

MARIA DIVINA CRUZ-VILLANUEVA, COMPLAINANT, VS. ATTY. CARLOS P. RIVERA AND ATTY. ALEXANDER P. SIMEON, JR., RESPONDENTS.

A.C. NO. 7123. November 20, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a complaint for disbarment filed by Maria Divina Cruz-Villanueva ("complainant") against Atty. Carlos P. Rivera ("respondent Rivera") and Atty. Alexander P. Simeon, Jr. ("respondent Simeon, Jr.") for grave misconduct and violation of the Code of Professional Responsibility ("Code").

The Facts

Sometime in January 2004, complainant engaged the services of respondent Rivera to prepare the documents, and to pay all the necessary expenses, relating to the sale of complainant's property to Samson B. Bautista ("Bautista"). As shown by an acknowledgment receipt,[1] respondent Rivera received P80,000 from complainant to cover expenses payable to the Bureau of Internal Revenue (BIR), the Register of Deeds, the City Treasurer's Office, and others.

On Bautista's death in February 2004, complainant learned that the property had been transferred in Bautista's name based on a Deed of Reconveyance[2] executed by complainant. Bautista's widow also informed complainant that final payment for the property would be withheld pending payment of all the necessary taxes.[3] The BIR also directed complainant to explain why no tax evasion charges should be filed against her for non-payment of taxes on the transfer.[4]

Respondent Rivera then convinced complainant to file an adverse claim on the property and to file cases for estafa and violation of Batas Pambansa No. 22 against Bautista's widow. Respondent Rivera requested and received P13,000 as acceptance fee and representation expenses.[5]

After repeated verbal requests, complainant wrote a letter[6] to respondent Rivera to clarify the issue on the non-payment of taxes and the alleged Deed of Reconveyance, which complainant claimed she did not execute. Complainant likewise inquired about the adverse claim supposedly filed by respondent Rivera on her behalf. Complainant also directed respondent Rivera to pay immediately the necessary taxes to the BIR.

Complainant later learned that respondent Rivera had no notarial commission for the years 2003 and 2004.[7]

Complainant also charged respondent Simeon, Jr., Regional Director, Registry of Deeds, Tuguegarao City, Cagayan, of conspiracy with respondent Rivera in registering the property under Bautista's name based on the Deed of Reconveyance without payment of the proper taxes. Complainant alleged that respondent Simeon, Jr. allowed the registration despite knowledge that there was a prior Deed of Sale[8] and that respondent Simeon, Jr.

received part of the P80,000 to facilitate the transfer.

In an Order dated 18 October 2004, the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline directed respondents to answer the complaint. Respondent Rivera asked for an extension of ten days to file his answer.[9] However, respondent Rivera did not file any answer.

In his Answer[10] dated 22 November 2004, respondent Simeon, Jr. denied complainant's allegations and prayed for the dismissal of the complaint against him. On the registration in Bautista's name without payment of the required taxes, respondent Simeon, Jr. claimed that he "relied on the genuineness and authenticity of the documents" presented by respondent Rivera. Respondent Simeon, Jr. denied that he received money from respondent Rivera to facilitate the transfer. Respondent Simeon, Jr. also disavowed any knowledge of a prior Deed of Sale.

IBP Commissioner Acerey C. Pacheco ("Commissioner Pacheco") set the case for mandatory conference on 11 March 2005. Only complainant and respondent Simeon, Jr. appeared in the 11 March 2005 hearing. The hearing was canceled and reset for 15 April 2005. Only complainant appeared in the 15 April 2005 hearing. Despite receipt of notices of hearing, respondent Rivera did not attend any of the hearings.

Commissioner Pacheco required all the parties to submit their position papers and documentary evidence. Complainant and respondent Simeon, Jr. both filed position papers. Respondent Simeon, Jr. submitted a reply to complainant's position paper. Respondent Rivera did not submit any position paper, thus waiving his right to comment and participate in the investigation.

The IBP's Report and Recommendation

The IBP Board of Governors issued Resolution No. XVII-2006-07 dated 28 January 2006 adopting with modification[11] Commissioner Pacheco's Report and Recommendation finding respondent Rivera guilty of grave misconduct and serious violation of the Code. The IBP Board of Governors recommended the imposition on respondent Rivera of a penalty of suspension from the practice of law for two years.

The IBP Board of Governors recommended the dismissal of the complaint against respondent Simeon, Jr. for lack of merit.

The IBP Board of Governors forwarded the instant case to the Court as provided under Section 12(b), Rule 139-B[12] of the Rules of Court.

The Ruling of the Court

The Court finds respondent Rivera liable for violation of the lawyer's oath and the Code.

The Court agrees with the IBP that the complaint against respondent Simeon, Jr. should be dismissed.

Complaint Must be Supported by Substantial Evidence

In administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint.[13] Mere allegation is not evidence and is not equivalent to proof.[14]

Aside from complainant's bare allegations, complainant did not present any evidence to prove that respondent Simeon, Jr. conspired with respondent Rivera in registering the property in Bautista's name based on the Deed of Reconveyance without payment of taxes. Likewise, complainant did not present any evidence to prove that respondent Simeon, Jr. received part of the P80,000 from respondent Rivera for the registration. Hence, the complaint against respondent Simeon, Jr. should be dismissed.

