modifications, the land intended to be described as the subject of that agreement is but a parcel of land while in the notarized copy, it describes two parcels of land. Further, had the complainant and her brother and sisters appeared before the Notary Public for notarization of said document, then there is no reason why Lucila Magboo, Mena Umali, Feliciano Umali and Aurelia Miranda would not be required to sign on the first page of the document. In fact, Bayani Melo signed again the said document on the first page while Ronald Reagan Hernandez who is already represented by Bayani Melo was required to sign said document on the first page. Hence, there is sufficient ground to hold respondents for trial for the said offense under I.S. No. 97-3353.

.....

WHEREFORE, in view of the foregoing, it is respectfully recommended that an information for Falsification of Public Document be filed against all the respondents under I.S. No. 97-3353 . . . [6]

In addition, complainant submitted on December 4, 2000 a list of criminal cases, eight in all, filed against

respondent, including that filed by complainant. Four of the cases had been dismissed, while four others were pending. Most of the cases were for violation of B.P. Blg. 22, estafa, and estafa through falsification of a public document.

The case was referred to the Integrated Bar of the Philippines (IBP). Thereafter, the IBP Investigating Commissioner, Atty. Renato G. Cunanan, to whom this case was assigned, recommended the suspension of respondent Alfredo R. Datingaling from the practice of the profession for a period of one year. In his report, Atty. Cunanan stated:

We are therefore of the impression that, to say the least, the respondent has not shown qualities that endear him to the profession or the Bar. While complainant's present criminal case against the respondent may be pending, and he still enjoys the presumption of innocence so far as Crim. Case No. 9426 (I.S. No. 97-3353) is concerned, the fact remains that for purposes of this administrative complaint, the evidence presented by the complainant considered vis-à-vis the unconvincing explanation of the respondent, his silence and failure to file a rejoinder, and the criminal cases filed against him, it is clear that Atty. Alfredo R. Datingaling has violated the Code of Professional Responsibility, more particularly Canons 1 and 7.

We therefore recommend the suspension of Atty. Alfredo R. Datingaling from the practice of the profession for a period of one (1) year.[7]

The IBP Board of Governors approved the report with modification:

RESOLVED to ADOPT and APPROVE, . . . the Report and Recommendation of the Investigating Commissioner . . .; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, with modification, and considering respondent's violation of the Code of Professional Responsibility more particularly Canons 1 and 7, Respondent's Commission as Notary Public is hereby SUSPENDED with disqualification for appointment as Notary Public for two years from receipt of notice.[8]

Respondent filed a motion for reconsideration declaring himself innocent and insisting he had no participation in the transaction. In addition, he denied receipt of the resolution requiring him to file a rejoinder. However, his motion was denied by the IBP Board of Governors on the ground that it no longer had jurisdiction over the case as it had already been endorsed to this Court. The IBP Board cited Rule 139-B, § 12(b) of the Rules of Court as the basis of this resolution.

Rule 139-B, § 12(b) provides:

Section 12. – Review and decision by the Board of Governors.

.....

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

As the provision reads, no mention is made of motions for reconsideration. However, it was held in *Halimao v. Villanueva*[9] that although Rule 139-B, § 12(c) does not mention motions for reconsideration, there is nothing in its text or history which prohibits the filing of such motion. A motion for reconsideration of a resolution of the IBP Board of Governors may be filed within 15 days from notice to a party appealing. Indeed, the filing of such motion before the Board is in fact encouraged before resort is made to this Court as a matter of exhaustion of administrative remedies, to afford the agency rendering the judgment an opportunity to correct any error it may

have committed through a misapprehension of facts or misappreciation of the evidence.[10]

Be that as it may and considering that the motion for reconsideration was filed after the records of this case had been forwarded to this Court, we have decided to treat the motion as a petition for review within the contemplation of Rule 139-B, § 12 (b).

After due consideration of respondent's motion for reconsideration, we find the motion to be without merit.

