

FIRST DIVISION

[A.C. No. 10450, July 30, 2014]

EMERITA B. MAHILUM, COMPLAINANT, VS. ATTY. SAMUEL SM. LEZAMA, RESPONDENT.

R E S O L U T I O N

REYES, J.:

This administrative complaint^[1] filed by Emerita B. Mahilum (complainant) seeks the disbarment of Atty. Samuel SM. Lezama (respondent), a commissioned notary public and practicing lawyer in San Carlos City, Negros Occidental, for notarizing a 'Deed of Donation' in the absence of one of the affiants.

The complainant averred that on May 24, 2006, the respondent notarized a Deed of Donation executed by her estranged husband, Rodolfo (Rodolfo) Mahilum as donor, and their common daughter, Jennifer Mahilum-Sorenson (Jennifer) as donee, pertaining to the donor's share of one-half portion over a parcel of land covered by Transfer Certificate of Title No. T-71071^[2] of the Registry of Deeds of Bacolod City.

Attached to the complaint is a copy of the deed of donation dated February 7, 2006 bearing the signatures of Rodolfo and Jennifer, as well as the notarial seal and signature of the respondent on the acknowledgment portion attesting to the personal appearance of Rodolfo and Jennifer before him when the same was notarized on May 24, 2006.^[3]

According to the complainant, she has personal knowledge that Jennifer could not have personally appeared before the respondent on May 24, 2006 or even on February 7, 2006 because during those dates, she was in the United States of America (USA) working at the State Fund Office in California.

In his Answer,^[4] the respondent asserted that the donor, donee and instrumental witnesses to the donation were all physically present when the document was signed. He stated that he is personally acquainted with Rodolfo and he had no reason to cast doubts upon him when he introduced his daughter Jennifer who came all the way from the USA to visit her father.

The respondent further averred that the complainant has a long-running feud with Rodolfo and she and some of their common children are using this complaint as part of her personal vendetta against Rodolfo who happens to be friends with the respondent.

The parties were summoned for mandatory conference before the Integrated Bar of the Philippines (IBP), Negros Occidental Chapter, whereby both of them undertook to present documentary evidence showing the actual whereabouts of Jennifer during the dates in question.

The complainant submitted a Certification^[5] from the Bureau of Immigration showing the arrival and departure records of Jennifer in the Philippines. Based thereon, Jennifer did not enter the Philippines in the year 2006. Her travel records closest to that year showed that she arrived in the Philippines on June 25, 2004 but departed a month later or on July 22, 2004. She again arrived in the Philippines on June 24, 2007 and left on July 20, 2007. There were other various dates of her arrival in the country but the records did not reflect that she came to the Philippines in 2006.

Despite opportunity to submit evidence rebutting the foregoing certification, the respondent failed to file any.^[6] The only supporting evidence he proffered were the documents attached to his Answer showing the present marital status of the complainant – that she is actually married to a certain George W. Cooper, a British Canadian; that on July 14, 1986 she filed for the dissolution of her marriage with Rodolfo before the Superior Court of California, County of Orange and the same was granted on October 23, 1986. Likewise attached to his Answer is an Affidavit executed by Rodolfo attesting that Jennifer was physically present when she signed the deed of donation.^[7]

Report and Recommendation of the IBP

In its Resolution transmitted to the IBP national office on March 12, 2009,^[8] the Grievance Committee of IBP Negros Occidental Chapter found that the respondent failed to exercise diligence in ascertaining the identity of the person who appeared before him as donee considering that based on official records, Jennifer never set foot in the Philippine soil at any time in the year 2006. The respondent failed to require competent proof of identification from the parties to the deed of donation as mandated by the Rules on Notarial Practice.

On December 1, 2009, the IBP Committee on Bar Discipline adopted the foregoing findings and accordingly, recommended that the respondent's notarial commission be revoked and that he be prohibited from being commissioned as a Notary Public for a period of two years.^[9]

The IBP Board of Governors adopted the above recommendation in a Resolution^[10] dated May 15, 2011.

The respondent moved for reconsideration^[11] pleading for the modification of the penalty meted upon him on the ground that various factors does not render it commensurate with the offense charged. He stressed that the complainant never became his client neither was she involved in the execution of the deed of donation. There was also no claim whatsoever that Jennifer's signature in the deed of donation was forged or falsified. The respondent, further, asserted that he did not benefit financially from the notarization of the deed of donation and that the same did not cause any damage or injury to the complainant.

The respondent also asserted that there was no need for him to require any proof of identity from Rodolfo since he was personally known to him having been his partner

before the latter retired from law practice.

He appealed for humanitarian consideration and cited that he has been a notary public for 35 years and this is the first administrative case filed against him. He also rendered free notarial services to the members of the local Philippine National Police in San Carlos City as well as the personnel of the Regional Trial Courts and Municipal Courts of Calatrava in Negros Occidental.

In the same motion, the respondent expressed remorse over his negligence and pledged to exercise diligence in discharging his duties as a notary public.

In a Resolution^[12] dated February 11, 2014, the IBP Board of Governors denied the respondent's motion for reconsideration.

Ruling of the Court

The Court agrees with and sustains the IBP's finding that the official record from the Bureau of Immigration showing that Jennifer never traveled to the Philippines in the year 2006 substantially established that indeed she could not have personally appeared before the respondent when he notarized the deed of donation on May 24, 2006. Certainly, the conclusive import of the contents of such certification cannot be overcome by the respondent's mere counter-allegations unsupported by any corroborative proof.

Section 1 of Public Act No. 2103, or the Notarial Law mandates that affiants must personally appear to the notary public, viz:

Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

Corollary, under Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004, a commissioned notary public is enjoined from performing a notarial act unless the affiant is: (1) in his presence at the time of the notarization; **and** (2) personally known to him or otherwise identified by him through competent evidence of identity as defined by these Rules.

The purpose of the rule was emphasized in *Angeles v. Ibañez*,^[13] thus:

The physical presence of the affiants enables the notary public to verify the genuineness of the signatures of the acknowledging parties and to ascertain that the document is the parties' free act and deed.