

## JOSEFINA P. SORIANO COMPLAINANT, VS. ATTY. HUMBERTO B. BASCO, RESPONDENT.

*A.C. NO. 6648. September 21, 2005*

Ponente: GARCIA, J.

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### GARCIA, J.:

Atty. Humberto B. Basco is charged by Josefina P. Soriano in a complaint[1] for disbarment dated May 5, 2003, filed with the Committee on Bar Discipline, Integrated Bar of the Philippines ("IBP"), with violation of Sections 245 and 246 of the Revised Administrative Code, Title IV, Chapter II, known as the Notarial Law.

In her Report, IBP Investigating Commissioner Milagros V. San Juan summarized the allegations of complainant as well as the answer of respondent in the following wise:

In her verified complaint, complainant made the following allegations: That on June 30, 2000, respondent Atty. Humberto B. Basco, Notary Public of Manila testified before the Regional Trial Court of Manila, Branch 35, stating among others, that he allegedly notarized a Deed of Sale allegedly executed by complainant Josefina P. Soriano. He further testified that Josefina Soriano personally appeared before him when he notarized the Deed of Sale. Since complainant had never appeared before Notary Public Humberto B. Basco, had not seen much less received copy of the alleged contract, complainant requested for a copy of the alleged contract from the Office of the Clerk of Court and Ex-Officio Sheriff, Regional Trial Court of Manila concerning the aforementioned Deed of Sale. Clerk of Court VII Jennifer H. Dela Cruz-Buendia, issued a Certification dated February 11, 2003 certifying that the alleged Deed of Sale involving Josefina P. Soriano as vendor alleged to have been acknowledged before Notary Public Humberto B. Basco was not among the document submitted to said office (Annex "A" of Complaint). Complainant also received a certified true copy of the notarial register of Notary Public Basco which disclosed his failure to indicate the names of the witnesses, fees charged, the respective residence certificates of the parties to the documents which he notarized (Annex "B" of Complaint). Although Atty. Basco was duty bound to furnish to complainant a certified true copy of the alleged deed, he failed to do so despite demand therefor.

Respondent filed his Answer on June 10, 2003. In his defense, respondent declared that on January 17, 1997, herein complainant together with her son, Marcial P. Soriano went to his office located at 234 City Hall Bldg. both carrying with them a duly pre-drafted deed of sale, contents whereof signified that complainant did convey to the son valuable property. Respondent further stated that he instructed his staff secretary, Ms. Elizabeth Roque-Sanchez, to effect the clerical entry of notarial particulars of the original and copies of the said mutually executed deed of sale. Respondent claim that his staff secretary of course, retained a copy for our file and advised complainant and her son to immediately return or call the office to furnish their respective Community Tax Certificate.

On October 7, 2004, the IBP Board of Governors passed CBD Resolution No. XVI-2004-402[2], adopting the report of the Investigating Commissioner and approving the latter's recommendation that respondent's notarial commission be revoked and respondent be reprimanded and warned that a breach of his professional duties shall be dealt with more severely. Says the said report:

The issue to be resolved in this case is whether or not the respondent is guilty of dereliction of duty as a notary public.

The certification issued by the Clerk of Court, Jennifer H. Dela Cruz-Buendia clearly show that the questioned document purportedly acknowledged before the respondent on 17 January 1997 and entered as Doc. No. 424 Page No. 21, Book No. 67, Series of 1997, was not among the documents submitted by said office (Annex "A" of the Complain).

The certified true copy of the notarial register of respondent disclosed that there is no entry regarding the names of the witnesses to the documents neither were the respective Community Tax Certificates of the parties indicated in the notarial register of respondent (Annex "B" of Complaint).

The respondent failed to furnish the complainant a copy of the alleged Deed of Sale despite the fact that respondent admitted having retained a copy of the document for their office file.

Respondent delegated to his secretary the clerical entry to his records, evidently he failed to check the sufficiency of the notarial entries which explains the absence of the names of the witnesses and other pertinent data.

Notably, the allegations of the complainant remain uncontroverted by the respondent. It is very evident that respondent in discharging the duties as notary public failed to exercise diligence in his performance of his responsibilities as such. Thus, it is recommended that respondent's notarial commission be revoked and the respondent be reprimanded and warned that a breach of his professional duties shall be dealt with more severely.[3]

The IBP Board of Governors' Resolution No. XVI-2004-402, now before the Court for final action, is well-taken.

