

## EN BANC

[ A.C. No. 4269, October 11, 2016 ]

**DOLORES NATANAUAN, COMPLAINANT, VS. ATTY. ROBERTO P. TOLENTINO, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

For the Court's consideration is Atty. Roberto P. Tolentino's (Atty. Tolentino) motion to have his disbarment case re-opened and reheard on the ground that he was denied his constitutional right to due process.

The case originated from a disbarment complaint<sup>[1]</sup> filed by Dolores Natanauan (Dolores) accusing Atty. Tolentino of deceit, malpractice, and gross misconduct in violation of the Lawyer's Oath and the Code of Professional Responsibility.

#### The Facts

Complainant Dolores alleged that she is a co-owner (with her siblings Rafaela, Ernestina, and Romulo [Dolores, *et al.*]) of a parcel of land with an area of about 50,000 square meters located in Tagaytay City.<sup>[2]</sup> On January 3, 1978, they sold this land to Alejo Tolentino (Alejo) for P500,000.00. At the time, the title to the property had not yet been issued by the Land Registration Commission.<sup>[3]</sup> The parties thus agreed that payment for the same shall be made in installments, as follows: P80,000.00 upon the execution of the contract and the remaining balance in two (2) installments, payable one (1) year after the issuance of the title and then one (1) year thereafter.<sup>[4]</sup>

On August 9, 1979, and after the execution of the contract of sale between the parties, the Register of Deeds of Cavite issued Transfer Certificate of Title (TCT) No. T-107593<sup>[5]</sup> in Alejo's favor. Despite several requests from Dolores, *et al.*, Alejo, however, failed to settle the remaining obligation. Thus, on May 14, 1991, Dolores, *et al.* filed a case against Alejo and his wife Filomena, docketed as Civil Case No. TG-1188, for the recovery of possession of immovable property, declaration of nullity of the deed of sale, and damages.<sup>[6]</sup>

On March 30, 1993, the Regional Trial Court (RTC) promulgated a Decision<sup>[7]</sup> in Civil Case No. TG-1188 declaring the rescission of the contract of sale. Consequently, it ordered: (1) the reconveyance of the land back to Dolores, *et al.*; (2) the cancellation of TCT No. T-107593; (3) the issuance of a new title in favor of Dolores, *et al.*; and (4) the payment of damages by Alejo and Filomena.

Sometime in June 1993, Dolores discovered that the TCT No. 107593 under Alejo's name was issued not on the basis of the January 3, 1978 contract but on a **Deed of**

**Sale dated August 3, 1979**, purportedly executed by their father Jose Natanauan (Jose), Salud Marqueses, Melquides<sup>[8]</sup> Parungao and Asuncion Fajardo (Jose, *et al.*).<sup>[9]</sup> She further discovered a **Joint Affidavit dated August 6, 1979**, purportedly executed by Jose, *et al.* attesting to the absence of tenants or lessees in the property<sup>[10]</sup> and **another Deed of Sale dated March 9, 1979**, executed between Dolores, *et al.* as vendors and Atty. Tolentino as vendee covering purportedly the same property.<sup>[11]</sup>

Dolores claims that the foregoing documents were falsified as Jose, who died in Talisay, Batangas on June 12, 1977, could not have signed the Deed of Sale dated August 3, 1979 and the Joint Affidavit dated August 6, 1979.<sup>[12]</sup> Furthermore, the Deeds of Sale were all notarized by Notary Public Perfecto P. Fernandez (Perfecto) who Dolores later on discovered was not commissioned as a notary public for and in the City of Manila for the year 1979.<sup>[13]</sup>

It was also around the same time that Dolores discovered that the title to the property has been subsequently registered, under TCT No. T-21993, in the name of Buck Estate, Inc., where Atty. Tolentino is a stockholder,<sup>[14]</sup> and mortgaged to Rizal Commercial Banking Corporation for Ten Million Pesos (P10,000,000.00).<sup>[15]</sup>

Thus, on June 1, 1994, Dolores filed the present disbarment complaint against Atty. Tolentino and Perfecto for their alleged acts of falsification. In her complaint, Dolores attached an Affidavit dated December 2, 1980, where Alejo and Filomena attested that the subject property never belonged to them in truth or in fact, the true and absolute owner of the same being Alejo's brother, Atty. Tolentino.<sup>[16]</sup> Notably, this Affidavit bears Atty. Tolentino's conformity.<sup>[17]</sup>

In a Resolution<sup>[18]</sup> dated July 18, 1994, this Court required respondents to file their Comment within ten (10) days from notice.

