

FIRST DIVISION

[AC. No. 3849, June 25, 2003]

FELICIDAD VDA. DE BERNARDO, COMPLAINANT, VS. ATTY. JOSE R. RESTAURO, RESPONDENT.

R E S O L U T I O N

AZCUNA, J.:

Complainant Felicidad Vda. de Bernardo (married to the late Alberto Bernardo) and Marcelino G. Soriano (married to Hildegarda Mejia) were co-owners of a parcel of land, with an area of 561 square meters, situated in Davao City, and covered by TCT No. T-39100.^[1]

On June 8, 1992, complainant filed a petition for the disbarment or indefinite suspension of respondent Atty. Jose R. Restauro of Davao City for malpractice, deceit and grave misconduct.

Complainant averred that on July 19, 1990, respondent prepared and notarized a Special Power of Attorney^[2] making it appear that she, Felicidad G. Soriano (complainant's full maiden name), her deceased spouse, Alberto Bernardo and Hildegarda Mejia appointed Marcelino G. Soriano, Jr. as their attorney-in-fact to sell a parcel of land situated in Davao City covered by TCT No. T-39100 when they neither appeared nor executed and acknowledged said document before respondent. The Special Power of Attorney was entered in the Notarial Register of respondent as Doc. No. 380, Page No. 76, Book No. XIX, Series of 1990.

Complainant further alleged that her husband, Alberto Bernardo, could not have appeared and executed said Special Power of Attorney before respondent on July 19, 1990 since her husband died on January 30, 1980 at the Pangasinan Medical Center, as evidenced by a death certificate.^[3] Hence, when the Special Power of Attorney was executed, her husband was dead for more than ten years.

Complainant also alleged that to recover her share of the property which was sold to a third party, she hired the services of her counsel whom she promised to pay 25 percent (on a contingent basis) of the value of her share.

Complainant prayed that respondent be disbarred or indefinitely suspended, and that he be ordered to pay the value of her *pro indiviso* half share of said property, the attorney's fees and the costs of the suit.

In his Answer, respondent asserted that he would not have known the names of Felicidad Soriano, Alberto Bernardo and Hildegarda Mejia if said persons did not go to his office to request that he prepare the Special Power of Attorney. Moreover, he stated that he would not have notarized the document if they did not appear before him and acknowledge that it was their act and deed. He also mentioned that said

persons brought with them the title (TCT No. T-39100) to the property.

Respondent further averred that a living Alberto Bernardo appeared before him in Davao City and signed the Special Power of Attorney at the time of its execution. He also stated that Pangasinan and Davao City are far apart; hence, events happening in either places (alluding to the death of complainant's husband, Alberto Bernardo) are not always known to everybody. Atty. Restauro prayed for the dismissal of the complaint.

On September 14, 1992, this case was referred by the Court to the Integrated Bar of the Philippines for investigation, report and recommendation.

The Investigating Commissioner set the case for hearing on November 16, 1993. During the hearing, only complainant and her counsel were present. Complainant testified and identified the documents mentioned in her Complaint. Thereafter, she submitted a Formal Offer of Evidence dated November 19, 1993.

On November 18, 1993, the Commissioner received from respondent a Manifestation dated November 9, 1993 stating that he could not attend the hearing set on November 16, 1993 due to previous commitments and that if the hearing could not be postponed to a later date, he was waiving his right to attend it.

In his Comments/Objections on Complainant's Formal Offer of Evidence, respondent stated that he acted in good faith when he prepared the Special Power of Attorney and that the persons involved were all present, otherwise, the execution of said document would not have been possible. He prayed for the non-admission of the evidence submitted by complainant.

As directed by the Commissioner, complainant filed a Memorandum. But respondent did not.

In her Memorandum, complainant stated that whoever appeared before respondent at the time of the execution of the Special Power of Attorney and claimed to be her, Felicidad G. Soriano, and her deceased husband, Alberto Bernardo, were impostors. According to complainant, respondent could have been in good faith when the supposed Alberto Bernardo went to his office for the first time for the preparation and notarization of the Special Power of Attorney. Nevertheless, after complainant, through her counsel, had informed respondent on May 6, 1992 (nearly 2 years after the execution of said Special Power of Attorney) that the persons who appeared before him were impostors, respondent was already in bad faith for not contacting said persons and for not retracting the unauthorized Special Power of Attorney.

In her report, the Investigating Commissioner found that it was not satisfactorily established that respondent was a party to the fraudulent execution of said Special Power of Attorney. Respondent's participation was only in the preparation and notarization of said document based on the parties' identification papers and their representations that they were the persons who they claimed to be. The notarial acknowledgment of said document showed that the alleged impostors presented their Community Tax Certificates bearing the names of complainant Felicidad G. Soriano and her deceased husband, Alberto Bernardo.

The Investigating Commissioner also stated, thus: