

HEIR OF HERMINIGILDO A. UNITE, REPRESENTED BY HIS SOLE HEIR, FLORENTINO S. UNITE, COMPLAINANT, VS. ATTY. RAYMUND P. GUZMAN, RESPONDENT.

A.C. No. 12062. July 02, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

This administrative case stemmed from a Petition for Disbarment[1] filed on December 9, 2014 by Florentino S. Unite (complainant), as the sole heir of Herminigildo A. Unite (Herminigildo), before the Integrated Bar of the Philippines (IBP), against respondent Atty. Raymund P. Guzman (respondent) for violation of Rule 10.01 of the Code of Professional Responsibility (CPR), his oath as a lawyer, and the 2004 Rules on Notarial Practice (Notarial Rules).[2]

The Facts

In his Petition for Disbarment, complainant alleged that on December 19, 2012, respondent notarized a Deed of Self Adjudication with Sale and/or with Deed of Absolute Sale[3] (Deed) executed by Jose Unite Torrices (Torrices), claiming to be the sole heir of Herminigildo, in favor of one Francisco U. Tamayo (Tamayo), covering a parcel of land located in Ballesteros, Cagayan and covered by a title[4] under Herminigildo's name. According to complainant, the Deed was executed with only Torrices's community tax certificate (CTC) as evidence of identity.[5] Complainant asserted that he is the only surviving heir of his father, Herminigildo, as Torrices is his cousin. As a result of respondent's acts, the Deed was recorded in the Registry of Deeds, which caused the cancellation of his father's title and the issuance of a new one in the name of Tamayo.[6] Complainant added that on October 20, 2014, he filed a complaint for the annulment of the Deed and Tamayo's title, with liquidation/accounting and damages before the Regional Trial Court of Ballesteros, Cagayan, Branch 33, docketed as Civil Case No. 33-471-2014.[7] In support of his Petition, complainant attached copies of the Deed, Certificate of Death of Herminigildo,[8] his birth certificate,[9] the marriage contract of his parents,[10] Tamayo's Transfer Certificate of Title,[11] and the Complaint[12] in Civil Case No. 33-471-2014 with its annexes.[13]

In his Answer,[14] respondent denied the charges against him and claimed that he complied with the requirements of the Notarial Rules. Particularly, he verified the identity of the parties to the Deed from their current government identification documents with pictures and CTCs.[15] He further inquired from the parties, especially from Torrices, their capacity to execute the Deed.

In reply[16] to respondent's Answer, complainant pointed out, among others, that: (a) a CTC is no longer considered a competent evidence of identification as it does not bear the photograph and signature of the individual;[17] (b) the other documents presented by Torrices as proof of being the sole heir did not cure the absence of the required competent evidence of identity;[18] (c) and the pendency of Civil Case No. 33-471-2014 does not bar the instant administrative action.[19]

The IBP's Report and Recommendation

In a Report and Recommendation[20] dated April 21, 2015, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for violation of the Notarial Rules. The IBP-IC held that respondent failed to confirm the identity of the parties to the Deed through the presentation of competent evidence of identity as required by the Notarial Rules, pointing out, in this regard, that a CTC is not one of the enumerated evidence of identity under the Rules.[21] Accordingly, the IBP-IC recommended that respondent be suspended from the practice of law for a period of six (6) months and be disqualified from being commissioned as a notary public for a period of one (1) year.[22]

In a Resolution[23] dated June 20, 2015, the IBP Board of Governors adopted the above-findings but reduced the recommended penalty imposed on respondent to reprimand, "considering that [r]espondent personally knows the affiant and the [CTC] then will suffice."

Dissatisfied, complainant moved for reconsideration,[24] which the IBP Board of Governors denied in a Resolution[25] dated April 20, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the Notarial Rules.

The Court's Ruling

The Court affirms the findings and adopts the recommendations of the IBP with modifications.

