

SECOND DIVISION

[Adm. Case No. 5764, January 13, 2003]

REUBEN M. PROTACIO, COMPLAINANT, VS. ATTY. ROBERTO M. MENDOZA, RESPONDENT.

DECISION

MENDOZA, J.:

This is a complaint for disbarment against Atty. Roberto M. Mendoza for his alleged failure to require the parties to a document which he notarized to appear personally before him.

Complainant Reuben M. Protacio alleged that, as president of Jumping Jap Trading Company, Inc. (JJTC, Inc.), he filed in the Office of the City Prosecutor of Manila on March 7, 2001 a complaint for estafa through falsification of public documents against the spouses Nobuyasu and Carmencita Nemoto and the Metropolitan Land Corporation. He claimed that respondent Atty. Roberto M. Mendoza, who served as counsel for the spouses Nemoto in that case, had presented in the investigation a resolution of the JJTC, Inc., dated March 30, 1998, which purported to have been signed by him (the complainant), as president/director of JJTC, Inc., and Nobuyasu Nemoto, as director thereof. The resolution had been notarized by respondent. It reads:

RESOLVED AS IT IS HEREBY RESOLVED THAT Jumping Jap Corporation/Jumping Jap Company transfers, conveys and assigns unto Carmencita I. Fradejas, all of the said corporation's rights and interests over a parcel of land with a residential house erected thereon, located at #167 (#112) Pili Drive Ayala Alabang Village, Muntinlupa City covered by TCT No. 205572 issued by the Register of Deeds of Makati registered in the name of Metropolitan Land Corporation with an area of 618 sq. m.

RESOLVED FINALLY that Reuben Protacio, President of Jumping Jap Trading Corp./Jumping Jap Company whose specimen signature appears hereinbelow be authorized and empowered for and in behalf of said corporation to execute the Deed of Assignment transferring, conveying and assigning all of the rights and interests of said corporation subject of the Deed of Conditional Sale dated 1 December 1997, in favor of Carmencita I. Fradejas.

APPROVED, Manila, 30 March 1998.^[1]

Complainant claimed that he did not sign the board resolution nor did he attend a board meeting of the corporation on the date stated therein (March 30, 1998), and therefore the signature purporting to be his was a forgery. He alleged that the Notarial Section of the Regional Trial Court of Manila had in fact certified that it did not have a copy of the board resolution in question because respondent had not

submitted his notarial report for March 1998. Furthermore, according to complainant, the records of the Bureau of Immigration and Deportation (BID) showed that Nobuyasu Nemoto was out of the country on March 30, 1998, having left the Philippines on March 26, 1998 and having returned only on March 31, 1998. Hence, complainant claimed, it was impossible for Nobuyasu Nemoto to have attended the supposed board meeting on March 30, 1998 and to have signed the resolution on the same date. Complainant charged that respondent knowingly and maliciously notarized the said board resolution without the presence of the party allegedly executing it.

In addition, another document entitled Deed of Assignment, dated April 2, 1998, appeared to have also been notarized by respondent, purporting to have been signed by complainant as one of the parties therein. The Deed of Assignment reads:

Know All Men By These Presents:

This Deed of Assignment made and entered into on this 2nd day of April 1998 at Manila by and between:

Jumping Jap Trading Corporation/Jumping Jap Company, a corporation existing under and by virtue of Philippine law, with business address at No. 310 Galeria de Magallanes Condominium, Magallanes Village, Makati City, here represented by its President, Reuben Protacio, hereinafter referred to as ASSIGNOR;

- and -

Carmencita I. Fradejas, Filipino, of legal age, single and with residence at #167 (#112) Pili Drive, Ayala Alabang Village, Muntinlupa City, hereinafter referred to as the ASSIGNEE.

WITNESSETH That

The parties have agreed as follows:

The ASSIGNOR for value received, hereby transfers, conveys, and assigns unto the ASSIGNEE, her heirs, and successors-in-interest, all of the former's rights and interests over a parcel of land with a residential house erected thereon, located at #167 (#112) Pili Drive, Ayala Alabang Village, Muntinlupa City, covered by TCT No. 205572 issued by the Register of Deeds of Makati registered in the name of Metropolitan Land Corporation, with an area of 618 sq.m. and subject of the Deed of Conditional Sale dated 1 December 1997.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures on this 2nd day of April, 1998, in Manila.^[2]

Complainant denied that he had signed this deed of assignment. He pointed out that the Notarial Section of the Regional Trial Court of Manila had certified that there was no such document on file in that office as respondent had not submitted a notarial report for April 1998.^[3]

Complainant alleged that respondent should not have notarized any document without first requiring the presence of the parties to attest to him that it had been duly executed, made voluntarily and with the knowledge of the parties involved. He asked that respondent be held accountable, and respondent be disbarred from the practice of law.^[4]

In his answer,^[5] respondent insisted that on March 30, 1998, the JJTC, Inc. had adopted a board resolution authorizing the transfer of its rights over some property in favor of one Carmencita Fradejas, who subsequently married Nobuyasu Nemoto. He insisted that the resolution, dated March 30, 1998, had been signed by complainant and Nobuyasu Nemoto and later notarized by him (respondent). Respondent said that the document was dated March 30, 1998 because it was prepared on that date, but it was actually signed by the parties therein only on March 31, 1998, upon the arrival of Nobuyasu Nemoto from Japan. It was alleged that, through inadvertence, respondent failed to change the date. Respondent maintained that the signature appearing on the board resolution was that of complainant, who participated in the board meeting. He explained that he failed to submit his notarial report for 1998 because it was lost when he transferred his residence from Sta. Cruz, Manila to Makati City.

With regard to the Deed of Assignment, respondent claimed that it was executed by complainant in the presence of respondent and other witnesses. As proof of the authenticity of complainant's signature in the Deed of Assignment, he furnished a letter addressed to the Metropolitan Land Corp., dated April 20, 1998, allegedly prepared by complainant, in which he (complainant) appeared to be confirming a request he had previously made for the substitution of the JJTC, Inc. by Carmencita I. Fradejas as vendee in the Deed of Conditional Sale, pursuant to the Deed of Assignment dated 30 March 1998. The letter reads:

20 April 1998

METROPOLITAN LAND CORP.
Penthouse JMT Corp. Cond.
ADB Ave., Ortigas Center
Pasig City, Philippines

Attention: JOSE MA. V. LAMUG
Managing Director

Dear Mr. Lamug:

This will formalize my request for the change of the name of the Vendee in the Deed of Conditional Sale between Metropolitan Land Corporation and Jumping Jap Trading Corp/Jumping Jap Company dated 1 December 1997 from Jumping Jap Trading Corp/Jumping Jap Company to Carmencita I. Fradejas, pursuant to the Deed of Assignment dated 30 March 1998, executed by said corporation in favor of the latter. Enclosed are copies [of] said Deed of Assignment and Board Resolution authorizing such Deed of Assignment, for your ready reference.