

JESSICA C. UY, COMPLAINANT, VS. ATTY. EMMANUEL P. SAÑO, RESPONDENT.

A.C. No. 6505. September 11, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This is a disbarment case filed[1] by complainant Jessica C. Uy against respondent Atty. Emmanuel P. Saño for allegedly notarizing several documents despite the expiration of his commission.

Respondent was the counsel for a certain Pablo Burgos, an intervenor in a civil case docketed as EJP-01-03-10 for Foreclosure of Real Estate Mortgage.[2] In the course of the proceedings, respondent introduced before the trial court, certain documents, including a Deed of Absolute Sale[3] which he notarized on December 7, 2001 under Doc. No. 376, Page No. 73, Book No. V, Series of 2001.

It appeared, however, in a letter[4] dated February 9, 2004 of Atty. Blanche Astilla-Salino, Clerk of Court VI, that no notarial commission was issued to respondent for the years 2000-2001 and 2001-2002. Hence, the instant administrative case.

Respondent, for his part, admitted that he was not issued a notarial commission during the aforesaid period; yet, he performed notarial works. He, however, explained that he applied, through a representative, for a notarial commission in the year 1998 and was commissioned as such from 1998 to 1999.[5] In 2000, he applied for the renewal of his commission, again through an office aide, who later informed him that his application was approved.[6] By virtue of said representation, respondent resumed his notarial work; only to find out later that he was not given a new commission.[7] He exerted earnest efforts in locating the whereabouts of the office aide but to no avail. Having acted on the mistaken belief that he still had his notarial commission, respondent pleaded that he be excused and given clemency for this fiasco and be allowed to correct and make amends.[8]

In a Resolution[9] dated December 8, 2004, we referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On September 1, 2005, Commissioner Rebecca Villanueva-Maala submitted her report and recommendation,[10] the pertinent portion of which reads:

CONCLUSION AND RECOMMENDATION:

From the facts and evidence presented, we find sufficient proof to warrant disciplinary action against the respondent. Notarizing documents after the lawyer's commission as notary public had expired is malpractice and gross misconduct (*Flores vs. Lozada*, 21 SCRA 1267). Respondent's explanation that he was made to believe by his agent that his commission has been filed and approved cannot be accepted for to rule otherwise will be to enable irresponsible lawyers to avoid disciplinary action by simply attributing the problem to his aide/secretary or employee (*Gutierrez vs. Zulueta*, 187 SCRA 607).

WHEREFORE, premises considered, we hereby recommend that respondent ATTY. EMMANUEL SAÑO be

SUSPENDED for a period of SIX MONTHS from receipt hereof from the practice [of] his profession as a lawyer and as a member of the Bar.

RESPECTFULLY SUBMITTED.[11]

Per Resolution No. XVII-2006-115 dated March 20, 2006, the IBP Board of Governors modified the report and recommendation of Commissioner Villanueva-Maala by increasing the recommended period of suspension from six (6) months to one (1) year. In addition, the Board resolved to revoke respondent's notarial commission and disqualified him from reappointment as notary public for a period of two (2) years.

We agree with the IBP's conclusion, finding respondent guilty of malpractice, warranting disciplinary action. We, however, find the penalty recommended by the Board of Governors to be too harsh; instead, we sustain the Investigating Commissioner's recommendation.

At the threshold, it is worth stressing that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions.[12]

The bar should maintain a high standard of legal proficiency as well as of 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.[13]

Apropos to the case at bar, it has been emphatically stressed that notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified and authorized may act as notaries public. It must be underscored that the act of notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[14]

Respondent admitted that he applied for a notarial commission in 1998. Such application, according to him, was facilitated by a representative. In renewing his commission for 2000 until 2002, he again relied on the assistance offered by an office aide. It appears from respondent's Comment that he, in fact, did not personally know the said office aide; yet, he completely relied on his representation that this office aide would facilitate respondent's renewal of his notarial commission. At the very least, respondent should have demanded from the office aide documentary proofs of the approval of his commission. Besides, respondent could have easily verified the aide's representation at the office of the Executive Judge. His actuation clearly shows disregard of the requirements for the issuance of notarial commission. His effort in shifting the responsibility to the office aide does not strike the Court as the kind of diligence properly required of a member of the bar in performing his duties as notary public.[15]

To be sure, the requirements for the issuance of a commission as notary public must not be treated as a mere casual formality. The Court has characterized a lawyer's act of notarizing documents without the requisite commission therefor as reprehensible, constituting as it does, not only malpractice, but also the crime of falsification of public documents. For such reprehensible conduct, the Court has sanctioned erring lawyers by suspension from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment.[16]

Time and again, we have held that where the notarization of a document is done by a member of the Philippine

Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. One who is performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." By acting as a notary public without the proper commission to do so, the lawyer likewise violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.[17]

As to the appropriate penalty, considering the circumstances obtaining in the instant case, and based on jurisprudence on this matter, suspension for six (6) months is adequate.

Complainant in the instant case presented only one document showing respondent's unauthorized notarization. However, by respondent's own admission, he had been placed in a mistaken belief that his commission was renewed from 2000 to 2002. During this two-year period, it seems entirely possible that he had similarly notarized, without legal authority, other still unidentified documents.[18]

In *Buensuceso v. Barrera*,[19] Atty. Joelito Barrera was administratively sanctioned for committing acts of unauthorized notarization. As in the instant case, Atty. Barrera claimed that he was unaware of said lack of authority, and he shifted the blame to his secretary to whom he had entrusted the task of making sure that his notarial commission would be renewed. Though only five documents were presented to prove his culpability, considering that more than twelve (12) years had lapsed, and it was possible that similar documents had been unlawfully notarized, the Court suspended him from the practice of law for a period of one year.

In the instant case, since only two years had lapsed prior to the discovery of the unauthorized act, six-month suspension suffices.

An attorney's right to practice law may be resolved by a proceeding to suspend him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbaring him as an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of attorney, and thus, to protect the public and those charged with the administration of justice, rather than to punish an attorney.[20]

WHEREFORE, premises considered, respondent Emmanuel P. Saño is hereby **SUSPENDED** from the practice of law for a period of six (6) months. In addition, his present notarial commission, if any, is **HEREBY REVOKED**, and he is **DISQUALIFIED** from reappointment as a notary public for a period of two (2) years. He is further **WARNED** that any similar act or infraction in the future shall be dealt with more severely.

Let copies of this Decision be furnished all the courts of the land through the Court Administrator, as well as the IBP, and the Office of the Bar Confidant, and recorded in the personal records of the respondent.

SO ORDERED.

Tinga[*], Chico-Nazario, Velasco, Jr.[*], and Reyes, JJ., concur.

[*] Designated additional members in lieu of Associate Justices Consuelo Ynares-Santiago and Ma. Alicia Austria-Martinez per Special Order No. 517 dated August 27, 2008.

[1] Embodied in a petition filed before this Court, through the Office of the Bar Confidant, dated July 10, 2004;

rollo, pp. 2-4.

[2] Rollo, p. 2.

[3] Id. at 11-12.

[4] Id. at 13.

[5] Id. at 37.

[6] Id. at 38.

[7] Id.

[8] Id. at 39.

[9] Id. at 44.

[10] Id. at 92-95.

[11] Id. at 95.

[12] St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 621-622; Zoreta v. Simpliciano, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 8.

[13] St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 622; Zoreta v. Simpliciano, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9.

[14] St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 626-627; Zoreta v. Simpliciano, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9-10; see Buensuceso v. Barrera, A.C. No. 3727, December 11, 1992, 216 SCRA 309, 312, citing Joson v. Baltazar, 194 SCRA 114, 119 (1991).

[15] Buensuceso v. Barrera, A.C. No. 3727, December 11, 1992, 216 SCRA 309, 311.

[16] Zoreta v. Simpliciano, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 10.

[17] St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 627.

[18] Buensuceso v. Barrera, A.C. No. 3727, December 11, 1992, 216 SCRA 309, 312.

[19] A.C. No. 3727, December 11, 1992, 216 SCRA 309.

[20] St. Louis Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz, A.C. No. 6010, August 28, 2006, 499 SCRA 614, 622; Zoreta v. Simpliciano, A.C. No. 6492, November 18, 2004, 443 SCRA 1, 9.

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