

EN BANC

[A.C. No. 12011, June 26, 2018]

NICANOR D. TRIOL, COMPLAINANT, V. ATTY. DELFIN R. AGCAOILI, JR., RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is an administrative complaint^[1] dated November 3, 2014 filed by complainant Nicanor D. Triol (complainant) against respondent Atty. Delfin R. Agcaoili, Jr. (respondent) praying for the latter's disbarment.

The Facts

Complainant alleged that he and his sister, Grace D. Triol (Grace), are co-owners of a parcel of land with an area of 408.80 square meters situated in Quezon City and covered by Transfer Certificate of Title No. 129010 (subject land). Sometime in January 2011, complainant decided to sell the subject land to a certain Leonardo P. Caparas (Caparas) but was unable to do so, as he could not obtain the signature of Grace who was already residing in the United States (U.S.) at that time. Subsequently, complainant discovered that a Deed of Absolute Sale^[2] dated March 11, 2011 (subject deed) was executed and notarized by respondent supposedly conveying the subject land to Fajardo without the authority of complainant and Grace; neither did they give their consent to the same, as they allegedly did not personally appear before respondent when the subject deed was notarized. Moreover, complainant found out that their purported community tax certificates stated in the subject deed were fake. Accordingly, he filed a disbarment complaint against respondent.^[3]

In his defense,^[4] respondent disavowed knowledge of the execution and notarization of the subject deed, claiming that he did not know complainant, Grace, and Caparas. He maintained that his signature on the subject deed was forged, since he would never notarize an instrument without the signatory parties personally appearing before him. He likewise asserted that he could not have notarized it, as he was not a commissioned notary public in Quezon City in 2011.^[5]

The IBP's Report and Recommendation

In a Report and Recommendation^[6] dated August 14, 2015, the IBP Investigating Commissioner recommended the dismissal of the complaint, there being no substantial evidence to show that respondent is guilty of violating Section 1 (b) (7), Rule XI of the 2004 Rules on Notarial Practice (2004 Notarial Rules).^[7] The Investigating Commissioner found that respondent was not aware of the execution and notarization of the subject deed, as he was able to establish that the signature

affixed on the subject deed was not his by virtue of the specimen signature that he provided in his Answer.^[8]

In a Resolution^[9] dated April 29, 2016, the IBP Board of Governors reversed the recommendation of the Investigating Commissioner, and accordingly, imposed the penalty of suspension from the practice of law for a period of two (2) years, as well as disqualification from being commissioned as a notary public for the same period. It likewise directed the revocation of his current notarial commission, if any, and ordered the Commission on Bar Discipline Director Ramon S. Esguerra (CIBD Dir. Esguerra) to prepare an extended resolution explaining its action.^[10]

In an undated Extended Resolution,^[11] CIBD Dir. Esguerra explained the recommendation of the IBP Board of Governors to suspend respondent from the practice of law for a period of two (2) years and to disqualify him from being commissioned as notary public for the same period pursuant to the case of *Tenoso v. Echanez*.^[12] CIBD Dir. Esguerra observed that while respondent provided his specimen signature in his Answer, he failed to substantiate its genuineness and authenticity, given that he did not submit a copy of his signature appearing in the records of the Office of the Clerk of Court or any other official document containing the same specimen signature. As such, the probative value of the subject deed containing his notarization, as well as the certifications^[13] from the Clerk of Court of the Regional Trial Court (RTC) of Quezon City that he was not a commissioned notary public in 2011 and 2012, stands.^[14]

Aggrieved, respondent filed a motion for reconsideration,^[15] which was denied in a Resolution^[16] dated May 27, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable.

The Court's Ruling

The Court concurs with the findings of the IBP.

It is settled 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."^[17]

In this light, Section 2 (b), Rule IV of the 2004 Notarial Rules requires a duly-commissioned notary public to perform a notarial act only **if the person involved as signatory to the instrument or document is: (a) in the notary's presence personally at the time of the notarization**; and (b) personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.^[18] In other words, a notary public is not allowed to notarize a document unless the persons who signed the same are the

very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement 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 and deed.^[19]

Parenthetically, in the realm of legal ethics, a breach of the aforesaid provision of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well.^[20] He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.^[21] Thus, Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the CPR categorically state:

CANON 1 – A lawyer shall uphold the constitution, **obey the laws of the land and **promote respect for law and legal processes**.**

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

x x x x

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice. (Emphases and underscoring supplied)

In this case, records show that respondent indeed violated the 2004 Notarial Rules when he notarized the subject deed without complainant and Grace personally appearing before him, much more without the requisite notarial commission in 2011.^[22] Significantly, it was established that both complainant and Grace could not have personally appeared before respondent, since Grace was already residing at the U.S. at the time of the supposed notarization. Furthermore, complainant presented a Certification^[23] dated April 7, 2015 issued by the Clerk of Court of the RTC showing that respondent was also not a commissioned notary public for and within Quezon City in 2012. On the other hand, respondent, apart from his bare denials and unsubstantiated defense of forgery, failed to rebut complainant's allegations and evidence. While respondent provided his specimen signature in his Answer to support his defense of forgery, the same nonetheless remained insufficient. As aptly observed by CIBD Dir. Esguerra, respondent did not even submit a copy of his signature appearing in the records of the Office of the Clerk of Court or any other official document containing the same specimen signature to prove its genuineness and authenticity. Case law states that where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained.^[24] Hence, no reasonable conclusion can be had other than the fact that respondent notarized the subject deed in violation of the 2004 Notarial Rules.

In the same breath, respondent also violated the provisions of the CPR, particularly Rule 1.01, Canon 1 and Rule 10.01, Canon 10 thereof. By misrepresenting himself as a commissioned notary public at the time of the alleged notarization, he did not