

## EN BANC

[ A.C. No. 4191, June 10, 2013 ]

**ANITA C. PENA, COMPLAINANT, VS. ATTY. CHRISTINA C. PATERNO, RESPONDENT.**

### DECISION

#### PER CURIAM:

This is an administrative case filed against respondent Atty. Christina C. Paterno for acts violative of the Code of Professional Responsibility and the Notarial Law.

On February 14, 1994, complainant Anita C. Peña, former head of the Records Department of the Government Service Insurance System (GSIS), filed an Affidavit-Complaint<sup>[1]</sup> against respondent Atty. Christina C. Paterno. Complainant alleged that she was the owner of a parcel of land known as Lot 7-C, Psd-74200, located in Bayanbayanan, Parang, Marikina, Metro Manila, covered by Transfer Certificate of Title (TCT) No. N-61244,<sup>[2]</sup> Register of Deeds of Marikina, with an eight-door apartment constructed thereon. She personally knew respondent Atty. Christina C. Paterno, as respondent was her lawyer in a legal separation case, which she filed against her husband in 1974, and the aforementioned property was her share in their property settlement. Complainant stated that she also knew personally one Estrella D. Kraus, as she was respondent's trusted employee who did secretarial work for respondent. Estrella Kraus was always there whenever she visited respondent in connection with her cases.

Moreover, complainant stated that, sometime in 1986, respondent suggested that she (complainant) apply for a loan from a bank to construct townhouses on her property for sale to interested buyers, and that her property be offered as collateral. Respondent assured complainant that she would work out the speedy processing and release of the loan. Complainant agreed, but since she had a balance on her loan with the GSIS, respondent lent her the sum of P27,000.00, without any interest, to pay the said loan. When her title was released by the GSIS, complainant entrusted it to respondent who would handle the preparation of documents for the loan and follow-up the same, and complainant gave respondent the authority for this purpose. From time to time, complainant inquired about the application for the loan, but respondent always assured her that she was still preparing the documents required by the bank. Because of her assurances, complainant did not bother to check on her property, relying on respondent's words that she would handle speedily the preparation of her application.

Further, complainant narrated that when she visited her property, she discovered that her apartment was already demolished, and in its place, four residential houses were constructed on her property, which she later learned was already owned by one Ernesto D. Lampa, who bought her property from Estrella D. Kraus. Complainant immediately confronted respondent about what she discovered, but

respondent just brushed her aside and ignored her. After verification, complainant learned that her property was sold on November 11, 1986 to Krisbuilt Traders Company, Ltd., and respondent was the Notary Public before whom the sale was acknowledged.<sup>[3]</sup> Krisbuilt Traders Company, Ltd., through its Managing Partner, Estrella D. Kraus, sold the same to one Ernesto D. Lampa on April 13, 1989.<sup>[4]</sup>

Complainant stated in her Complaint that she did not sell her property to Krisbuilt Traders Company, Ltd., and that she neither signed any deed of sale in its favor nor appeared before respondent to acknowledge the sale. She alleged that respondent manipulated the sale of her property to Krisbuilt Traders Company, Ltd. using her trusted employee, Estrella D. Kraus, as the instrument in the sale, and that her signature was forged, as she did not sign any deed selling her property to anyone.

In her Answer,<sup>[5]</sup> respondent alleged that Estrella D. Kraus never worked in any capacity in her law office, and that Estrella and her husband, Karl Kraus (Spouses Kraus), were her clients. Respondent denied that she suggested that complainant should apply for a loan from a bank to construct townhouses. She said that it was the complainant, on the contrary, who requested her (respondent) to look for somebody who could help her raise the money she needed to complete the amortization of her property, which was mortgaged with the GSIS and was about to be foreclosed. Respondent stated that she was the one who introduced complainant to the Spouses Kraus when they were both in her office. In the course of their conversation, complainant offered the property, subject matter of this case, to the Spouses Kraus. The Spouses Kraus were interested, and got the telephone number of complainant. Thereafter, complainant told respondent that she accompanied the Spouses Kraus to the site of her property and the Office of the Register of Deeds. After about three weeks, the Spouses Kraus called up respondent to tell her that they had reached an agreement with complainant, and they requested respondent to prepare the deed of sale in favor of their company, Krisbuilt Traders Company, Ltd. Thereafter, complainant and the Spouses Kraus went to respondent's office where complainant signed the Deed of Sale after she received Sixty-Seven Thousand Pesos (P67,000.00) from the Spouses Kraus. Respondent alleged that complainant took hold of the Deed of Sale, as the understanding was that the complainant would, in the meantime, work for the release of the mortgage, and, thereafter, she would deliver her certificate of title, together with the Deed of Sale, to the Spouses Kraus who would then pay complainant the balance of the agreed price. Complainant allegedly told respondent that she would inform respondent when the transaction was completed so that the Deed of Sale could be recorded in the Notarial Book. Thereafter, respondent claimed that she had no knowledge of what transpired between complainant and the Spouses Kraus. Respondent stated that she was never entrusted with complainant's certificate of title to her property in Marikina (TCT No. N-61244). Moreover, it was only complainant who negotiated the sale of her property in favor of Krisbuilt Traders Company, Ltd. According to respondent, complainant's inaction for eight years to verify what happened to her property only meant that she had actually sold the same, and that she concocted her story when she saw the prospect of her property had she held on to it. Respondent prayed for the dismissal of the case.

