

CORAZON T. NEVADA, COMPLAINANT, VS. ATTY. RODOLFO D. CASUGA, RESPONDENT.

A.C. No. 7591. March 20, 2012

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Corazon T. Nevada (Nevada) seeks the disbarment of Atty. Rodolfo D. Casuga (Casuga) for alleged violation of his lawyer's oath and the 2004 Rules on Notarial Practice (Notarial Rules).

The Facts

Nevada is the principal stockholder of C.T. Nevada & Sons, Inc., a family corporation which operates the Mt. Crest Hotel located at Legarda Road, Baguio City (the Hotel).

In her affidavit-complaint[1] dated June 28, 2007, with annexes, Nevada alleges that she and Casuga are members of the One in Jesus Christ Church, a religious group which counts the latter as one of its "elders." According to Nevada, she has allowed the use of one of the Hotel's functions rooms for church services. And in time, Casuga was able to gain her trust and confidence.

Nevada further alleges that unbeknownst to her, Casuga, sometime in 2006, started to represent himself as the administrator of the Hotel. In fact, on March 1, 2006, he entered into a contract of lease[2] with a certain Jung Jong Chul (Chul) covering an office space in the Hotel. Notably, Casuga signed the lease contract over the printed name of one Edwin T. Nevada and notarized the document himself.

Annex "B"[3] of the affidavit-complaint is a notarized letter dated May 15, 2007, wherein Chul attested that he gave Casuga, upon contract signing, the amount of ninety thousand pesos (PhP 90,000) as rental deposit for the office space. The amount thus deposited, so Nevada claims, was never turned over to her or to C.T. Nevada & Sons, Inc.

Nevada adds that, in the course of their acquaintanceship, Casuga was able to acquire from her several pieces of jewelry: a ¾ K diamond solitaire ring, earrings with three (3) diamonds each and a ring with three (3) diamonds, with an aggregate value of three hundred thousand pesos (PhP 300,000), and a solid gold Rolex watch with diamond dials valued at twelve thousand US dollars (USD 12,000). Casuga took possession of the valuables purportedly with the obligation of selling them and to remit any proceeds to Nevada. However, despite repeated demands by Nevada for Casuga to return the valuables or otherwise remit the proceeds of the sale, no jewelry or money was ever returned.

In compliance with a directive from the Court, Casuga submitted an Affidavit[4] dated December 5, 2007, as comment on the administrative complaint. In it, Casuga claims that Nevada informally instituted him as the administrator of the Hotel in a limited capacity but denied receiving the PhP 90,000 from Chul. With regard to the pieces of jewelry and the Rolex watch, Casuga stated that Nevada actually pawned them in a pawnshop and that she later asked his wife to redeem them using their own money. Thereafter, Nevada asked Casuga's wife to sell

the valuables and reimburse herself from the proceeds of the sale.

By Resolution of July 2, 2008, the Court, thru the Office of the Bar Confidant, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation/decision. The case was docketed as CBD Case No. 7591 entitled *Corazon T. Nevada v. Atty. Rodolfo D. Casuga*.

On September 22, 2008, the IBP Commission on Bar Discipline (CBD), thru Commissioner Norberto B. Ruiz, issued and sent out a Notice of Mandatory Conference directing the parties to appear before it on October 23, 2008. On that date, only Nevada showed up, prompting the designated commissioner to reset the conference to November 25, 2008, with a warning that he, Casuga, will be declared in default and the case submitted for resolution should he again fail to appear. November 25, 2008 came, but only Nevada was present at the conference. Thus, CBD Case No. 7591 was submitted for resolution on the basis of Nevada's Position Paper dated December 3, 2008 and the evidence she submitted consisting of, among others, twenty-one (21) official rental receipts Casuga issued to at least two (2) lessors of the Hotel.

Results of the Investigation

In its Report and Recommendation^[5] dated January 14, 2009, the IBP CBD found Casuga guilty of the charges against him, disposing as follows:

WHEREFORE, premises considered it is hereby recommended that Casuga be suspended for one (1) year for gross misconduct, violation of the notarial law and infidelity in the custody of monies, jewelries and a Rolex watch which pertain to the complainant and the family corporation.

