

## SECOND DIVISION

**[ Adm. Case No. 6475, January 30, 2013 ]**

**FE A. YLAYA, COMPLAINANT, VS. ATTY. GLENN CARLOS GACOTT,  
RESPONDENT.**

### **D E C I S I O N**

**BRION, J.:**

For the Court's consideration is the disbarment complaint<sup>[1]</sup> tiled by Fe A. Ylaya (*complainant*) against Atty. Glenn Carlos Gacott (*respondent*) who allegedly deceived the complainant and her late husband, Laurentino L. Ylaya, into signing a "preparatory" Deed of Sale that the respondent converted into a Deed of Absolute Sale in favor of his relatives.

After the submission of the respondent's comment to the complaint, the Court referred the complaint to the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) for investigation, evaluation and recommendation.

The complainant alleged that she and her late husband are the registered owners of two ( 2) parcels of land covered by Transfer Certificate of Title (*TCT*) Nos. 162632 and 162633 located at Barangay Sta. Lourdes, Puerto Princesa City. Prior to the acquisition of these properties, TCT No. 162632 (*property*) was already the subject of expropriation proceedings filed by the City Government of Puerto Princesa (*City Government*) on May 23,1996 against its former registered owner, Cirilo Arellano. The expropriation case was filed with the Regional Trial Court (RTC) of Palawan and Puerto Princesa, Branch 95, and was docketed as Civil Case No. 2902. The RTC already fixed the price and issued an order for the City Government to deposit P6,000,000.00 as just compensation for the property.<sup>[2]</sup>

The respondent briefly represented the complainant and her late husband in the expropriation case as intervenors for being the new registered owners of the property. The complainant alleged that the respondent convinced them to sign a "preparatory deed of sale" for the sale of the property, but he left blank the space for the name of the buyer and for the amount of consideration. The respondent further alleged that the deed would be used in the sale to the City Government when the RTC issues the order to transfer the titles.<sup>[3]</sup> The respondent then fraudulently – without their knowledge and consent, and contrary to their understanding – converted the "preparatory deed of sale" into a Deed of Absolute Sale dated June 4, 2001,<sup>[4]</sup> selling the subject property to Reynold So and Sylvia Carlos So for P200,000.00.<sup>[5]</sup>

The complainant denied that she and Laurentino were paid the P200,000.00 purchase price or that they would sell the property "for such a measly sum" when they stood to get at least P6,000,000.00 as just compensation.<sup>[6]</sup>

The complainant also claimed that the respondent notarized the Deed of Absolute Sale dated June 4, 2001 even though Reynold and Sylvia (his mother's sister) are his uncle and his aunt, respectively.<sup>[7]</sup>

The respondent denied all the allegations in the complaint.<sup>[8]</sup>

The respondent argued that the complainant's greed to get the just compensation<sup>[9]</sup> caused her to file this "baseless, unfounded [and] malicious" disbarment case.<sup>[10]</sup> He claimed that the sale was their voluntary transaction and that he "simply ratified the document."<sup>[11]</sup> He also claimed that Reynold and Laurentino had originally jointly purchased the properties from Cirilo Arellano on July 10, 2000; that they were co-owners for some time; and that Laurentino subsequently sold his share to Reynold under a Deed of Absolute Sale dated June 4, 2001.<sup>[12]</sup>

The respondent specifically denied asking the complainant and her late husband to execute any "preparatory deed of sale" in favor of the City Government.<sup>[13]</sup> He also denied that the Deed of Absolute Sale contained blanks when they signed it.<sup>[14]</sup> That he filed for the spouses Ylaya and Reynold an opposition to the just compensation the RTC fixed proved that there was no agreement to use the document for the expropriation case.<sup>[15]</sup> He also argued that it was clear from the document that the intended buyer was a natural person, not a juridical person, because there were spaces for the buyer's legal age, marital status, and citizenship,<sup>[16]</sup> and he was even constrained to file a subsequent Motion to Intervene on behalf of Reynold because the complainant "maliciously retained" the TCTs to the subject properties after borrowing them from his office.<sup>[17]</sup> Lastly, he denied violating the Rules on Notarial Practice.<sup>[18]</sup>

