



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **15 June 2020** which reads as follows:*

**“A.C. No. 12451 (*John Paul E. Defiesta v. Atty. John Mark M. Tamaño*)** – Before the Court is a Complaint for Disbarment<sup>1</sup> dated November 14, 2016 filed by complainant John Paul E. Defiesta (complainant Defiesta) before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) against respondent Atty. John Mark M. Tamaño (respondent Tamaño) for violation of the 2004 Rules of Notarial Practice.

The antecedent facts are as follows:

Complainant Defiesta accused respondent Tamaño of gross negligence for allegedly notarizing a document denominated as “Discharge of Real Estate Mortgage” (DREM)<sup>2</sup> purportedly executed by complainant Defiesta before respondent Tamaño on April 23, 2015 in Bacolod City.<sup>3</sup> Complainant Defiesta denied executing the said document and claimed that he was in Metro Manila on said date and has been a resident thereof for 20 years.<sup>4</sup> He further alleged that because of the grossly negligent act of respondent Tamaño, the Real Estate Mortgage (REM) agreement entered between him (complainant Defiesta) and his cousin, Esperanza de Ocampo Espeleta (Espeleta), was cancelled allowing her to mortgage the subject property to a bank, and thereby, causing him to incur significant monetary losses.<sup>5</sup>

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<sup>1</sup> *Rollo*, pp. 2-5.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 2.

In his Answer,<sup>6</sup> respondent Tamaño admitted notarizing the DREM. However, he denied the allegations of negligence imputed upon him.<sup>7</sup> He claimed that on April 23, 2015, Jericho Magbanua (witness Magbanua), a close friend of his, came to his law office to have some documents notarized;<sup>8</sup> that with Magbanua were Patrick Lim (witness Lim), the latter's wife, complainant Defiesta, and Espeleta;<sup>9</sup> that complainant Defiesta presented to him the DREM for notarization;<sup>10</sup> that as proof of his identity, complainant Defiesta showed his company Identification Card (ID) from Matina Pangi, Davao City;<sup>11</sup> that respondent Tamaño asked for another ID but because complainant Defiesta had no other ID with him, he instead presented two legal documents, a Real Estate Mortgage (REM) and a Lease Contract, as proof of his identity;<sup>12</sup> and that respondent Tamaño notarized the DREM only after comparing the signatures of complainant Defiesta on the documents presented and ascertaining from the two witnesses, Magbanua and Lim, that they personally knew complainant Defiesta.<sup>13</sup> Respondent Tamaño further claimed that upon hearing about the concern of complainant Defiesta regarding the notarization of the DREM, he, without admitting any fault, immediately reached out to complainant Defiesta and offered to help but complainant Defiesta instead demanded monetary compensation;<sup>14</sup> that after further inquiry, respondent Tamaño discovered that the REM was actually fictitious as it was executed in order to conceal the properties of the grandmother of Espeleta and complainant Defiesta;<sup>15</sup> and that complainant Defiesta did not suffer any monetary loss because of the notarization of the DREM.<sup>16</sup>

#### Report and Recommendation of the IBP:

In his June 13, 2017 Report and Recommendation,<sup>17</sup> the Investigating Commissioner of the IBP declared respondent Tamaño guilty of negligence and recommended that his notarial commission, if still active, be revoked and that he be barred from being commissioned as a notary public for two years. The Investigating Commissioner found respondent Tamaño negligent in ascertaining the identity of the affiant because the company ID indicated in the Acknowledgment of the DREM is not considered a current identification document issued by an official agency. Also, based on the affidavits of witnesses Magbanua and Lim, the Investigating Commissioner found that they did not personally know the affiant because he was

<sup>6</sup> Id. at 19-24.

<sup>7</sup> Id. at 19.

<sup>8</sup> Id. at 20.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id. at 21.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 21-22.

<sup>16</sup> Id.

<sup>17</sup> Id. at 132-138; prepared by Investigating Commissioner Jose Alfonso M. Gomos.

introduced to them by the wife of witness Lim only on the day the DREM was notarized. In fact, according to Magbanua, he agreed to bring along the affiant to the law office only because the latter also needed to have a document notarized.

In its May 19, 2018 Resolution,<sup>18</sup> the Board of Governors of the IBP adopted the findings and recommendations of the Investigating Commissioner.

### *The Court's Ruling*

The Court adopts the findings of the IBP but with modifications as to the recommended penalty.

