

## **SECOND DIVISION**

**[ A.C. No. 3677, June 21, 2000 ]**

**DANILO M. CONCEPCION, COMPLAINANT, VS. ATTY. DANIEL P. FANDIÑO, JR., RESPONDENT.**

### **D E C I S I O N**

**MENDOZA, J.:**

This is a complaint for disbarment filed against respondent Atty. Daniel P. Fandiño, Jr. for gross misconduct, deceit and malpractice for having allegedly notarized several documents without having been appointed or commissioned as notary public. The complaint alleges:

1. Petitioner is of legal age, single, with residence and postal address at Barangay Bantayan, Calamba, Laguna, while defendant is a member of the Philippine Bar, married, with office address at R-305 A. Lina Building, Crossing, Calamba, Laguna where it (sic) may be served with summons and other processes of this Honorable Tribunal;
2. On October, 1989 in Calamba, Laguna, without being appointed nor commissioned as Notary Public the defendant signed and entered his name as notary public in a Deed of Absolute Sale purportedly executed by one Damian Piamonte in favor of Tomahawk Development Corporation over a lot in Barangay Makiling, Calamba, Laguna for a consideration of P3,048,045.00 and allegedly entered the same in a non-existing Notarial Book as Doc. No. 483, Page No. 97, Book No. 7, Series of 1989, copy of the Deed of Absolute Sale is hereto attached as Annex "A" and the signature of the defendant as Annex "A-1", the certification by the Clerk of Court of Binan, Laguna dated March 29, 1990 that the defendant was not appointed as Notary Public in the Province of Laguna for the year 1989 as Annex "B";
3. In the foregoing transaction of the sale of a lot in Bo. Makiling, Calamba, Laguna where herein parties were authorized to negotiate its sale at 5% commission, defendant did not pay the plaintiff the sum of P157,572.00 as his share resulting in the filing of a suit for a sum of money by the herein plaintiff against the defendant before the Regional Trial Court of Calamba, Laguna and a criminal suit for Usurpation of Official Function of a Notary Public, a copy of the complaints both criminal and civil are hereto attached marked as Annexes "C" and "D";
4. Likewise, on December 10, 1987, the defendant signed and entered his name as Notary Public in Calamba, Laguna on a Deed of Absolute Sale for P2,800,000.00 of a lot in Calamba, Laguna again without being appointed nor commissioned as such as shown by the certification of the 4th Judicial Region, Office of the Clerk of Court, Calamba, Laguna dated

June 5, 1991 that the defendant had not been appointed nor commissioned as Notary Public by the Court for the years 1985, 1986, 1987, and 1988 is hereto attached as Annex "E" and the Deed of Sale as Annex "D", respectively, including the signature of the defendant as Annex "D-1";

5. Pursuant to Rule 138 of the Rules of Court the defendant may be removed from his office by this Honorable Tribunal for any deceit, malpractice or other gross misconduct of which the foregoing facts are tenable as within the ambit of deceit, malpractice and gross misconduct intended by the Rules of Court against erring members of the Philippine Bar.

WHEREFORE, it is prayed of this Honorable Tribunal that the defendant be REMOVED from his office as member of the Philippine Bar.<sup>[1]</sup>

Photocopies of the documents allegedly notarized by respondent are attached to the complaint.

In his comment, respondent denies that he ever notarized the documents in question and alleges that the complaint was made merely to pressure him to give P100,000.00 to complainant as commission for certain real estate transactions. According to respondent, complainant in fact filed criminal and civil suits against him based on the same allegations made in this case. The criminal complaint was dismissed by the prosecutor for lack of probable cause, while in the civil case, a demurrer to evidence has been filed. Respondent alleges:

a) Respondent was accused of having notarized the alleged deed of sale dated October 1989, and in support thereof an alleged xerox copy was attached to the Complaint. In the civil and criminal complaint filed against Respondent, Complainant was asked to produce authentic copy of that Deed of Sale because Respondent cannot recall having notarized such a document. His only participation in that transaction was to refer the brokering of the sale of land to Mr. Rodolfo Tingzon. If ever there exists seemingly authentic copy of said deed, then that is a falsification made by Complainant.

The alleged deed was never registered. And neither the seller nor the buyer ever produced the alleged document. It cannot be basis for a complaint. The document is not admissible in evidence being mere xerox copy . . . .

He must have falsified the alleged signature of respondent or must have caused its falsification. The evidence on record is not credible but most importantly, it proceeded from a non-credible witness . . . .

The act of Complainant in filing one case after another, for the same alleged act, in different fora, and failing to prove the charge is forum shopping, and is considered malpractice and condemnable and should not be tolerated . . . .

b) Respondent was likewise charged for allegedly having notarized a Deed of Sale on December 15, 1987. He could not have notarized the said deed. His services professional or business, have never been secured by the seller, nor by the buyers. He has never transacted any business with them in any capacity, as a lawyer or a private person, and so he could not have served them by notarizing the questioned document.

What is intriguing is that why did Complainant know this transaction and document? Could he again abuse the trust of Respondent by falsifying his signature or having it signed surreptitiously in Respondent's unguarded moments? Why did he come out only now, almost four years after the execution of the alleged document? . . .

The motive of complainant, no doubt, is to harass, embarrass and blackmail Respondent. Lawyers falling under this trap of unscrupulous and depraved person deserve the protection of the Court.<sup>[2]</sup>

This matter was referred to the Integrated Bar of the Philippines for investigation, report and recommendation. On November 5, 1998, the IBP Board of Governors passed a resolution adopting the report and recommendation of the investigating commissioner that the complaint be dismissed for lack of merit. The report of Investigating Commissioner Milagros V. San Juan, states in pertinent parts:

The records of the case show that the controversy between the parties was an off shoot of a sale of a piece of property where the complainant received a commission which he believes to be insufficient.

In his original complaint petitioner attached a copy of Deed of Sale executed by Damian Piamonte which was allegedly notarized by the respondent, together with a certification from the Clerk of Court with the Regional Trial Court of Laguna to the effect that Atty. Daniel P. Fandino, Jr. of Calamba Laguna has not applied nor was appointed as Notary Public of the Province of Laguna.

The issue to be resolved in this case is whether or not the respondent is guilty of malpractice and gross misconduct which makes him unfit as member of the Philippine Bar.

A study of the document on which the complaint is anchored shows that the photocopy is not a certified true copy neither was it testified on by any witness who is in a position to establish the authenticity of the document. Neither was the source of the document shown for the participation of the complainant in its execution. The certification issued by the Regional Trial Court clearly states that a certified true copy of alleged Deed of Sale dated October 1989 and two (2) alleged Special Power of Attorney dated July 1989 can not be issued by said office. This fact gives rise to the query, where did these documents come from, considering also the fact that respondent vehemently denied having anything to do with it. It is worthy to note that the parties who allegedly executed said Deed of Sale are silent regarding the incident.

To warrant disciplinary action to be meted out to the respondent, the