

JEAN MARIE S. BOERS, COMPLAINANT, VS. ATTY. ROMEO CALUBAQUIB, RESPONDENT.

A.C. No. 10562. August 01, 2017

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PER CURIAM:

The Case

On May 28, 2009, Jean Marie S. Boers (Boers) filed before the Commission on Bar Discipline (Commission) a complaint-affidavit^[1] against Atty. Romeo Calubaquib (Calubaquib). Boers claims that Calubaquib violated the Rules on Notarial Practice and prays that he be given the appropriate disciplinary action. The Commission directed Calubaquib to file his answer.^[2] It then conducted a mandatory conference and thereafter ordered the parties to submit their position papers.^[3] On May 23, 2011, the Commission submitted its Report and Recommendation^[4] to the Integrated Bar of the Philippines Board of Governors (IBP Board of Governors). The IBP Board of Governors adopted and approved the Commission's report and recommendation^[5] and forwarded the resolution to this Court.^[6]

The Facts

Boers and her siblings are co-owners of parcels of land in Tuguegarao City covered by a transfer certificate of title.^[7] Sometime in October 2008, Boers learned that a certain Isaac Gavino (Gavino) annotated an adverse claim on their land.^[8] The adverse claim was based on a Deed of Sale of a Portion of Land on Installment Basis (Deed of Sale) dated October 16, 1991.^[9] Boers' signature appears on the Deed of Sale as one of the sellers. The Deed of Sale was notarized by Calubaquib on the same date.^[10]

Boers claims that she could not have signed the Deed of Sale and appeared before Calubaquib for the notarization on October 16, 1991 because she was in Canada at the time. To prove this, Boers presented her passport which shows that she left the Philippines to return to Canada on December 20, 1990.^[11] She also presented her Philippine visa which was valid only until February 7, 1991.^[12] Boers also points to the absence of any residence certificate number under her name and signature in the notarization of the Deed of Sale. Neither was there any other competent form of identification stated in it.^[13]

Boers inquired with the National Archives of the Philippines where she learned that the Deed of Sale does not appear in Calubaquib's notarial file. It appears that the Deed of Sale was acknowledged as Doc. No. 143; Page No. 30; Book No. LIX; Series of 1991. However, upon verification with the National Archives, the document that corresponds to this is not the Deed of Sale but an Affidavit executed by one Alfred Danao on October 15, 1991.^[14]

Boer also added that this Court has already sanctioned Calubaquib in *Lingan v. Calubaquib*.^[15] In that case, we suspended Calubaquib from the practice of law for one (1) year for his failure to enter in his notarial record a certification of forum shopping which he notarized.^[16]

In his defense, Calubaquib insists that Boers signed the Deed of Sale and the acknowledgment. He theorizes that

Boers may have viewed the adverse claim as a hindrance to a planned sale of the land and thus filed this complaint against him.[17] As evidence, he attached to his answer a joint affidavit of Eulogia D. Simangan and Erlinda S. Tumaliuan, Boers' aunt and cousin, respectively.[18]

Notably, the joint affidavit states:

- That when JEAN MARIE A. SIMANGAN-BOERS signed the document at the office of Atty. ROMEO I. CALUBAQUIB, the document was not immediately notarized because not all the parties to the document signed at one time.
- That when all the parties to the document signed, the same was not immediately brought to Atty. Calubaquib for notarization because JOSE A. SIMANGAN, JR. wanted to increase the purchase price and which was objected to vigorously by the BUYERS.
- That when Jose A. SIMANGAN, JR. and the BUYERS settled their differences, that was the time that the document was brought to the notary public for notarization.
- That at the time the document was brought for notarization, JEAN MARIE A. SIMANGAN-BOERS was no longer in the country.[19]

The Commission recommended that Calubaquib be suspended from the practice of law for two (2) years. Further, it recommended the revocation of Calubaquib's notarial commission and his perpetual prohibition from being commissioned as a notary public.[20]

The IBP Board of Governors adopted the Commission's recommendation but added a stern warning that repetition of the same or similar conduct will be dealt with more severely.[21] On Calubaquib's motion for reconsideration, the IBP Board of Governors modified its resolution and removed the stern warning as part of Calubaquib's penalties.[22]

The Ruling of the Court

We affirm the findings of the Commission and the IBP Board of Governors.

