

NESA ISENHARDT, COMPLAINANT, VS. ATTY. LEONARDO M. REAL, RESPONDENT.

A.C. No. 8254 (Formerly CBD Case No. 04-1310). February 15, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

This case stemmed from the verified complaint[1] filed with the Integrated Bar of the Philippines (IBP) on 9 September 2004 by Nesa G. Isenhardt (complainant), through her counsel Atty. Edgardo Golpeo, seeking the disbarment of respondent Atty. Leonardo M. Real (respondent) for allegedly notarizing a document even without the appearance of one of the parties.

The Antecedent Facts

Complainant alleged that on 14 September 2000 respondent notarized a Special Power Attorney (SPA)[2] supposedly executed by her. The SPA authorizes complainant's brother to mortgage her real property located in Antipolo City. Complainant averred that she never appeared before respondent. She maintained that it was impossible for her to subscribe to the questioned document in the presence of respondent on 14 September 2000 since she was in Germany at that time.

To support her contention, complainant presented a certified true copy of her German passport[3] and a Certification from the Bureau of Immigration and Deportation (BID)[4] indicating that she arrived in the Philippines on 22 June 2000 and left the country on 4 August 2000. The passport further indicated that she arrived again in the Philippines only on 1 July 2001.

Complainant submitted that because of respondent's act, the property subject of the SPA was mortgaged and later foreclosed by the Rural Bank of Antipolo City.

In his answer,[5] respondent denied the allegations in the complaint. He narrated that sometime in the middle of year 2000, spouses Wilfredo and Lorena Gusi approached him to seek advice regarding the computer business they were planning to put up. During one of their meetings, the spouses allegedly introduced to him a woman by the name of Nesa G. Isenhardt, sister of Wilfredo, as the financier of their proposed business.

Respondent further narrated that on 14 September 2000, spouses Gusi, together with the woman purporting to be the complainant, went to his office to have the subject SPA notarized. He maintained that the parties all signed in his presence, exhibiting to him their respective Community Tax Certificates (CTCs). He added that the complainant even presented to him the original copy of the Transfer Certificate of Title (TCT)[6] of the property subject of the SPA evidencing her ownership of the property.

Respondent noted that spouses Gusi even engaged his services as counsel in a civil case filed before the Regional Trial Court (RTC) of Antipolo City. The expenses incurred for the case, which was predicated on the closure of their computer business for non-payment of rentals, was allegedly financed by complainant. The professional engagement with the spouses was, however, discontinued in view of differences of opinion between lawyer and

clients, as well as, non-payment of respondent's professional fees.

Respondent concluded that complainant's cause of action had already prescribed. He argued that under the Rules of Procedure of the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines, a complaint for disbarment prescribes in two years from the date of professional misconduct. Since the document questioned was notarized in year 2000, the accusation of misconduct which was filed only in September 2004 had already prescribed. Moreover, respondent noted that the SPA in question authorizing the grantee Wilfredo Gusi to mortgage the property of complainant was not used for any transaction with a third person prejudicial to the latter. The annotation at the back of the TCT[7] would show that the property subject of the SPA was instead sold by complainant to her brother Wilfredo for P500,000.00 on 12 January 2001. Thus, he submits that the SPA did not cause grave injury to the complainant.

The IBP Report and Recommendation

On 8 September 2006, the IBP Board of Governors issued Resolution No. XVII-2006-405,[8] which adopted and approved the Report and Recommendation[9] of the Investigating Commissioner. IBP Commissioner Dennis A. B. Funa, after due proceeding, found respondent guilty of gross negligence as a notary public and recommended that he be suspended from the practice of law for one year and disqualified from reappointment as notary public for two (2) years.

Aggrieved, respondent on 13 November 2006 filed a Motion for Reconsideration[10] of the aforesaid Resolution. This was, however, denied by the IBP Board of Governors in a Resolution dated 11 December 2009.

Our Ruling

We sustain the findings and recommendation of the IBP. As stated by the IBP Board of Governors, the findings of the Investigating Commissioner are supported by evidence on record, as well as applicable laws and rules.

Respondent violated his oath as a lawyer and the Code of Professional Responsibility[11] when he made it appear that complainant personally appeared before him and subscribed an SPA authorizing her brother to mortgage her property.

It cannot be overemphasized that a notary public should not notarize a document unless the person who signs it is the same person who executed it, personally appearing before him to attest to the contents and the truth of what are stated therein. This 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.[12]

Section 1, Public Act No. 2103, otherwise known as the Notarial Law states:

The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

Such requirement of affiant's personal appearance was further emphasized in Section 2 (b) of Rule IV of the Rules on Notarial Practice of 2004 which provides that:

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.

