

FIRST DIVISION

[A.C. No. 10559, June 10, 2019]

**RAJESH GAGOOMAL, COMPLAINANT, V. ATTY. VON LOVEL
BEDONA, RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

Complainant Rajesh Gagoomal (Rajesh) seeks the suspension from the practice of law or disbarment of respondent lawyer Atty. Von Lovel Bedona for notarizing a November 27, 2000 Deed of Assignment/Transfer (Deed).^[1] Rajesh claims that it was made to appear in the Deed that he personally appeared and executed and signed the document before respondent lawyer even though he was out of the Philippines at that time.

The Facts

According to Rajesh, sometime in the year 2000, he and his company, the Sonite Limited (Sonite) subscribed to the shares of stock of Beam Realty, Inc. (Beam); and that for identification and documentation purposes, he provided Robert Fields (Robert), one of Beam's stockholders, a copy of his (Rajesh's) Philippine Passport No. ZZ035516.^[2] As of January 2002, he claims to be the owner of 41.48%^[3] of Beam's subscribed capital stock, while his company, the Sonite, owned 32.53%^[4] of Beam's subscribed capital stock; that, in the latter part of 2006, Rajesh claimed that he and Sonite had been deleted as stockholders of Beam, and this prompted him to file with the Regional Trial Court of San Jose, Antique "Corporate Case No. 07-01,"^[5] a case for Accounting and Reversion of Shares against the stockholders; that among the defendants named in this case were Robert and the siblings Prelu and Primrose Autajay (Autajays).

The Autajays in their answer in said corporate case countered that Rajesh had never been a stockholder of Beam, and that his company, Sonite, was no longer a stockholder because Sonite had already sold all of its shares to Beam, resulting in the increase of subscribed and fully-paid shares of stock of Robert to 51% in Beam, with the remaining 49% belonging to the Autajays and their relatives. To prove their claim, the Autajays attached to their Answer^[6] a notarized deed, registered as Doc. No. 146, Page No. 32, Book No. XVI, Series of 2000, wherein it was stated that Rajesh, acting for Sonite, deeded or transferred Sonite's shares to Beam.^[7] This notarized deed is now the questioned document in this administrative case.

As stated, it was respondent lawyer who notarized the Deed of Assignment/Transfer dated November 27, 2000. In the notarial portion under "Acknowledgment," respondent lawyer indicated Philippine Passport No. ZZ035516 as proof of Rajesh's identity and as a signatory to the subject deed.

Rajesh claimed that he came across this Deed only when the Autajays attached the same to their Answer in the corporate case. He insisted that he could not have possibly appeared in person before the respondent lawyer in Iloilo City on November 27, 2000, because he was in Malaysia from November 25, 2000 to December 3, 2000, as evidenced by the stamped entries on page 8^[8] of his Philippine Passport No. ZZ035516.

The record disclosed that Rajesh filed a criminal complaint^[9] against Robert, the Autajays, and respondent lawyer for Falsification of Public Document, Forgery, and Use of Falsified Document before the City Prosecutor of Iloilo City. However, except for Robert and for the Autajays, the city prosecutor found no probable cause to indict respondent lawyer for falsification under Article 171 in relation to Article 172 of the Revised Penal Code,^[10] because his only participation was the notarization of the document.^[11] The criminal case against Robert and the Autajays eventually found its way into Branch 6 of the Municipal Trial Court in Cities (MTCC) in Iloilo City.^[12]

Thus, Rajesh lodged a Complaint-Affidavit^[13] with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) for the purpose of holding respondent lawyer administratively liable for malpractice of law and for disbarment. This is the case at bar.

In his Answer^[14] and Supplemental Answer and/or Manifestation,^[15] respondent lawyer claimed that he never violated his oath as a lawyer; that in notarizing the Deed, he complied with his duties as a notary public; that all the signatories in the questioned deed did, in fact, personally appear before him at the time and date in question; and that he signed the document after he had explained to them all its contents. Respondent lawyer stressed that he did not personally know Rajesh and the rest of the parties to the Deed and that it was beyond his power or authority to obtain the details of Rajesh's passport prior to the Deed's notarization.

