

REUBEN M. PROTACIO, COMPLAINANT, VS. ATTY. ROBERTO M. MENDOZA, RESPONDENT.

Adm. Case No. 5764. January 13, 2003

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint for disbarment against Atty. Roberto M. Mendoza for his alleged failure to require the parties to a document which he notarized to appear personally before him.

Complainant Reuben M. Protacio alleged that, as president of Jumping Jap Trading Company, Inc. (JJTC, Inc.), he filed in the Office of the City Prosecutor of Manila on March 7, 2001 a complaint for estafa through falsification of public documents against the spouses Nobuyasu and Carmencita Nemoto and the Metropolitan Land Corporation. He claimed that respondent Atty. Roberto M. Mendoza, who served as counsel for the spouses Nemoto in that case, had presented in the investigation a resolution of the JJTC, Inc., dated March 30, 1998, which purported to have been signed by him (the complainant), as president/director of JJTC, Inc., and Nobuyasu Nemoto, as director thereof. The resolution had been notarized by respondent. It reads:

RESOLVED AS IT IS HEREBY RESOLVED THAT Jumping Jap Corporation/Jumping Jap Company transfers, conveys and assigns unto Carmencita I. Fradejas, all of the said corporation's rights and interests over a parcel of land with a residential house erected thereon, located at #167 (#112) Pili Drive Ayala Alabang Village, Muntinlupa City covered by TCT No. 205572 issued by the Register of Deeds of Makati registered in the name of Metropolitan Land Corporation with an area of 618 sq. m.

RESOLVED FINALLY that Reuben Protacio, President of Jumping Jap Trading Corp./Jumping Jap Company whose specimen signature appears hereinbelow be authorized and empowered for and in behalf of said corporation to execute the Deed of Assignment transferring, conveying and assigning all of the rights and interests of said corporation subject of the Deed of Conditional Sale dated 1 December 1997, in favor of Carmencita I. Fradejas.

APPROVED, Manila, 30 March 1998.[1]

Complainant claimed that he did not sign the board resolution nor did he attend a board meeting of the corporation on the date stated therein (March 30, 1998), and therefore the signature purporting to be his was a forgery. He alleged that the Notarial Section of the Regional Trial Court of Manila had in fact certified that it did not have a copy of the board resolution in question because respondent had not submitted his notarial report for March 1998. Furthermore, according to complainant, the records of the Bureau of Immigration and Deportation (BID) showed that Nobuyasu Nemoto was out of the country on March 30, 1998, having left the Philippines on March 26, 1998 and having returned only on March 31, 1998. Hence, complainant claimed, it was impossible for Nobuyasu Nemoto to have attended the supposed board meeting on March 30, 1998 and to have signed the resolution on the same date. Complainant charged that respondent knowingly and maliciously notarized the said board resolution without the presence of the party allegedly executing it.

In addition, another document entitled Deed of Assignment, dated April 2, 1998, appeared to have also been notarized by respondent, purporting to have been signed by complainant as one of the parties therein. The Deed of Assignment reads:

Know All Men By These Presents:

This Deed of Assignment made and entered into on this 2nd day of April 1998 at Manila by and between: Jumping Jap Trading Corporation/Jumping Jap Company, a corporation existing under and by virtue of Philippine law, with business address at No. 310 Galeria de Magallanes Condominium, Magallanes Village, Makati City, here represented by its President, Reuben Protacio, hereinafter referred to as ASSIGNOR;

- and -

Carmencita I. Fradejas, Filipino, of legal age, single and with residence at #167 (#112) Pili Drive, Ayala Alabang Village, Muntinlupa City, hereinafter referred to as the ASSIGNEE.

WITNESSETH That

The parties have agreed as follows:

The ASSIGNOR for value received, hereby transfers, conveys, and assigns unto the ASSIGNEE, her heirs, and successors-in-interest, all of the former's rights and interests over a parcel of land with a residential house erected thereon, located at #167 (#112) Pili Drive, Ayala Alabang Village, Muntinlupa City, covered by TCT No. 205572 issued by the Register of Deeds of Makati registered in the name of Metropolitan Land Corporation, with an area of 618 sq.m. and subject of the Deed of Conditional Sale dated 1 December 1997.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures on this 2nd day of April, 1998, in Manila.[2]

Complainant denied that he had signed this deed of assignment. He pointed out that the Notarial Section of the Regional Trial Court of Manila had certified that there was no such document on file in that office as respondent had not submitted a notarial report for April 1998.[3]

