

WILLIAM HECTOR MARIA, PETITIONERS, VS. ATTY. WILFREDO R. CORTEZ, RESPONDENTS.

A.C. No. 7880. April 11, 2012

Ponente: REYES, J.

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REYES, J.:

This is an administrative complaint[1] filed by William Hector Maria (William) against respondent Atty. Wilfredo R. Cortez for having notarized a Special Power of Attorney (SPA) without verifying the authenticity of the signatures contained therein in violation of the Notarial Law.

The factual antecedents are as follows:

Complainant William is a citizen of New Zealand, and married to Ernita Villanueva-Maria (Ernita) from Bio, Tagudin, Ilocos Sur. Sometime in September 2005, the complainant and his wife Ernita (Spouses Maria) took a vacation in Ilocos Sur from Australia. They met Emmanuel Biteng (Emmanuel) and Ethel Biteng (Ethel), collectively called as Spouses Biteng, who represented themselves as caretakers of certain parcels of land purportedly for sale and specifically covered by Original Certificates of Title (OCT) Nos. P-69632 and P-69595, situated in Sevilla and Paratong, Ilocos Sur, respectively. Taking interest over the same, Spouses Maria had the metes and bounds surveyed and came to know that the properties were separately registered under the names of Emmanuel's aunts namely: Gundaway Biteng (Gundaway) and Namnama B. Alberto (Namnama), and his late father Pascual Biteng (Pascual).

Being confronted with the issue on ownership, Emmanuel presented an SPA allegedly signed by Gundaway and Namnama, appointing him as their attorney-in-fact in all transactions pertaining to the subject properties. The SPA was notarized by the respondent and entered in his Notarial Register as Document No. 1553, Page No. 313, Book No. XV, Series of 2005.[2]

The complainant, however, doubted the authenticity of the document as it appeared to be a mere photocopy. Besides, he learned that both Gundaway and Namnama were living abroad, who allegedly never came home to execute an SPA in favor of Emmanuel. Spouses Biteng, however, promised to send Spouses Maria a duly signed SPA notarized in the USA. Relying on their word, Ernita affixed her signature on the Deed of Sale (as to the land owned by Gundaway and Namnama) and Deed of Adjudication with Sale (as to the land owned by the late Pascual).

When Spouses Maria were back in Australia, they received a communication from the Philippines together with a General Power of Attorney (GPA) signed by Gundaway and Namnama executed in Daly City, California, USA; but said document was allegedly not authenticated by the Philippine Embassy.

In the early part of 2006, Spouses Maria found out that Transfer Certificates of Title (TCTs) over the subject properties have already been issued in their names but were in the possession of the Spouses Biteng who refused to deliver to them due to some misunderstanding. This prompted the Spouses Maria to get in touch with

Gundaway and Namnama in the USA who told them that they (Gundaway and Namnana) did not execute any SPA in favor of Emmanuel.

On April 4, 2006, the complainant came back to the Philippines and reviewed all the pertinent documents involved in the sale of the subject properties and noticed that they were all notarized by the respondent. Hence, the complainant filed the instant administrative case which prayed for the respondent's suspension as a notary public and for his disbarment for violating his sworn duty as a lawyer.

In his Answer,[3] the respondent asserted that he had no active participation in the sale nor did he exert any influence over the parties into agreeing to said sale; that his two well-trusted secretaries carefully scrutinized every document, specifically the identities of the parties involved and the authenticity of their signatures, before they were brought to him for his notarial signature.

The respondent also averred that the SPA he notarized was not the one used in the registration of the subject properties, since it was replaced with another one upon the insistence of Spouses Maria, who eventually signed the two (2) Deeds of Sale on the same day. He even asseverated that the complainant should not have allowed his wife to sign the two Deeds of Sale if he doubted the authenticity of the SPA. More importantly, the respondent stressed that he was merely being implicated in the feud between the parties regarding the selling price of the subject properties. The parties have settled their differences and the titles of the land were finally turned over to Spouses Maria. In support thereof, he presented the following documents, to wit: (1) Affidavit executed by Emmanuel stating that Spouses Maria refused to pay the price they agreed upon and did threaten to declare the transaction illegal by filing the instant administrative complaint against the respondent; (2) OCTs Nos. P-69632,[4] P-69595[5] and P-69635[6] over the subject properties, issued in the name of Ernita, married to William;[7] and (3) the Joint Affidavit[8] of his secretaries attesting to the respondent's integrity as a member of the Integrated Bar of the Philippines (IBP). The respondent, thus, prayed for the dismissal of the complaint.

The instant case was referred to the IBP for investigation, report and recommendation.

The Investigating Commissioner set the case for mandatory conference on August 4, 2006 which was reset to September 8, 2006. However, only the respondent was present. In an Order[9] dated September 8, 2006, the IBP Commission on Bar Discipline terminated the conference and ordered the parties to submit their respective Position Papers.

In his report,[10] Investigating Commissioner Acerey C. Pacheco found the respondent administratively liable for having notarized the SPA in the absence of the alleged affiants and without knowing whether or not the signatures appearing therein belong to the supposed affiants. As it appeared, the signatures were falsified considering that Gundaway and Namnama were not aware of such SPA. The Investigating Commissioner further stated that it was of no moment that such SPA was not utilized in registering the sale as alleged by the respondent. The mere fact that the respondent notarized such SPA with an acknowledgement that these affiants have personally appeared before him as a Notary Public when in fact, they did not, makes the respondent administratively liable. Thus, the Investigating Commissioner recommended that the respondent be reprimanded and denied commission as a notary public for a period of one (1) year.[11]

The IBP Board of Governors adopted the report and recommendation and issued Resolution No. XVIII-2007-275 dated November 2, 2007 which states:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, 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 for respondent's violation of the Rules on Notarial Practice, Atty. Wilfredo R.

Cortez is hereby REPRIMANDED and DISQUALIFIED from being Commissioned as Notary Public for one (1) year.[12]

A motion for reconsideration was promptly filed by the respondent, pleading that the penalty of disqualification from being commissioned as notary public for one year was too harsh. He reiterated that he was a victim of circumstances considering that the instant administrative case merely arose from the misunderstanding between the parties. The respondent alleged that he has not committed any fraud, dishonesty or deliberate injustice to anyone. For the past twenty years (20) engaging in notarial works, he has not committed any kind of misconduct which may destroy his honor and reputation as a member of the legal profession.[13]

In Resolution No. XIX-2011-399 dated June 26, 2011, the IBP Board of Governors denied the respondent's motion for reconsideration which was duly noted by the Court in a resolution issued on October 12, 2011.

The findings of the IBP are well-taken.

A notary public is empowered to perform a variety of notarial acts, most common of which are the acknowledgement and affirmation of documents or instruments. In the performance of these notarial acts, the notary public must be mindful of the significance of the notarial seal affixed on documents. The notarial seal converts a document from a private to a public instrument, after which it may be presented as evidence without need for proof of its genuineness and due execution. Thus, notarization should not be treated as an empty, meaningless or routinary act.[14]

Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice reads:

Section 2. Prohibitions –

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.

In the instant case, it was clearly established that the respondent notarized the subject SPA without having Gundaway and Namnama personally appear before him as required by law. In his Answer, he stated that he merely relies on his two secretaries in scrutinizing all contents of documents including the authenticity of its signatories before the documents are brought to him for his notarial signature. This was what actually transpired with regard to the subject SPA when Emmanuel went to the respondent's office to have the SPA notarized. The secretaries were familiar with Emmanuel for being a long time Barangay Chairman. With the secretaries' assurance that they knew Emmanuel in person, the respondent affixed his notarial signature on the SPA without even requiring the physical presence of Gundaway and Namnama whose names appear as signatories on the SPA.

The respondent's excuse that the SPA was never used or has been replaced during the registration of the subject lands is of no moment. The fact remains that the SPA was notarized without complying with the requirements of the law.

It should be noted that a notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity.[15] A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify

to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[16]

We agree with the IBP that the respondent's Answer to the complaint, is virtually an admission that he failed to exercise the due diligence required of him in the performance of the duties of notary public. Such negligence can not be countenanced and definitely warrants sanction from the Court. In imposing the penalty, the Court is mindful that removal from the Bar should not really be decreed when any punishment less severe - reprimand, temporary suspension or fine - would accomplish the end desired.[17]

Considering the circumstances of the case, particularly the absence of bad faith and the fact that this is the first infraction lodged against him for the past 20 years, the Court finds that a suspension of six (6) months as notary public would suffice. The respondent, and for that matter, all notaries public, are hereby cautioned to be very careful and diligent in ascertaining the true identities of the parties executing the document before them, especially when it involves disposition of a property, as this Court will deal with such cases more severely in the future.[18]

WHEREFORE, premises considered, respondent Atty. Wilfredo R. Cortez is hereby REPRIMANDED and DISQUALIFIED from being commissioned as Notary Public for six (6) months.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Rollo, pp. 2-5.

[2] Id. at 6-7.

[3] Id. at 14-16.

[4] Id. at 19.

[5] Id. at 20.

[6] Id. at 21

[7] Id.

[8] Id. at 22.

[9] Id. at 29-30.

[10] Id. at 41-45.

[11] Id. at 45.

[12] Id. at 40.

[13] Id. at 48-51.

[14] Sajid D. Agagon v. Atty. Artemio F. Bustamante, A.C. No. 5510, December 10, 2007.

[15] Follosco v. Atty. Mateo, 466 Phil. 305, 312 (2004). (Citation omitted)

[16] Heirs of the Late Spouses Lucas and Francisca Villanueva v. Beradio, A.C. No. 6270, January 22, 2007, 512 SCRA 17, 22.

[17] Rizalina L. Gemina v. Atty. Isidro S. Madamba, A.C. No. 6689, August 24, 2011.

[18] Vda. de Bernardo, v. Atty. Restauero, 452 Phil. 745, 752 (2003).

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