Time and again, the Court has emphasized that the act of notarization is impressed with public interest. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity.[26] A notarial document is, by law, entitled to full faith and credence.[27] As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system.[28] In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[29]

Under Section 2 (b) (1) and (2), Rule IV of the Notarial Rules, a notary public should not notarize a document unless the signatory to the document is "in the notary's presence personally at the time of the notarization," and is "personally known to the notary public or otherwise identified by the notary public through competent evidence of identity." [30] Section 12, Rule II of the same rules, as amended by the February 19, 2008 En Banc Resolution in A.M. No. 02-8-13-SC, defines "competent evidence of identity" thus:

Section 12. Competent Evidence of Identity. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a)

At least one current identification document issued by an official agency bearing the photograph and signature of the individual; such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

(b)

The oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification. (Emphasis supplied)

In this case, respondent, as duly found by the IBP-IC, clearly failed to faithfully observe his duties as a notary public when he failed to confirm the identity of Torrices through the competent evidence of identity required by the Notarial Rules. This fact is clear from the Deed itself which shows that Torrices presented only his CTC when he appeared before respondent. Jurisprudence^[31] provides that a community tax certificate or cedula is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; more importantly, it does not bear the photograph and signature of the person appearing before notaries public which the Rules deem as the more appropriate and competent means by which they can ascertain the person's identity.

While respondent argues that, apart from the CTC, he required all the parties to the Deed to present at least two (2) current government identification documents and conducted further interviews to ascertain their capacity and personality to enter into the transactions, the Deed itself, however, belies this contention. Had respondent indeed required – and had the parties presented – current government identification documents at the time of the Deed's notarization, respondent should have reflected these facts on the Deed's acknowledgement portion in the same manner that the Deed reflected Torrices' CTC. By notarizing the Deed notwithstanding the absence of the competent evidence of identity required by the Notarial Rules, respondent undoubtedly failed to properly perform his duty as a notary public.

In this regard, the Court disagrees with the IBP Board of Governor's finding that respondent personally knows the affiant, hence, the CTC suffices. Under Section 2 (b), Rule IV of the Notarial Rules quoted above, a notary public may be excused from requiring the presentation of competent evidence of identity of the signatory before him only if such signatory is personally known to him. In this case, the acknowledgment portion of the Deed does not state that Torrices is personally known to respondent, as the Rules require; rather, it simply states that Torrices is known to me (respondent), thus:

"Personally came and appeared before me on this ____day of ____ at [sic] Tuguegarao City, Cagayan, Jose U. Torrices with his CTC No. appearing below his signature known to me and to me known to be the same person who executed the foregoing instrument and who acknowledged to that the same is her [sic] free act and voluntary deed."^[32] (Emphasis and underscoring supplied)

In other words, nowhere in the Deed did respondent declare that Torrices is personally known to him so as to excuse the presentation of any of the enumerated competent evidence of identity. Moreover, it should be clarified that the phrase "personally known" contemplates the notary public's personal knowledge of the signatory's personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization.^[33] It entails awareness, understanding, or knowledge of the signatory's identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee of the signatory's identity and thus eliminate the need for the verification process of documentary identification. In this case, if indeed respondent personally knows Torrices, as the IBP Board of Governors surmised, there would have been no need for respondent, as he asserted in his Answer, to require the parties to present at least two (2) current government identification documents and conduct further interviews to ascertain their capacity and personality to execute the Deed.

Lastly, as a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession

and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession.[34] By notarizing the subject Deed, he engaged in an unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Rule 1.01, Canon 1 thereof which provides:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

As herein discussed, respondent's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization.[35] He should thus be held liable for such negligence not only as a notary public but also as a lawyer. Consistent with jurisprudence,[36] he should be meted out with the modified penalty of immediate revocation of his notarial commission, if any, disqualification from being commissioned as a notary public for a period of two (2) years, and suspension from the practice of law for a period of six (6) months.

