ELSA L. MONDEJAR, COMPLAINANT, VS. ATTY. VIVIAN G. RUBIA, RESPONDENT.

A.C. NOS. 5907 AND 5942. July 21, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By two separate complaints filed with the Office of the Court Administrator (OCA), Elsa L. Mondejar (complainant) sought the disbarment of Atty. Vivian G. Rubia (respondent) and the cancellation of her notarial commission for allegedly committing deceitful acts and malpractice in violation of the Code of Professional Responsibility.

The facts which gave rise to the filing of the administrative complaints are as follows:

Sometime in 2002, complainant charged Marilyn Carido (Marilyn) and her common law husband Japanese national Yoshimi Nakayama (Nakayama) before the Digos City Prosecutor's Office for violation of the Anti-Dummy Law,[1] claiming that the Bamiyan Group of Enterprises (Bamiyan) which was capitalized at P15 million and which was engaged in, among other things, money lending business and operation of miki and siopao factory was actually owned by Nakayama but it was made to appear that Marilyn was the owner.[2]

Marilyn, by her Counter-Affidavit dated November 6, 2002 which she filed before the Prosecutor's Office, denied the charge, in support of which she attached a Memorandum of Joint Venture Agreement[3] (the document) forged by her and Nakayama, acknowledged before respondent on January 9, 2001 but appearing to have been entered in respondent's notarial register for 2002 and bearing respondent's Professional Tax Receipt (PTR) No. issued in 2002. The document purported to show that Marilyn owned Bamiyan, albeit its capital was provided by Nakayama.

Contending that the January 9, 2001 document did not exist before she filed the criminal charge in 2002 before the Prosecutor's Office, complainant, who was formerly an employee of Bamiyan, filed the first above captioned administrative complaint against respondent, as well as criminal complaints for falsification of public document and use of falsified public document before the Prosecutor's Office also against respondent, together with Marilyn, Nakayama, and the witnesses to the document Mona Liza Galvez and John Doe.[4]

It appears that on April 20, 2001, respondent notarized a Deed of Absolute Sale[5] of a parcel of land situated in Digos City, purportedly executed by Manuel Jose Lozada (Lozada) as vendor and Marilyn as vendee. Complainant alleged that respondent falsified the document by forging the signature of Lozada who has been staying in Maryland, U.S.A. since 1992.[6] Hence, spawned the second above-captioned administrative complaint.

After respondent submitted her Comment to which she attached her November 18, 2002 Counter-Affidavit[7] to the Affidavit-Complaint of Marilyn charging her with falsification before the Prosecutor's Office, the administrative complaints were referred to the Integrated Bar of the Philippines (IBP) for investigation, report and

recommendation within 60 days from notice.[8]

Commissioner Doroteo Aguila, to whom the IBP Commission on Bar Discipline assigned the cases, set them for mandatory conference on November 24, 2003. It turned out that complainant had died on September 15, 2003. Complainant's husband Celso Mondejar had requested, however, that consideration of the cases continue on the basis of documentary evidence already submitted.[9]

In her Position Paper filed with the IBP, respondent argued that complainant was neither a party nor a witness to the document as well as to the Deed of Absolute Sale, hence, devoid of legal standing to question the authenticity and due execution thereof.[10] Besides, added respondent, complainant had passed away.[11]

To her Position Paper respondent again attached her November 18, 2002 Counter-Affidavit which she filed with the Digos City Prosecutor's Office wherein she explained that the discrepancies of dates appearing in the document executed by Nakayama and Marilyn on January 9, 2001 came about when the document was "revise[d] and amend[ed]" in 2002.[12]

After evaluation of the evidence of the parties, Investigating Commissioner Aguila, by Report and Recommendation[13] dated May 12, 2004, recommended the dismissal of the second complainant (Administrative Case No. 5942) relative to respondent's notarization of the Deed of Sale.

As for the first complaint (Administrative Case No. 5907) relative to the discrepancies of dates appearing in the document, Commissioner Aguila found respondent to have violated Rule 1.01 of the Code of Professional Responsibility reading:

> Canon 1, Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct,

and recommended respondent's suspension from the practice of law for One Month.

