

SECOND DIVISION

[A.C. No. 10793, September 16, 2020]

**ATTY. BRYAN S. LIM AND NESTOR R. WONG, COMPLAINANTS,
VS. ATTY. JOSE C. TABILIRAN, JR., RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Before the Court is an administrative complaint^[1] for disbarment filed on May 7, 2015 by complainants Atty. Bryan S. Lim (Atty. Lim) and Nestor R. Wong (Nestor; collectively, complainants), before the Office of the Bar Confidant, against respondent Atty. Jose C. Tabiliran, Jr. (respondent), charging the latter with violation of the Rules on Notarial Practice (Notarial Rules) and pertinent provisions of the Code of Professional Responsibility (Code) and immorality.

The Facts

On separate occasions,^[2] Nestor was appointed by his sisters, Elsa Wong (Elsa) and Virginia Wong (Virginia), as their agent to sell their respective properties in Laoy, San Antonio, Katipunan, Zamboanga Del Norte.^[3] On December 13, 2011, Nestor, in turn, appointed^[4] a sub-agent, Raquel Go Esturco (Esturco),^[5] who found a buyer (Naomi Jumanguin^[6]) for Virginia's land. Accordingly, on January 3, 2012, Nestor signed the corresponding Deed of Sale of Virginia's land, which was prepared and notarized by respondent, a notary public.^[7] After signing the Deed of Sale, Nestor signed other documents given by Esturco, which the latter claimed to be mere copies of the previous Deed of Sale. Thereafter, Nestor received the amount of P50,000.00 as the purchase price of the subject lot.^[8]

Several months later, Nestor was approached by Raul Jumanguin, the buyer's father, to borrow money and to disclose that Esturco showed him several deeds of sale,^[9] namely: (a) Absolute Deed of Sale dated May 24, 2011, in favor of Esturco; (b) Absolute Deed of Sale dated May 24, 2012, in favor of Esturco; (c) Absolute Deed of Sale dated December 14, 2011, in favor of Esturco and respondent's son, Venus Baybayan Tabiliran (Venus); and (d) Absolute Deed of Sale dated February 20, 2012, in favor of Esturco and Venus.^[10]

Meanwhile, Esturco went to the Registry of Deeds to register the Absolute Deed of Sale dated May 24, 2011. She was required by Atty. Lim, the Acting Registrar of Deeds of the Province of Zamboanga del Norte,^[11] to indicate the name of her spouse but she refused and instead, withdrew all her documents. Thereafter, on May 29, 2013 she filed a petition for *mandamus*, and on September 27, 2013, a disbarment case, against Atty. Lim.

On March 23, 2014, Atty. Lim filed a counter-complaint^[12] for disbarment against respondent,^[13] claiming that the latter notarized documents with an expired commission, having been commissioned only for February 12, 2007 until December 31, 2008; July 23, 2009 until December 31, 2010; March 31, 2011 until December 31, 2012; and August 28, 2013 until December 31, 2014, but nonetheless, notarized an Authorization on **March 18, 2011** and a Confirmation of Deed of Sale of Land in **June 2013**. Atty. Lim also averred that respondent failed to timely file certified true copies of the documents entered in his notarial register; falsified Nestor's Absolute Deed of Sale dated May 24, 2011; as well as falsified and notarized two (2) deeds of sale in favor of Esturco and his own son, Venus.^[14] Furthermore, it was alleged that respondent notarized instruments not in the presence of Nestor,^[15] and even filed false certified true copies of the documents entered in his notarial register.^[16]

For his part,^[17] respondent averred that: (a) the Confirmation of Deed of Sale of Land^[18] was signed by the parties sometime in June 2013 but was actually notarized and recorded after the approval of his commission on August 28, 2013; (b) the parties to the notarized documents were duly apprised that he was waiting for the renewal of his commission; (c) he did not falsify any documents since Nestor freely and voluntarily signed the same at his office; and (d) the contract was not immoral, and he has not committed any malpractice or gross misconduct in the exercise of his profession.^[19]

In a Resolution^[20] dated March 14, 2016, the Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The IBP's Report and Recommendation

In a Report and Recommendation^[21] dated October 3, 2018, the Investigating Commissioner found respondent administratively liable for violation of the Notarial Rules, the Code, and the Lawyer's Oath, and accordingly, recommended the penalty of two (2) years suspension from the practice of law, with a warning that a commission of repeated or similar acts will result in the imposition of a more severe penalty against him.^[22]

The Investigating Commissioner found that respondent: (a) notarized documents with an expired notarial commission; (b) failed to submit to the Clerk of Court the certified true copies of the documents entered in his notarial register together with their duplicate original; (c) assigned the same notarial details to different documents; and (d) notarized documents in favor of his son, Venus, who was privy thereto. In this regard, the Investigating Commissioner further pointed out that respondent was already disqualified from reappointment as notary public for a period of two (2) years in a June 17, 2016 Resolution of the Executive Judge of the Regional Trial Court of Dipolog City, for violation of the same acts complained of in the instant administrative case. As to the charge of immorality, however, the Investigating Commissioner found insufficient evidence to prove the same.^[23]

In a Resolution^[24] dated November 7, 2018, the IBP Board of Governors adopted the Investigating Commissioner's Report, with modification, however, as regards the penalty, imposing instead, the penalty of disbarment.^[25]

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

The Court concurs and affirms the findings of the IBP Board of Governors with modification as to the penalty.

It is well to stress that "notarization is not an empty, meaningless, routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, 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 notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."^[26]

For being invested with public interest, the Notarial Rules provide that only those who are duly commissioned may act and serve as notaries public.^[27] Commission either means the grant of authority to perform notarial or the written evidence of authority. Without a commission, a lawyer is unauthorized to perform any of the notarial acts.^[28]

In this case, the Court agrees with the findings of the Investigating Commissioner, as affirmed by the IBP Board of Governors, that respondent was indeed remiss in his duties as a notary public and as a lawyer. Records reveal that respondent was issued a notarial commission for the following periods: February 12, 2007 until December 31, 2008; July 23, 2009 until December 31, 2010; March 31, 2011 until December 31, 2012; and August 28, 2013 until December 31, 2014. However, he notarized an Authorization on **March 18, 2011** and a Confirmation of Deed of Sale of Land in **June 2013**, both of which were clearly done when he was not qualified or authorized to do so. Notably anent respondent's claim that he had notarized the latter document after his commission was issued on August 28, 2013,^[29] the Investigating Commissioner aptly observed:

While respondent admitted to having prepared the document, he denied notarizing it on said month and year as he was allegedly processing his notarial commission at that time and explained that he had notarized the document after his commission was issued on August 28, 2013. Again records proved that the *Confirmation of Deed of Sale of Land* was received by the Office of the Registry of Deeds of Zamboanga del Norte on **June 19, 2013** and annotated as Entry No. 9512 on **June 19, 2013** at the back of the Transfer Certificate of Title No. T-76725, (Exhibit "M"). As correctly observed by complainant [Nestor] Wong and Lim, the said document was the basis for the cancellation of the said title and issuance of a new one to the buyer, and submitted to the Registry of Deeds on June 19, 2013, hence it was notarized on or before June 19, 2013, or during the time respondent had no valid notarial commission.^[30] (Emphases supplied)

It is settled that by performing notarial acts without the necessary commission from the court a lawyer violates not only his oath to obey the laws, particularly the Rules on Notarial Practice, but also Canons 1 and 7 of the Code of Professional Responsibility, which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession at all times,^[31] as in this case.

To expound, in *Nunga v. Atty. Viray*,^[32] the Court held that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial [act] without such commission is a violation of the lawyer's oath to obey the laws, more specifically the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."^[33]

Also, as found by the Investigating Commissioner, respondent failed to observe the obligations imposed upon him under Rule VI of the Notarial Rules, to wit:

Section 2. Entries in the Notarial Register. x x x

x x x x

(e) The **notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register,** and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

x x x x

(h) A **certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court** and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required. (Emphases supplied)

Here, the Clerk of Court certified that as of March 11, 2014, respondent has not submitted copies of any documents which he notarized from August 28, 2013 until December 31, 2014,^[34] contrary to Section 2 (3), Rule VI above. Moreover, when respondent eventually submitted his notarial documents to the Clerk of Court sometime in March 2015, it was discovered that the **same notarial details** were assigned by respondent to **different** documents in violation of Section 2 (h), Rule VI. As enumerated by the Investigating Commissioner, these documents are:

Common Notarial Registry No.	Documents obtained by Complainants	Clerk of Court's Records