The Notarial Law is explicit on the obligations and duties of a notary public. Sections 245 and 246 of the Revised Administrative Code respectively provide:

Sec. 245. Notarial Register. – Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary; and he shall supply a certified copy of such record, or any part thereof, to any person applying for it and paying the legal fees therefor.

Such register shall be kept in books to be furnished by the Attorney-General (Solicitor General) to any notary public upon request and upon payment of the actual cost thereof, but officers exercising the functions of notaries public ex-officio shall be supplied with the register at Government expense. The register shall be duly paged, and on the first page, the Attorney-General (Solicitor General) shall certify the number of pages of which the book consists.

Sec. 246. Matters to be entered therein. – The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to or acknowledging the instrument, the witnesses, if any, to the signature, the date of the execution, oath, or acknowledgment of the instrument, the fees collected by him for his services as notary in connection therewith, and, when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

xxx xxx xxx

At the end of each week the notary shall certify in his register the number of instruments executed, sworn to,

acknowledged or protested before him; or if none such, the certificate shall show this fact.

A certified copy of each month's entries as described in this section and a certified copy of any instrument acknowledged before them shall within the first ten days of the month next following be forwarded by the notaries public to the clerk of the Court of First Instance (now Regional Trial Court) of the province and shall be filed under the responsibility of such officer: Provided, That if there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of the certified copies herein required.

Here, Atty. Basco violated the Notarial Law by failing to provide all the necessary information regarding the questioned Deed of Sale entered in his notarial register. He even notarized said instrument even without the notation of the residence certificate of the party to the document. As a notary public, respondent is required by the Notarial Law to certify that the party to the instrument acknowledged before him has presented the proper residence certificate (or exemption from the residence certificate) and to enter its number, place of issue and date as part of the certification. Worse, he likewise failed to send copy of the notarized document to the clerk of court of the proper RTC and to retain a copy thereof for his own records. These formalities are mandatory and cannot simply be neglected. Failure to perform this duty results in the revocation of a notary's commission.[4] In *Vda. de Rosales vs. Ramos*,[5] we held:

X x x. The notarial registry is a record of the notary public's official acts. Acknowledged documents and instruments recorded in it are considered public documents. If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document. Considering the evidentiary value given to notarized documents, the failure of the notary public to record the document in his notarial registry is tantamount to falsely making it appear that the document was notarized when in fact it was not. xxx. This is a clear violation of the Notarial Law for which he must be disciplined.

We have emphatically stressed that notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantive public interest, such that only those who are qualified or authorized may act as notary public. Notarization of a private document converts it into a public instrument making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties, lest, the confidence of the public in the integrity of the document will be undermined.[6]

As a lawyer commissioned as a notary public, respondent is mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment are sacrosanct. He cannot simply disregard the requirements and solemnities of the Notarial Law.

In *Protacio vs. Mendoza*,[7] this Court suspended respondent's commission as a notary public for one (1) year for his failure to send to the Clerk of Court of the proper RTC the entries in his notarial registry.

WHEREFORE, for breach of the notarial law, the commission of respondent Atty. Humberto B. Basco as Notary Public, if still existing, is REVOKED and he is DISQUALIFIED from being commissioned as such for a period of one (1) year with a WARNING that a repetition of the same negligent act charged in the complaint will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines.

**SO ORDERED.**

Panganiban, J., (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales JJ., concur.

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[1] Rollo, pp. 1-3.

[2] Rollo, p. 130.

[3] Rollo, pp. 132-133.

[4] Sec. 249. Grounds for revocation of commission. – The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of the notarial commission, thus:

(a)

The failure of the notary to keep a notarial register.

(b)

The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.

(c)

The failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance(now Regional Trial Court) within the first ten days of the month next following.

(d)

The failure of the notary to affix to acknowledgment the date of expiration of his commission, as required by law.

(e)

The failure of the notary to forward his notarial register, when filled, to the proper clerk of court.

(f)

The failure of the notary to make the proper notation regarding cedula certificates. (See C.A. 238, re abolition of cedula tax; see also C.A. 465, Sec. 6, re presentation of residence certificate by a person liable to pay residence tax when acknowledging document before a notary public.

(g)

The failure of the notary to make the proper notation regarding cedula certificates.

(h)

Any other dereliction or act which shall appear to the judge to constitute good cause for removal.

[5] A.C. No. 5645, 383 SCRA 498 [2002].

[6] Arrieta vs. Llosa, 346 Phil. 935 [1997], citing Maligsa vs. Cabanting, 338 Phil. 917 [1997].

[7] A.C No. 5764 395 SCRA 11 [2003].

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