Pertinent portions of Atty. Aguila's Report read:

> [T]here is sufficient proof to discipline the respondent in Adm. Case No. 5907. In the Memorandum of a Joint Venture Agreement, Atty. Rubia stated in the acknowledgment portion thereof that the parties personally appeared before her "on this 9th day of January, 2001." But then this document . . . was entered in respondent's notarial register as Document No. 5707; Page No. 1144; Book No 25; Series of 2002 [Annex "A-1," Petition]. It is further pointed out that respondent's PTR Number as indicated in this document is PTR Number 4574844 that is likewise indicated as being issued on January 3, 2002. On the other hand, the [Counter] Affidavit of Marilyn Carido, which Atty. Rubia notarized . . . was notarized on November 6, 2002 [Annex "B-2" of the Petition]. This [counter] affidavit also indicates respondent's PTR Number as 4574844 issued on January 3, 2002. It must be stressed that this is the same Number indicated in the Memorandum of a Joint Venture Agreement [notarized on January 9, 2001]. But then a Deed of Absolute Sale dated 28 March 2001 between one Leandro Prosia and Jocelyn Canoy-Alson [Annex "D," Petition] that was also notarized by respondent, indicates that her PTR for the year 2001 was PTR No. 4320009 [p. 14, SC Records].
>
> As already pointed out, the [January 9, 2001] Memorandum of a Joint Venture Agreement indicates that it was entered as Document No. 5707, Series of 2002 in respondent's notarial register. On the other hand, the [November 6, 2002] Affidavit of Marilyn Carido was entered as Document No. 2791, Series of 2002. Since the [Counter] Affidavit was notarized [o]n 06 November 2002, it is illogical why the document number for the Memorandum of a Joint Venture is greater (higher) than that of the former since the latter was supposed to have been notarized many months earlier, or specifically, on 09 January 2001.
> All of the foregoing show that the respondent effectively made an untruthful declaration in a public document when she attested that the Memorandum of a Joint Venture Agreement was acknowledged before her on 09 January 2001 when evidence clearly shows otherwise.[14] (Emphasis and underscoring supplied)

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By Resolution of July 30, 2004, the IBP Board of Governors (BOG) adopted the finding of the Investigating Commissioner's Report that respondent violated Rule 1.01 of the Code of Professional Responsibility for making a false declaration in a public document. It, however, modified the recommended sanction in that, instead of suspension from the practice of law for One Month, it merely WARNED respondent that a repetition of the same or similar act in the future would be dealt with more severely.[15]

By Resolution of March 12, 2005, the BOG denied respondent's motion for reconsideration.[16]

Hence, the elevation of the first administrative case to this Court by respondent who reiterates her challenge to the standing of complainant's husband in pursuing the cases.

Rule 139-B, Section 1 of the Rules of Court provides that "[p]roceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court motu proprio, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person."

That an administrative complaint filed by any person against a lawyer may be acted upon by this Court is settled. In re Almacen[17] explains the raison d'être:

> . . . [D]isciplinary proceedings [against lawyers] are sui generis. Neither purely civil nor purely criminal, this proceeding is not - and does not involve - a trial of an action or a suit, but is rather an investigation by the Court into the conduct of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court motu proprio. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor. (Emphasis supplied)

Complainant's husband's pursuance of the cases was thus in order.

Notarization by a notary public converts a private document into a public document, thus rendering the document admissible in evidence without further proof of its authenticity.[18]

Lawyers commissioned as notaries public are thus mandated to subscribe to the sacred duties appertaining to their office, such duties being dictated by public policy impressed with public interest.[19] A graver responsibility is placed upon them by reason of their solemn oath to obey the laws, to do no falsehood or consent to the doing of any,[20] and to guard against any illegal or immoral arrangement,[21] and other duties and responsibilities.

In exculpation, respondent, in her November 18, 2002 Counter Affidavit, proffered the following explanation, quoted verbatim:

x x x x

> - That way back in the early 2001, specifically in January of the year 2001, Marilyn A. Carido and Yoshimi Nakayama, had me prepared [sic] a document in preparation of the business enterprises to be established by Marilyn A. Carido, wherein Yoshimi Nakayama, will grant the former CAPITAL for the establishment of the proposed enterprises, the main purpose of which is to secure the future of Marilyn A. Carido, their children, and the family of Marilyn A. Carido. A copy of the said agreement is hereto attached as ANNEX "A," with its corresponding submarking;

x x x x

- That in fact, on May 10, 2002, Marilyn A. Carido and Yoshimi Nakayama came to my office, for two (2) purposes: First, Yoshimi Nakayama had me prepared a document which would be an ADDENDUM to their original transaction in January 2001, wherein Yoshimi Nakayama gave Marilyn A. Carido additional capital to augment the operation of the "Bamiyan Superstore;" Second, that Marilyn A. Carido and Yoshimi Nakayama wanted me to REVISE and AMEND the original agreement made by them in January, 2001, because Yoshimi Nakayama wanted to add certain conditions to the original agreement, specifically referring to the flow of money unto the coffers of the enterprises of Marilyn A. Carido, and as to the fact of the technical assistance that he is giving Marilyn A. Carido, because, at that time, there were already many problems in the operations of the Bamiyan enterprises. That, for the first purpose, I prepared the ADDENDUM to the original agreement between Marilyn A. Carido and Yoshimi Nakayama. A copy of the said addendum is hereto attached and made another part hereof as ANNEX "C," with its corresponding submarking;

- That for the second purpose referring to the REVISION or AMENDMENT of the original transaction, I told both Marilyn A. Carido and Yoshimi Nakayama, to submit to me all the copies of the original agreement in their possession, and I will just make another instrument which would supplant or replace the old one while incorporating the needed conditions suggested by Yoshimi Nakayama. That I told them that I will be making a new and/or revised agreement, but I will retain the original date of the first transaction made in January, 2001, because anyway, I have not yet submitted the documents which I have notarized for the year 2001, since my notarial commission will expire yet on the last day of December, 2002;

- That, therefore, on the same date, Marilyn A. Carido and Yoshimi Nakayama submitted to me all the copies in their possession of the old agreement, and I proceeded to have another one encoded in my computer by my secretary, Mona Liza Galvez, incorporating the needed additional conditions in accordance with the wishes of my said clients. A copy of the said REVISED agreement is hereto attached as ANNEX "D," with the its corresponding submarkings;

- That in fact, on November 6, 2002, I attached a copy of the revised agreement on the COUNTER-AFFIDAVIT of Marilyn A. Carido, in the case for a violation of the Anti-Dummy law filed against her by an assumed witness, Elsa Mondejar who is also the assumed complainant in this instant investigation; That, however, while I was going over the documents of Marilyn A. Carido, I noticed that the revised agreement referred to above, although retained the original date of the original one as January, 2001, mistakenly or erroneously bear the series of 2002 in my notarial register, and likewise bear my new PROFESSIONAL TAX RECEIPT (PTR) NO. and IBP No. for the year 2002;

- That even before then, I already instructed my secretary to make the necessary corrections in the said revised document because the accountant and administrator of the Bamiyan, Felicisima Abo, had already brought the erroneous entries to my attention when all the legal papers of Marilyn A. Carido were turned over to her profession, as early as June, 2002. That, however, because of my workload, I forgot to remind my secretary about the corrections that she should made therein. However, I already told Marilyn A. Carido and Yoshimi Nakayama, that the corrections are proper because I will just make the necessary initials on the corrected portions;

- That, again because of the fact, that I had to arrange certain matters on the labor aspects of all the Bamiyan enterprises, because at these times, both Marilyn A. Carido and Yoshimi Nakayama, were in Japan, it was only after I filed the counter-affidavit of Marilyn A. Carido, in the said Anti-Dummy case, that I was reminded on the said erroneous entries. Therefore, on November 8, 2002, I had Mona Liza Galvez, my secretary, make the necessary corrections; A copy of the corrected revised agreement is hereto attached as ANNEX "E," with the corresponding submarkings; as well as copies of the memos that I had issued in behalf of my principal, Marilyn A. Carido, for the Bamiyan, are likewise hereto attached as ANNEXES "F" TO "I," respectively;

x x x x[22] (Emphasis and underscoring supplied)

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In sum, respondent claimed that the document was forged on January 9, 2001 but she made a "new and/or revised agreement" in 2002 to incorporate additional conditions thereto, retaining, however, its original date - January 9, 2001; that on noticing that the document "mistakenly or erroneously [b]ore the series of 2002 in [her] notarial register and likewise b[ore] her new . . . [PTR] No. and IBP No. for the year 2002," she instructed her secretary to make the necessary corrections, but on account of her workload, she forgot to remind her secretary to comply therewith; and that it was only after Marilyn's Counter-Affidavit of November 6, 2002 was filed before the Prosecutor's Office that she (respondent) was reminded of the erroneous entries, hence, she had her secretary make the corrections on November 8, 2002.

And as reflected in her above-quoted portions of her Counter-Affidavit, respondent further claimed that she retained the original January 9, 2001 date of the document since the "documents which [she] notarized for the year 2001" were not yet submitted as her notarial commission was to expire yet on the last day of December, 2002.[23]

Respondent's explanation does not impress as it betrays her guilt.

The document clearly appears to have been ante-dated in an attempt to exculpate Marilyn from the Anti-Dummy charge against her in 2002.

The document was allegedly notarized on January 9, 2001 but a new revised/amended document was made in 2002 bearing the original date of execution/acknowledgment. If that were so, how could an error have been committed regarding the other year 2001 original entries in the notarial register, when the purported new document was to retain the original January 9, 2001 date as it would merely input additional conditions thereto? The above-quoted discussion by the Investigating IBP Commissioner of why he discredited respondent's explanation behind the conflicting dates appearing in the document is thus well-taken.

As for respondent's submission that corrections could be subsequently made on the document, she not having anyway submitted the documents she notarized for the year 2001 since her notarial commission was still to expire in 2002, the same does not lie.

One of the grounds for revocation of notarial commission is the failure of the notary to send a copy of notarized documents to the proper clerk of court or Executive Judge (under the 2004 Rules on Notarial Practice) within the first ten (10) days of the month next following.[24]

In fine, the recommendation of Investigating IBP Commissioner Aguila merits this Court's approval.

WHEREFORE, respondent, Atty. Vivian Rubia, for violation of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, is suspended for One (1) Month, and warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this decision be attached to respondent's personal records in this Court.

SO ORDERED.

Quisumbing, (Chairman), Tinga, and Velasco, Jr. JJ., concur.
Carpio, J., on official leave.

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[1] Rollo (A.C. No. 5907), Vol. I, p. 8 and Vol. II, p. 36.

[2] Id., Vol. II at 46.

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[3] Id., Vol. I at 6-7; Annex "A."

[4] Id., Vol. II at 36.

[5] Rollo (A.C. No. 5942), Vol. I, pp. 8-9; Annex "A."

[6] Id., Vol. I at 3-4.

[7] Rollo (A.C. No. 5907), Vol. III, pp. 14-18.

[8] Rollo (A.C. No. 5907), Vol. III, p. 124 and Rollo (A.C. No. 5942), Vol. I, p. 46.

[9] Rollo (A.C. No. 5907), Vol. III, p. 6.

[10] Rollo (A.C. No. 5907), Vol. III, p. 10 and Rollo (A.C. No. 5942), Vol. III, p. 9.

[11] Rollo (A.C. No. 5907), Vol. III, p. 11 and Rollo (A.C. No. 5942), Vol. III, p. 10.

[12]Rollo (A.C. No. 5907), Vol. III, p. 15.

[13] Id., Vol. III at 124-128.

[14]Id., Vol. III at 127.

[15]Id., Vol. III at 123.

[16]Id., Vol. III at 140.

[17]No. L-27654, February 18, 1970, 31 SCRA 562, 600-601; Esquivias v. Court of Appeals, G.R. No. 119714, May 29, 1997, 272 SCRA 803, 812; See also Batac, Jr. v. Cruz, Jr., A.C. No. 5809, February 23, 2004, 423 SCRA 309, 318.

[18]Aquino v. Atty. Manese, 448 Phil. 555, 561 (2003); Nunga v. Viray, A.C. No. 4758, April 30, 1998, 306 SCRA 487, 491.

[19] Fulgencio v. Atty. Martin, 451 Phil. 275, 281 (2003); Villarin v. Atty. Sabate, Jr. 382 Phil. 1, 6-7 (2000); Maligsa v. Cabanting, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 414.

[20] Gokioco v. Mateo, A.C. No. 4179, November 11, 2004, 442 SCRA 1, 9; Alitagtag v. Atty. Garcia, 426 Phil. 542, 547 (2002); Flores v. Chua, A.C. No. 4500, April 30, 1999, 306 SCRA 465, 484-485.

[21] Cruz v. Villasor, No. L-32213, November 26, 1973, 54 SCRA 31, 34.

[22] Rollo (A.C. No. 5907), Vol. II, pp. 7-8.

[23] Id., Vol. III at 15-16.

[24] Vide: Notarial Law (Revised Administrative Code, Chapter II, Title IV), Section 249(c) as well as the 2004 Rules on Notarial Practice, Rule XI, Section 1(b)(3).

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