Respondent Rivera Not Commissioned as Notary Public

A member of the Bar who notarizes a document when he has no authorization or commission to do so may be subjected to disciplinary action. Notarization is not an empty act. It is invested with substantive public interest, such that only those who are authorized may act as notaries public. Notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity and due execution.[15]

Respondent Rivera notarized the Deed of Sale and the Deed of Reconveyance sometime in January 2004. However, the Office of the Clerk of Court, Regional Trial Court, Tuguegarao City, Cagayan, issued a certification that respondent Rivera had no notarial commission for the years 2003 and 2004.[16] Respondent Rivera did not present any evidence to the contrary. Therefore, when respondent Rivera notarized the two deeds, he had no authority to do so.

In performing notarial work without a commission, respondent Rivera violated the lawyer's oath to obey the law, specifically the Notarial Law, and to do no falsehood. Respondent Rivera also violated Rule 1.01[17] of the Code because he deceived complainant into believing that he was authorized to act as notary public when he was not. Respondent Rivera's conduct constitutes malpractice and falsification of a public document.[18]

Respondent Rivera Failed to Account for the Money He Received from Complainant

The Code mandates that every lawyer shall hold in trust all funds of his client that may come into his possession.[19] The Code further states that a lawyer shall account for all money received from the client.[20]

When a lawyer receives money from the client for a particular purpose, the lawyer must render an accounting to the client showing that the money was spent for the intended purpose.[21] Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.[22]

Respondent Rivera specifically received P80,000 from complainant for expenses to the BIR, the Register of Deeds, the City Treasurer's Office and other related purposes. Respondent Rivera also received P13,000 from complainant as acceptance fee and representation expenses for the filing of the adverse claim and criminal charges against Bautista's widow. However, respondent Rivera did not pay the taxes to the BIR and did not file an adverse claim. Hence, respondent Rivera should have promptly accounted for and returned the money to complainant.

Respondent Rivera's failure to make an accounting or to return the money to complainant is a violation of the trust reposed on him. As a lawyer, respondent Rivera should be scrupulously careful in handling money entrusted to him in his professional capacity because the Code exacts a high degree of fidelity and trust from members of the bar.[23]

The Court also notes respondent Rivera's lack of respect for the IBP and its proceedings. After filing the Motion for Extension of Time to File an Answer[24] and despite receipt of the IBP's orders and notices, respondent Rivera did not participate in the investigation. Respondent Rivera's actuation shows a high degree of irresponsibility which stains the nobility of the legal profession.[25]

On the Appropriate Penalty Against Respondent Rivera

Notaries public who notarize documents without the requisite commission are penalized with revocation of their notarial commission and are barred from being commissioned as notary public.[26] Thus, respondent Rivera should be barred from being commissioned as notary public for one year and his notarial commission, if any, revoked.

On the other hand, lawyers guilty of violation of Canon 16 and Rule 16.01 of the Code are suspended from the

practice of law for six months to one year.[27] Considering respondent Rivera's lack of prior administrative record, suspension from the practice of law for one year and not disbarment, as prayed for by complainant, serves the purpose of protecting the interest of the public and the legal profession.

WHEREFORE, we find respondent Atty. Carlos P. Rivera GUILTY of violation of the lawyer's oath, Rule 1.01, Canon 16, and Rule 16.01 of the Code of Professional Responsibility. Accordingly, we SUSPEND respondent Atty. Carlos P. Rivera from the practice of law for one year effective upon finality of this decision. Further, respondent Atty. Carlos P. Rivera is BARRED from being commissioned as notary public for one year and his present commission, if any, is REVOKED. Furthermore, respondent Atty. Carlos P. Rivera is ORDERED TO ACCOUNT to complainant, within 20 days from notice of this decision, for the P80,000 and the P13,000.

We DISMISS the complaint against respondent Atty. Alexander P. Simeon, Jr.

Let copies of this decision be furnished the Office of the Bar Confidant, to be appended to respondents' personal record as attorneys. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] Rollo, p. 10.

[2] Id. at 8.

[3] Id. at 13.

[4] Id. at 12.

[5] Id. at 17.

[6] Id. at 14-15.

[7] Id. at 16.

[8] Id. at 32.

[9] Id. at 21.

[10] Id. at 25-28.

[11] Commissioner Pacheco recommended the disbarment of respondent Rivera.

[12] Section 12(b), Rule 139-B of the Rules of Court provides:

SEC. 12. Review and Decision by the Board of Governors. —

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(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

- [13] *Adarne v. Aldaba*, A.C. No. 801, 27 June 1978, 83 SCRA 734.
- [14] *Navarro v. Cerezo*, A.M. No. P-05-1962, 17 February 2005, 451 SCRA 626.
- [15] *Nunga v. Viray*, 366 Phil. 155 (1999).
- [16] *Rollo*, p. 16.
- [17] Rule 1.01-- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
- [18] *Joseon v. Baltazar*, A.C. No. 575, 14 February 1991, 194 SCRA 114.
- [19] Code of Professional Responsibility, Canon 16.
- [20] Code of Professional Responsibility, Rule 16.01.
- [21] *Garcia v. Manuel*, 443 Phil. 479 (2003).
- [22] *Barnachea v. Quiocho*, 447 Phil. 67 (2003).
- [23] *Medina v. Bautista*, 120 Phil. 787 (1964).
- [24] *Rollo*, pp. 21-22.
- [25] *Sencio v. Calvadores*, 443 Phil. 490 (2003).
- [26] *Zoreta v. Simpliciano*, A.C. No. 6492, 18 November 2004, 443 SCRA 1; *Nunga v. Viray*, supra note 15.
- [27] *Meneses v. Macalino*, A.C. No. 6651, 27 February 2006, 483 SCRA 212; *Villanueva v. Ishiwata*, A.C. No. 5041, 23 November 2004, 443 SCRA 401; *Emiliano Court Townhouses v. Dioneda*, 447 Phil. 408 (2003).

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