On September 4, 2006, the respondent filed a Motion to Resolve or Decide the Case dated August 24, 2006 praying for the early resolution of the complaint.<sup>[19]</sup>

On December 5, 2006, the complainant filed an *Ex Parte* Motion to Withdraw the Verified Complaint and To Dismiss the Case dated November 14, 2006.<sup>[20]</sup>

On February 28, 2008, the complainant executed an Affidavit<sup>[21]</sup> affirming and confirming the existence, genuineness and due execution of the Deed of Absolute Sale notarized on March 6, 2000;<sup>[22]</sup> the Memorandum of Agreement (MOA) dated April 19, 2000;<sup>[23]</sup> and the Deed of Absolute Sale notarized in 2001.<sup>[24]</sup> The respondent submitted this Affidavit to the IBP as an attachment to his Motion for Reconsideration of April 21, 2008.<sup>[25]</sup>

### **The IBP's Findings**

In her Report and Recommendation dated November 19, 2007, IBP Commissioner Anna Caridad Sazon-Dupaya found the respondent administratively liable for violating Canon 1, Rule 1.01 (*A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct*) and Canon 16 (*"A lawyer shall hold in trust all moneys and properties of his client that may come into his possession"*) of the Code of

Professional Responsibility, and Section 3(c), Rule IV of A.M. No. 02-8-13-SC (2004 Rules on Notarial Practice).<sup>[26]</sup> She recommended his suspension from the practice of law for a period of six (6) months.<sup>[27]</sup>

In its Resolution No. XVIII-2007-302<sup>[28]</sup> dated December 14, 2007, the IBP Board of Governors adopted the IBP Commissioner's finding, but increased the penalty imposed to two (2) years suspension and a warning:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner [in] the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violations of Canon 1, [Rule] 1.01 and Canon 16 of the Code of Professional Responsibility and Rule IV, Sec. 39(c) of A.M. No. 02-8-13-SC (2004 Rules on Notarial Practice), Atty. Glenn Carlos Gacott is hereby **SUSPENDED** from practice of law for two (2) years with a **Warning** that commission of a similar offense will be dealt with more severely. [emphases supplied]

On May 8, 2008, the respondent filed a Motion for Reconsideration dated April 21, 2008, attaching, among others, a copy of the complainant's Affidavit dated February 27, 2008, admitting the existence, genuineness and due execution of the Deed of Absolute Sale between Cirilo and Laurentino; the MOA between Laurentino and Reynold; the Deed of Absolute Sale between Laurentino and Reynold; and the Compromise Agreement between Reynold and the complainant dated November 14, 2006 for the expropriation case.<sup>[29]</sup>

On September 4, 2008, the respondent filed a Manifestation with the Supreme Court, requesting that the IBP be directed to resolve his Motion for Reconsideration.<sup>[30]</sup>

By Resolution No. XIX-2010-545 dated October 8, 2010,<sup>[31]</sup> the IBP Board of Governors denied the respondent's Motion for Reconsideration for failing to raise any new substantial matter or any cogent reason to warrant a reversal or even a modification of its Resolution No. XVIII-2007-302.<sup>[32]</sup>

On March 14, 2012, the respondent filed a Petition for Review (*on appeal*) assailing the IBP's findings, as follows:<sup>[33]</sup>

- a) In conveniently concluding that the Deed of Absolute Sale was pre-signed and fraudulently notarized without requiring Fe Ylaya to adduce evidence in a formal hearing thus, violated the respondent's right to due process as he was not able to cross-examine her. This is not to mention that the complainant failed to offer corroborative proof to prove her bare allegations;
- b) In sweepingly and arbitrarily disregarded/skirted (sic) the public documents (MOA and 2 other DOAS) duly executed by

- the parties therein and notarized by the respondent;
- c) In totally ignoring the complainant's Affidavit admitting the genuineness and due execution of the Deed of Absolute Sale in issue;
  - d) In arbitrarily concluding the absence of co-ownership by Reynold So and Fe Ylaya of the subject lots despite the existence of a notarized MOA clearly showing the co-ownership of Ylaya and So; and
  - e) In finding the respondent/appellant's act of notarizing the DOAS as contrary to the notarial rules[.]

