LUZVIMINDA R. LUSTESTICA, COMPLAINANT, VS. ATTY. SERGIO E. BERNABE, RESPONDENT.

A.C. No. 6258. August 24, 2010

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PER CURIAM:

For consideration is the disbarment complaint filed by Luzviminda R. Lustestica (complainant) against Atty. Sergio E. Bernabe (respondent) for notarizing a falsified or forged Deed of Donation of real property despite the non-appearance of the donors, Benvenuto H. Lustestica (complainant's father) and his first wife, Cornelia P. Rivero, both of whom were already dead at the time of execution of the said document.

In his Answer,[1] the respondent admitted the fact of death of Benvenuto H. Lustestica and Cornelia P. Rivero, considering their death certificates attached to the complaint. The respondent claimed, however, that he had no knowledge that the real Benvenuto H. Lustestica and Cornelia P. Rivero were already dead at the time he notarized the Deed of Donation.[2] He also claimed that he exerted efforts to ascertain the identities of the persons who appeared before him and represented themselves as the donors under the Deed of Donation.[3]

After the submission of the respondent's Answer to the complaint, the Court referred the matter to the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP Commission on Bar Discipline) for investigation, evaluation and recommendation. The IBP Commission on Bar Discipline made the following findings:

> The core issue is whether or not Respondent committed a falsehood in violation of his oath as a lawyer and his duties as Notary Public when he notarized the Deed of Donation purportedly executed by Benvenuto H. Lustestica and Cornelia P. Rivero as the donors and Cecilio R. Lustestica and Juliana Lustestica as the donees on 5 August 1994.
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> Section 1 of Public Act No. 2013, otherwise known as the Notarial Law, explicitly provides:
> x x x 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. x x x.

As correctly observed by Complainant, Respondent's Acknowledgment is the best evidence that NO RESIDENCE CERTIFICATES were presented by the alleged donors and the donees. Had the parties presented their residence certificates to Respondent, it was his duty and responsibility under the Notarial Law to enter, as part of his certification, the number, place of issue and date of each residence certificate presented by the parties to the Deed of Donation. Respondent, however, failed to make the required entries. Respondent's claim that the persons who allegedly appeared before him and represented themselves to be the parties to the Deed of Donation showed their residence certificates and that he instructed his secretary to indicate the details of the residence certificates of the parties is self-serving and not supported by the evidence on record.

x x x x

The fact that Respondent notarized a forged/falsified document is also undisputed not only by [the] strength of

Complainant's documentary evidence but more importantly, by Respondent's own judicial admission. x x x. In view of Respondent's judicial admission that the alleged donors, BENVENUTO H. LUSTESTICA and his first wife, CORNELIA P. RIVERO, died on 7 September 1987 and 24 September 1984, respectively, it is beyond reasonable doubt that said donors could not have personally appeared before him on 5 August 1994 to [acknowledge] to him that they freely and voluntary executed the Deed of Donation. Moreover, x x x quasi-judicial notice of the Decision of the Municipal Trial Court finding accused CECILIO LUSTESTICA and JULIANA LUSTESTICA GUILTY BEYOND REASONABLE DOUBT as principals of the crime of falsification of public document.[4]

In his Report dated August 15, 2005, IBP Commissioner Leland R. Villadolid, Jr. found the respondent grossly negligent in the performance of his duties as notary public and recommended that the respondent's notarial commission be suspended for a period of one (1) year. The IBP Commissioner also recommended that a penalty ranging from reprimand to suspension be imposed against the respondent, with a warning that a similar conduct in the future will warrant an imposition of a more severe penalty.[5]

By Resolution No. XVII-2005-116 dated October 22, 2005, the Board of Governors of the IBP Commission on Bar Discipline adopted and approved the Report of the IBP Commissioner. The pertinent portion of this Resolution reads:

> [C]onsidering Respondent's gross negligence in the performance of his duties as Notary Public, Atty. Sergio E. Bernabe is hereby SUSPENDED from the practice of law for one (1) year and Respondent's notarial commission is Revoked and Disqualified from reappointment as Notary Public for two (2) years with a notification that this suspension of one year must be served in succession to the initial recommendation of the IBP Board of Suspension of one year in CBD Case No. 04-1371.[6]

From these undisputed facts, supervening events occurred that must be taken into consideration of the present case.