Despite several attempts, a copy of the Resolution was not served on Perfecto due to lack of knowledge as to his whereabouts.<sup>[19]</sup> Atty. Tolentino, on the other hand, was able to file the required Comment<sup>[20]</sup> through his then-counsel Atty. Tranquilino M. Fuentes (Atty. Fuentes).

In his Comment, Atty. Tolentino specifically denied having any participation in the falsification of the Deed of Sale dated August 3, 1979,<sup>[21]</sup> and vehemently denied any participation in the transactions, deeds of sale and other documents covering the subject property.<sup>[22]</sup> Atty. Tolentino claimed that there was no specific or concrete allegation of fact in the Complaint as to how he colluded with Alejo and Filomena in the commission of the alleged falsifications. He further pointed out that: (1) he does not appear as party to any of the falsified documents; and (2) it was not alleged that he benefited from the same.<sup>[23]</sup> Atty. Tolentino also averred that Buck Estate, Inc. did not acquire the property from Alejo and Filomena, but rather bought the same in a 1990 auction sale after the property was foreclosed due to the latter's failure to pay their loan obligations. He further alleged that he does not personally know his co-respondent Perfecto and has never dealt nor met with him in any capacity.<sup>[24]</sup>

In her Reply,<sup>[25]</sup> Dolores countered that Atty. Tolentino cannot disclaim knowledge or participation of the falsification as the latter, in fact, also misrepresented before the Supreme Court that he is the absolute owner of the subject parcel of land by virtue of the **March 9, 1979 Deed of Sale** notarized by Fernandez. To support this, Dolores cited this Court's decision in *Banco De Oro v. Bayuga*<sup>[26]</sup> involving the same subject property.

In the meantime, and in the course of her efforts to locate respondent Perfecto, Dolores discovered that Perfecto was not a member of the Philippine Bar as evidenced by a Certification<sup>[27]</sup> dated March 18, 1996 issued by then Deputy Clerk of Court and Bar Confidant Erlinda C. Verzosa. Neither has he been commissioned as notary public for and in the City of Manila since 1979 to 1996.<sup>[28]</sup>

On December 4, 1996, this Court referred the case to the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) for investigation, report and recommendation.<sup>[29]</sup> Due to Atty. Tolentino's repeated failure and refusal to appear on the scheduled hearings, Dolores was allowed to give testimony and present her evidence *ex-parte*.<sup>[30]</sup>

### **Findings of the Integrated Bar of the Philippines**

In a Report and Recommendation<sup>[31]</sup> dated January 31, 2010, IBP Commissioner Edmund T. Espina (Commissioner Espina) found that Atty. Tolentino violated the Lawyer's Oath as well as Canon 1, Rule 1.01 of the Code of Professional Responsibility.<sup>[32]</sup>

Commissioner Espina gave credence to Dolores' testimony and found that this and other supporting documentary evidence clearly illustrated the acts of falsification committed by Atty. Tolentino in connivance with his brother Alejo and associate Perfecto.<sup>[33]</sup> Specifically, Commissioner Espina inferred Atty. Tolentino's direct participation in the falsifications from the fact that he was the one who personally entered into the subject contract with Dolores, *et al.*, merely using his brother Alejo and the sister-in-law Filomena as dummies.<sup>[34]</sup>

x x x Circumstances exist which point to respondent's complicity in the two (2) acts of falsification- he is the brother of Alejo Tolentino, the original vendee, and the parcel of land consisting of fifty (*sic*) (50,000) square meters, more or less, was subsequently conveyed, transferred and ceded to Buck Estate, Inc., of which he is one of the incorporators and stockholders, and which mortgaged the parcel of land with the bank. Another important document which points to respondent's fraudulent act is the very Affidavit of Spouses Alejo and Filomena Tolentino dated December 2, 1990 strongly stating, among other things, that subject parcel of land had never belonged to them, the true and absolute owner thereof being respondent, Atty. Roberto P. Tolentino. More importantly, said Deed of Sale and Joint-Affidavit were notarized by Perfecto P. Fernandez, a close associate of respondent Atty. Roberto P. Tolentino, both of them being residents and/or holding office in the same address, and worse, who is not a notary public or lawyer.

