

## THIRD DIVISION

[ A.C. No. 10231, August 10, 2016 ]

**OSCAR M. BAYSAC, COMPLAINANT, VS. ATTY. ELOISA M.  
ACERON-PAPA, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

This refers to the Resolution of the Integrated Bar of the Philippines (IBP) Board of Governors dated 13 February 2013 adopting and approving with modification the Report and Recommendation of the Commission on Bar Discipline which found Atty. Eloisa M. Acheron-Papa (respondent) administratively liable for notarizing a fictitious or spurious document. As a consequence, the IBP Board of Governors revoked her commission as notary public and disqualified her from being commissioned as notary public for three years with a stern warning to be more circumspect in her notarial dealings.

#### The Facts

Complainant Oscar M. Baysac (complainant) owns a property with an area of 322 sq. m. covered by Transfer Certificate of Title (TCT) No. T-58159<sup>[1]</sup> and registered with the Registry of Deeds of Trece Martires City. The property was mortgaged by complainant to Spouses Emmanuel and Rizalina Cruz (Spouses Cruz) on December 20, 2000.<sup>[2]</sup> The Deed of Real Estate Mortgage<sup>[3]</sup> was notarized by Atty. Renelie B. Mayuga-Donato on December 20, 2000.

In February 2003, complainant went to the Registry of Deeds of Trece Martires City to get a certified true copy of the certificate of title of the property because the property had a prospective buyer. However, complainant was surprised to find out that TCT No. T-58159 had already been cancelled, and in lieu thereof, TCT No. T-67089<sup>[4]</sup> was issued in favor of Spouses Cruz.<sup>[5]</sup>

After further investigation, complainant found out that the property was transferred in the name of Spouses Cruz pursuant to a Deed of Absolute Sale<sup>[6]</sup> which was allegedly executed on January 13, 2003 for the consideration of P100,000.00.<sup>[7]</sup>

The Deed of Absolute Sale which was allegedly signed by complainant, as the owner of the property, was notarized by respondent on January 13, 2003.<sup>[8]</sup> Complainant, however, vehemently denied having ever signed the Deed of Absolute Sale and having ever appeared before a notary public on January 13, 2003 to acknowledge the same. He claimed that he was in Tanza, Cavite that entire day with Ms. Floerfida A. Angeles (Ms. Angeles) searching for a buyer of the property.<sup>[9]</sup> Complainant further stated that the Deed of Absolute Sale showed that what he allegedly presented to the notary public when he acknowledged having executed the

document was his Community Tax Certificate (CTC) issued on May 26, 2000 or three years prior to the execution of the Deed of Absolute Sale. The same CTC was used for the notarization of the Deed of Real Estate Mortgage on December 20, 2000.<sup>[10]</sup>

To support this allegation, complainant submitted the affidavit<sup>[11]</sup> of Ms. Angeles and Questioned Documents Report No. 515-703<sup>[12]</sup> dated October 8, 2003 issued by the National Bureau of Investigation (NBI).

In her affidavit, Ms. Angeles declared that she was with complainant in Tanza, Cavite from 7:00 in the morning until 10:30 in the evening on January 13, 2003. She further declared that complainant did not execute the Deed of Absolute Sale and did not personally appear before a notary public in Cavite City on January 13, 2003.<sup>[13]</sup>

In the Questioned Documents Report No. 515-703, the NBI confirmed that the signature of complainant in the Deed of Absolute Sale and the signatures in other sample documents which he actually signed were not made by one and the same person.<sup>[14]</sup>

More, a few months after the execution of the Deed of Absolute Sale, and subsequent to the transfer of the title to Spouses Cruz, Atty. Estrella O. Laysa (Atty. Laysa) as counsel for Spouses Cruz, allegedly sent a letter to complainant. The letter demanded him to vacate the property subject of the alleged sale. According to complainant, Atty. Laysa is respondent's partner in Laysa Acheron-Papa Sayarot Law Office. Thus, complainant claimed that respondent's act of improperly notarizing the Deed of Absolute Sale caused him injustice because he was ousted from his property.<sup>[15]</sup>

In view of these circumstances, complainant filed a Complaint; for Disbarment<sup>[16]</sup> dated April 14, 2009 with the IBP Commission on Bar Discipline for violation of Section 1, Rule II of the 2004 Rules on Notarial Practice.