First, CBD Case No. 04-1371, entitled Victorina Bautista, complainant, v. Atty. Sergio E. Bernabe, respondent, which was the case referred to in Resolution No. XVII-2005-116, was docketed as A.C. No. 6963[7] before the Court. In a decision dated February 9, 2006, the Court revoked the respondent's notarial commission and disqualified him from reappointment as Notary Public for a period of two (2) years, for his failure to properly perform his duties as notary public when he notarized a document in the absence of one of the affiants. In addition, the Court suspended him from the practice of law for a period of one (1) year, with a warning that a repetition of the same or of similar acts shall be dealt with more severely.

Second, on January 6, 2006, the respondent filed a motion for reconsideration of Resolution No. XVII-2005-116 before the IBP Commission on Bar Discipline. The respondent moved to reconsider the IBP Resolution, claiming that the penalty imposed for the infraction committed was too harsh. The motion was denied in Resolution No. XVII-2006-81, dated January 28, 2006,[8] for lack of jurisdiction of the IBP Commission on Bar Discipline, since the administrative matter had then been endorsed to the Court.

Third, on January 4, 2006, a motion for reconsideration (the same as the one filed with the IBP Commission on Bar Discipline) was filed by the respondent before the Court. In a Minute Resolution dated March 22, 2006, the Court noted the findings and recommendations in Resolution No. XVII-2005-116 and required the complainant to file her Comment to the respondent's motion for reconsideration. On April 28, 2006, the complainant filed her Comment praying for the denial of the motion.

On July 5, 2006, the Court issued a Minute Resolution noting the denial of the respondent's motion for reconsideration, by the IBP Commission on Bar Discipline, and the complainant's Comment to the respondent's

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motion before the Court.

Subsequently, on January 26, 2009, the Court declared the case closed and terminated after considering that no motion for reconsideration or petition for review, assailing both IBP resolutions, had been filed by the respondent.[9]

On October 8, 2009, the respondent, through a letter addressed to the Office of the Bar Confidant, requested that he be given clearance to resume the practice of law and to allow him to be commissioned as a notary public. In his letter, the respondent alleged that he has already served the penalties imposed against him in A.C. No. 6963 and the present case. He claimed that after the receipt of the IBP Resolutions in both cases, he did not practice his profession and had not been appointed or commissioned as a notary public.

The Office of the Bar Confidant

Acting on the respondent's letter, the Office of the Bar Confidant submitted a Report and Recommendation, which states:

> - The EFFECTIVITY of the respondent's suspension and disqualification should have been COMMENCED on the date of receipt of the Decision of the Court and not from the date of receipt of the Resolution of the IBP recommending the respondent's suspension from the practice of law and disqualification from being commissioned as notary public, it being recommendatory in nature;
>
> - The prayer of the respondent to resume his practice of law in Adm. Case No. 6963 be denied;
>
> - The respondent be REQUIRED to submit certification from competent courts and IBP that he has fully served the entire period of suspension and disqualification in Adm. Case No. 6963;
>
> - The Court may now FINALLY RESOLVE the findings and recommendation of the IBP in its Resolution No. XVII-2005-16, dated October 2005, in Adm. Case No. 6258, for final disposition of the case and for proper determination whether the order of suspension and disqualification in Adm. Case No. 6963 should be lifted after the respondent has satisfactorily shown that he has fully served the suspension and disqualification.[10]