Not content with the foregoing felonious, unlawful and malicious acts, respondent Atty. Roberto P. Tolentino committed yet another falsification when he filed and submitted to the Supreme Court a Deed of Sale dated March 9, 1979 relative to that case entitled ["*Banco de Oro v. Bayuga*"], docketed as No. L-49568, 93 SCRA 443. Such Deed of Sale shows that complainant and her brother and sisters sold on installment basis the same parcel of land to respondent.<sup>[35]</sup>

Lastly, Commissioner Espina found that Atty. Tolentino's failure to appear before the IBP-CBD was another ground for disciplinary action. As a lawyer, he is required to submit himself to the disciplinary authority of the IBP.<sup>[36]</sup> Commissioner Espina thus recommended that Atty. Tolentino be suspended from the practice of law for a period of six (6) months.

On May 13, 2011, the IBP Board of Governors (IBP Board) issued a Resolution<sup>[37]</sup> adopting Commissioner Espina's Report and Recommendation but increasing the recommended penalty of suspension from the practice of law for six (6) months to three (3) years.<sup>[38]</sup>

Atty. Tolentino filed a Motion for Reconsideration with Motion to Re-Open Case<sup>[39]</sup> and a Supplemental Motion for Reconsideration<sup>[40]</sup> dated July 29, 2011 and August 25, 2011, respectively. In his Supplemental Motion for Reconsideration, Atty. Tolentino attached a *Sinumpaang Salaysay*<sup>[41]</sup> signed by his brother Alejo and wife Filomena stating that they are, in fact, the true owners of the property subject of this case and that Atty. Moises Samson (counsel for Dolores) made them sign an affidavit written in English under the following pretext: "x x x *para maisaayos ang bilihan namin ng lupa nina Romulo [Natanauan] at mga kapatid nito* x x x."<sup>[42]</sup> They also denied attesting to such affidavit before anyone.

In a Resolution<sup>[43]</sup> dated December 15, 2012, the IBP Board unanimously denied Atty. Tolentino's motions. The IBP Board's resolutions were thereafter transmitted to this Court on April 4, 2013.<sup>[44]</sup>

On August 6, 2013, Atty. Tolentino filed a Manifestation and/or Motion<sup>[45]</sup> claiming that he was denied his constitutional right to due process when the IBP Board failed to give him an opportunity to be heard and present his side. Atty. Tolentino claims that neither he nor his counsel received a subpoena or notice of the order directing parties to file their memorandum. He likewise challenges the findings made by Commissioner Espina, on the ground that the latter simply relied on Dolores' Memorandum, there being no transcript of stenographic notes of the proceedings.<sup>[46]</sup> Atty. Tolentino further decries the IBP Board's decision to increase the recommended penalty from six (6) months to three (3) years suspension from the practice of law, as this was done without giving him the opportunity to be notified and heard.<sup>[47]</sup>

### **Issues**

The issues to be resolved in this case are as follows: (1) whether there was a

violation of Atty. Tolentino's constitutional right to due process; and (2) whether Atty. Tolentino committed deceit, malpractice and gross misconduct through the aforementioned falsifications in violation of the Code of Professional Responsibility and the Lawyer's Oath which would merit his disbarment and removal from the legal profession.

### **The Court's Ruling**

The Court resolves to deny Atty. Tolentino's motion and affirm the IBP Resolution with modification.

*There was no denial of due process and opportunity to be heard.*

Atty. Tolentino, like any respondent in a disbarment or administrative proceeding, is entitled to due process. The most basic tenet of due process is the right to be heard, hence, denial of due process means the total lack of opportunity to be heard or to have one's day in court.<sup>[48]</sup> As a rule, no denial of due process takes place where a party has been given an opportunity to be heard and to present his case.<sup>[49]</sup>

Rule 138, Section 30 of the Revised Rules of Court also provides:

*Sec. 30. Attorney to be heard before removal or suspension.* - No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex-parte*.

Contrary to his claims, Atty. Tolentino was not denied due process or deprived of an opportunity to be heard. The records show that his then counsel Atty. Fuentes filed a Comment on his behalf. He also filed a Motion for Reconsideration of the May 13, 2011 Resolution of the IBP Board, and a Supplemental Motion for Reconsideration. His participation through pleadings and motions cured whatever defect that may have attended the issuance of notices regarding the proceedings held before the IBP.

In *Vivo v. Philippine Amusement and Gaming Corporation*,<sup>[50]</sup> we held that any defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard.<sup>[51]</sup> We likewise reiterated that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to reconsideration of the action or ruling complained of.<sup>[52]</sup>

Knowing that there is a pending administrative complaint against him, Atty. Tolentino should have actively and voluntarily participated in the case especially so when he believes that his defense is meritorious. Instead, after filing his Comment containing bare denials and facts unsupported by any proof, Atty. Tolentino deliberately failed to participate in the proceeding and now hides behind the flimsy excuse that no notices were received by him or his counsel.