Respondent lawyer described as "mere afterthought" Rajesh's allegation that he (Rajesh) provided Robert a copy of his Philippine Passport No. ZZ035516 in the year 2000 for identification and documentation purposes. According to the respondent lawyer, Rajesh only averred this for the first time in his Position Paper,^[16] and never mentioned this during the IBP mandatory conferences that were held thrice.^[17] To prove that Rajesh's signatures on the Deed were not falsified or forged, respondent lawyer attached the Questioned Document Examination Report of the Philippine National Police (PNP) Regional Crime Laboratory Office 6,^[18] and the Final Report of Truth Verifier Systems, Inc.,^[19] both of which found that Rajesh's signature on the Deed were genuine.

With respect to the so-called entry and exit stamps in Malaysia on page 8 of the passport, respondent lawyer posited that they were not credible evidence as these "chops" can be easily fabricated. Respondent lawyer argued that the relevant or material evidence should be the record itself of Rajesh's exit from the Philippines prior to November 27, 2000 and his entry to the Philippines after such date.

In his Comment/Rejoinder,^[20] Rajesh asserted that he has no proof to show by way of any immigration stamping or "chopping" that he left for Malaysia on November 25, 2000. He explained that he was then a Hong Kong resident and that he was not

required to pass immigration procedure for the stamping or "chopping" in Hong Kong of his passport, and that he was simply required to present his Hong Kong ID to the immigration officer there.

Ruling of the Integrated Bar of the Philippines

In his Report and Recommendation^[21] dated August 19, 2011, Investigating Commissioner Hector B. Almeyda (Commissioner Almeyda) recommended the dismissal of this administrative complaint for lack of sufficient evidence to sustain the charge.

Commissioner Almeyda found that Rajesh failed to adduce clear and convincing proof that his signature in the questioned Deed of Assignment/Transfer of November 27, 2000 was forged or falsified, given that the handwriting experts from the PNP and from a private company found that the questioned signature was indeed that of Rajesh. Commissioner Almeyda likewise opined that the evidence relative to the so-called "passport chops" or stamping which was submitted by Rajesh to prove his absence in the Philippines, did not comply with the requirements for admissibility of entries in official records, and that these so-called "passport chops" or stamps, at most, only indicated that they were mere stamped entries.

In Resolution No. XX-2013-385,^[22] dated March 22, 2013, the Board of Governors of the IBP sustained Commissioner Almeyda's report and recommendation.

In his Motion for Reconsideration,^[23] Rajesh, to fortify his claim that he was a non-participant in the Deed, submitted additional documents: 1) a copy of the Questioned Documents Report No. 28-109^[24] of the National Bureau of Investigation dated March 9, 2009 that concluded forgery in Rajesh's signature and; 2) a July 9, 2013 Certification by the Bureau of Immigration^[25] with the attached list^[26] of Rajesh's travel record from January 1999 to December 31, 2001. Rajesh averred that on the basis of this 2-page Bureau of Immigration document, he was out of the Philippines from November 18, 2000 and only returned to the Philippines on June 6, 2001.

But, in its March 22, 2014 Resolution No. XXI-2014-132,^[27] the IBP denied the Motion for Reconsideration.

Hence, this Petition for Review.

The Court's Ruling

Because of the serious consequences flowing from the imposition of severe disciplinary sanctions such as disbarment or suspension against a member of the Bar, we emphasized in *Aba v. Guzman*^[28] that:

[T]he Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The evidence required in suspension or disbarment proceedings is preponderance of evidence. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent.^[29]

"Preponderance of evidence means that the evidence adduced by one side is x x x superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."^[30]

Section 1 of Public Act No. 2103 states:

x x x x

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

x x x x

In addition, Section 2(b)(1) of Rule IV of the 2004 Rules of Notarial Practice provides, viz.:

- (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;

It goes without saying that the burden of proof in the present administrative proceeding rests upon the complainant. Thus, the issue now is whether Rajesh's documentary evidence supports his position that he was not in the Philippines at the time and place mentioned in the disputed Deed of Assignment/Transfer.

In their respective attempts to prove the falsification or forgery (as Rajesh averred) or the genuineness of the subject signature in the Deed (as respondent lawyer claimed), the parties submitted conflicting written reports of the professional findings of (1) the PNP and the Truth Verifier Systems, Inc. and (2) the NBI. Jurisprudence however teaches us that:

Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case or otherwise unreasonable. **When faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific.** The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and