TAN TIONG BIO A.K.A. HENRY TAN, COMPLAINANT, VS. ATTY. RENATO L. GONZALES, RESPONDENT.

A.C. No. 6634. August 23, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Under consideration is this complaint[1] for disbarment filed by Tan Tiong Bio, a.k.a. Henry Tan, against Atty. Renato L. Gonzales for allegedly notarizing a conveying deed outside the territory covered by his notarial commission and without requiring the personal presence before him of the signatories to the deed before notarizing the same, in violation of the Notarial Law and the lawyer's oath.

As records reveal, complainant purchased several parcels of land at the Manila Southwoods Residential Estates (Southwoods, for short), a mix residential-commercial complex situated in Carmona, Cavite owned/operated by Fil-Estate Golf and Development, Inc. (FEGDI) and Fil-Estate Properties, Inc. (FEPI). FEPI has its office at Renaissance Towers, Meralco Avenue, Pasig City. In one of the transactions adverted to, complainant, as vendee, was made to sign and execute Deed of Sale No. 1108[2] (Deed 1108, hereinafter) covering a lot described in and covered by the vendor's Transfer Certificate of Title (TCT) No. T-427206. Following payment of the contract price in full, including miscellaneous expenses, TCT No. 968702 in complainant's name was delivered to him with the corresponding completed deed of sale. Respondent Renato L. Gonzales, employed as corporate counsel for FEPI and appointed/reappointed from 1996 to 2001 as notary public for Quezon City[3], was the notarizing officer of Deed 1108 on which the name and signature of Alice Odchigue- Bondoc (Bondoc) appear as the vendor's authorized representative.

As complainant would allege in his Complaint Affidavit dated November 17, 2003, and its annexes, sometime in 1995, he made another Southwoods purchase covering Lot 10, Block 27, Phase 3 (or Lot 10). Several years following his payment of the amount of P2,068,523, representing the full purchase price for Lot 10 and after he had signed a deed with the space for the title number and technical description left in blank, complainant repeatedly asked for but was not able to secure a certificate of title for the same or a refund of his payment. The rebuff, according to complainant, impelled him to file a case for estafa with the Office of the City Prosecutor of Pasig City.

In connection with the estafa charge, so complainant claims, Ms. Bondoc, signatory (for FEGDI as vendor) to Deed 1108, executed a counter-affidavit therein stating that she had not personally met nor transacted with the complainant either with respect to the negotiations for the sale of the land covered by TCT No. T-427206 nor during the execution of Deed 1108. Complainant would add, however, that Ms. Bondoc admitted that she and the complainant did sign the said deed of sale, but at different times and in different places, and not in each other's presence,[4] like other "signed hundreds of deeds (of sale) over other documents for our behalf of the President [of Fil-Estate] with buyers [she] had never (even) met."[5]

It is on the basis of Ms. Bondoc's foregoing statements that complainant initiated the present disbarment case

before the Integrated Bar of the Philippines (IBP), it being his posture that respondent Gonzales notarized Deed 1108 without requiring him, or Ms. Bondoc, to appear and acknowledge before him the due and voluntary execution thereof, a practice not only violative of the Notarial Law, but detrimental to his interests and those similarly situated as well.

Respondent, in his Verified Answer,[6] was less than categorical on the matter of whether or not complainant and Ms. Bondoc, vis-á-vis Deed 1108, indeed appeared before him and attested to the contents and the truth of what are stated in the deed. Instead, he alleged as follows:

> 10. Because of the hundreds of documents I have notarized, I do not recall with absolute certainty the details of the notarization ceremony of the Deed of Absolute Sale in question. Nevertheless, what I do know is that I have personally met both complainant and Atty. Bondoc and notarized documents which they had acknowledged. Based on the admissions of both the complainant and Atty. Bondoc that they have not personally met, it appears that in notarizing the Deed of Absolute Sale in question, both complainant and Atty. Bondoc appeared before me and signed, but at different times.
>
> 11. As a matter of practice, I require the personal appearance of all parties who seek to have deeds of sale notarized. However, the parties need not necessarily sign and acknowledge their acts in one another's presence. xxx
>
> xxx xxx xxx
> 13. Thus, complainant cannot dispute that both signatories to the Deed of Absolute Sale personally appeared before me ..., albeit at different times. That is all that is required by law. The fact that the signatories to the Deed signed and acknowledged the same on different occasions is of no moment, and certainly does not constitute misconduct on my part.
>
> x x x x x x x x x
> 15. The only basis for the charge of professional misconduct against me is that I allowed the signatories to acknowledge their signatures on the Deed of Absolute Sale at different times. However, complainant fails to cite any law or rule which obliges a notary public to require the parties to the instrument to simultaneously appear before him, as in fact, there is none. Thus, even if I did not require complainant and Atty. Bondoc to personally appear before me at the same time, I cannot be faulted for such, as I am not required to do so.[7]

