

SECOND DIVISION

[**A.C. No. 11826 (Formerly CBD Case No. 13-3801), September 05, 2018**]

ROLANDO N. UY, COMPLAINANT, VS. ATTY. EDMUNDO J. APUHIN, RESPONDENT.

RESOLUTION

CAGUIOA, J:

Before this Court is a complaint for disbarment^[1] filed by Complainant Rolando N. Uy (Uy) against Respondent Atty. Edmundo J. Apuhin (Atty. Apuhin) based on the latter's alleged acts of false notarization of documents in violation of Administrative Matter No. 02-8-13-SC or the 2004 Rules on Notarial Practice.

The Factual Antecedents

Uy worked as an Overseas Filipino Worker in Taiwan between January 29, 2000 and March 16, 2008.^[2] Together with his wife, Susan Magon-Uy, he owned a 600-square meter land^[3] in Carmen, North Cotabato (subject property).^[4] In his *Complaint-Affidavit*, Uy narrates that upon his return to the Philippines, he discovered that a *Joint Waiver of Rights, Interests and Ownership*^[5] (*Joint Waiver*) covering the subject property had been ostensibly executed by him and his wife on **July 2, 2006**. In the *Joint Waiver*, it was made to appear that Uy and his wife had conveyed the property to their son, Rick Rosner Uy (Rick Uy).^[6] Attached to the *Joint Waiver* was an application for a Building Permit at the Carmen Municipal Engineer's Office – Carmen, North Cotabato, also ostensibly signed by Uy and his wife.^[7] The *Joint Waiver* was acknowledged before Atty. Apuhin per Doc. No. 216, Page No. 44, Book No. 29, series of 2006.^[8]

On May 8, 2013, knowing that he and his wife were both in Taiwan when the *Joint Waiver* was executed and acknowledged before Atty. Apuhin on July 2, 2006, Uy filed an administrative complaint against Atty. Apuhin before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD), charging the latter with falsity in the conduct of his duties as a notary public,^[9] and for violation of Sections 3^[10] and 5^[11] of Rule IV of the 2004 Rules on Notarial Practice and of the Lawyers' Oath.^[12]

Further, Uy alleges that his ownership rights over his land were prejudiced by Atty. Apuhin's false notarization of the *Joint Waiver*, considering that he was compelled to litigate to protect his rights (*i.e.*, Uy needed to institute Civil Case No. 12-05 for *Specific Performance, Quieting of Title, Declaration of Trust, Preliminary Injunction and Accounting* and criminal case for *Falsification of Public Documents*, against his

son and his sister, the property's caretaker).[13]

In an *Order*[14] dated May 10, 2013, the IBP-CBD, in CBD Case No. 13-3801, ordered Atty. Apuhin to submit his answer to the complaint.

On June 28, 2013, Atty. Apuhin submitted his *Counter-Affidavit*.^[15] In it, he claimed that as a notary public, it was not his task to inquire into the whereabouts of his "clients" and that, insofar as the July 2, 2006 acknowledgement of the *Joint Waiver* was concerned, he merely "[believed] the representation of the parties [that they were] members of the same family" when the *Joint Waiver* was presented to him for notarization.^[16] Atty. Apuhin further avers that he could not remember or memorize the face of all his clients, more so as to whether parties have signed the documents personally.^[17] Finally, he alleges that the *Joint Waiver* "turned out to be x x x harmless" considering that it was only used by Rick Uy to obtain a Building Permit and the ownership of the property had not been transferred.^[18]

On October 9, 2013, the IBP-CBD^[19] directed Uy and Atty. Apuhin to attend the mandatory conference. When the parties failed to appear, the IBP-CBD rescheduled the mandatory conference to December 6, 2013,^[20] and later to December 15, 2013.^[21]

The Report and Recommendation of the IBP-CBD

In a *Report and Recommendation*^[22] dated June 11, 2014 the IBP-CBD recommended that Atty. Apuhin be disqualified from his commission as a notary public for one (1) year and suspended from the practice of law, also for one (1) year,^[23] viz.:

Hence, considering the foregoing, it is respectfully recommended that disbarment proceedings against the herein respondent [Atty. Apuhin] be upheld. Furthermore, it appeared (*sic*) that this is the first time respondent counsel committed said violation and considering that he is in his senior years (records show that he is 62 years of age)[,] it is recommended that the notarial commission of herein respondent be revoked, with the disqualification to be commissioned as notary public for one (1) year and the penalty of suspension from law practice be meted for the same period.

Respectfully submitted.^[24]

As basis for its recommendation, the IBP-CBD found that Atty. Apuhin violated Section 2(b)(1) & (2), Rule IV of the 2004 Rules on Notarial Practice, which in turn provide:

(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.

Accordingly, the IBP-CBD ruled that a notary public should not notarize a document unless the person who signed it is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated in that document.^[25] Thus, without the personal appearance of the person signing the document, the notary public would have no way of verifying the signature of the acknowledging party and of ascertaining that the document is indeed the party's act or deed.^[26]

In Atty. Apuhin's case, the IBP-CBD found that he failed to exercise the due diligence required of a good father of a family in not determining the true identity of the persons who allegedly signed the *Joint Waiver*.^[27] The IBP-CBD likewise observed that, having been a practicing lawyer and a notary public for 35 years, Atty. Apuhin should have known and discerned the import of the documents presented before him (*i.e.*, acts involving the alienation of property).^[28]

Findings of the IBP Board of Governors

On January 6, 2015, the IBP Board of Governors issued a *Resolution* in CBD Case No. 13-3801 and **adopted and approved with modification**, the Report and Recommendation of the IBP-CBD, *viz.*:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding the recommendation to be fully supported by the evidence on record and applicable laws and Respondent's violation of Rule II Section 12^[29] (1) and (2) and Rule IV Section 2^[30] (b)(1) & (2) of the 2004 Rules on Notarial Practice. Thus, [Atty. Apuhin's] notarial commission, if presently commissioned, is immediately REVOKED. Furthermore, he is DISQUALIFIED from being commissioned as a Notary Public for two (2) years and is SUSPENDED from the practice of law for six (6) months.^[31] (Additional emphasis supplied and italics in the original)

Subsequently, in a *Resolution* dated January 26, 2017, the IBP Board of Governors denied Atty. Apuhin's motion for reconsideration,^[32] there being no new reason or argument adduced to reverse the previous findings and decision of the Board of

Governors.^[33]

The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court upholds and adopts the findings and recommendation of the IBP Board of Governors in CBD Case No. 13-3801.

At the outset, it does not escape the Court's attention that on its face, the *Joint Waiver* shows that it was allegedly signed and executed by Uy and his wife on **July 2, 2006**. Mere reference to the record reveals that Uy was in fact in Taiwan — as evinced by a Certification^[34] from the Bureau of Immigration — the day that Atty. Apuhin notarized the *Joint Waiver* in his office in North Cotabato, Philippines.

Suffice it to state that the notarization of a document is vested with substantive public interest.^[35] Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.^[36] Consequently, acknowledgment of a document (*i.e.*, the act of a person who executed a deed, of going before a competent officer to declare the same to be his act or deed)^[37] must be done in accordance with the requirements of the 2004 Rules on Notarial Practice.

Specifically, Section 1, Rule II of the 2004 Rules on Notarial Practice requires that, in the acknowledgment of documents, an individual:

SECTION 1. x x x

- (a) appears in person before the notary public and presents an 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 a particular representative capacity, that he has the authority to sign in that capacity. (Italics and underscoring supplied)

Thus, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed it and personally appeared before him to attest to the contents and truth of what are stated therein.^[38] In fact, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice clearly requires, among others, that: "[a] *person shall not perform a notarial act if the person involved as signatory to the instrument or document x x x is not in the notary's presence personally at the time of the notarization.*"^[39]