

VICENTE FOLLOSCO AND HERMILINA FOLLOSCO, COMPLAINANTS, VS. ATTY. RAFAEL MATEO, RESPONDENT.

A.C. No. 6186. February 03, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The present administrative complaint against Atty. Rafael Mateo was originally filed by the spouses Vicente and Hermilina Follosco with the Commission on Human Rights (CHR) some time in 1994. In August of the same year, the CHR referred the complaint to the Integrated Bar of the Philippines (IBP) for appropriate action. A complaint for disbarment, docketed as Administrative Case No. 4375, was also filed by the spouses Follosco against herein respondent, based on the same acts complained of in the present complaint.

The complaint was then raffled to Commissioner Pedro A. Magpayo, Jr.. After the parties submitted their respective position papers and other pertinent pleadings, Commissioner Magpayo, Jr., rendered his Report and Recommendation dated July 24, 2003.

Based on the following findings of facts, to wit:

Respondent was a notary public during all the time (1992 and 1993) material to the complaint.

Complainants are the owners of a certain property (house and lot) located in Tanay, Rizal which was mortgaged to Dr. Eпитacio R. Tongohan for a loan of P50,000.00.

Pursuant to this transaction, several related documents were caused to be executed namely: (1) Sinumpaang Kasunduan Salaysay Tungkol sa Lupang Sanlaan; (2) Dagdag na Paglilinaw Tungkol sa Lupang Sanlaan; (3) Sinumpaang Salaysay; (4) Sinumpaang Pangako Tungkol sa Lupang Sanglaang; and (5) Promissory Note (Sinumpaang Pangako) which were all notarized by herein respondent in his official capacity as notary public for the Province of Rizal.

Claiming that the signatures appearing on the documents to be forged, complainants filed criminal complaints for falsification of public documents against Dr. Tongohan, respondent Mateo and the instrumental witnesses which complaints were docketed as I.S. Nos. 94-269 and 94-2064 of the Provincial Prosecutor's Office of Rizal.

I.S. No. 94-269 which involves the document entitled Dagdag na Paglilinaw Tungkol sa Lupang Sanglaan" was dismissed by Pros. Marianito Santos while I.S. No. 94-2064 which was filed at a later time was dismissed as against respondent, but four (4) counts of falsification of public documents were filed in court against Tongohan and Trinidad Iposadas and one (1) count of falsification against Veronica Regondola. The latter two were the witnesses to the documents.

Herein complainants not entirely satisfied with the resolution of investigating prosecutor Jison D. Julian elevated I.S. No. 94-2064 to the Department of Justice on a petition for review.

The Department of Justice, speaking thru Chief State Prosecutor Jovencito Zuñiga, reversed the resolution in

I.S. No. 94-2064 and directed that the questioned documents be referred to the NBI or PNP Crime Laboratory for appropriate examination and thereafter to conduct a re-investigation of the case and resolve the case anew based on the evidence adduced by the parties.

...

After due examination of the questioned document (Sinumpaang Pangako Tungkol sa Lupang Sanglaan), the NBI issued "Questioned Documents Report No. 661-900 containing the conclusion: "The questioned signatures on one hand and the standard sample signatures on the other hand were not written by one and the same person."

By the use of this forged documents, new tax declarations bearing Nos. 00-TN-001-3661 and 00-TN-001-3147 were issued in the name of Dr. Eпитacio Tongohan effectively canceling Tax Declaration Nos. 00-001-1158 and 001-3217 in the name of complainant Vicente Follosco.[1]

Commissioner Magpayo, Jr. found respondent guilty of negligence in the performance of his duty as a notary public and recommended his suspension from the practice of law for a period of three months with warning that repetition of the same or similar conduct in the future will be dealt with more severely.[2]

In its Resolution dated August 30, 2003, The IBP Board of Governors approved the report and recommendation of Commissioner Magpayo, Jr., with the modification that instead, respondent's notarial commission be suspended for one year and that respondent be reprimanded with warning that repetition of the same or similar conduct in the future will be dealt with more severely.

The Court agrees with the finding of the IBP that respondent failed to exercise utmost diligence in the performance of his duties as notary public.

Section 1 of Public Act No. 2103, otherwise known as the Notarial Law, explicitly provides:

Sec. 1. (a) The acknowledgment shall be 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, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

From the foregoing, it is clear that the party acknowledging must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.[3]

In this case, respondent does not deny notarizing the questioned documents. According to him, these documents were already prepared and executed at the time it was submitted to him for notarization; and because he was familiar with the complainants, he "unsuspectingly" affixed his signatures thereon. Respondent also stated that he does not have the slightest intention of causing damage to complainants.[4]

It cannot be said that respondent acted in good faith in notarizing the questioned documents without requiring the affiants to personally appear before him and ensuring that the signatures were indeed theirs. Respondent's claim of good faith cannot relieve him from the consequences of his reckless failure to comply with the dictates of the law.

Acknowledgment of a document is not an empty act or routine.[5] Thus, in *Vda. de Rosales vs. Ramos*,[6] the Court emphasized the significance of the act of notarization, to wit:

The importance attached to the act of notarization cannot be overemphasized. Notarization is not an empty,

meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.

For this reason notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

A notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity. [7]

The Court is not unaware of the careless practice of some lawyers who notarize documents without requiring the physical presence of the affiants. For one reason or another, they forego this essential requirement without taking into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. The Court had resolved numerous cases involving unauthentic notarized deeds and documents. Sadly, public faith in the integrity of public documents is continually eroding, and the Court must, once more, exhort notaries public to be more circumspect in the discharge of their functions.

It devolves upon herein respondent to act with due care and diligence in stamping fiat on the questioned documents. A notary public should not notarize a document unless the persons who signed the same are the very persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein.[8]

As borne by the records, respondent's failure to perform his duty as a notary public resulted not only in damaging complainants' rights over the property subject of the documents but also in undermining the integrity of a notary public and in degrading the function of notarization. Hence, he should be liable for such negligence, not only as a notary public but also as a lawyer.

As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct. Simply put, such responsibility is incumbent upon respondent and failing therein, he must now accept the commensurate consequences of his professional indiscretion.[9]

As the Court has held in *Flores vs. Chua*:

Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands him not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession. In *Maligsa v. Cabanting*, we emphatically pronounced:

As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct. Simply put, such responsibility is incumbent upon and failing therein, he must now accept the commensurate

consequences of his professional indiscretion. By his effrontery of notarizing a fictitious or spurious document, he has made a mockery of the legal solemnity of the oath in an Acknowledgment.[10] (Emphasis supplied)

Under the facts and circumstances of the case, respondent's notarial commission should not only be suspended as recommended by the IBP Board of Governors but respondent must also be suspended from the practice of law as recommended by the investigating commissioner.

WHEREFORE, Atty. Rafael Mateo is SUSPENDED from practice of law for three (3) months; his incumbent notarial commission, if any, is REVOKED; and he is prohibited from being commissioned as notary public, for one year, effective immediately, with a stern warning that repetition of the same or similar conduct in the future will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be attached to the personal record of respondent; the Office of the Clerk of Court of the Court for dissemination to all lower courts; and the Integrated Bar of the Philippines, for proper guidance and information.

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Report and Recommendation, pp. 5-7.

[2] Id., p. 10.

[3] Coronado vs. Felongco, A.C. No. 2611, November 15, 2000, 344 SCRA 565, 568.

[4] Respondent's Position Paper, p. 5-6.

[5] Gerona vs. Datingaling, A.C. No. 4801, February 27, 2003; Coronado case, supra., note 3.

[6] A.C. No. 5645. July 2, 2002, 383 SCRA 498, 504-505.

[7] Vda. de Bernardo vs. Restauero, A.C. No. 3849, June 25, 2003.

[8] Villarin vs. Sabate, Jr., 325 SCRA 123, 128 (2000).

[9] Ibid..

[10] Flores vs. Chua, 306 SCRA 465, 484-485 (1999).

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