The IBP Board of Governors later adopted and approved the CBD's Report and Recommendation, with modification, as indicated in Resolution No. XIX-2010-461 dated August 28, 2010, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above entitled case x x x; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Casuga's violation of Canon 16 of the Code of Professional Responsibility, for misappropriation of his client[s] funds and jewelries, for violation of the Notarial Law when he signed as a party to a lease contract and notarized the same and also taking into consideration the gravity of the offense committed, Atty. Rodolfo D. Casuga is hereby SUSPENDED from the practice of law for four (4) years. In addition, Atty. Casuga is Suspended or Disqualified from reappointment as Notary Public for two (2) years and Ordered to Return the amount of P90,000.00, jewelries amounting to P300,000.00 and the Rolex watch valued at \$12,000.00 or its equivalent to Mr. Jung Jong Chul, otherwise his Suspension shall continue.

The CBD Report and Recommendation and a copy of Resolution No. XIX-2010-461 were subsequently forwarded to the Court along with the records of the case.

In the meantime, Nevada, upon receipt of a copy of Resolution No. XIX-2010-461, wrote and asked the IBP Board of Governors to rectify said resolution. Instead of the return of the amount of PhP 90,000, the jewelry and the Rolex watch or their monetary value to Chul, as directed in the resolution, Nevada requested the return to be made in her favor. The letter-request of Nevada had remained not acted upon owing obviously to the fact that the records of the case have been transmitted to the Court in the interim.

The Issues

The principal but simple issues in this case pivot on the guilt of Casuga for the charges detailed or implied in the basic complaint; and the propriety of the return to Nevada of the items, or their money value, and the amount subject of the case.

The Court's Ruling

We agree with the CBD's inculpatory findings, as endorsed by the IBP Board of Governors, and the recommended upgrading of penalties, as shown in Resolution No. XIX-2010-461, but subject to the modification as shall be discussed.

Casuga is guilty of gross misconduct for misrepresenting himself

In re Horrilleno[6] defined "gross misconduct" in the following wise:

The grounds for removal of a judge of first instance under Philippine law are two: (1) Serious misconduct and (2) inefficiency. The latter ground is not involved in these proceedings. As to the first, the law provides that "sufficient cause" must exist in the judgment of the Supreme Court involving "serious misconduct." The adjective is "serious;" that is, important, weighty, momentous, and not trifling. The noun is "misconduct;" that is, a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word "misconduct" implies a wrongful intention and not a mere error or judgment. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. (Lawlor vs. People [1874], 74 Ill., 228; Citizens' Insurance Co. vs. Marsh [1861], 41 Pa., 386; Miller vs. Roby [1880], 9 Neb., 471; Smith vs. Cutler [1833], 10 Wend. [N.Y.], 590; U.S. vs. Warner [1848], 28 Fed. Cas. No. 16643; In re Tighe [1904], 89 N.Y. Supra., 719.) (Emphasis supplied.)

The above definition was to be reiterated in Ajeno v. Judge Inserto,[7] where the Court wrote:

In the case of In re [Horrilleno], 43 Phil. 212, this Court previously ruled that "For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules."

Of similar tenor is the definition provided in Jamsani-Rodriguez v. Ong:[8]

x x x The respondent Justices were not liable for gross misconduct – defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence, or the corrupt or persistent violation of the law or disregard of well-known legal rules x x x.

Respondent Casuga represented himself as a duly-authorized representative of Nevada when in fact he was not. Casuga admitted signing the subject contract of lease, but claimed that he was duly authorized to do so by Nevada. However, Casuga failed to adduce an iota of evidence to prove that he was indeed so authorized. One who alleges the existence of an agency relationship must prove such fact. The Court ruled in Yun Kwan Byung v. Philippine Amusement and Gaming Corporation,[9] "The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it."

Plainly enough, Casuga is guilty of misrepresentation, when he made it appear that he was authorized to enter into a contract of lease in behalf of Nevada when, in fact, he was not. Furthermore, the records reveal that Casuga received the rentals by virtue of the contract of lease, benefitting from his misrepresentation. Chul's notarized letter of May 15, 2007 sufficiently shows that Casuga indeed received Php 90,000 as rental deposit from Chul. In his affidavit-comment dated December 5, 2007, Casuga denied having received such amount, alleging that a certain Pastor Oh, who purportedly introduced him to Chul, received the money. However, Casuga again failed to adduce a single piece of evidence to support his contention. A bare denial must fail in light of the positive assertion of Chul, who appears to have no ulterior motive to incriminate Casuga.

In Tan v. Gumba,[10] the respondent lawyer similarly misrepresented herself to have been authorized to sell a parcel of land by virtue of a Special Power of Attorney (SPA). By virtue of the SPA, the lawyer was able to obtain a loan from the complainant, secured by the said parcel of land through an "open" deed of sale. When the respondent lawyer defaulted in the payment of the loan, it turned out that the SPA only authorized the lawyer to

mortgage the property to a bank. Thus, the complainant could not register the deed of sale with the register of deeds and could not recover the amount that he loaned to the lawyer. In that case, the Court ruled:

Here, respondent's actions clearly show that she deceived complainant into lending money to her through the use of documents and false representations and taking advantage of her education and complainant's ignorance in legal matters. As manifested by complainant, he would have never granted the loan to respondent were it not for respondent's misrepresentation that she was authorized to sell the property and if respondent had not led him to believe that he could register the "open" deed of sale if she fails to pay the loan. By her misdeed, respondent has eroded not only complainant's perception of the legal profession but the public's perception as well. Her actions constitute gross misconduct for which she may be disciplined, following Section 27, Rule 138 of the Revised Rules of Court, as amended x x x. (Emphasis supplied.)

In the instant case, by maintaining an office within the Hotel, taking advantage of his apparent close relationship to Nevada, and through the use of false representations, Casuga led Chul to believe that he was the administrator of the Hotel, when in fact he was not. By doing so, he made it appear that he was duly authorized to enter into contracts for the Hotel and to receive rentals from its occupants. His fraudulent scheme enabled Casuga to collect rentals from the occupants of the Hotel, Chul in particular, which he did not transmit to Nevada. Worse still, Casuga obtained money belonging to the Hotel. Following the principle laid down in Tan, Casuga's misrepresentation properly constitutes gross misconduct for which he must be disciplined.

Notably, in Tan, the respondent lawyer was held guilty of misconduct and suspended from the practice of law for six (6) months.

Casuga also violated Canon 16
of the Code of Professional Responsibility

With regard to the jewelry and watch entrusted to him, Casuga alleged that Nevada pawned them and thereafter instructed Casuga's wife to redeem them with the latter's money. He added that Nevada then instructed his wife to sell the valuables and use the proceeds to reimburse herself for the redemption price. Again, however, Casuga's allegations are unsupported by a single shred of evidence. Pawnshop receipts would have provided the best evidence under the circumstances. But they were not presented, too.

Moreover, Casuga's admission that the valuables are indeed in his possession, without any adequate reason, supports Nevada's version of the story. Casuga's failure to return such property or remit the proceeds of the sale is a blatant violation of Canon 16 of the Code of Professional Responsibility (the Code). The Code's Canon 16 and Rule 16.3 state:

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Having been tasked to sell such valuables, Casuga was duty-bound to return them upon Nevada's demand. His failure to do so renders him subject to disciplinary action. To be sure, he cannot use, as a defense, the lack of a lawyer-client relationship as an exonerating factor. In *Barcenas v. Alvero*,^[11] the Court suspended a lawyer from the practice of law for two (2) years after he failed to account for or return PhP 300,000 that was entrusted to him for deposit with the courts. The Court ruled:

From the records of the case, there is likewise a clear breach of lawyer-client relations. When a lawyer receives

money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client. x x x

Jurisprudence dictates that a lawyer who obtains possession of the funds and properties of his client in the course of his professional employment shall deliver the same to his client (a) when they become due, or (b) upon demand. x x x

[Respondent] Atty. Alvero cannot take refuge in his claim that there existed no attorney-client relationship between him and Barcenas. Even if it were true that no attorney-client relationship existed between them, case law has it that an attorney may be removed, or otherwise disciplined, not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.

Atty. Alvero's failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity and moral soundness, and warranted the imposition of disciplinary action. It gave rise to the presumption that he converted the money for his own use, and this act constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession. They constitute gross misconduct and gross unethical behavior for which he may be suspended, following Section 27, Rule 138 of the Rules of Court x x x. (Emphasis supplied.)

Having failed to return, upon demand, the items entrusted to him by Nevada or remit the proceeds of the sale, Casuga violated Canon 16 and Rule 16.03 of the Code.

In *Almendarez, Jr. v. Langit*,^[12] the Court suspended a lawyer from the practice of law for two (2) years for failing to account for the money and properties of his client. Similarly, in *Small v. Banares*,^[13] a lawyer was also suspended from the practice of law for two (2) years, as he failed to return the money of his client that he was holding in trust and for failing to file an answer to the complaint and his refusal to appear at the mandatory conference before the IBP. Thus, the same penalty should be imposed upon Casuga.

Casuga violated the Notarial Rules

The Notarial Rules, A.M. No. 02-8-13-SC, provides in its Rule IV, Section 1(c) and Sec. 3(a) when a notary public may sign a document in behalf of another person, thus:

SEC. 1. Powers. – x x x

x x x x

(c) A notary public is authorized to sign on behalf of a person who is physically unable to sign or make a mark on an instrument or document if:

- (1) the notary public is directed by the person unable to sign or make a mark to sign on his behalf;
- (2) the signature of the notary public is affixed in the presence of two disinterested and unaffected witnesses to the instrument or document;
- (3) both witnesses sign their own names;
- (4) the notary public writes below his signature: "Signature affixed by notary in presence of (names and addresses of person and two (2) witnesses)";
- (5) the notary public notarizes his signature by acknowledgment or jurat.

On the other hand, the succeeding Sec. 3(a) disqualifies a notary public from performing a notarial act if he or she

“is a party to the instrument or document that is to be notarized.”

None of the requirements contained in Rule IV, Sec. 1(c), as would justify a notary signing in behalf of a contracting party, was complied with in this case. Moreover, Casuga’s act of affixing his signature above the printed name “Edwin T. Nevada,” without any qualification, veritably made him a party to the contract of lease in question. Thus, his act of notarizing a deed to which he is a party is a plain violation of the aforequoted Rule IV, Sec. 3(a) of the Notarial Rules, for which he can be disciplinarily sanctioned provided under Rule XI, Sec. 1(b)(10) of the Notarial Rules, which provides:

SECTION 1. Revocation and Administrative Sanctions. – x x x.

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

(10) knowingly performs or fails to perform any other act prohibited or mandated by these Rules;

Aside from being a violation of the Notarial Rules, Casuga’s aforementioned act partakes of malpractice of law and misconduct punishable under the ensuing Sec. 27, Rule 138 of the Rules of Court:

SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, x x x or for any violation of the oath which he is required to take before admission to practice x x x. (Emphasis supplied.)

So it was that in *Lanuzo v. Bongon*[14] the Court suspended a notary public from the practice of law for one (1) year for violation of the Notarial Rules. This was on top of the penalty of disqualification from being commissioned as a notary public for two (2) years.

In *Dela Cruz v. Zabala*,[15] the Court adjudged the respondent notary public guilty of gross negligence for failing to require the parties to be physically present before him. In revoking the erring notary’s commission, the Court, in *Dela Cruz*, stressed the significance of notarization and proceeded to define the heavy burden that goes when a lawyer is commissioned as a notary public. The Court wrote:

x x x [N]otarization is not an empty, meaningless routinary act. It is invested with substantive public interest. It must be underscored that x x x notarization x x x converts a private document into a public document making that document admissible in evidence without further proof of authenticity thereof. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, a notary public must observe with utmost care the basic requirements in the performance of x x x duties; otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

x x x

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 the truth of what are stated therein. These acts of the affiants cannot be delegated because what are stated therein are facts they have personal knowledge of and are personally sworn to. Otherwise, their representative’s names should appear in the said documents as the ones who executed the same.