Complainant alleged that respondent should not have notarized any document without first requiring the presence of the parties to attest to him that it had been duly executed, made voluntarily and with the knowledge of the parties involved. He asked that respondent be held accountable, and respondent be disbarred from the practice of law.[4]

In his answer,[5] respondent insisted that on March 30, 1998, the JJTC, Inc. had adopted a board resolution authorizing the transfer of its rights over some property in favor of one Carmencita Fradejas, who subsequently married Nobuyasu Nemoto. He insisted that the resolution, dated March 30, 1998, had been signed by complainant and Nobuyasu Nemoto and later notarized by him (respondent). Respondent said that the document was dated March 30, 1998 because it was prepared on that date, but it was actually signed by the parties therein only on March 31, 1998, upon the arrival of Nobuyasu Nemoto from Japan. It was alleged that, through inadvertence, respondent failed to change the date. Respondent maintained that the signature appearing on the board resolution was that of complainant, who participated in the board meeting. He explained that he failed to submit his notarial report for 1998 because it was lost when he transferred his residence from Sta. Cruz, Manila to Makati City.

With regard to the Deed of Assignment, respondent claimed that it was executed by complainant in the presence of respondent and other witnesses. As proof of the authenticity of complainant's signature in the Deed of Assignment, he furnished a letter addressed to the Metropolitan Land Corp., dated April 20, 1998, allegedly

prepared by complainant, in which he (complainant) appeared to be confirming a request he had previously made for the substitution of the JJTC, Inc. by Carmencita I. Fradejas as vendee in the Deed of Conditional Sale, pursuant to the Deed of Assignment dated 30 March 1998. The letter reads:

20 April 1998

METROPOLITAN LAND CORP.
Penthouse JMT Corp. Cond.
ADB Ave., Ortigas Center
Pasig City, Philippines

Attention: JOSE MA. V. LAMUG
Managing Director

Dear Mr. Lamug:

This will formalize my request for the change of the name of the Vendee in the Deed of Conditional Sale between Metropolitan Land Corporation and Jumping Jap Trading Corp/Jumping Jap Company dated 1 December 1997 from Jumping Jap Trading Corp/Jumping Jap Company to Carmencita I. Fradejas, pursuant to the Deed of Assignment dated 30 March 1998, executed by said corporation in favor of the latter. Enclosed are copies [of] said Deed of Assignment and Board Resolution authorizing such Deed of Assignment, for your ready reference.

With the aforesaid Deed of Assignment, Jumping Jap Trading Corp/Jumping Jap Company, through the undersigned, hereby releases Metropolitan Land Corporation from any and all present and future claims arising from the execution of the above-mentioned Conditional Deed of Sale.

Very truly yours,

(signed)
REUBEN PROTACIO
President[6]

Respondent stated he was ready to submit the original of the Board Resolution and Deed of Assignment to the National Bureau of Investigation (NBI) for analysis and comparison of the signatures therein with complainant's signature in his Complaint-Affidavit before the Office of the City Prosecutor of Manila to prove the authenticity of complainant's signatures in the questioned documents.

In his report, dated November 27, 2001, the Investigating Commissioner of the Integrated Bar of the Philippines (IBP) found respondent to have been negligent in the performance of his duties and obligations as a notary public and recommended the revocation of his notarial commission for a period of two years.[7] The IBP Board of Governors adopted and approved the report and recommendation of the Investigating Commissioner, with the modification that respondent's commission as notary public be suspended and that he be disqualified from appointment as notary public for two years.

The findings of the IBP are supported by the evidence in the record.

Act No. 2103[8] provides:

Section 1. (a) 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.

It is necessary that a party to any document notarized by a notary public appear in person before the latter and affirm the contents and truth of what are stated in the document.[9] The importance of this requirement cannot be gainsaid. The acknowledgement of a document is not an empty meaningless act. By it a private document is converted into a public document, making it admissible in court without further proof of its authenticity. For this reason, it behooves every notary public to see to it that this requirement is observed and that formalities for the acknowledgment of documents are complied with.[10]

In this case, Nobuyasu Nemoto, who was allegedly a signatory to a resolution of a corporation, allegedly notarized by respondent, could not have signed the document on March 30, 1998, the date indicated therein, since he was not then in the Philippines. Respondent's explanation that Nemoto actually signed the document on March 31, 1998, after arriving from Japan, cannot be accepted. Documents must speak the truth if their integrity is to be preserved. That is what a notary public vouches for when he states in the jurat that the parties have appeared before him at the time and in the place he (the notary public) states and that the document is then a free act and deed. It is for this reason that public documents are given full faith and credit, at least as to their due execution.

Even more serious than the failure of respondent to indicate the true date of the resolution is his failure to file a copy of the document with the Regional Trial Court of Manila as required by law. Chapter 11 of Act No. 2657 (Administrative Code), as amended, provides:

Sec. 245. Notarial register. — Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees therefor.

Such register shall be kept in books to be furnished by the Attorney-General to any notary public upon request and upon payment of the actual cost thereof, but officers exercising the functions of notaries public ex officio shall be supplied with the register at Government expense. The register shall be duly paged, and on the first page, the Attorney-General shall certify the number of pages of which the book consists.

Sec. 246. Matters to be entered therein. — The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to or acknowledging the instrument, the witnesses, if any, to the signature, the date of the execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof, and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

....

A certified copy of each month's entries as described in this section and a certified copy of any instrument acknowledged before them shall within the first ten days of the month next following be forwarded by the notaries public to the clerk of the Court of First Instance of the province and shall be filed under the responsibility of such officer: Provided, That if there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of the certified copies herein required. (Emphasis supplied)

Respondent's failure to comply with the duty to file a copy of the resolution with the Regional Trial Court of Manila and to send to it the entries in his notarial register constitutes a sufficient ground for the revocation of his commission.[11]

However, we think that the suspension of respondent for one year as a notary public would be more appropriate considering that there is no competent proof that complainant's signature in the documents notarized by respondent was forged. What was clearly established in this case was respondent's failure to submit a copy of the Board Resolution and the Deed of Assignment notarized to the Regional Trial Court of Manila. In *Doughlas v. Lopez, Jr.*,^[12] the Court suspended the respondent therein from his commission as notary public for one year, for notarizing the verification of a motion to dismiss when three of the affiants thereof did not appear before him and for notarizing the same instrument of which he was one of the signatories. In another case, *Coronado v. Felongco*,^[13] the Court, in suspending the respondent for two months as a notary public considered the fact that it was his first offense and that he expressed remorse for his negligence in notarizing a document, not knowing that one of the affiants thereof has died a few days before the date of notarization

WHEREFORE, in view of the foregoing, respondent Atty. Roberto M. Mendoza is **SUSPENDED** from his commission as a notary public for a period of one (1) year with **WARNING** that a repetition of the same negligent act charged in this complaint will be dealt with more severely.

SO ORDERED.

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

[1] Rollo, p. 4.

[2] *Id.*, pp. 9-10.

[3] *Id.*, pp. 1-2.

[4] *Id.*, p. 2.

[5] *Id.*, pp. 15-22.

[6] *Id.*, p. 49.

[7] Report and Recommendation of the Investigating Commissioner, p. 6.

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

[9] *Rural Bank of Silay, Inc. v. Pilla*, 350 SCRA 138 (2001); *Villarin v. Sabate, Jr.*, 325 SCRA 123 (2000); *Flores v. Chua*, 306 SCRA 465 (1999).

[10] See *Coronado v. Felongco*, 344 SCRA 565 (2000); *Nunga v. Viray*, 306 SCRA 487 (1999); *Arrieta v. Llosa*, 282 SCRA 248 (1997); *Dinoy v. Rosal*, 235 SCRA 419 (1994).

[11] Section 249, Chapter 11 of Act No. 2657 (Administrative Code), as amended, provides:

Sec. 249. Grounds for revocation of commission. The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

- (a) The failure of the notary to keep a notarial register.
- (b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the matter required by law.
- (c) The failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance within the first ten days of the month next following.

- (d) The failure of the notary to affix to acknowledgments the date of expiration of his commission, as required by law.
- (e) The failure of the notary to forward his notarial register, when filled, to the proper clerk of court.
- (f) The failure of the notary to make the proper notation regarding cedula certificates.
- (g) The failure of a notary to make report, within a reasonable time, to the proper judge of first instance concerning the performance of his duties, as may be required by such judge.
- (h) Any other dereliction or act which shall appear to the judge to constitute good cause for removal.

[12] 325 SCRA 123 (2000).

[13] 344 SCRA 565 (2000).

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