The Rules on Notarial Practice governs the various notarial acts that a duly commissioned notary public is authorized to perform. These include acknowledgment, affirmation and oath, and jurat. In the case of the Deed of Sale, Calubaquib performed the notarial act identified under the Rules as acknowledgment. Rule II, Section 1 of the Rules define acknowledgment as:

Sec. 1. Acknowledgment. — "Acknowledgment" refers to an act in which an individual on a single occasion:

(a)

appears in person before the notary public and presents an integrally complete instrument or document;

(b)

is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c)

represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

In *Cabanilla v. Cristal-Tenorio*,^[23] we held that "a party acknowledging must appear before the notary public."^[24] This rule is hinged on the obligation of a notary public to guard against any illegal arrangements.^[25] The appearance of the parties to the deed helps the notary public to ensure that the signature appearing on the document is genuine and that the document itself is not spurious. The persons who signed the document must appear before the notary public to enable the latter to verify that the persons who signed the document are the same persons making the acknowledgment. Their presence also enables the notary public to ensure that the document was signed freely and voluntarily. Thus, we have consistently repeated that a notary public should not notarize a document unless the persons who signed are the very same persons who executed and personally appeared before him or her to attest to the contents and truth of the matters stated in the document.^[26]

Calubaquib clearly violated this rule. Boer satisfactorily proved that she could not have personally appeared before Calubaquib on October 16, 1991 as she was out of the country as early as December 20, 1990. Moreover, Calubaquib's own evidence established this same fact. He presented a joint affidavit which expressly states that Boer was not in the Philippines when he notarized the Deed of Sale. For this violation of the Rules, the imposition of disciplinary sanctions is proper.

Calubaquib also violated the mandatory recording requirements under the Rules. Section 1 of Rule VI of the Rules requires a notary public to keep a notarial register. Section 2 mandates that a notary public must record in the notarial register every notarial act at the time of notarization. We explained the importance of this mandatory recording in *Vda. de Rosales v. Ramos*:^[27]

The notarial registry is a record of the notary public's official acts. Acknowledged documents and instruments recorded in it are considered public document. If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document. Considering the evidentiary value given to notarized documents, the failure of the notary public to record the document in his notarial registry is tantamount to falsely making it appear that the document was notarized when in fact it was not.^[28]

The Certification from the National Archives reveals that Calubaquib failed to record the Deed of Sale in his notarial register. In the face of this evidence and the lack of any explanation on the part of Calubaquib, we rule that he committed a further violation of the Rules.

In *Sappayani v. Gasmen*^[29] and *Sultan v. Macabanding*,^[30] where the notary public involved notarized a document without the presence of the affiant, we meted out the penalties of revocation of the notarial commission, suspension from the practice of law for one (1) year, and disqualification from being commissioned as a notary public for two (2) years. Further, in instances where the notary public improperly recorded entries in the notarial registry, as in the cases of *Gimeno v. Zaide*^[31] and *Heirs of Pedro Alilano v. Examen*,^[32] we ordered the revocation of the notarial commission. We also imposed the penalties of suspension from the practice of law for at least one (1) year and disqualification from being commissioned as a notary public for two (2) years.

In this case, however, we note that this is not the first time that we sanctioned Calubaquib for his violation of the Rules on Notarial Practice. This serves as an aggravating circumstance that merits a harsher penalty.

WHEREFORE, in view of the foregoing, we AFFIRM WITH MODIFICATION Resolution No. XX-2014-136 of the Board of Governors of the Integrated Bar of the Philippines. We impose on Calubaquib the penalty of **SUSPENSION** for **TWO (2) YEARS** from the practice of law effective upon finality of this Decision. Further, Calubaquib's notarial commission is **REVOKED** and he is **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public. Calubaquib is also **STERNLY WARNED** that a repetition of the same or

similar acts will be dealt with more severely.

SO ORDERED.

Sereno, C. J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Mendoza, Perlas-Bernabe, Leonen, Jardeleza, Martires, Tijam, and Reyes, Jr., JJ., concur.
Caguioa, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames: Please take notice that on August 1, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 31, 2017 at 10:00 a.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo, pp. 3-8.

[2] Id. at 30.

[3] Id. at 92.

[4] Id. at 122-126.

[5] Id. at 120.

[6] Id. at 139.

[7] See id. at 3, 10.

[8] Id. at 9.

[9] Id. at 10-11.

[10] Id. at 11.

[11] Id. at 18.

[12] Id. at 19.

[13] Id. at 11.

[14] Id. at 28.

[15] A.C. No. 5377, June 15, 2006, 490 SCRA 526.

[16] Id. at 537.

[17] Rollo, p. 36.

[18] Id. at 39-40.

[19] Id. at 40.

[20] Id. at 126.

[21] Id. at 120.

[22] Id. at 140.

[23] A.C. No. 6139, November 11, 2003, 415 SCRA 353.

[24] Id. at 360.

[25] Valles v. Arzaga-Quijano, A.M. No. P-99-1338, November 18, 1999, 318 SCRA 411, 414.

[26] Cabanilla v. Cristal-Tenorio, supra at 361; Fulgencio v. Martin, A.C. No. 3223, May 29, 2003, 403 SCRA 216, 221; Villarin v. Sabale, Jr., A.C. No. 3324, February 9, 2000, 325 SCRA 123, 128.

[27] A.C. No. 5645, July 2, 2002, 383 SCRA 498.

[28] Id. at 505.

[29] A.C. No. 7073, September 1, 2015, 768 SCRA 373.

[30] A.C. No. 7919, October 8, 2014, 737 SCRA 530.

[31] A.C. No. 10303, April 22, 2015, 757 SCRA 11.

[32] A.C. No. 10132, March 24, 2015, 754 SCRA 187.

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