The act of notarization is imbued with public interest because it converts a private document into a public document, thereby rendering it admissible in court without further proof of its authenticity.<sup>19</sup> As such, notaries public are mandated to faithfully observe the basic rules on notarial practice so as not to undermine the public's confidence in the integrity of notarized documents.<sup>20</sup>

Under the 2004 Rules of Notarial Practice, a person acknowledging an instrument is required to personally appear before the notary public<sup>21</sup> and to present competent evidence of identity, which refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; x x x or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally

<sup>18</sup> Id. at 130-131.

<sup>19</sup> *Roa-Buenafe v. Lirazan*, A.C. No. 9361, March 20, 2019.

<sup>20</sup> Id.

<sup>21</sup> SECTION 1. *Acknowledgment*. — "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents and integrally complete instrument or document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

knows the individual and shows to the notary public documentary identification.<sup>22</sup>

In this case, respondent Tamaño failed to ascertain the identity of the person claiming to be complainant Defiesta through the competent evidence of identify required by the rules on notarial practice. The company ID issued at Matina Pangi, Davao City, submitted by the person representing himself to be complainant Defiesta, is not a competent evidence of identity under the rules as it was not issued by a government agency. Neither can respondent Tamaño claim that he ascertained the identity of the affiant based on the oath or affirmation of the two witnesses, Magbanua and Lim considering that in their affidavits,<sup>23</sup> they themselves admitted that they were introduced to the person claiming to be complainant Defiesta only on the day the DREM was notarized. Thus, it would be a stretch to say that they personally knew complainant Defiesta. Had respondent Tamaño been more prudent, he would have learned about this. Unfortunately, respondent Tamaño was very lax in performing his duty as notary public and failed to observe even the most basic requirements in notarizing documents.

Failing to comply with the basic requirements of an acknowledgment, the Court finds respondent Tamaño guilty of violation of the 2004 Rules of Notarial Practice, which is ground for the revocation of his notarial commission, as well as the imposition of appropriate administrative sanctions against him.<sup>24</sup>

Under prevailing jurisprudence, a notary public who fails to discharge his duties is penalized not only with the revocation of his or her notarial commission and the disqualification from being commissioned as a notary public for a period of two years, but also with the suspension from the practice of law, the period of which depends on the circumstances of the case.<sup>25</sup>

<sup>22</sup> SECTION 12. *Competent Evidence of Identity.* – The phrase “competent evidence of identity” refers to the identification of an individual based on:

(a) at least once current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver’s license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter’s ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, PhilHealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman’s book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

<sup>23</sup> *Rollo*, pp. 25-28.

<sup>24</sup> *Miranda, Jr. v. Alvarez, Sr.*, A.C. No. 12196, September 3, 2018.

<sup>25</sup> *Roa-Buenafe v. Lirazan*, *supra* note 19.

Thus, in this case, in addition to the revocation of respondent Tamaño's notarial commission, if still active,<sup>26</sup> and his disqualification from being commissioned as a notary public for two years, the Court finds that a penalty of suspension from the practice of law for six months is likewise warranted.<sup>27</sup>

**WHEREFORE**, the Court hereby finds respondent Atty. John Mark M. Tamaño **GUILTY** of violation of the 2004 Rules of Notarial Practice.

Accordingly, the Court hereby (1) **SUSPENDS** him from the practice of law for six months; (2) **REVOKES** his incumbent commission as notary public, if any; and (3) **PROHIBITS** him from being commissioned as a notary public for a period of two years. He is **WARNED** that a repetition of the same offense or similar acts shall be dealt with more severely.

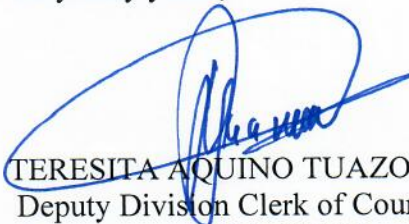
The suspension in the practice of law, revocation of notarial commission, and disqualification from being commissioned as a notary public shall take effect immediately upon receipt of this Resolution by respondent Tamaño. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

The January 28, 2019 letter of the Integrated Bar of the Philippines is **NOTED**.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent Tamaño's personal record as an attorney, the Integrated Bar of the Philippines for its information and guidance, and the Office of the Court Administrator for circulation to all courts in the country.

**SO ORDERED."**

Very truly yours,



TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *Urb. 6/29*

29 JUN 2020

<sup>26</sup> Respondent Tamaño filed a Manifestation stating that his commission expired last December 31, 2017 and that since then, he has not sought to be recommissioned as a notary public. *Rollo*, p. 125.

<sup>27</sup> *Uy v. Apuhin*, A.C. No. 11826, September 5, 2018; *Heir of Unite v. Guzman*, A.C. No. 12062, July 2, 2018.

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AC12451. 6/15/2020(225)URES *16/19*