Respondent insists that complainant appeared before him and subscribed to the SPA subject of the instant case. His contention, however, cannot prevail over the documentary evidence presented by complainant that she was not in the Philippines on 14 September 2000, the day the SPA was allegedly notarized. Respondent may have indeed met complainant in person during the period the latter was allegedly introduced to him by Spouses Gusi but that did not change the fact established by evidence that complainant was not in the personal presence of respondent at the time of notarization. It is well settled that entries in official records made in the performance of a duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.[13] This principle aptly covers the Certification from the BID that complainant left the Philippines on 4 August 2000 and arrived back only on 1 July 2001.

Respondent's contention was further negated when he claimed that complainant presented to him the original TCT of the property subject of the SPA. A perusal of the TCT would reveal that ownership of the property was transferred to complainant only on 10 January 2001. Thus, it could not have been presented to respondent by complainant on 14 September 2000.

The allegation of respondent that there were other documents subscribed by complainant during the interim of 4 August 2000 and 1 July 2001 or the time that she was supposed to be in Germany deserves scant consideration. Such allegation was refuted during the hearing before the Investigating Commissioner when counsel for complainant informed Commissioner Funa that those documents are subjects of criminal and civil cases pending before the Regional Trial Courts of Pasig, Antipolo and Quezon City,[14] where the documents are being contested for being spurious in character.

Anent respondent's claim of prescription of the offense pursuant to Section 1, Rule VIII of the Rules of Procedure[15] of the Commission on Bar Discipline, we agree with the Investigating Commissioner that the rule should be construed to mean two years from the date of discovery of the professional misconduct. To rule otherwise would cause injustice to parties who may have discovered the wrong committed to them only at a much later date. In this case, the complaint was filed more than three years after the commission of the act because it was only after the property was foreclosed that complainant discovered the SPA.

The duties of a notary public is dictated by public policy and impressed with public interest.[16] It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for notarization. It is of no moment that the subject SPA was not utilized by the grantee for the purpose it was intended because the property was allegedly transferred from complainant to her brother by virtue of a deed of sale consummated between them. What is being penalized is respondent's act of notarizing a document despite the absence of one of the parties. By notarizing the questioned document, he engaged in unlawful, dishonest, immoral or deceitful conduct.[17] A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the confidence of the public in notarized documents will be undermined.[18]

In a catena of cases,[19] we ruled that a lawyer commissioned as notary public having thus failed to discharge his duties as a notary public, the 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, are in order.

WHEREFORE, the notarial commission of respondent Atty. Leonardo M. Real is hereby REVOKED. He is disqualified from reappointment as notary public for a period of two (2) years and SUSPENDED from the practice of law for a period of one (1) year, effective immediately. He is WARNED that a repetition of the same

or similar offense in the future shall be dealt with more severely. He is directed to report the date of receipt of this Decision in order to determine the date of effectivity of his suspension.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and all courts in the country for their information and guidance. Let a copy of this Decision be attached to respondent's personal record as attorney.

SO ORDERED.

Carpio, (Chairperson), Villarama, Jr.,[*] Sereno, and Reyes, JJ., concur.

[*] Designated additional member per Special Order No. 1195 dated 15 February 2012.

[1] Rollo, pp. 2-5.

[2] Id. at 6-7.

[3] Id. at 116-119.

[4] Id. at 120-121.

[5] Id. at 15-18.

[6] Id. at 32-35.

[7] Id. at 112.

[8] Id. at 125.

[9] Id. at 126-130.

[10] Id. at 131-159.

[11] The Code of Professional Responsibility provides:

Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.

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

[12] Judge Lopena v. Atty. Cabatos, 504 Phil. 1, 8 (2005).

[13] National Steel Corporation v. Court of Appeals, G.R. No. 112287, 12 December 1997, 283 SCRA 45, 76.

[14] Rollo, p. 70.

[15] Rule VIII of the Rules of Procedure of the Commission on Bar Discipline.

Section 1. Prescription. A complaint for disbarment, suspension or discipline of attorneys prescribes in two (2) years from the date of the professional misconduct.

[16] Lanuzo v. Bongon, A.C. No. 6737, 23 September 2008, 566 SCRA 214, 217.

[17] Gonzales v. Atty. Ramos, 499 Phil. 345, 351 (2005).

[18] Id. at 347.

[19] Judge Lopena v. Atty. Cabatos, *supra* note 12; Lanuzo v. Bongon, *supra* note 16 at 218; Bautista v. Atty. Bernabe, 517 Phil. 236 (2006); Tabas v. Atty. Mangibin, 466 Phil. 297 (2004).

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