

SECOND DIVISION

[A.C. No. 6689, August 24, 2011]

RIZALINA L. GEMINA, COMPLAINANT, VS. ATTY. ISIDRO S. MADAMBA, RESPONDENT.

DECISION

BRION, J.:

We review Resolution No. XVIII-2008-101 dated March 6, 2008 of the Board of Governors of the Integrated Bar of the Philippines (*IBP*), dismissing the complaint filed by Rizalina L. Gemina (*complainant*). The complaint charged Atty. Isidro S. Madamba (*respondent*) with deceit, malpractice and gross negligence, and prayed for his suspension/disbarment.^[1]

The complainant alleged that she is an heir of the registered owner of several parcels of land located in Laoag City.^[2] These parcels of land were unlawfully sold by Francisco Eugenio in connivance with the respondent. The documents pertaining to the transactions over these lands were notarized by the respondent either without the presence of the affiants or with their forged signatures. The documents the complainant referred to were:

1. Waiver of Rights & Interest
2. Affidavit of Buyer/Transferee
3. Deed of Adjudication^[3] & Sale
4. Affidavit of Non-Tenancy
5. Deed of Absolute Sale

The complainant alleged that the Waiver of Rights and Interests was submitted by Eugenio to the Department of Agrarian Reform. This document shows that it was entered in the respondent's Notarial Register as Doc. No. 2283, Page No. 252, Book No. VIII, Series of 2003. However, when she went to the Office of the Clerk of Court (*OCC*), Regional Trial Court, Isabela, to request for a copy, she found out that Doc. No. 2283, Page No. 252, Book No. VIII, Series of 2003 was an Affidavit of Buyer/Transferee allegedly executed by the Spouses Efren Alonzo and Imelda Alonzo on September 29, 2003. In the column "REMARKS" of Document No. 2283, the word cancelled was written, but no reason was given for the cancellation, nor was a copy of the alleged cancelled document in the records. The same Affidavit of Buyer/Transferee was also entered in the respondent's Notarial Register as Doc. No. 2285, Page No. 253, Book No. VIII, Series of 2003. The complainant submitted a Certification dated May 3, 2004 issued by Clerk of Court Artemio H. Quidilla, Jr., that a certified true copy of Doc. No. 2283, Page No. 252, Book No. VIII, Series of 2003 cannot be issued because the respondent did not submit notarial reports for the years 2003 and 2004, although he was commissioned as a Notary Public for these years.^[4]

The complainant also asked for a certified true copy of a Deed of Adjudication and Sale allegedly executed by Eugenio and the other heirs, and notarized by the respondent on July 22, 2003. The instrument shows that this document was entered in the respondent's Notarial Register as Doc. No. 2263, Page No. 248, Book No. VIII, Series of 2003, but no copy was submitted to the OCC. In the column "REMARKS," the words "without copy" appeared, without stating the reason for the absence of a copy. Clerk of Court Quidilla issued a Certification dated June 21, 2004 that indeed, no copy was submitted.^[5]

In another unlawful sale of a parcel of land, an Affidavit of Non-Tenancy was notarized by the respondent. It was entered in his Notarial Register as Doc. No. 2448, Page No. 276, Book No. VIII, Series of 2004. The affidavit referred to a Deed of Sale involving a 2,500-square meter property. The Deed of Sale was notarized by the respondent on November 14, 2002 and entered in his Notarial Register as Doc. No. 2212, Page No. 239, Book No. VIII, Series of 2002. To verify the authenticity of the Deed of Sale, the complainant tried to secure a copy but she discovered that no such Deed of Sale existed. In fact, a different document corresponds to Doc. No. 2212, Page No. 239, Book No. VIII, Series of 2002. It refers to an Affidavit of Discrepancy, instead of a Deed of Sale. On the column "REMARKS," the word "cancelled" appeared without indicating the reason for the cancellation. This was confirmed by Clerk of Court Quidilla in his 1st Indorsement dated July 16, 2004, stating that "Doc. No. 2212, Series of 2002 pertains to an Affidavit of Discrepancy executed by Joseph Lim Clemente on November 15, 2002."^[6]

In his Comments and Compliance dated August 29, 2006,^[7] the respondent admitted the complainant's allegations on the notarization of the subject documents, but denied any participation in the sale and transfer of the lands covered by the documents. He claimed that it was his secretary who prepared and drafted the documents. He claimed that his only participation was to affix his signature on the documents; he was already 82 years old and insulin dependent, so he had no more time to prepare documents and enter documents in his notarial register. He begged for leniency and consideration from the Court, and asked for forgiveness for his inadvertent acts. He apologized and committed himself not to repeat these misdeeds.