The respondent parlays in his answer the idea of laches, arguing that the transaction in question took place in 2001, while complainant initiated the disbarment charge only in November 2003.

At the preliminary conference before the IBP Commission on Bar Discipline (Commission), complainant and respondent entered into the following stipulation of facts, to wit:

> [T]he Deed of Absolute Sale No. 1108 .. was duly executed by Mr. Henry Tan and Atty. Alice Odchigue-Bondoc as authorized signatory of the seller; that the subject document was notarized by respondent as document no. 367, page no. 74, book no. 8, series of 2001 of his notarial register; that respondent admits that his notarial appointment covers Quezon City and that the subject document was notarized in Pasig City, specifically, at the Renaissance Tower; and that the parties admit that Atty. Alice Odchigue-Bondoc and Henry Tan Tan were not present at the same time when the subject document was notarized xxx (Underscoring added.)

After due hearings, Investigating Commissioner Doroteo B. Aguila submitted his REPORT AND RECOMMENDATION dated August 27, 2004, which, as approved by the IBP Director for Bar Discipline, was forwarded to the Court.

In the report, the Commission recommended that respondent be adjudged liable and penalized for violating the rule proscribing one from acting as a notary outside the area covered by his commission, but recommended the

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dismissal of the complaint insofar as it charges the respondent for notarizing a document without the personal appearance before him of the party-signatories thereto.

We agree.

As aptly found by the Investigating Commissioner, delving on the second part of the recommendation, complainant failed to substantiate with competent proof his allegations that respondent performed the notarial procedure on Deed 1108 without his (complainant) being present to acknowledge the due execution thereof. Being a notarized document, Deed 1108 and the solemnities attending its execution are disputably presumed to be regular.[8] Absent convincing evidence to the contrary, the certification in Deed 1108 that the vendor and the vendee personally appeared before the respondent to acknowledge the same must be upheld. As we said in Vda. De Rosales v. Ramos,[9] when a notary certifies to the due execution and delivery of the document under his hand and seal, the document thus notarized is converted into a public document. To us and to the Investigating Commissioner,[10] the declaration of Ms. Bondoc in her counter-affidavit before the prosecutor's office is not the clear and convincing evidence required to overturn the presumption of regularity. Ms. Bondoc's declaration that she had not met or dealt directly with Southwoods buyers does not necessarily prove that such buyers and FEPI's representatives in the purchase did not in fact appear before the notary public to acknowledge the fact of contract execution before him. If at all, Ms. Bondoc's declaration simply means that she has not personally met the buyers, or, with like effect, that she, as representative of the seller, has not appeared together with the buyers before the notarizing officer. As it were, the Notarial Law is silent as to whether or not the parties to a conveying instrument must be present before the notary public at the same time when they acknowledge its due execution.

There can be quibbling, however, that the respondent breached the injunction against notarizing a document in a place outside one's commission. As reported by the Investigating Commissioner, respondent acknowledged that from February 1, 1996 to September 30, 2001, within which period Deed 1108 was notarized, his notarial commission then issued was for Quezon City.[11] Deed 1108 was, however, notarized in Pasig City. To compound matters, he admitted having notarized hundreds of documents in Pasig City, where he used to hold office, [12] during the period that his notarial commission was only for and within Quezon City.