WHEREFORE, the Court hereby finds respondent Atty. Raymund P. Guzman GUILTY of violation of the 2004 Rules on Notarial Practice and of the Code of Professional Responsibility. Accordingly, the Court hereby: SUSPENDS him from the practice of law for a period of six (6) months; REVOKES his incumbent commission as a notary public, if any; and PROHIBITS him from being commissioned as a notary public for a period of two (2) years. He is WARNED that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

The suspension in the practice of law, revocation of notarial commission, and disqualification from being commissioned as a notary public shall take effect immediately upon receipt of this Resolution by respondent. He is DIRECTED to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as an attorney, the Integrated Bar of the Philippines for its information and guidance, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio, (Chairperson), Del Castillo,[**] Caguioa, and Reyes, Jr., JJ., concur.

[*] "Hermenegildo" or "Hermingildo" in some parts of the rollo.

[**] Designated Additional member per Raffle dated July 2, 2018.

[1] Dated December 3, 2014. Rollo, pp. 2-8.

[2] A.M. No. 02-8-13-SC (August 1, 2004).

[3] Rollo, p. 93.

[4] Id. at 105-107.

[5] See Deed; id. at 93. See also id. at 4.

[6] See *id.* at 4 and 7.

[7] *Id.* at 7.

[8] *Id.* at 12.

[9] *Id.* at 13-14.

[10] *Id.* at 15.

[11] *Id.* at 17-18.

[12] *Id.* at 19-27.

[13] *Id.* at 28-62.

[14] Dated January 15, 2015. *Id.* at 68-70.

[15] See *id.* at 68-69.

[16] Dated February 4, 2015. *Id.* at 73-78.

[17] See *id.* at 74-75.

[18] *Id.* at 75.

[19] *Id.*

[20] *Id.* at 156-157. Signed by Commissioner Arsenio P. Adriano.

[21] See *id.* at 157.

[22] *Id.*

[23] See Notice of Resolution in Resolution No. XXI-2015-554 issued by National Secretary Nasser A. Marohomsalic; *id.* at 155, including dorsal portion.

[24] See complainant's motion for reconsideration dated January 11, 2016; *id.* at 158-164.

[25] See Notice of Resolution in Resolution No. XXII-2017-1286 issued by National Secretary Patricia-Ann T. Prodigalidad; *id.* at 189-190.

[26] *Gaddi v. Velasco*, 742 Phil. 810, 815 (2014).

[27] *Id.*

[28] See *Bartolome v. Basilio*, 771 Phil. 1, 5 (2015).

[29] *Id.* at 9. See also *Sultan v. Macabanding*, 745 Phil. 12, 20 (2014).

[30] Emphasis supplied. Under Section 1 (b) (8), Rule XI of the Notarial Rules, the notary public's failure to identify the principal on the basis of personal knowledge or competent evidence is ground for administrative sanctions.

[31] See *Baysac v. Acheron-Papa*, A.C. No. 10231, August 10, 2016, 800 SCRA 1; and *Agbulos v. Viray*, 704 Phil. 1 (2013).

[32] *Rollo*, p. 93.

[33] See *Jandoquile v. Revilla, Jr.*, 708 Phil. 337 (2013). Black's Law Dictionary defines "personal" as "[o]f or affecting a person" or "[o]f or constituting personal property"; while "personal knowledge" as "[k]nowledge gained through firsthand observation or experience, as distinguished from a belief on what someone else has said" (see Black's Law Dictionary, Eight Edition, pp. 1179 and 888, respectively).

[34] See *Sappayani v. Gasmen*, 768 Phil. 1, 8-9 (2015).

[35] *Baysac v. Aceron-Papa*, supra note 31, at 11-12; *Bartolome v. Basilio*, supra note 28, at 10; and *Sappayani v. Gasmen*, id at 8.

[36] See Unsigned Resolution of *Agotilla v. Valencia*, A.C. No. 9267, September 6, 2017; *Yumul-Espina v. Tabaquero*, A.C. No. 11238, September 21, 2016, 803 SCRA 571; and *Bon v. Ziga*, 473 Phil. 148 (2004).

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