First. As regards the charge of falsification of a public document filed against respondent, the records show that as of the date of filing of respondent's Urgent Motion for Reconsideration on September 16, 2002, the same is still pending trial before Branch 8, Regional Trial Court of Batangas City.[11] Respondent claims that although he notarized the document, he had no participation whatsoever in the transaction. He merely notarized the document on the representation of the persons who appeared before him.[12]

The power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of a respondent as an officer of the court and as a member of the bar.[13] Disbarment should never be decreed where any lesser penalty, such as temporary suspension, could accomplish the end desired.[14] To be sure, conviction in a criminal case is not necessary for finding a member of the bar guilty in an administrative proceeding. As we have held in *Calub v. Suller*,[15] the dismissal of a criminal case is not determinative of the liability of the accused for disbarment. In the case at bar, however, the criminal prosecution based on the same acts charged in this case is still pending in the court. To avoid contradictory findings, therefore, any administrative disciplinary proceedings for the same act must await the outcome of the criminal case for falsification of a public document.

Second. The findings of IBP Investigating Commissioner, Atty. Renato Cunanan, as to the violation of Act No. 2103 are fully supported by the evidence. Act No. 2103, § 1(a) provides:

The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.[16]

Respondent had a duty to require the persons claiming to have executed the document to appear personally before him and to attest to the contents and truth of what are stated in the document. If the parties were represented by other persons, their representatives' names should appear in the said documents as the ones who had executed the same and the latter should be required to affirm their acts.[17] Respondent failed to do this.

Respondent also failed to controvert complainant's evidence that Wendy Sunshine Umali are actually two different persons named Wendy and Sunshine, both surnamed Umali; that they were minors at the time of the execution of the aforesaid document; and that their signatures therein had been made by an unidentified person. It is clear even from the face of the "Consent to Quarry" that Wendy and Sunshine Umali are two different minors, who were represented by a person who signed the document in their behalf, thus lending credence to complainant's claim that the document is fictitious. In fact, the residence certificate number of Wendy Sunshine Umali is not stated in the notarized document. In addition, page one of the agreement appears to have been intercalated and to have been typed with a different machine.

The acknowledgment of a document is not an empty act. By it a private document is converted into a public document, making it admissible in court without further proof of its authenticity.[18]

The importance of the function of a notary public cannot therefore be overemphasized. No less than the public faith in the integrity of public documents is at stake in every aspect of that function.

However, the suspension of respondent from his commission as a notary public for two years, as recommended by the IBP Board of Governors, is too severe a penalty for what he has committed. In *Villarin v. Sabate, Jr.*,^[19] this Court suspended respondent's commission as a notary public for one year for notarizing the verification of a motion to dismiss when the fact was that three of the affiants had not appeared before him and for notarizing the same instrument of which he had been one of the signatories. In accordance with that case, the suspension of respondent from his commission as notary public for one year would be proper.

WHEREFORE, respondent Atty. Alfredo Datingaling is found guilty of violation of Act No. 2103, § 1(a) and is hereby **SUSPENDED** from his commission as notary public for a period of one (1) year, with **WARNING** that a repetition of the same or similar negligent act charged in this complaint will be dealt with more severely. The charge of falsifying a public document is **DISMISSED** without prejudice to the filing of an administrative case for the same act should the evidence warrant such action.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Annex A of the Complaint-Affidavit; Rollo, p. 3.

[2] Rollo, p. 1.

[3] Counter-Affidavit, p. 1; Rollo, p. 6.

[4] *Id.*, pp. 1-2; *id.*, pp. 6-7.

[5] Rollo, pp. 9-11.

[6] Annexes A-10 to A-12 of the Reply Affidavit; Rollo, pp. 25-27.

[7] Report of the IBP Commissioner, dated November 27, 2001, p. 4.

[8] Resolution of the IBP Board of Governors, dated June 29, 1995, p. 1.

[9] 253 SCRA 1 (1996).

[10] See *id.*, at p. 6 (citations omitted).

[11] Annex A of complainant's Urgent Manifestation, Rollo, p. 31; Respondent's Urgent Motion for Reconsideration, p. 2.

[12] Respondent's Urgent Motion for Reconsideration, p. 2.

[13] *Paras v. Paras*, 343 SCRA 414 (2000); *Tapucar v. Tapucar*, 293 SCRA 331 (1998).

[14] *Id.*; *Resurrecion v. Sayson*, 300 SCRA 129 (1998).

[15] 323 SCRA 556 (2000).

[16] "An Act Providing for the Acknowledgment and Authentication of Instruments and Documents Within the Philippine Islands," enacted on January 26, 1912.

[17] See *Villarin v. Sabate, Jr.*, 325 SCRA 123 (2000).

[18] *Protacio v. Mendoza*, Adm. Case No. 5764, Jan. 13, 2002.

[19] 325 SCRA 123 (2000).

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