The Court's Ruling

The findings of the Board of Governors of the IBP Commission on Bar Discipline are well-taken. We cannot overemphasize the important role a notary public performs. In Gonzales v. Ramos,[11] we stressed that notarization is not an empty, meaningless routinary act butone invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity.[12] A notarized document is, by law, entitled to full faith and credit upon its face.[13]It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[14]

The records undeniably show the gross negligence exhibited by the respondent in discharging his duties as a notary public. He failed to ascertain the identities of the affiants before him and failed to comply with the most basic function that a notary public must do, i.e., to require the parties' presentation of their residence certificates or any other document to prove their identities. Given the respondent's admission in his pleading that the donors were already dead when he notarized the Deed of Donation, we have no doubt that he failed in his duty to ascertain the identities of the persons who appeared before him as donors in the Deed of Donation.

Under the circumstances, we find that the respondent should be made liable not only as a notary public but also as a lawyer. He not only violated the Notarial Law (Public Act No. 2103), but also Canon 1 and Rule 1.01 of the

Code of Professional Responsibility.

Section 1 of Public Act No. 2103 (Old Notarial Law)[15] states:

> (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.

In turn, Canon 1 of the Code of Professional Responsibility provides that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." At the same time, Rule 1.01 of the Code of Professional Responsibility prohibits a lawyer from engaging in unlawful, dishonest, immoral or deceitful conduct.

In this regard, a reading of the respondent's Acknowledgment in the Deed of Donation shows how these provisions were violated by the respondent:

> BEFORE ME, Notary Public for and in Bulacan this AUG 05 1994 day of August, 1994, personally appeared:
>
> BENVENUTO H. LUSTESTICA: C.T.C. # _____:_____:_____
> CORNELIA RIVERO : C.T.C. # _____:_____:_____
> CECILIO LUSTESTICA : C.T.C. # _____:_____:_____
> JULIANA LUSTESTICA : C.T.C. # _____:_____:_____
>
> known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same are their free act and voluntary deed.[16]

The respondent engaged in dishonest conduct because he falsely represented in his Acknowledgment that the persons who appeared before him were "known to him" to be the same persons who executed the Deed of Donation, despite the fact that he did not know them and did not ascertain their identities as he attested.[17]

Moreover, the respondent engaged in unlawful conduct when he did not observe the requirements under Section 1 of the Old Notarial Law that requires notaries public to certify that the party to the instrument has acknowledged and presented, before the notaries public, the proper residence certificate (or exemption from the residence certificate) and to enter the residence certificate's number, place, and date of issue as part of the certification.[18] The unfilled spaces in the Acknowledgment where the residence certificate numbers should have been clearly established that the respondent did not perform this legal duty.

With these considerations, we find that the imposition of administrative sanctions for the above infractions committed is in order.

The IBP Commission on Bar Discipline recommended the penalty of suspension, for a period of one (1) year, from the practice of law and disqualification from reappointment as Notary Public for a period of two (2) years. Considering that this is already Atty. Bernabe's second infraction, we find the IBP's recommendation to be very light; it is not commensurate with his demonstrated predisposition to undertake the duties of a notary public and a lawyer lightly.

In Maligsa v. Cabanting,[19] we disbarred a lawyer for failing to subscribe to the sacred duties imposed upon a notary public. In imposing the penalty of disbarment, the Court considered the lawyer's prior misconduct where he was suspended for a period of six (6) months and warned that a repetition of the same or similar act would be

dealt with more severely.[20]

In Flores v. Chua,[21] we disbarred the lawyer after finding that he deliberately made false representations that the vendor appeared before him when he notarized a forged deed of sale. We took into account that he was previously found administratively liable for violation of Rule 1.01 of the Code of Professional Responsibility (for bribing a judge) and sternly warned that a repetition of similar act or acts or violation committed by him in the future would be dealt with more severely.[22]

In Traya v. Villamor,[23] we found the respondent notary public guilty of gross misconduct in his notarial practice for failing to observe the proper procedure in determining that the person appearing before him is the same person who executed the document presented for notarization. Taking into account that it was his second offense, he was perpetually disqualified from being commissioned as a notary public.[24]

