

## EN BANC

[ A.C. No. 6258, August 24, 2010 ]

**LUZVIMINDA R. LUSTESTICA, COMPLAINANT, VS. ATTY. SERGIO E. BERNABE, RESPONDENT.**

### DECISION

#### PER CURIAM:

For consideration is the disbarment complaint filed by Luzviminda R. Lustestica (*complainant*) against Atty. Sergio E. Bernabe (*respondent*) for notarizing a falsified or forged Deed of Donation of real property despite the non-appearance of the donors, Benvenuto H. Lustestica (complainant's father) and his first wife, Cornelia P. Rivero, both of whom were already dead at the time of execution of the said document.

In his Answer,<sup>[1]</sup> the respondent admitted the fact of death of Benvenuto H. Lustestica and Cornelia P. Rivero, considering their death certificates attached to the complaint. The respondent claimed, however, that he had no knowledge that the real Benvenuto H. Lustestica and Cornelia P. Rivero were already dead at the time he notarized the Deed of Donation.<sup>[2]</sup> He also claimed that he exerted efforts to ascertain the identities of the persons who appeared before him and represented themselves as the donors under the Deed of Donation.<sup>[3]</sup>

After the submission of the respondent's Answer to the complaint, the Court referred the matter to the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP Commission on Bar Discipline*) for investigation, evaluation and recommendation. The IBP Commission on Bar Discipline made the following findings:

The core issue is whether or not Respondent committed a falsehood in violation of his oath as a lawyer and his duties as Notary Public when he notarized the Deed of Donation purportedly executed by Benvenuto H. Lustestica and Cornelia P. Rivero as the donors and Cecilio R. Lustestica and Juliana Lustestica as the donees on 5 August 1994.

Section 1 of Public Act No. 2013, otherwise known as the Notarial Law, explicitly provides:

x x x **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** acknowledged that the same is his free act and deed. x x x.

As correctly observed by Complainant, Respondent's Acknowledgment is the best evidence that NO RESIDENCE CERTIFICATES were presented by the alleged donors and the donees. Had the parties presented their residence certificates to Respondent, it was his duty and responsibility under the Notarial Law to enter, as part of his certification, the number, place of issue and date of each residence certificate presented by the parties to the Deed of Donation. Respondent, however, failed to make the required entries. Respondent's claim that the persons who allegedly appeared before him and represented themselves to be the parties to the Deed of Donation showed their residence certificates and that he instructed his secretary to indicate the details of the residence certificates of the parties is self-serving and not supported by the evidence on record.

x x x x

The fact that Respondent notarized a forged/falsified document is also undisputed not only by [the] strength of Complainant's documentary evidence but more importantly, by Respondent's own judicial admission. x x x. In view of Respondent's judicial admission that the alleged donors, BENVENUTO H. LUSTESTICA and his first wife, CORNELIA P. RIVERO, died on 7 September 1987 and 24 September 1984, respectively, it is beyond reasonable doubt that said donors could not have personally appeared before him on 5 August 1994 to [acknowledge] to him that they freely and voluntarily executed the Deed of Donation. Moreover, x x x quasi-judicial notice of the Decision of the Municipal Trial Court finding accused CECILIO LUSTESTICA and JULIANA LUSTESTICA **GUILTY BEYOND REASONABLE DOUBT** as principals of the crime of falsification of public document.<sup>[4]</sup>

In his Report dated August 15, 2005, IBP Commissioner Leland R. Villadolid, Jr. found the respondent grossly negligent in the performance of his duties as notary public and recommended that the respondent's notarial commission be suspended for a period of one (1) year. The IBP Commissioner also recommended that a penalty ranging from reprimand to suspension be imposed against the respondent, with a warning that a similar conduct in the future will warrant an imposition of a more severe penalty.<sup>[5]</sup>

By Resolution No. XVII-2005-116 dated October 22, 2005, the Board of Governors of the IBP Commission on Bar Discipline adopted and approved the Report of the IBP Commissioner. The pertinent portion of this Resolution reads:

[C]onsidering Respondent's gross negligence in the performance of his duties as Notary Public, Atty. Sergio E. Bernabe is hereby **SUSPENDED** from the practice of law for one (1) year and Respondent's notarial commission is **Revoked and Disqualified** from reappointment as Notary Public for two (2) years **with a notification that this suspension of one year must be served in succession to the initial recommendation of the IBP Board of Suspension of one year in CBD Case No. 04-1371.**<sup>[6]</sup>

From these undisputed facts, supervening events occurred that must be taken into consideration of the present case.