Records show that respondent did not file any answer to the complaint. The Order<sup>[17]</sup> dated April 23, 2009 directing respondent to answer was returned to the Commission on Bar Discipline with a notation "Moved Out, Left No Address."<sup>[18]</sup> During the mandatory conference on August 27, 2009, only the counsel for complainant was present.<sup>[19]</sup> Nevertheless, the Commission on Bar Discipline, in its Order<sup>[20]</sup> dated August 27, 2009, terminated the mandatory conference and directed the parties to submit their verified position papers so as not to delay the early disposition of the case. Despite the Order dated August 27, 2009 being received by respondent as evidenced by the Registry Return Receipt<sup>[21]</sup> signed by a certain Zyra N. Ningas, it was only complainant who filed a position paper.<sup>[22]</sup>

### **Findings and Recommendation of the IBP**

Based on the documents submitted, Investigating Commissioner Atty. Salvador B. Hababag (Atty. Hababag) of the IBP Commission on; Bar Discipline (to whom the case was referred for investigation, report and recommendation) submitted his Report and Recommendation<sup>[23]</sup> dated November 25, 2009. He found respondent administratively liable for notarizing a fictitious or spurious document. Atty. Hababag

also stated; that respondent was notified of the Order dated August 27, 2009 requiring the parties to submit their position papers.<sup>[24]</sup> The order was sent to her new address on September 14, 2009, as evidenced by the Registry Return Receipt signed by Zyra N. Ningas. Despite due notice, respondent failed to submit her position paper, and is therefore deemed to have waived her right to present her position to the case.<sup>[25]</sup> Atty. Hababag recommended that respondent be suspended for two years as notary public.<sup>[26]</sup>

On February 13, 2013, the IBP Board of Governors issued Resolution No. XX-2013-136<sup>[27]</sup> which adopted the findings of the Investigating Commissioner but modified the recommended penalty. Instead of suspension for two years as notary public, the IBP Board of Governors recommended the disqualification of respondent from being commissioned as notary public for three years with a stern warning to be more circumspect in her notarial dealings and that repetition of the same or similar act shall be dealt with more severely.

### **The Court's Ruling**

We affirm the resolution of the IBP Board of Governors finding respondent administratively liable, but we modify the penalty imposed.

We note that the complainant and the IBP Board of Governors cited Section 1, Rule II of the 2004 Rules on Notarial Practice<sup>[28]</sup> as basis for the complained acts of respondent. However, we find Section 1 of Public Act No. 2103,<sup>[29]</sup> otherwise known as the Notarial Law, to be the applicable law at the time the complained acts took place. Nonetheless, as will be seen below, both laws provide for a similar provision on acknowledgment.

Section 1 of Public Act No. 2103 provides:

x x x

(a) **The acknowledgment shall be made before a notary public** or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. **The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed.** The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. (Emphasis added.)

Section 1, Rule II of the 2004 Rules on Notarial Practice emphasizes the requirement of affiant's personal appearance in an acknowledgment:

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 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 that capacity. (Emphasis added.)

In fact, the Acknowledgment in the Deed of Absolute Sale explicitly states:

BEFORE ME, a Notary Public for and in the City of Cavite, this day of 13 JAN [2003] in Cavite City, **personally appeared OSCAR M. BAYSAC x x x who made known to me to be the same person who executed the foregoing instrument and he acknowledged to me that the same is his own free act and voluntary deed.** x x x<sup>[30]</sup> (Emphasis added.)

Based on the foregoing, the party acknowledging the document must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.<sup>[31]</sup> In *Agbulos v. Viray*,<sup>[32]</sup> we held:

To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.

<sup>[33]</sup>

In this case, however, it would have been physically impossible for complainant to appear before respondent and sign the Deed of Absolute Sale on January 13, 2003. On that same day, complainant was with Ms. Angeles in Tanza, Cavite the whole day. Ms. Angeles, in her affidavit, confirmed this fact. Further, the NBI's findings in its Questioned Documents Report show that the signature in the Deed of Absolute Sale was not signed by complainant. These allegations remain unrebutted despite the opportunity given to complainant to do so.

Therefore, the affidavit of Ms. Angeles, and the findings of the NBI prove that respondent violated the Notarial Law when she notarized the Deed of Absolute Sale without the personal appearance of complainant. It was respondent's duty as notary public to require the personal appearance of the person executing the document to enable the former to verify the genuineness of his signature.<sup>[34]</sup> Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be.<sup>[35]</sup>

This Court has consistently held the following principle in a number of cases:

Notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantial public interest, such that only those who