

SECOND DIVISION

[A.C. No. 12084, June 06, 2018]

HERNANIE P. DANDOY, COMPLAINANT, V. ATTY. ROLAND G. EDAYAN, RESPONDENT.

RESOLUTION

PERLAS-BERNABE, J.:

This administrative case stemmed from a verified letter-complaint^[1] dated December 17, 2010 filed by Hernanie P. Dandoy (Dandoy) before the Integrated Bar of the Philippines (IBP) against respondent Atty. Roland G. Edayan (respondent) for violation of Canons 1, 3, and 7 of the Code of Professional Responsibility (CPR).^[2]

The Facts

In the complaint, Dandoy alleged that on October 17, 2006, respondent notarized: (a) a Special Power of Attorney^[3] (SPA) executed by his (Dandoy) father, Jacinto S. Dandoy (Jacinto), in favor of a certain Antoine Cyrus C. Garzo (Garzo) granting the latter authority to offer as collateral two (2) parcels of land located in San Juan, Siquijor; and (b) a Deed of Extrajudicial Settlement of Real Estate^[4] (Deed) of Dandoy's late grandmother, Eutiquia Sumagang, wherein his father was also one of the parties.^[5] According to Dandoy, Jacinto could not have been present before respondent on October 17, 2006 because he passed away on July 13, 1999.^[6] He added that, through the SPA and the Deed, Garzo was able to mortgage the two (2) parcels of land as security for a P400,000.00 loan. The mortgage was, however, foreclosed and the mortgaged properties were not redeemed to the great prejudice of Dandoy and his siblings.^[7] In support thereof, Dandoy attached a certified true copy of the SPA, death certificate of Jacinto stating that he died on July 13, 1999, a copy of the Deed, and a copy of the Deed of Real Estate Mortgage^[8] dated October 17, 2006 executed by Garzo on behalf of Jacinto and Felipe Dandoy (Felipe), Dandoy's uncle.

In his Sworn Statement^[9] dated May 22, 2011, respondent admitted to having notarized the two (2) documents, but claimed that he verified the identities of the signatories thereto through their residence certificates. He narrated that on the said date, two (2) persons came to his office claiming to be Jacinto and Felipe and asked him to draft and notarize the SPA and the Deed. He added that Felipe even confirmed the identity of Jacinto in the same manner that the witnesses to the documents, who were likewise present at that time, confirmed the identities of the two. Finally, he submitted that while residence certificates are not mentioned in the list of competent evidence of identity enumerated under Section 12, Rule II of the 2004 Rules on Notarial Practice^[10] (2004 Notarial Rules), these are still necessary for the proper execution of the notarial act as it is still prescribed by various laws,

i.e., Commonwealth Act No. 465,^[11] the Notarial Law,^[12] and the Local Government Code.^[13]

The Report and Recommendation of the IBP

In its Report and Recommendation^[14] dated October 22, 2015, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for failure to comply with the 2004 Notarial Rules, and accordingly, recommended that respondent's notarial commission, if existing, be revoked and that he be disqualified from being commissioned as a notary public for a period of two (2) years. ^[15]

The IBP-IC found that respondent failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules the controlling rules on notarial practice at the time of the notarization of the SPA and the Deed, not the Notarial Law invoked by respondent. In this regard, the IBP-IC pointed out that under the 2004 Notarial Rules, competent evidence of identity includes: (a) a government-issued identification document bearing their respective photographs, which clearly does not include the community tax certificate presented in this case; and (b) affirmation of one credible witness not privy to the instrument, etc. who is personally known to the notary public and who personally knows the individual, which, in this case, was not satisfied by the statements made by Felipe or Garzo as to the identity of Jacinto because they are privy to the Deed and the SPA. Finally, the IBP-IC noted the apparent discrepancy between the signatures affixed by the person claiming to be Jacinto in the SPA and in the Deed which, to the IBP-IC, should have already raised suspicion on respondent's part and prompted him to require a signature and photograph-bearing identification card from said person. Being a notary public, and therefore an officer of the court, the IBP-IC pointed out that respondent must strictly comply with the rules on notarial practice as may be issued by the Court.^[16]

The IBP-IC, however, found the evidence insufficient to show that respondent wilfully and maliciously conspired with Garzo and Felipe in depriving Dandoy and his siblings of their grandmother's property in order to hold him administratively liable under the CPR.^[17]

In a Resolution^[18] dated February 25, 2016, the IBP Board of Governors adopted the above report and recommendation of the IBP-IC. Dissatisfied, respondent sought reconsideration,^[19] which the IBP denied in a Resolution^[20] dated April 20, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the 2004 Notarial Rules.

The Court's Ruling

The Court affirms the findings and adopts the recommendations of the IBP with modifications.

Time and again, the Court has emphasized that the act of notarization is impressed with public interest. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity.^[21] A

notarial document is, by law, entitled to full faith and credence.^[22] As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system.^[23] In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.^[24]

The 2004 Rules on Notarial Practice provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity.^[25] Section 12, Rule II of the same rules defines "competent evidence of identity" as follows:

Section 12. *Competent Evidence of Identity.*- The phrase "competent evidence of identity" 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**; 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. (Emphases and underscoring supplied)

Pursuant to these Rules, a notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.^[26]

In this case, respondent, as duly found by the IBP, was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules. Jurisprudence^[27] provides that a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; but moreso, it does not bear the photograph and signature of the persons appearing before them, which the Rules deem as the more appropriate and competent means by which notaries public can ascertain the person's identity. Records show that Jacinto passed away on July 13, 1999, and therefore, clearly could not have appeared before respondent to sign and execute the two (2) documents. Had respondent been more circumspect in performing his duties as notary public and asked for the photograph-and-signature-bearing identification document required by the 2004 Notarial Rules, he would have immediately discovered that the person before him was not the person whom he purports to be. All told, by accepting the residence certificates presented by the person who claimed to be Jacinto as evidence of identity, respondent made it appear