While seemingly appearing to be a harmless incident, respondent's act of notarizing documents in a place outside of or beyond the authority granted by his notarial commission, partakes of malpractice of law and falsification. While perhaps not on all fours because of the slight dissimilarity in the violation involved, what the Court said in Nunga v. Viray [13] is very much apropos:

> 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. For one, 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: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

It cannot be over-emphasized that notarization is not an empty, meaningless, routinary act. Far from it. Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.[14] Hence, the requirements for the issuance of a commission as notary public are treated with a formality definitely more than casual.[15]

For all legal intents and purposes, respondent, by performing through the years notarial acts in Pasig City where he is not so authorized, has indulged in deliberate falsehood. By such malpractice as a notary public, respondent

likewise violated Canon 7 of the Code of Professional Responsibility, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

To be sure, respondent cannot plausibly seek refuge in the complainant's alleged delay in filing the instant complaint for disbarment. He cannot, as a means to defeat the present charge, invoke the complainant's ill-motive in filing said complaint. We have, time and again, held that the Court's disciplinary authority cannot be defeated or frustrated by a mere delay in filing the complaint, or by the complainant's motivation to do so. The practice of law is so delicately affected by public interest that it is both a right and a duty of the State to control and regulate it in order to protect and promote public welfare.[16] Indeed, we have held that an administrative complaint against a member of the bar does not prescribe.[17]

Needless to stress, respondent cannot escape from disciplinary action in his capacity as member of the bar and as a notary public. His proven transgression does not, however, merit disbarment, as urged by the complainant. This most severe form of disciplinary sanction ought to be imposed only in a clear case of misconduct that seriously affects the standing and character of a respondent as an officer of the court and as a member of the bar. Disbarment should never be decreed where any lesser penalty, such as temporary suspension, could accomplish the end desired.[18]

The IBP Report recommended the revocation of respondent's commission as a notary public (in any jurisdiction), if still existing, and that he henceforth be disqualified from being commissioned as such for a period of one (1) year. A one-month suspension from the practice of law for violation of Canon 1[19] and Rule 1.01[20] of the Code of Professional Responsibility is also recommended for the respondent.

In Zoreta v. Simpliciano,[21] the Court meted the penalty of two (2) years suspension from law practice on Atty. Simpliciano as well as his permanent disqualification from being commissioned as notary public for notarizing several documents after his commission as notary public had already expired.

Considering the circumstances and the extent of respondent's willful malfeasance, and guided by Zoreta, a penalty higher than that recommended by the IBP Commission on Bar Discipline ought to be imposed.

WHEREFORE, respondent Atty. Renato L. Gonzales is PERMANENTLY BARRED from being commissioned as Notary Public. He is furthermore SUSPENDED from the practice of law for a period of two (2) years, effective upon receipt of a copy of this Decision.

Let copies of this Decision be furnished all the courts of the land, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines, and let the Office of the Bar Confidant be notified of this Decision which is hereby ordered duly recorded in the personal files of the respondent.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Dated November 17, 2003, and filed with the Integrated Bar of the Philippines (IBP) on November 28, 2003; rollo, p. 1.

[2] Entered as Document No. 367, Page 74, Book 8, series of 2001 in respondent's Notarial Register.

[3] Rollo, pp. 99-10.

[4] Id. at 23 and 27.

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[5] Id. at 27.

[6] Id. at 36 et seq.

[7] Id. at 6-8.

[8] Mendozona v. Ozamiz, G.R. No. 143370, February 6, 2002, 376 SCRA 482.

[9] Adm. Case No. 5645, July 2, 2002, 383 SCRA 498.

[10] Citing Lorena v. Encomienda, A.M. No. MTJ-99-1177, February 8, 1999, 302 SCRA 632; Salame v. Court of Appeals, G.R. No. 104373, December 22, 1994, 239 SCRA 366; Causapin v. Court of Appeals, G.R. No. 107432, July 4, 1994, 233 SCRA 615; rollo, page unnumbered.

[11] TSN, April 19, 2004, p. 22.

[12] TSN, April 19, 2004, pp. 7-8, 22, 25, 28-29, 39, 42; Respondent's Position Paper, p. 8, rollo, p. 115.

[13] A.C. No. 4758, April 30, 1999, 306 SCRA 487.

[14] Maligsa v. Cabanting, A.M. No. 4539, May 14, 1997, 272 SCRA 408.

[15] Heck v. Santos, A.M. No. RTJ-01-1657, February 23, 2004, 423 SCRA 329.

[16] Cabanilla v. Tenorio, A.C. No. 6139, November 11, 2003, 415 SCRA 353.

[17] Supra note 14.

[18] Gerona v. Datingaling, A.C. No. 4801, February 27, 2003, 398 SCRA 148.

[19] Canon 1 - A lawyer shall ... promote respect for law and legal processes.

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

[21] A.C. No. 6492, November 18, 2004, 443 SCRA 1, citing Nunga v. Viray and other violation of Notarial Law cases.

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