

SECOND DIVISION

[A.C. No. 4370, May 25, 2004]

DOUGLAS G. ZABALLERO, COMPLAINANT, VS. ATTY. MARIO J. MONTALVAN, RESPONDENT.

D E C I S I O N

TINGA, J.:

Because of the credence which all civilized nations attach to the attestation and authentication of notaries to facilitate commercial intercourse,^[1] faithful observance and utmost respect for its legal solemnities [are] sacrosanct and, failing therein, one must bear commensurate consequences.^[2]

On January 17, 1995, the Bar Confidant received a verified *Complaint* from Douglas G. Zaballero praying for the disbarment of Atty. Mario J. Montalvan, Notary Public for the City of Oroquieta, for alleged negligence and incompetence in notarizing documents. ^[3]

Complainant alleges that respondent notarized three (3) documents sometime from 1989 to 1992, purportedly executed, either as a vendor or a donor, by complainant's father Eulalio Zaballero. These documents are: a *Deed Confirming a Previous Verbal Donation of Land* dated November 6, 1989 and notarized on November 10, 1989 with Quirino Zaballero as donee; a *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991 and notarized on June 9, 1992 in favor of Luis Zaballero, as vendee; and a *Deed of Absolute Sale of a Portion of Land* dated February 26, 1990 notarized on February 26, 1990 with James Zaballero, as vendee. Complainant faults respondent for notarizing said documents despite the fact that they were falsified.

According to complainant, the residence certificates of Eulalio Zaballero were fake. Residence Certificate No. 13994501 dated April 18, 1989, which was used in the *Deed Confirming a Previous Verbal Donation of Land* dated November 6, 1989, was not personally secured by him. Also, the supposed date of issuance on February 8, 1990 of Residence Certificate No. 15648548 which was used in the *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991, was a Saturday. Residence Certificate No. 15648548 issued on February 8, 1989, used in the *Deed Confirming a Previous Verbal Donation of Land* dated November 6, 1989 could not have been obtained by complainant's father because he was then confined at the Cebu Doctors Hospital, where he stayed until February 10, 1989.

The complainant further asserts Eulalio Zaballero could not have appeared before respondent because he was already very sick and suffering from a serious eye defect. More significantly, he died on May 31, 1992; hence, he could not have appeared to acknowledge the *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991 on June 9, 1992. Finally, the defects and

superimpositions are evident.

In his *Comment*, respondent claims that he had nothing to do with the issuance of Eulalio Zaballero's residence certificate. The personnel from the City Treasurer's Office are the ones tasked and responsible therefor. Moreover, complainant's mere allegation that Eulalio Zaballero did not personally secure his residence certificates cannot overcome the presumption of regularity of its issuance, respondent avers.

According to respondent, Eulalio Zaballero, accompanied by one whom the respondent believed to be Eulalio's son, appeared before him on October 17, 1991. Eulalio showed him a prepared document captioned *Deed of Confirmation of Previous Verbal Sale of Land* for notarization. Other than the space allotted for the residence certificate, the document was complete. It was duly signed and acknowledged by Eulalio's to be his free and voluntary act. When respondent asked for Eulalio's residence certificate, he failed to present one. Eulalio said that he would just go to the City Hall and procure a residence certificate. He never returned.

Approximately eight (8) months later, on June 9, 1992, a representative of Eulalio Zaballero, accompanied by one whom respondent believed to be his son, appeared before him. They showed respondent the document brought by Eulalio Zaballero on October 17, 1991, still unnotarized. Knowing that it was the same document, respondent notarized it. No one informed respondent that Eulalio Zaballero had already passed away. Otherwise, respondent alleges, he would not have notarized the subject document.

Respondent expresses deep regrets and sadness about the incident. Claiming that he was misled, he stresses that Eulalio Zaballero acknowledged his signature and voluntarily executed the document on October 17, 1991, but it was not notarized on said date because he did not have his residence certificate. Seeking compassion and understanding for his conduct, respondent blames it on his alleged busy workload as he notarized twenty-three (23) other documents on that day.

On May 29, 1995, the Court issued a resolution referring the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation within ninety (90) days from notice. After eight (8) years and a series of resolutions from the Court addressed to the IBP, the last of which is dated July 9, 2003, the latter finally submitted its report on July 24, 2003.

IBP Investigating Commissioner Manuel A. Tiuseco (Tiuseco) found that respondent failed to comply with his calling as a lawyer and a notary public and recommended that he be suspended for a period of three months.

On June 21, 2003, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner, but modified the recommended penalty, as follows:

[W]ith modification as to penalty to conform to evidence, and considering that the respondent has not been true to his calling as a lawyer and notary public by taking lightly his duty and obligation in giving effect to public documents that need[s] his participation as notary public thereby causing harm and injury to complainant, Atty. Mario J. Montalvan's Commission as Notary Public is hereby REVOKED and he is hereby