

JOCELYN A. SAQUING, COMPLAINANT, VS. ATTY. NOEL A. MORA, RESPONDENT.

A.C. NO. 6678. October 09, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Complainant Jocelyn A. Saquing seeks the disbarment of respondent Atty. Noel A. Mora for grave misconduct for allegedly conspiring with spouses Paulino and Manuela Mora in inducing her to buy an unregistered parcel of land, and for performing a notarial act without a commission, he being a lawyer of the Public Attorney's Office (PAO).

Complainant alleged that in June 2004, she bought from the spouses Mora 7,828 square meter parcel of allegedly registered land located at Sitio Paquiel, Camasi, Peñablanca, Cagayan, for P782,800.00.[1] On July 8, 2004, she paid the amount of P550,000.00 to the spouses Mora at the house of the respondent, who prepared a handwritten acknowledgment receipt, which reads:[2]

ACKNOWLEDGMENT RECEIPT

This is to acknowledge receipt the amount of FIVE HUNDRED FIFTY THOUSAND PESOS (P550,000.00) from MS. JOCELYN [A.] SAQUING as partial payment of the Lot 108-3, PSU-(2f) 02-165983 Amd3 with an area of Seven Thousand Eight Hundred Twenty Eight (7,828) square meters located at Camasi, Peñablanca, Cagayan.

The balance in the amount of TWO HUNDRED THIRTY TWO THOUSAND EIGHT HUNDRED PESOS (P232,800.00) shall be paid within the period of three (3) months.

Executed this 8[th] day of July, 2004 at Tuguegarao City.

(Sgd.) JOCELYN [A.] SAQUING (Sgd.) PAULINO MORA

(Sgd.) MANUELA ASPA MORA

SIGNED IN THE PRESENCE OF:

SUBSCRIBED AND SWORN to before me this 8[th] day of July, 2004 at Tuguegarao.

(Sgd.) ATTY. NOEL A. MORA[3]

After payment of the remaining balance, respondent prepared the Deed of Absolute Sale of a Portion of Unregistered Land,[4] but complainant refused to affix her signature on the deed because it was stated therein that the land was unregistered, contrary to the representations of the spouses and the respondent.[5]

When the spouses Mora refused to return the contract price, complainant filed a complaint for estafa against them

at the City Prosecutor's Office, Tuguegarao City, and an administrative case for disbarment against the respondent at the Office of the Bar Confidant.[6]

Respondent denied conspiring with spouses Mora regarding the sale of the land. He alleged that before he prepared the acknowledgment receipt, the parties had already agreed on the terms of the contract; thus, there was no need for him to convince complainant to buy the land. He admitted that he asked the parties to subscribe the acknowledgment receipt and swear before him but claimed that he did it only for complainant's protection in case any problem would arise. He denied giving any assurance that the land was registered. In fact, he explained to her the status of the case with the Department of Environment and Natural Resources (DENR) and that the spouses were facilitating the titling of the property in their names.[7]

Complainant filed a Reply[8] to respondent's comment, after which the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[9] In its Resolution No. XVII-2006-238, dated April 27, 2006, the IBP Board of Governors approved the report and recommendation of the Investigating Commissioner, Lolita A. Quisumbing, finding respondent guilty of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility for notarizing the Acknowledgment Receipt without notarial commission and recommending that he be reprimanded with warning that repetition of the same act will be dealt with more severely.[10]

This resolution is now before us for review.

In disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the former establishes its case by clear, convincing, and satisfactory evidence.[11] Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.[12]

Complainant's evidence consists mainly of her Affidavit-Complaint, Acknowledgment Receipt, Deed of Absolute Sale of a Portion of Unregistered Land and her testimony before the Commission attesting to the truth of the allegations in her affidavit.

We agree with the Investigating Commissioner that while the evidence of complainant is sufficient to support the charge that respondent notarized the Acknowledgment Receipt without a notarial commission, the same however is insufficient to prove that respondent conspired with spouses Mora in inducing her to purchase the land. Thus,

Other than complainant's bare allegation, there is no extant proof adequately showing that respondent told her that the property was registered land. Instead, we find sufficient evidence to support the finding that there was no connivance and that complainant was aware that the property was still to be titled:

- The Acknowledgment Receipt describes the property as "Lot 108-3, PSU (2f) 02-165983 xxx" and not by TCT or OCT Number.
- The Acknowledgment Receipt provides that the balance shall be paid within a period of three (3) months. Thus, complainant had sufficient time to demand or verify if the property was registered with the Registry of Deeds. But instead of doing so, she made further payments on 16 August 2004 and 8 September 2004.
- Complainant was present when the property was being surveyed for the purpose of segregating the lot to be adjudicated to her. The status of the property was further explained to her by Engr. Camb[r]i during the segregation survey of the property she bought.
- The Lot Descriptions attached to the Survey Plan prepared by Engr. Cambri specifically states that Lot No. 15 was complainant's.

- The property was adjudicated to the spouses Mora by the DENR in the Order dated 5 October 2001 which already became final and executory. In a way, the title of spouses of the lot was confirmed and in the process of making it perfect through the approval of the subdivision plan and the appropriate public land application. This was explained by respondent to complainant since he is the lawyer of the spouses in the DENR case.[13]

Anent the charge of notarizing a document without a notarial commission, we agree that such an act violates Rule 1.01, Canon 1 of the Code of Professional Responsibility, which reads:

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

In *Nunga v. Viray*,^[14] the Court 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. For one, performing a notarial 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."

For such misconduct, the Court has sanctioned erring lawyers with suspension from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment.^[15]

Disbarment is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution for only the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar. Accordingly, disbarment should not be decreed where any punishment less severe - such as a reprimand, suspension, or fine - would accomplish the end desired.^[16]

In *Joson v. Baltazar*,^[17] the Court suspended a lawyer for three months for unauthorized notarization of a deed of sale. Considering, however, that in the instant case, it was only an Acknowledgment Receipt that was notarized; that it was done to protect the complainant; that it was the first offense of the respondent; and the heavy workload of the respondent as Public Attorney, we find the recommended penalty of reprimand sufficient under the present circumstances.

WHEREFORE, in view of the foregoing, Resolution No. XVII-2006-238, dated April 27, 2006, of the IBP Board of Governors which adopted and approved the report and recommendation of Investigating Commissioner Lolita A. Quisumbing, finding respondent Atty. Noel A. Mora GUILTY of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility for notarizing an acknowledgment receipt without a notarial commission and recommending that he be REPRIMANDED with warning that repetition of the same act will be dealt with more severely, is AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, p. 2.

[2] Id.

[3] Id. at 10.

[4] Id. at 11.

[5] Id. at 3.

[6] Id.

[7] Id. at 45-47.

[8] Id. at 86-91.

[9] Id. at 92.

[10] Id. Notice of Resolution, IBP Commission on Bar Discipline, Board of Governors.

[11] *Arienda v. Aguila*, A.C. No. 5637, April 12, 2005, 455 SCRA 282, 287.

[12] *Tabang v. Gacott*, A.C. No. 6490, September 29, 2004, 439 SCRA 307, 312.

[13] Report of Investigating Commissioner Lolita A. Quisumbing, pp. 4-5.

[14] 366 Phil. 155, 161 (1999).

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

[16] *Suzuki v. Tiamson*, A.C. No. 6542, September 30, 2005, 471 SCRA 129, 140.

[17] A.C. No. 575, February 14, 1991, 194 SCRA 114.

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