The function of a notary public is, among others, to guard against any illegal or immoral arrangements. By affixing his notarial seal on the instrument, he converted the Deed of Absolute Sale, from a private document into a public document. x x x As a lawyer commissioned to be a notary public, respondent is mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or jurat. Simply put, such responsibility is incumbent upon him, he must now accept the

commensurate consequences of his professional indiscretion.[16] x x x (Emphasis supplied.)

The recommended penalty must be modified

Considering the various infractions Casuga committed, as discussed above, the aggregate penalty recommended by the IBP Board of Governors of suspension from the practice of law for four (4) years was correct. It hews with prevailing jurisprudence as cited above. However, Casuga's disqualification from reappointment as notary public for two (2) years should match his suspension from the practice of law. The disqualification should accordingly be increased to four (4) years, since only a lawyer in good standing can be granted the commission of a notary public.

The desired disbarment of Casuga, however, is too severe a sanction to impose under the premises; it cannot be granted. The penalty of disbarment shall be meted out only when the lawyer's misconduct borders on the criminal and/or is committed under scandalous circumstance.[17]

The money, jewelry and Rolex watch should be returned to Nevada

Nevada's plea that the rental deposit of PhP 90,000, the pieces of jewelry worth PhP 300,000, and the Rolex watch valued at USD 12,000 or its equivalent in Philippine Peso should be ordered returned to her instead of to Jung Jong Chul is well-taken. We need not belabor the fact that Chul has no right whatsoever over the amount or property mentioned above.

WHEREFORE, the Court finds Atty. Rodolfo D. Casuga GUILTY of gross misconduct for violation of Canon 16 of the Code of Professional Responsibility and the Notarial Rules. He is hereby SUSPENDED for a period of four (4) years from the practice of law. The notarial commission of Atty. Casuga, if still existing, is hereby REVOKED and he is DISQUALIFIED from being commissioned as Notary Public also for four (4) years. Additionally, he is ordered to return the amount of PhP 90,000, the pieces of jewelry subject of this case or their equivalent of PhP 300,000, and the Rolex watch valued at USD 12,000 or its equivalent in Philippine Peso to Corazon T. Nevada within thirty (30) days from finality of this Decision; otherwise, he shall be cited for contempt. Lastly, Atty. Casuga is warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant, to be appended to the personal record of Atty. Rodolfo D. Casuga as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for dissemination to all trial courts for their information and guidance.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

Del Castillo, J., on official leave.

[1] Rollo, pp. 16-17.

[2] Id. at 18-26, Annex "A" to Complaint.

[3] Id. at 27.

[4] Id. at 36-37.

[5] Penned by Commissioner Norberto B. Ruiz.

[6] 43 Phil. 212, 214 (1922).

- [7] A.M. No. 1098-CFI, May 31, 1976, 71 SCRA 166, 171-172.
- [8] A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626, 648-649; citations omitted.
- [9] G.R. No. 163553, December 11, 2009, 608 SCRA 107, 129.
- [10] A.C. No. 9000, October 5, 2011.
- [11] A.C. No. 8159, April 23, 2010, 619 SCRA 1, 9-10.
- [12] A.C. No. 7057, July 25, 2006, 496 SCRA 402.
- [13] A.C. No. 7021, February 21, 2007, 516 SCRA 323.
- [14] A.C. No. 6737, September 23, 2008, 566 SCRA 214, 217-218.
- [15] A.C. No. 6294, November 17, 2004, 442 SCRA 407.
- [16] *Id.* at 412-413.
- [17] *Dantes v. Dantes*, A.C. No. 6486, September 22, 2004, 438 SCRA 582, 588, 590.

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