In a resolution dated November 29, 2006, we referred the complaint to the IBP for investigation, report and recommendation.^[8]

In the position paper she submitted to the IBP, the complainant reiterated her charges against the respondent, further stating that as a member of the Philippine Bar, the respondent allowed himself to be used as a Notary Public to illegally enable third parties to claim rights over properties to which the complainant has hereditary rights. By notarizing documents through false representations, without the signatories personally present before him as required under the Notarial Law, the respondent should be held guilty of dishonesty and conduct unbecoming of a member of the Philippine Bar.^[9]

The respondent likewise reiterated in his position paper^[10] his explanations

contained in his comment submitted to this Court -

Respondent does not deny having affix[ed] his signatures in the subject documents but he was never a participant in the alleged unlawful sale. His participation is limited to the affixing [of] his signature in the subject documents. The alleged manipulation was committed by her [sic] clerk[-]secretary who enjoyed his trust and confidence having been in said position for almost two decades. Said clerk-secretary is responsible for the preparation and entry of the documents in the Notarial Book. As such, he has all the chance to do [the] things he wanted to do, which of course respondent has no least suspicion to suspect him to do illegal and unlawful acts to his Notarial Register.

When respondent was still strong, he personally prepare [sic] document and personally do [sic] the entry of his Notarial Documents in his Notarial Book, but in the early [year] of 1999, his sickness was aggravated and he became insulin dependent. This necessarily weakens his body and eyesight. And so he has no choice except to trust said secretary-clerk for the preparation and entry of notarial documents in his notarial register.

On February 12, 2008, Commissioner Rebecca Villanueva-Maala submitted to the IBP Board of Governors her Report and Recommendation,^[11] recommending the dismissal of the complaint for lack of merit, finding that:

In her Complaint, complainant alleged that she is an heir of a registered owner of some parcels of land in Laoag City. However, no documentary evidence was presented to support the same. She insisted that respondent notarized documents without the appearance before him of the persons who executed the same, but no clear and sufficient evidence was also presented.

Rule 130, Section 14 of the Rules of Court provides that "Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated." In the herein case, although complainant made it appear that she has evidence to prove that there was anomaly in the notarization of the subject documents, she failed to present the same.

An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved and that as an officer of the court he has performed his duties in accordance with his oath (*Acosta v. Serrano*, 75 SCRA 254; *Atienza v. Evangelista*, 80 SCRA 338). The burden of proof rests upon the complainant to overcome the presumption and establish his charges by a clear preponderance of evidence (*Baldoman v. Luspo*, 64 SCRA 74; *In re De Guzman*, 55 SCRA 139).

The IBP Board of Governors, in its Resolution No. XVIII-2008-101 dated March 6,

2008 adopted and approved Commissioner Maala's Report and Recommendation, and dismissed the complaint against the respondent for lack of merit.^[12]

We totally disagree with the findings of Commissioner Maala for the following reasons: *First*, the IBP cannot inquire into whether the complainant is an heir of the registered owner of the land. It is not within its authority to determine whether the complainant has a legal right to the properties involved in the transactions and to require her to submit proof to that effect. Its function is limited to disciplining lawyers, and it cannot determine issues of law and facts regarding the parties' legal rights to a dispute. *Second*, from the respondent's own admissions, it cannot be doubted that he is guilty of the charges against him. His admissions show that he had notarized documents without reading them and without ascertaining what the documents purported to be. He had completely entrusted to his secretary the keeping and the maintenance of his Notarial Register. This eventually resulted in inaccuracies in the entry of the notarial acts in his Notarial Register.

The excerpts from the transcript of stenographic notes taken during the hearing held on November 12, 2007, presided by IBP Commissioner Oliver L. Pantaleon,^[13] show:

MR. GEMINA:

Your Honor, itong Affidavit of Discrepancy is not an Affidavit of Discrepancy. Minamanipulate niya yong ano... This is a Deed of Sale. Pinalitan niya yong ano, eh, document number. This is a Deed of Sale pertaining to the property... Noong sinita na namin siya pinalitan naniya, the same number pero iba na ang pangalan. Affidavit of Discrepancy na ang pinalabas. The same document number, page 3, number 8. And we were able to get a copy of these documents.

COMM. PANTALEON:

You can submit that also.

ATTY. MADAMBA:

That is really true, Your Honor, because I have said I am not the one anymore preparing my reports on notarial. I relied on my secretary. So everything there will present to me and I sign it believing that all are clear.

COMM. PANTALEON:

So you admit that particular allegation.

ATTY. MADAMBA:

Yes, that I have notarized that two documents.

MR. GEMINA: