PETER T. DONTON, COMPLAINANT, VS. ATTY. EMMANUEL O. TANSINGCO, RESPONDENT.

A.C. NO. 6057. June 27, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a disbarment complaint against respondent Atty. Emmanuel O. Tansingco ("respondent") for serious misconduct and deliberate violation of Canon 1,[1] Rules 1.01[2] and 1.02[3] of the Code of Professional Responsibility ("Code").

The Facts

In his Complaint dated 20 May 2003, Peter T. Donton ("complainant") stated that he filed a criminal complaint for estafa thru falsification of a public document[4] against Duane O. Stier ("Stier"), Emelyn A. Maggay ("Maggay") and respondent, as the notary public who notarized the Occupancy Agreement.

The disbarment complaint arose when respondent filed a counter-charge for perjury[5] against complainant. Respondent, in his affidavit-complaint, stated that:

> 5. The OCCUPANCY AGREEMENT dated September 11, 1995 was prepared and notarized by me under the following circumstances:
>
> - Mr. Duane O. Stier is the owner and long-time resident of a real property located at No. 33 Don Jose Street, Bgy. San Roque, Murphy, Cubao, Quezon City.
>
> - Sometime in September 1995, Mr. Stier – a U.S. citizen and thereby disqualified to own real property in his name – agreed that the property be transferred in the name of Mr. Donton, a Filipino.
>
> - Mr. Stier, in the presence of Mr. Donton, requested me to prepare several documents that would guarantee recognition of him being the actual owner of the property despite the transfer of title in the name of Mr. Donton.
>
> - For this purpose, I prepared, among others, the OCCUPANCY AGREEMENT, recognizing Mr. Stier's free and undisturbed use of the property for his residence and business operations. The OCCUPANCY AGREEMENT was tied up with a loan which Mr. Stier had extended to Mr. Donton.[6]

Complainant averred that respondent's act of preparing the Occupancy Agreement, despite knowledge that Stier, being a foreign national, is disqualified to own real property in his name, constitutes serious misconduct and is a deliberate violation of the Code. Complainant prayed that respondent be disbarred for advising Stier to do something in violation of law and assisting Stier in carrying out a dishonest scheme.

In his Comment dated 19 August 2003, respondent claimed that complainant filed the disbarment case against him upon the instigation of complainant's counsel, Atty. Bonifacio A. Alentajan,[7] because respondent refused to

act as complainant's witness in the criminal case against Stier and Maggay. Respondent admitted that he "prepared and notarized" the Occupancy Agreement and asserted its genuineness and due execution.

In a Resolution dated 1 October 2003, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP's Report and Recommendation

In her Report dated 26 February 2004 ("Report"), Commissioner Milagros V. San Juan ("Commissioner San Juan") of the IBP Commission on Bar Discipline found respondent liable for taking part in a "scheme to circumvent the constitutional prohibition against foreign ownership of land in the Philippines." Commissioner San Juan recommended respondent's suspension from the practice of law for two years and the cancellation of his commission as Notary Public.

In Resolution No. XVI-2004-222 dated 16 April 2004, the IBP Board of Governors adopted, with modification, the Report and recommended respondent's suspension from the practice of law for six months.

On 28 June 2004, the IBP Board of Governors forwarded the Report to the Court as provided under Section 12(b), Rule 139-B[8] of the Rules of Court.

On 28 July 2004, respondent filed a motion for reconsideration before the IBP. Respondent stated that he was already 76 years old and would already retire by 2005 after the termination of his pending cases. He also said that his practice of law is his only means of support for his family and his six minor children.

In a Resolution dated 7 October 2004, the IBP denied the motion for reconsideration because the IBP had no more jurisdiction on the case as the matter had already been referred to the Court.

The Ruling of the Court

The Court finds respondent liable for violation of Canon 1 and Rule 1.02 of the Code.

A lawyer should not render any service or give advice to any client which will involve defiance of the laws which he is bound to uphold and obey.[9] A lawyer who assists a client in a dishonest scheme or who connives in violating the law commits an act which justifies disciplinary action against the lawyer.[10]

By his own admission, respondent admitted that Stier, a U.S. citizen, was disqualified from owning real property.[11] Yet, in his motion for reconsideration,[12] respondent admitted that he caused the transfer of ownership to the parcel of land to Stier. Respondent, however, aware of the prohibition, quickly rectified his act and transferred the title in complainant's name. But respondent provided "some safeguards" by preparing several documents,[13] including the Occupancy Agreement, that would guarantee Stier's recognition as the actual owner of the property despite its transfer in complainant's name. In effect, respondent advised and aided Stier in circumventing the constitutional prohibition against foreign ownership of lands[14] by preparing said documents.

Respondent had sworn to uphold the Constitution. Thus, he violated his oath and the Code when he prepared and notarized the Occupancy Agreement to evade the law against foreign ownership of lands. Respondent used his knowledge of the law to achieve an unlawful end. Such an act amounts to malpractice in his office, for which he may be suspended.[15]

In Balinon v. De Leon,[16] respondent Atty. De Leon was suspended from the practice of law for three years for preparing an affidavit that virtually permitted him to commit concubinage. In In re: Santiago,[17] respondent Atty. Santiago was suspended from the practice of law for one year for preparing a contract which declared the spouses to be single again after nine years of separation and allowed them to contract separately subsequent

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marriages.

WHEREFORE, we find respondent Atty. Emmanuel O. Tansingco GUILTY of violation of Canon 1 and Rule 1.02 of the Code of Professional Responsibility. Accordingly, we SUSPEND respondent Atty. Emmanuel O. Tansingco from the practice of law for SIX MONTHS effective upon finality of this Decision.

Let copies of this Decision 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, the Department of Justice, and all courts in the country for their information and guidance.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Canon 1--A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

[2] Rule 1.01.--A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[3] Rule 1.02.--A lawyer shall not counsel or abet activities aimed at defiance of the law or lessening confidence in the legal system.

[4] Docketed as I.S. No. 02-2520 before the Office of the City Prosecutor of Marikina City.

[5] Docketed as I.S. No. 03-0474.

[6] Rollo, pp. 15-16. Emphasis in the original.

[7] Respondent, in turn, filed a disbarment complaint against Atty. Bonifacio A. Alentajan docketed as CBD Case No. 03-112.

[8] Section 12(b), Rule 139-B of the Rules of Court provides:

SEC. 12. Review and Decision by the Board of Governors.-

x x x

(b) If the Board, by 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.

[9] E. PINEDA, LEGAL AND JUDICIAL ETHICS 35-36 (1994).

[10] In re: Terrell, 2 Phil. 266 (1903).

[11] Rollo, p. 15.

[12] Id. at 99.

[13] In respondent's 30 December 2002 affidavit, he enumerated all the documents he prepared for Stier:

- A Deed of Sale over the property, which Mr. Stier could consolidate in favor of any person of his choice at anytime;

[Note: The deed of Sale had an open date, and the name of the transferee was to be indicated by Mr. Stier, at his discretion.]

- Occupancy Agreement, recognizing Mr. Stier's free and undisturbed use of the property for his residence and business operations;
[Note: The Occupancy Agreement was tied up with a loan which Mr. Stier had extended to Mr. Donton.]

- Real Estate Mortgage over the property, which Mr. Stier could enforce anytime; and

- Irrevocable Special Power of Attorney to sell, mortgage or lease the property, which Mr. Stier could exercise anytime.

[14] Article XII, Section 7 of the 1987 Constitution provides:

SEC. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

[15] In re: Santiago, 70 Phil. 66 (1940).

[16] 94 Phil. 277 (1954).

[17] Supra.

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