On February 28, 1995, complainant filed a Reply,<sup>[6]</sup> belying respondent's allegations and affirming the veracity of her complaint.

On March 20, 1995, this case was referred to the Integrated Bar of the Philippines (IBP) for investigation and recommendation.<sup>[7]</sup> On April 18, 1996, complainant moved that hearings be scheduled by the Commission on Bar Discipline. On November 8, 1999, the case was set for its initial hearing, and hearings were conducted from March 21, 2000 to July 19, 2000.

On August 3, 2000, complainant filed her Formal Offer of Evidence. Thereafter, hearings for the reception of respondent's evidence were set, but supervening events caused their postponement.

On July 4, 2001, respondent filed a Demurrer to Evidence,<sup>[8]</sup> which was opposed by complainant. The Investigating Commissioner denied respondent's prayer for the outright dismissal of the complaint, and directed respondent to present her evidence on October 24, 2001.<sup>[9]</sup>

The Register of Deeds of Marikina City was subpoenaed to testify and bring the Deed of Absolute Sale dated November 11, 1986, which caused the cancellation of TCT No. 61244 in the name of complainant and the issuance of a new title to Krisbuilt Traders Company, Ltd. However, the Register of Deeds failed to appear on March 1, 2002. During the hearing held on July 29, 2003, respondent's counsel presented a certification<sup>[10]</sup> from Records Officer Ma. Corazon Gaspar of the Register of Deeds of Marikina City, which certification stated that a copy of the Deed of Sale executed by Anita C. Peña in favor of Krisbuilt Traders Company, Ltd., covering a parcel of land in Marikina, could not be located from the general file of the registry and that the same may be considered lost. Hearings continued until 2005. On February 17, 2005, respondent was directed by the Investigating Commissioner to formally offer her evidence and to submit her memorandum.

Before the resolution of the case by the IBP, respondent filed a Motion to Dismiss before the IBP on the ground that the criminal case of estafa filed against her before the RTC of Manila, Branch 36, which estafa case was anchored on the same facts as the administrative case, had been dismissed in a Decision<sup>[11]</sup> dated August 20, 2007 in Criminal Case No. 94-138567. The RTC held that the case for estafa could not prosper against the accused Atty. Christina C. Paterno, respondent herein, for insufficiency of evidence to secure conviction beyond reasonable doubt, considering the absence of the Deed of Sale and/or any competent proof that would show that Anita Peña's signature therein was forged and the transfer of the land was made through fraudulent documents.

The issue resolved by the Investigating Commissioner was whether or not there was clear and preponderant evidence showing that respondent violated the Canons of Professional Responsibility by (a) deceiving complainant Anita C. Peña; (b) conspiring with Estrella Kraus and Engr. Ernesto Lampa to enable the latter to register the subject property in his name; and (c) knowingly notarizing a falsified contract of sale.

On January 6, 2009, Atty. Albert R. Sordan, the Investigating Commissioner of the IBP, submitted his Report and Recommendation finding that respondent betrayed the trust reposed upon her by complainant by executing a bogus deed of sale while she was entrusted with complainant's certificate of title, and that respondent also notarized the spurious deed of sale. Commissioner Sordan stated that there was no

evidence showing that respondent actively conspired with any party or actively participated in the forgery of the signature of complainant. Nevertheless, Commissioner Sordan stated that complainant's evidence supports the conclusion that her signature on the said Deed of Sale dated November 11, 1986 was forged.

Although no copy of the said Deed of Sale could be produced notwithstanding diligent search in the National Archives and the Notarial Section of the Regional Trial Court (RTC) of Manila, Commissioner Sordan stated that the interlocking testimonies of the complainant and her witness, Maura Orosco, proved that the original copy of the owner's duplicate certificate of title was delivered to respondent.<sup>[12]</sup> Commissioner Sordan did not give credence to respondent's denial that complainant handed to her the owner's duplicate of TCT No. N-61244 in November 1986 at the GSIS, as Maura Orosco, respondent's former client who worked as Records Processor at the GSIS, testified that she saw complainant give the said title to respondent.

Commissioner Sordan gave credence to the testimony of complainant that she gave respondent her owner's duplicate copy of TCT No. 61244 to enable respondent to use the same as collateral in constructing a townhouse, and that the title was in the safekeeping of respondent for seven years.<sup>[13]</sup> Despite repeated demands by complainant, respondent refused to return it.<sup>[14]</sup> Yet, respondent assured complainant that she was still the owner.<sup>[15]</sup> Later, complainant discovered that a new building was erected on her property in January 1994, eight years after she gave the title to respondent. Respondent argued that it was unfathomable that after eight years, complainant never took any step to verify the status of her loan application nor visited her property, if it is untrue that she sold the said property. Complainant explained that respondent kept on assuring her that the bank required the submission of her title in order to process her loan application.<sup>[16]</sup>

Commissioner Sordan stated that respondent enabled Estrella B. Kraus to sell complainant's land to Krisbuilt Traders Company, Ltd.<sup>[17]</sup> This was evidenced by Entry No. 150322 in TCT No. 61244 with respect to the sale of the property described therein to Krisbuilt Traders Company, Ltd. for P200,000.00.<sup>[18]</sup> Respondent alleged that complainant signed the Deed of Sale in her presence inside her office.<sup>[19]</sup> However, respondent would neither directly confirm nor deny if, indeed, she notarized the instrument in her direct examination,<sup>[20]</sup> but on cross-examination, she stated that she was not denying that she was the one who notarized the Deed of Sale.<sup>[21]</sup> Estrella Kraus' affidavit<sup>[22]</sup> supported respondent's defense.

Respondent presented her former employee Basilio T. Depaudhon to prove the alleged signing by complainant of the purported Deed of Absolute Sale, and the notarization by respondent of the said Deed. However, Commissioner Sordan doubted the credibility of Depaudhon, as he affirmed that his participation in the alleged Deed of Absolute Sale was mere recording, but he later affirmed that he saw the parties sign the Deed of Absolute Sale.<sup>[23]</sup>

Commissioner Sordan stated that the unbroken chain of circumstances, like respondent's testimony that she saw complainant sign the Deed of Sale before her is proof of respondent's deception. Respondent's notarization of the disputed deed of

sale showed her active role to perpetuate a fraud to prejudice a party. Commissioner Sordan declared that respondent failed to exercise the required diligence and fealty to her office by attesting that the alleged party, Anita Peña, appeared before her and signed the deed when in truth and in fact the said person did not participate in the execution thereof. Moreover, respondent should be faulted for having failed to make the necessary entries pertaining to the deed of sale in her notarial register.

According to Commissioner Sordan, these gross violations of the law made respondent liable for violation of her oath as a lawyer and constituted transgressions of Section 20 (a),<sup>[24]</sup> Rule 138 of the Rules of Court and Canon 1<sup>[25]</sup> and Rule 1.01 of the Code of Professional Responsibility.

Commissioner Sordan recommended that respondent be disbarred from the practice of law and her name stricken-off the Roll of Attorneys, effective immediately, and recommended that the notarial commission of respondent, if still existing, be revoked, and that respondent be perpetually disqualified from reappointment as a notary public.

On August 28, 2010, the Board of Governors of the IBP passed Resolution No. XIX-20-464, adopting and approving the Report and Recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of 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 finding Respondent guilty of [her] oath as a lawyer, Section 20 (a), Rule 138 of the Rules of Court and Canon 1, Rule 1.01 of the Code of Professional Responsibility, Atty. Christina C. Paterno is hereby **DISBARRED** from the practice of law and her name stricken off from the Roll of Attorneys. Furthermore, respondent's notarial commission if still existing is Revoked with Perpetual Disqualification from reappointment as a Notary Public.

The Court adopts the findings of the Board of Governors of the IBP insofar as respondent has violated the Code of Professional Responsibility and the Notarial Law, and agrees with the sanction imposed.

The criminal case of estafa from which respondent was acquitted, as her guilt was not proven beyond reasonable doubt, is different from this administrative case, and each must be disposed of according to the facts and the law applicable to each case.<sup>[26]</sup> Section 5,<sup>[27]</sup> in relation to Sections 1<sup>[28]</sup> and 2,<sup>[29]</sup> Rule 133, Rules of Court states that in administrative cases, only substantial evidence is required, not proof beyond reasonable doubt as in criminal cases, or preponderance of evidence as in civil cases. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[30]</sup>

*Freeman v. Reyes*<sup>[31]</sup> held that the dismissal of a criminal case does not preclude the continuance of a separate and independent action for administrative liability, as