In Social Security Commission v. Coral,[25] we suspended indefinitely the notarial commission of the respondent lawyer who was found to have prepared, notarized and filed two complaints that were allegedly executed and verified by people who have long been dead. We also directed him to show cause why he should not be disbarred.[26]

Considering these established rulings, read in light of the circumstances in the present case, we find that Atty. Bernabe should be disbarred from the practice of law and perpetually disqualified from being commissioned as a notary public. We emphasize that this is respondent's second offense and while he does not appear to have any participation in the falsification of the Deed of Donation, his contribution was his gross negligence for failing to ascertain the identity of the persons who appeared before him as the donors. This is highlighted by his admission[27] in his Answer that he did not personally know the parties and was not acquainted with them. The blank spaces in the Acknowledgment indicate that he did not even require these parties to produce documents that would prove that they are the same persons they claim to be. As we emphasized in Maligsa:

> A lawyer shall at all times uphold the integrity and dignity of the legal profession. The bar should maintain a high standard of legal proficiency as well as honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.[28]

In light of the above findings and penalties, the respondent's request to be given clearance to resume the practice of law and to apply for a notarial commission, after serving the administrative sanctions in A.C. No. 6963, is now moot and academic. We, accordingly, deny the request for clearance to practice law and to apply for notarial commission.

WHEREFORE, premises considered, the Court resolves to:

(1) NOTE the letter dated October 8, 2009 of respondent Atty. Sergio E. Bernabe to the Office of the Bar Confidant.

(2) ADOPT the findings and recommendations of the IBP Commission on Bar Discipline with MODIFICATION on the administrative penalty imposed.

(3) DECLARE respondent Atty. Sergio E. Bernabe liable for gross negligence, in the performance of his duties as notary public, and for his deceitful and dishonest attestation, in the course of administering the oath taken before him. Respondent Atty. Sergio E. Bernabe is hereby DISBARRED from the practice of law and his name is ORDERED STRICKEN from the Roll of Attorneys. He is also PERPETUALLY DISQUALIFIED from being commissioned as a notary public.

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(4) DENY the request for clearance to practice law and to apply for notarial commission of respondent Atty. Sergio E. Bernabe.

Let a copy of this Decision be attached to Atty. Sergio E. Bernabe's record, as a member of the bar, and copies furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts.

In view of the notarization of a falsified deed whose purported parties were already dead at the time of notarization, let a copy of this Decision be furnished the Office of the Prosecutor General, Department of Justice for whatever action, within its jurisdiction, it may deem appropriate to bring against Atty. Sergio E. Bernabe.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

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[1] Rollo, pp.18-24.

[2] Id. at 19.

[3] Ibid.

[4] Id. at 80-83.

[5] Id. at 85.

[6] Id. at 75.

[7] February 9, 2006, 482 SCRA 1.

[8] Rollo, p. 93.

[9] Id. at 105.

[10] Report and Recommendation, Office of the Bar Confidant, pp. 4-5.

[11] 499 Phil. 345, 347 (2005).

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] The Old Notarial Law is applied considering that the notarization occurred during the law's effectivity.

[16] Rollo, p. 11.

[17] Id. at 81-82.

[18] De la Cruz v. Dimaano, Jr., A.C. No. 7781, September 12, 2008, 565 SCRA 1.

[19] A.C. No. 4539, May 14, 1997, 272 SCRA 408, 414.

[20] Ibid.

[21] A.C. No. 4500, April 30, 1999, 306 SCRA 465, 484.

[22] Id. at 485.

[23] A.C. No. 4595, February 6, 2004, 422 SCRA 293, 295.

[24] Id. at 297.

[25] A.C. No. 6249, October 14, 2004, 440 SCRA 291, 292 and 297.

[26] Id. at 297.

[27] Rollo, p. 19.

[28] Supra note 19, at 413.

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