### **The Issues**

From the assigned errors, the complainant poses the following issues:

- (1) whether the IBP violated the respondent's right to due process; and
- (2) whether the evidence presented supports a finding that the respondent is administratively liable for violating Canon 1, Rule 1.01 and Canon 16 of the Code of Professional Responsibility, and Section 3(c), Rule IV of A.M. No. 02-8-13- SC.

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

We set aside the findings and recommendations of the IBP Commissioner and those of the IBP Board of Governors finding the respondent liable for violating Canon 1, Rules 1.01 and Section 3(c), Rule IV of A.M. No. 02-8-13-SC.<sup>[34]</sup>

We however hold the respondent liable for violating Canon 16 of the Code of Professional Responsibility for being remiss in his obligation to hold in trust his client's properties. We likewise find him liable for violation of (1) Canon 15, Rule 15.03 for representing conflicting interests without the written consent of the represented parties, thus, violating the rule on conflict of interests; and (2) Canon 18, Rule 18.03 for neglecting a legal matter entrusted to him.

#### ***a. Due process violation***

The most basic tenet of due process is the right to be heard. Denial of due process means the total lack of opportunity to be heard or to have one's day in court. 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>[35]</sup> what is prohibited **is the absolute lack of opportunity to be heard.**

The respondent claims that the IBP violated his right to due process because he was not given the "amplest opportunity to defend himself, to cross examine the witness [complainant], to object to the admissibility of documents or present controverting evidence"<sup>[36]</sup> when the IBP rendered its conclusion without requiring the complainant to adduce evidence in a formal hearing and despite the absence of corroborative proof. He insists that these defects rendered the complainant's allegations as hearsay, and the IBP's report, recommendation or resolution null and

void.

Although the respondent failed to have a face-to-face confrontation with the complainant when she failed to appear at the required mandatory conference on October 6, 2005,<sup>[37]</sup> the records reveal that the respondent fully participated during the entire proceedings and submitted numerous pleadings, including evidence, before the IBP. He was even allowed to file a motion for reconsideration supported by his submitted evidence, which motion the IBP considered and ruled upon in its Resolution No. XIX-2010-545 dated October 8, 2010.<sup>[38]</sup>

In *Alliance of Democratic Free Labor Organization v. Laguesma*,<sup>[39]</sup> we held that due process, as applied to administrative proceedings, is the opportunity to explain one's side. In *Samalio v. Court of Appeals*,<sup>[40]</sup> due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where the opportunity to be heard, either through oral arguments or through pleadings, is accorded, no denial of procedural due process takes place. The requirements of due process are satisfied where the parties are afforded a fair and reasonable opportunity to explain their side of the controversy at hand.

Similarly, in *A.Z. Arnaiz Realty, Inc. v. Office of the President*,<sup>[41]</sup> we held that "[d]ue process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude[, provided that] fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process, for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties."<sup>[42]</sup>

In this case, the respondent's failure to cross-examine the complainant is not a sufficient ground to support the claim that he had not been afforded due process. The respondent was heard through his pleadings, his submission of alleged controverting evidence, and his oral testimony during the October 6, 2005 mandatory conference. These pleadings, evidence and testimony were received and considered by the IBP Commissioner when she arrived at her findings and recommendation, and were the bases for the IBP Board's Resolution.

Moreover, "any seeming defect in the observance [of due process] is cured by the filing of a motion for reconsideration. **[A] [d]enial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.** Undoubtedly [in this case], the requirement of the law was afforded to [the] respondent."<sup>[43]</sup>

We also note that the respondent, on a Motion to Resolve or Decide the Case dated August 24, 2006, submitted his case to the IBP for its resolution *without any further hearings*. The motion, filed almost one year after the mandatory conference on October 6, 2005, significantly did not contain any statement regarding a denial of due process. In effect, the respondent *himself* waived his cross-examination of the complainant when he asked the IBP Board of Governors to resolve the case based