First, CBD Case No. 04-1371, entitled *Victorina Bautista, complainant, v. Atty. Sergio E. Bernabe, respondent*, which was the case referred to in Resolution No. XVII-2005-116, was docketed as A.C. No. 6963<sup>[7]</sup> before the Court. In a decision dated February 9, 2006, the Court revoked the respondent's notarial commission and disqualified him from reappointment as Notary Public for a period of two (2) years, for his failure to properly perform his duties as notary public when he notarized a document in the absence of one of the affiants. In addition, the Court suspended him from the practice of law for a period of one (1) year, with a warning that a repetition of the same or of similar acts shall be dealt with more severely.

Second, on January 6, 2006, the respondent filed a motion for reconsideration of Resolution No. XVII-2005-116 before the IBP Commission on Bar Discipline. The respondent moved to reconsider the IBP Resolution, claiming that the penalty imposed for the infraction committed was too harsh. The motion was denied in Resolution No. XVII-2006-81, dated January 28, 2006,<sup>[8]</sup> for lack of jurisdiction of the IBP Commission on Bar Discipline, since the administrative matter had then been endorsed to the Court.

Third, on January 4, 2006, a motion for reconsideration (the same as the one filed with the IBP Commission on Bar Discipline) was filed by the respondent before the Court. In a *Minute* Resolution dated March 22, 2006, the Court noted the findings and recommendations in Resolution No. XVII-2005-116 and required the complainant to file her Comment to the respondent's motion for reconsideration. On April 28, 2006, the complainant filed her Comment praying for the denial of the motion.

On July 5, 2006, the Court issued a *Minute* Resolution noting the denial of the respondent's motion for reconsideration, by the IBP Commission on Bar Discipline, and the complainant's Comment to the respondent's motion before the Court.

Subsequently, on January 26, 2009, the Court declared the case closed and terminated after considering that no motion for reconsideration or petition for review, assailing both IBP resolutions, had been filed by the respondent.<sup>[9]</sup>

On October 8, 2009, the respondent, through a letter addressed to the Office of the Bar Confidant, requested that he be given clearance to resume the practice of law and to allow him to be commissioned as a notary public. In his letter, the respondent alleged that he has already served the penalties imposed against him in A.C. No. 6963 and the present case. He claimed that after the receipt of the IBP Resolutions in both cases, he did not practice his profession and had not been appointed or commissioned as a notary public.

### **The Office of the Bar Confidant**

Acting on the respondent's letter, the Office of the Bar Confidant submitted a Report and Recommendation, which states:

1. The **EFFECTIVITY** of the respondent's suspension and disqualification should have been **COMMENCED** on the date of receipt of the Decision of the Court and not from the date of receipt of the Resolution of the IBP recommending the respondent's suspension from the practice of law and disqualification from being commissioned as notary public, it being recommendatory in nature;
2. The prayer of the respondent to resume his practice of law in Adm. Case No. 6963 be denied;
3. The respondent be **REQUIRED** to submit certification from competent courts and IBP that he has fully served the entire period of suspension and disqualification in Adm. Case No. 6963;
4. The Court may now **FINALLY RESOLVE** the findings and recommendation of the IBP in its Resolution No. XVII-2005-16, dated October 2005, in Adm. Case No. 6258, for final disposition of the case and for proper determination whether the order of suspension and disqualification in Adm. Case No. 6963 should be lifted after the respondent has satisfactorily shown that he has fully served the suspension and disqualification.<sup>[10]</sup>

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

The findings of the Board of Governors of the IBP Commission on Bar Discipline are well-taken. We cannot overemphasize the important role a notary public performs. In *Gonzales v. Ramos*,<sup>[11]</sup> we stressed that notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity.<sup>[12]</sup> A notarized document is, by law, entitled to full faith and credit upon its face.<sup>[13]</sup> It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.<sup>[14]</sup>

The records undeniably show the gross negligence exhibited by the respondent in discharging his duties as a notary public. He failed to ascertain the identities of the affiants before him and failed to comply with the most basic function that a notary public must do, *i.e.*, to require the parties' presentation of their residence certificates or any other document to prove their identities. Given the respondent's admission in his pleading that the donors were already dead when he notarized the Deed of Donation, we have no doubt that he failed in his duty to ascertain the identities of the persons who appeared before him as donors in the Deed of Donation.

Under the circumstances, we find that the respondent should be made liable not only as a notary public but also as a lawyer. He not only violated the Notarial Law (Public Act No. 2103), but also Canon 1 and Rule 1.01 of the Code of Professional Responsibility.