



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **September 8, 2020** which reads as follows:*

“A.C. No. 7170 – SPOUSES RAY and MARCELINA ZIALCITA v. ATTY. JOEL S. ALCAZAREN

Antecedents

Complainants Spouses Ray and Marcelina Zialcita seek to disbar respondent Atty. Joel S. Alcazaren for alleged violation of the Notarial Law and the Code of Professional Responsibility.

Complainants essentially alleged: From January 2000 to February 2004, they obtained several loans from Ester Servacio (Servacio) for the construction of their commercial building in Maasin City, Southern Leyte. As of December 16, 2004, their obligation amounted to ₱22,490,169.16.

To secure the loan, Servacio made them execute in her favor: (a) a post-dated check in the amount of ₱1,340,169.19; (b) a promissory note in the amount of ₱10,500,000.00; and (c) a Deed of Sale with Right to Repurchase over a commercial land and building for a period of one (1) year, in the amount of ₱11,000,000.00.

Servacio and respondent fraudulently substituted the first page of the Deed of Sale with Right to Repurchase with a Deed of Absolute Sale for a reduced consideration of ₱2,000,000.00. The first deed of sale indicating a consideration of ₱11,000,000.00 was notarized by Atty. Allan Latras. The second deed of sale bearing the amount of ₱2,000,000.00 for the same transaction was notarized by respondent on December 16, 2004 even though they did not personally appear in his office.¹

- over – six (6) pages ...

181-B

¹ Rollo, pp. 1-11.

Respondent countered, in the main: Servacio was one of the retained clients of the law firm he works in. As such, he personally appeared and negotiated with complainants regarding their outstanding obligation with Servacio. To settle their obligation, complainants voluntarily agreed to issue in Servacio's favor a deed of sale, promissory note, and post-dated check. They even handed the Owner's Duplicate Transfer Certificate of Title to Servacio for the transfer of the property.

Complainants signed two (2) sets of Absolute Deed of Sale in Maasin City: one, for ₱11,000,000.00 and the other, for only ₱2,000,000.00. Since his notarial commission was in Cebu City, he advised the parties to go to his office in Cebu City for the notarization and confirmation of the ₱2,000,000.00 Deed of Sale. Pursuant to the parties' agreement, Servacio went to Cebu City on December 16, 2004, together with one (1) of the witnesses, Paz Malabanan (Paz). Complainants later informed Paz by phone that they could not go to Cebu City as Ray had to attend an urgent conference in Tacloban City. Ray, nonetheless, told him to proceed with the notarization in his absence and assured him that he would go to Cebu City during that weekend. The notarization of the Deed of Sale was a mere confirmation since complainants had already signed it earlier without contesting its contents.²

IBP-CBD's Report and Recommendation

In her Report and Recommendation³ dated July 19, 2013, Investigating Commissioner Atty. Maria Editha A. Go-Binas recommended the dismissal of the case for complainants' failure to substantiate their allegations against respondent.

IBP Board of Governors' Resolution

By Resolution No. XXI-2014-633 dated September 27, 2014,⁴ the IBP Board of Governors reversed. It found respondent guilty of violating the Notarial Law for notarizing the Deed of Sale in the absence of complainants, the named vendors therein. It ruled that a lawyer's act of notarizing a document without the personal appearance of the affiant is also a violation of the lawyer's Code of Professional Responsibility. It, thus, recommended the revocation of respondent's notarial commission and respondent's disqualification from being

- over -

181-B

² *Id.* at 35-49.

³ *Id.* at 218-222.

⁴ *Id.* at 216-217, Notice of Resolution.

commissioned as Notary Public for two (2) years and suspension from the practice of law for six (6) months.⁵

In its Resolution No. XXII-2017-1243 dated June 17, 2017, however, the Board granted respondent's motion for reconsideration.⁶ In lieu of the penalty of suspension from the practice of law for six (6) months, it imposed the penalty of reprimand on ground that respondent acted in good faith and complainants did not deny their signatures on subject deed of sale.⁷

Ruling

The Court adopts the IBP Board of Governor's factual findings and legal conclusion but modifies the penalty.

The 2004 Rules on Notarial Practice⁸ mandates that before notarizing a document, a notary public should require the presence of the person who executed the same. Section 2(b), Rule IV thereof specifically enjoins a notary public from performing a notarial act in the absence of a signatory during the notarization, *viz.*:

SEC. 2. Prohibitions. — 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. (Emphasis added)

There is no dispute that respondent violated the Rules on Notarial Practice. He admitted that he notarized the Deed of Sale without the personal appearance of complainants – the named vendors and signatories therein. He offered the defense of good faith, claiming he merely followed the instruction of Ray to notarize the document without them and relied on his assurance that he would go to Cebu City during that weekend.

- over -

181-B

⁵ *Id.* at 216-217; See also Extended Resolution dated January 15, 2016, *id.* at 223-227.

⁶ *Id.* at 228-231.

⁷ *Id.* at 238, Notice of Resolution.

⁸ A.M. No. 02-8-13-SC, July 6, 2004.

In acknowledging that complainants personally appeared before him when they, in fact, did not, respondent casts doubt on the authenticity of the subject deed of sale and undermines the integrity of the notarial process. He violated not only the Notarial Rules but also Canon 1 of the Code of Professional Responsibility requiring lawyers to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes. Hence, he should be held liable both as a notary public and a lawyer.⁹

Based on recent jurisprudence, a lawyer commissioned as a notary public who fails to discharge his duties as such is penalized with revocation of his notarial commission and disqualification from being commissioned as a notary public for a period of two (2) years. In addition, he may also be suspended from the practice of law for a period of six (6) months for notarizing a document without the appearance of the parties.¹⁰

In *Ko v. Uy-Lampasa*,¹¹ a notary public, who notarized two (2) deeds of sale without requiring the presence of all the signatories therein, was found guilty of violating the Rules on Notarial Practice and Code of Professional Responsibility. The Court ordered her suspension from the practice of law for six (6) months, prohibition from being commissioned as a notary public for two (2) years, and the revocation of her notarial commission.

In *Tabao v. Lacaba*,¹² the notary public notarized the Counter-Affidavit without the personal appearance of all the affiants. The Court also imposed the same penalty: suspension from the practice of law for six (6) months, disqualification from being commissioned as a notary public for a period of two (2) years, and revocation of his notarial commission.

Finally, in *Spouses Zialcita v. Atty. Latras*,¹³ which involve the ₱11,000,000.00 deed of sale covering the same transaction between herein complainants and Ester Servacio, the Court found Atty. Latras liable for violation of the Notarial Law for notarizing said deed of sale without Spouses Zialcita personally appearing before him. Atty. Latras offered the same excuse as Atty. Alcazaren, *i.e.*, he merely relied on Ray Zialcita's instruction to notarize the document without their presence. The Court, however, found it unmeritorious. The Court

- over -

181-B

⁹ *Ladrera v. Osorio*, A.C. No. 10315, January 22, 2020.

¹⁰ *Ko v. Uy-Lampasa*, A.C. No. 11584, March 6, 2019.

¹¹ *Id.*

¹² A.C. No. 9269, March 13, 2019.

¹³ A.C. No. 7169, March 11, 2019.

suspended him from the practice of law for six (6) months, revoked his notarial commission, and disqualified him from being commissioned as notary public for two (2) years.

While the Court commiserates with respondent as he claims he has to take care of his ailing mother, We find the penalty of suspension from the practice of law for six (6) months, revocation of notarial commission, and disqualification from being commissioned as notary public for two (2) years proper and commensurate in this case.

Time and again, the Court has held that notarization is not an empty, meaningless ministerial act, but one imbued with substantive public interest. For it converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. For this reason, a notary public must observe utmost diligence in the performance of his notarial duties so as not to undermine the public's confidence in the integrity of notarized documents.¹⁴

ACCORDINGLY, Atty. Joel S. Alcazaren is found **GUILTY** of violation of Section 2(b), Rule IV of the 2004 Rules on Notarial Practice and the Canon of Professional Responsibility. He is **SUSPENDED** from the practice of law for **six (6) months** and his Notarial Commission is **REVOKED** with **PROHIBITION** from being commissioned as a notary public for **two (2) years**, effective immediately. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be: (1) entered into the personal records of Atty. Joel S. Alcazaren with the Office of the Bar Confidant; (2) furnished to all chapters of the Integrated Bar of the Philippines; and (3) circulated by the Court Administrator to all the courts in the country for their information and guidance.

This Resolution takes effect immediately. Atty. Alcazaren is required to submit to the Office of the Bar Confidant the exact date when he shall have received this Resolution within five (5) days from notice.


- over -

181-B

¹⁴ *Tabao v. Lacaba*, A.C. No. 9269, March 13, 2019; *Agaton v. Sugui*, A.C. No. 10592 (Notice), April 3, 2019.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *9/11/18*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
181-B

Sps. Ray & Marcelina Zialcita
Complainants
R. Kangleon Street, Mantahan
Maasin City, 6600 Southern Leyte

Atty. Joel S. Alcazaren
Respondent
LATRAS HEYROSA ALCAZAREN
REUSORRA
3rd Floor, Room 302
Cherry Court Bldg.
Gen. Maxilon Avenue
6000 Cebu City

Integrated Bar of the Philippines
1605 Pasig City
(For circulation to all IBP Chapters)

Office of the Bar Confidant (x)
Supreme Court

Office of the Court Administrator (x)
Supreme Court

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

UR



1/11/18