



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RE: ORDER DATED JANUARY
7, 2020 OF JUDGE IGNACIO I.
ALAJAR SUSPENDING ATTY.
ELY F. AZARRAGA'S
NOTARIAL COMMISSION FOR
ONE (1) YEAR.

A.C. No. 12798

Present:

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., JJ.

Promulgated:

February 3, 2021

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DECISION

DELOS SANTOS, J.:

The Court resolves an administrative case against Atty. Ely F. Azarraga, Jr. (respondent) for violation of Section 1, Rule II, in relation to Section 1(b)(7), Rule XI of A.M. No. 02-8-13-SC or the 2004 Rules on Notarial Practice.

Factual Antecedent

On May 8, 2019, a Petition for Issuance of Second Owner's Copy of Transfer Certificate of Title (TCT) No. T-44662¹ was filed with the Regional Trial Court (RTC) of Roxas City. The petition was signed by respondent on behalf of petitioner Brenda Natividad (Brenda), represented by her Attorney-in-Fact Aida Palomar Dela Cruz (Dela Cruz).

¹ Rollo, pp. 15-17.

Attached to the Petition are Special Power of Attorney² (SPA) dated May 2, 2019, which appointed Dela Cruz as her attorney-in-fact for the case, and an Affidavit of Loss³ dated April 22, 2019, both allegedly executed by Brenda. The Verification of the Petition and the SPA were notarized by respondent, without requiring Brenda to present any competent evidence of identity, with the annotation “*AFFIANT PERSONALLY KNOWN TO ME.*” Respondent also notarized the Affidavit of Loss without requiring any competent evidence of identity.

After a Notice of Hearing was posted, but before the RTC could hear the case, an Opposition⁴ dated November 5, 2019 was filed with the RTC by Lucien Natividad (Lucien), the former father-in-law of Brenda, and claimed that the original owner’s duplicate copy of the subject TCT is in his possession, and attached the same therewith. Also included in the Opposition are the affidavits⁵ of Brenda (now Brenda D. Custodio) and her former husband, Joselito F. Natividad (Joselito) — whose signatures appear in the SPA — which state that: (1) Brenda did not sign the petition; (2) the signatures appearing in the SPA were not theirs; and (3) the original owner’s duplicate copy of the TCT subject of the petition is not lost and is in the possession of Lucien.

In an Order⁶ dated November 29, 2019, the RTC dismissed the petition and ordered Dela Cruz and respondent to appear in open court. In a subsequent Order⁷ dated December 9, 2019, the RTC ordered Dela Cruz to show cause why no case shall be filed against her for executing the foregoing documents contrary to the allegations of Brenda, and likewise ordered respondent to show cause why his notarial commission will not be revoked for notarizing the said documents without requiring proper identification.

In compliance, respondent filed a Manifestation⁸ dated December 16, 2019 which conveyed his “sincere and deepest apology,” and explained that the incident was an oversight. He further stated that he was not in bad faith, that he had no dishonest or selfish motives as regards the notarization of the documents, and that he was also a victim of the circumstances for relying to the confirmation and assurance made to him by Dela Cruz. Respondent also mentioned that no actual or potential injury was caused to any private party, and that Dela Cruz has actual interest in the property involved.

² Id. at 23.

³ Id. at 24.

⁴ Id. at 25-28.

⁵ Id. at 33 and 34.

⁶ Id. at 35-36.

⁷ Id. at 42.

⁸ Id. at 37-38.

In an Affidavit⁹ dated December 13, 2019 attached to respondent's Manifestation, Dela Cruz alleged that her sister, Maria Palomar-Ali, bought the property from Jose and Procesa Natividad (Jose and Procesa) through a Deed of Absolute Sale executed in 1994. Jose and Procesa are the parents of Lucien, the oppositor in the case, and Gilda Natividad, the wife of their brother Eduardo Palomar. Dela Cruz stated that she and her sister are the one in material possession of the property from the time of sale until present, but the transfer and titling thereof has not been processed considering the trust and relationship between them. She recently learned that the title was transferred to Brenda and referred the matter to the Registry of Deeds in Roxas City, where a personnel therein advised her to file a Petition for Lost Title. The personnel brought her to the office of respondent to have the petition and other documents prepared. Respondent then required the presence and identification of Brenda for the execution of the said documents, but Dela Cruz insisted that she will just bring the documents to Brenda for her signature. After they went out of respondent's office, the personnel suggested that Dela Cruz sign the documents herself, which she did in good faith due to her interest in the property. When they returned to respondent's office a couple of days later, respondent demanded from them the identification of Brenda and Joselito, but they assured him that the latter signed the documents and that their identification will be submitted at a later date.

Ruling of the Executive Judge

In an Order¹⁰ dated January 7, 2020 (the Order), Executive Judge Ignacio I. Alajar of the RTC suspended the notarial commission of respondent for one year from the time of receipt thereof, pursuant to Section 1(b), Rule XI of the 2004 Rules on Notarial Practice, *viz.*:

WHEREFORE, in view of all the foregoing, the notarial commission of Atty. Ely F. Azarraga, Jr. is ordered suspended for a period of one (1) year counted from the time of receipt of this Order for violating the express provision of the 2004 Rules on Notarial Practice. He is further ordered to submit all the documents notarized by him within ten (10) days from receipt hereof.¹¹

From the Executive Judge's view, it is clear in the evidence on record that Brenda and Joselito did not sign the Verification on the Petition, the SPA, and the Affidavit of Loss, and were in fact signed by Dela Cruz herself. Consequently, the Executive Judge found that the annotation respondent made that Brenda is personally known to him is absolutely false.¹² The Executive Judge also found respondent's defense — that

⁹ Id. at 39-40.

¹⁰ Id. at 1-4.

¹¹ Id. at 4.

¹² Id. at 1-2.

nobody suffered any loss or injury — untenable, as a notary public's duties are dictated by public policy impressed with public interest.

To appeal the suspension of his notarial commission, respondent filed a Petition for Review¹³ dated January 16, 2020 before this Court, invoking Sections 1(c) and (d), Rule XI of the 2004 Rules on Notarial Practice. While admitting the factual circumstances as found by the Executive Judge, respondent “*most sincerely, deeply, and humbly apologizes to the Honorable Executive Judge and to the Honorable Supreme Court for the oversight in his performance of notarial processes.*” Respondent petitioned that his penalty be reduced for humanitarian and equitable considerations since this was his first offense since being commissioned as a notary public in 2001, and that his notarial practice is of great support to his spouse, who suffers complications from severe diabetes and recuperates from a kidney operation, and his minor daughter, who is physically disabled and blind.¹⁴ Respondent maintained that he has no dishonest or selfish motive and that he was not in bad faith, as he relied on the confirmation and assurance made to him that the documents were indeed signed by the persons named therein.

Recommendation of the Office of the Bar Confidant

Upon receipt of respondent's Petition for Review, the Office of the Bar Confidant (OBC) deemed it appropriate to docket the case as a regular administrative case against respondent. The OBC stated in its Report¹⁵ dated February 18, 2020 that the case is covered by Sections 16 and 17, Rule 139-B of the Rules of Court, and that respondent should have filed a motion for reconsideration on the Order which suspended his notarial commission instead of a Petition for Review. Noting that the contentions and issues raised in the Petition for Review had already been passed upon by the RTC, the OBC made the following recommendation:

WHEREFORE, in the light of the foregoing premises, it is respectfully recommended that the instant administrative case be duly NOTED and APPROVED. The Order dated 7 January 2020 of the Regional Trial Court of Roxas City, which revoked the notarial commission of Atty. Ely F. Azarraga, Jr. for one (1) year be AFFIRMED. Accordingly, the notarial commission of Atty. Ely F. Azarraga, Jr. be REVOKED and he be DISQUALIFIED from being commissioned as notary public for one (1) year. In addition to the penalty originally imposed upon Atty. Ely F. Azarraga, Jr., he shall likewise be SUSPENDED from the practice of law for six (6) months. The Petition for Review dated 16 January 2020 be DENIED as the contentions and issues raised therein has already been passed upon by the Regional Trial Court, Roxas City, in the Order dated 7 January 2020. It is further recommended that the Clerk of Court of the Regional Trial Court of Roxas City be

¹³ Id. at 7-14.

¹⁴ Id. at 11-12.

¹⁵ Id. at 48-49.

REQUIRED to submit the Order dated 7 January 2020 originally signed by the Executive Judge, Hon. Ignacio I. Alajar.¹⁶

Our Ruling

Before delving into the merits of this administrative case, the Court deems it necessary to discuss the proper remedy that a notary public whose notarial commission was suspended or revoked might take pursuant to Sections 1(c) and (d), Rule XI of the 2004 Rules on Notarial Practice, reproduced in full below for reference:

SEC. 1. *Revocation and Administrative Sanctions.*

x x x x

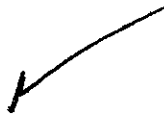
(c) Upon verified complaint by an interested, affected or aggrieved person, the notary public shall be required to file a verified answer to the complaint.

If the answer of the notary public is not satisfactory, the Executive Judge shall conduct a summary hearing. If the allegations of the complaint are not proven, the complaint shall be dismissed. If the charges are duly established, the Executive Judge shall impose the appropriate administrative sanctions. **In either case, the aggrieved party may appeal the decision to the Supreme Court for review. Pending the appeal, an order imposing disciplinary sanctions shall be immediately executory, unless otherwise ordered by the Supreme Court.**

(d) **The Executive Judge may *motu proprio* initiate administrative proceedings against a notary public, subject to the procedures prescribed in paragraph (c) above and impose the appropriate administrative sanctions on the grounds mentioned in the preceding paragraphs (a) and (b). (Emphases supplied)**

In this case, the Executive Judge of the RTC initiated administrative proceedings against respondent *motu proprio* for violation of Section 1(b)(7) of the same Rule, or “*fail[ure] to require the presence of a principal at the time of the notarial act,*” and Section 1, Rule II of the 2004 Rules on Notarial Practice, which requires in the notarial act of acknowledgment that the attesting individual is “*personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules.*” Following the prescribed remedy under Section 1(c), Rule XI of the 2004 Rules on Notarial Practice, it is reasonable for respondent to appeal the suspension of his notarial commission, which is immediately executory upon his receipt of the Order, with this Court. Perhaps, for purposes of clarification and guidance to any party meted with disciplinary sanctions pursuant to Sections 1(c) and (d), Rule XI of the 2004

¹⁶ Id. at 49.



Rules on Notarial Practice, it would be prudent to consider an amendment thereof to clarify the proper mode and period of appeal and to harmonize the same with the pertinent provisions of Rule 139-B of the Rules of Court.

The OBC, in its Report, stated that respondent should have filed a motion for reconsideration of the Order — to which the Court agrees, as this is a remedy available to respondent at the time and is not prohibited by any existing rule. Either way, whether respondent had filed a motion for reconsideration on the Order or directly appealed with this Court, Section 1(c), Rule XI of the 2004 Rules on Notarial Practice clearly provides that the order imposing disciplinary sanctions shall be immediately executory pending appeal.

Notwithstanding which remedy or relief respondent might have taken, the Court, upon taking cognizance of this administrative case, can revoke, shorten, or extend the suspension, or impose additional disciplinary sanctions as the facts may warrant. This finds support in the settled rule that in the realm of legal ethics, a breach of the 2004 Rules on Notarial Practice would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well.¹⁷ He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.¹⁸ Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the CPR provides:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

On this note, the Court, in concurring with the findings of the Executive Judge and the OBC as to the violations committed by respondent,

¹⁷ *De Guzman v. Atty. Venzon*, A.C. No. 8559, July 27, 2020; *Triol v. Atty. Agcaoili, Jr.*, 834 Phil. 154, 159 (2018).

¹⁸ *Triol v. Atty. Agcaoili, Jr.*, *id.*

also finds the latter to have breached Section 2(b), Rule IV of the 2004 Rules on Notarial Practice, *viz.*:

SEC. 2. *Prohibitions.*

x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

- (1) **is not in the notary's presence personally at the time of the notarization;** and
- (2) **is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity** as defined by these Rules. (Emphases supplied)

With respondent's liability having been duly established, the Court now looks into prevailing jurisprudence as to the appropriate penalty to be imposed. In the recent cases of *Dr. Malvar v. Atty. Baleros*,¹⁹ *Ko v. Atty. Uy-Lampasa*,²⁰ and *De Guzman v. Atty. Venzon*,²¹ the erring respondent lawyers-notaries public were found guilty of notarizing documents without the presence of the executing parties and were uniformly meted with the penalties of immediate revocation of their notarial commissions, disqualification from being commissioned as notaries public for a period of two years, and suspension from the practice of law for a period of six months.

Without departing from the above pronouncements, however, the Court deems it necessary to proportionately reduce the penalty imposed in the instant case considering that: (1) respondent's suspension of his notarial commission of one year has been partially served since his receipt of the Order on January 9, 2020; (2) this is respondent's first offense as a notary public since being commissioned in 2001; and (3) respondent's outright admission of guilt, repeated conveyance of remorse, and his personal circumstances raised in his Petition for Review invite compassion from the Court for humanitarian and equitable considerations.²²

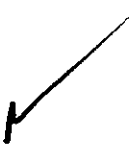
WHEREFORE, premises considered, the Court finds respondent Atty. Ely F. Azarraga, Jr. **GUILTY** of violating the 2004 Rules on Notarial Practice, Canon 1, Rule 1.01, Canon 10, and Rule 10.01 of the Code of Professional Responsibility. Accordingly, the Court **REVOKES** his incumbent commission as notary public; **DISQUALIFIES** him from being

¹⁹ 807 Phil. 16 (2017).

²⁰ A.C. No. 11584, March 6, 2019.

²¹ *Supra* note 17.

²² See *Yap v. Atty. Dantes*, A.C. No. 11741, June 19, 2019 (Minute Resolution).



commissioned as a notary public for a period of one (1) year; and **SUSPENDS** him from the practice of law for a period of six (6) months from notice of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

The foregoing penalties shall take effect immediately upon receipt by respondent of this Decision. Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to the records of respondent, and to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation and dissemination to all courts concerned.


Finally, respondent is directed to file a Manifestation before the Court upon serving his suspension and to furnish all courts and quasi-judicial bodies where he has entered an appearance a copy of this Decision.

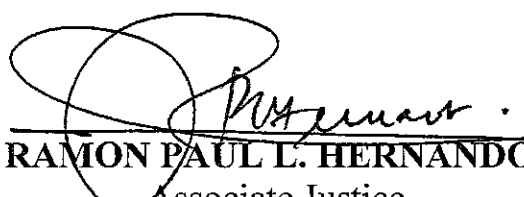
SO ORDERED.



EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice