PATROCINIO V. AGBULOS, COMPLAINANT, VS. ATTY. ROSELLER A. VIRAY, RESPONDENT.

A.C. No. 7350. February 18, 2013

Ponente: PERALTA, J.

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PERALTA, J.:

The case stemmed from a Complaint[1] filed before the Office of the Bar Confidant (OBC) by complainant Mrs. Patrocinio V. Agbulos against respondent Atty. Roseller A. Viray of Asingan, Pangasinan, for allegedly notarizing a document denominated as Affidavit of Non-Tenancy[2] in violation of the Notarial Law. The said affidavit was supposedly executed by complainant, but the latter denies said execution and claims that the signature and the community tax certificate (CTC) she allegedly presented are not hers. She further claims that the CfC belongs to a certain Christian Anton.[3] Complainant added that she did not personally appear before respondent for the notarization of the document. She, likewise, states that respondent's client, Rolando Dollente (Dollente), benefited from the said falsified affidavit as it contributed to the illegal transfer of a property registered in her name to that of Dollente.[4]

In his Comment,[5] respondent admitted having prepared and notarized the document in question at the request of his client Dollente, who assured him that it was personally signed by complainant and that the CTC appearing therein is owned by her.[6] He, thus, claims good faith in notarizing the subject document.

In a Resolution[7] dated April 16, 2007, the OBC referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision.

After the mandatory conference and hearing, the parties submitted their respective Position Papers.[8] Complainant insists that she was deprived of her property because of the illegal notarization of the subject document.[9] Respondent, on the other hand, admits having notarized the document in question and asks for apology and forgiveness from complainant as a result of his indiscretion.[10]

In his report, Commissioner Dennis A. B. Funa (Commissioner Funa) reported that respondent indeed notarized the subject document in the absence of the alleged affiant having been brought only to respondent by Dollente. It turned out later that the document was falsified and the CTC belonged to another person and not to complainant. He further observed that respondent did not attempt to refute the accusation against him; rather, he even apologized for the complained act.[11] Commissioner Funa, thus, recommended that respondent be found guilty of violating the Code of Professional Responsibility and the 2004 Rules on Notarial Practice, and that he be meted the penalty of six (6) months suspension as a lawyer and six (6) months suspension as a Notary Public.[12]

On April 15, 2008, the IBP Board of Governors issued Resolution No. XVIII-2008-166 which reads:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex “A”; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent’s violation of the Code of Professional

> Responsibility and 2004 Rules on Notarial Practice, Atty. Roseller A. Viray is hereby SUSPENDED from the practice of law for one (1) month.[13]

Respondent moved for the reconsideration of the above decision, but the same was denied. The above resolution was further modified in Resolution No. XX-2012-117, dated March 10, 2012, to read as follows:

> RESOLVED to DENY Respondent's Motion for Reconsideration, and unanimously MODIFY as it is hereby MODIFIED Resolution No. XVIII-2008-166 dated April 15, 2008, in addition to Respondent's SUSPENSION from the practice of law for one (1) month, Atty. Roseller A. Viray is hereby SUSPENDED as Notary Public for six (6) months. (Emphasis in the original)

The findings of the IBP are well taken.

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice emphasizes the necessity of the affiant's personal appearance before the notary public:[14]

> x x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
>
> (1)
>
> is not in the notary's presence personally at the time of the notarization; and
>
> (2)
>
> is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Moreover, Section 12,[15] Rule II, of the 2004 Rules on Notarial Practice defines the "competent evidence of identity" referred to above.

In this case, respondent admits that not only did he prepare and notarize the subject affidavit but he likewise notarized the same without the affiant's personal appearance. He explained that he did so merely upon the assurance of his client Dollente that the document was executed by complainant. In notarizing the document, respondent contented himself with the presentation of a CTC despite the Rules' clear requirement of presentation of competent evidence of identity such as an identification card with photograph and signature. With this indiscretion, respondent failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery. In failing to observe the requirements of the Rules, even the CTC presented, purportedly owned by complainant, turned out to belong to somebody else.

To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.[16] Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.[17]

As aptly observed by the Court in Dela Cruz-Sillano v. Pangan:[18]

> The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents

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> may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[19]

The Court has repeatedly emphasized in a number of cases[20] the important role a notary public performs, to wit:

> x x x [N]otarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[21]

Respondent's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization.[22] He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer.[23] The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or jurat is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any.[24] Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.[25]

As to the proper penalty, the Court finds the need to increase that recommended by the IBP which is one month suspension as a lawyer and six months suspension as notary public, considering that respondent himself prepared the document, and he performed the notarial act without the personal appearance of the affiant and without identifying her with competent evidence of her identity. With his indiscretion, he allowed the use of a CTC by someone who did not own it. Worse, he allowed himself to be an instrument of fraud. Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is meted the penalties of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for one year.[26]

WHEREFORE, the Court finds respondent Atty. Roseller A. Viray GUILTY of breach of the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court SUSPENDS him from the practice of law for one (1) year; REVOKES his incumbent commission, if any; and PROHIBITS him from being commissioned as a notary public for two (2) years, effective immediately. He is WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Leonen, JJ., concur.

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[1] Rollo, pp. 1-4.

[2] Id. at 5.

[3] Id. at I.

[4] Id.

[5] Id. at 7-8.

[6] Id. at 7.

[7] Id. at 10.

[8] Id. at 40-42 and 44.

[9] Id. at 41.

[10] Id. at 44.

[11] Report and Recommendation of the Commissioner, pp. 4-5.

[12] Id. at 5.

[13] Vol. III, p. 1. (Emphasis in the original).

[14] Dela Cruz-Sillano v. Pangan, A.C. No. 5851, November 25, 2008, 571 SCRA 479, 483.

[15] Section 12. Competent Evidence of Identity. - The phrase "competent evidence of identity" refers to the identification of an individual based on:

> (a)
>
> At least one current identification document issued by an official agency bearing the photograph and signature of the individual; or
>
> (b)
>
> The oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[16] Legaspi v. Landrito, A.C. No. 7091, October 15, 2008, 569 SCRA 1, 5; Dela Cruz v. Dimaano, Jr., A.C. No. 7781, September 12, 2008, 565 SCRA 1, 5-6.

[17] Dela Cruz v. Dimaano, Jr., supra, at 6.

[18] Supra note 14.

[19] Dela Cruz-Sillano v. Pangan, supra note 14, at 487-488.

[20] Id. at 488; Legaspi v. Landrito, supra note 16; Dela Cruz v. Dimaano, Jr., supra note 16, at 7-8.

[21] Lustestica v. Bernabe, A.C. No. 6258, August 24, 2010, 628 SCRA 613, 619-620.

[22] Dela Cruz-Sillano v. Pangan, supra note 14, at 488.

[23] Id.

[24] Legaspi v. Landrito, supra note 16, at 6.

[25] Dela Cruz v. Dimaano, Jr., supra note 16, at 7.

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[26] Isenhardt v. Real, A.C. No. 8254, February 15, 2012, 666 SCRA 20, 28; Linco v. Lacebal, A.C. No. 7241, October 17, 2011, 659 SCRA 130, 136; Lanuzo v. Bongon, A.C. No. 6737, September 23, 2008, 566 SCRA 214, 218.

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