

EN BANC

[A.C. No. 4758, April 30, 1999]

**VICTOR NUNGA, COMPLAINANT, VS. ATTY. VENANCIO VIRAY,
RESPONDENT.**

RESOLUTION

DAVIDE, JR., C.J.:

In his complaint, Victor Nunga seeks the disbarment of respondent Venancio Viray on the ground of grave misconduct for notarizing documents without a commission to do so. After issues were joined, the Integrated Bar of the Philippines conducted an investigation.

The Investigating Commissioner was Atty. Lydia A. Navarro. Report dated 4 August 1998 reads as follows:

Victor D. Nunga, president of the Masantol Rural Bank filed a complaint for disbarment against Atty. Venancio M. Viray on the ground of gross and serious misconduct for notarizing documents when he was not commissioned to do so at the time the said documents were executed.

Complainant alleged that in May 1996, he was appointed by the board of directors of Masantol Rural Bank after his father's resignation as its president.

A few month[] thereafter, he allegedly discovered that one of the bank's assets consisting of 250 square meters house and lot in Kalookan City was sold without proper bidding by its manager Jesus B. Manansala to Jesus Carlo Gerard M. Viray, a minor born February 2, 1969 during the transaction on May 22, 1987. The deed of absolute sale was notarized by the respondent who is not only the father of the buyer minor but also a stockholder and legal counsel of the vendor bank and was not duly commissioned as notary public as of that date.

Complainant further alleged that the said minor vendee wasn't capable to buy the said property at its value of FOUR HUNDRED THOUSAND PESOS (P400,000.00) but his parents Atty. and Mrs. Venancio Viray, respondent herein [*sic*]. Being a minor he must [have been] represented by a guardian in the said transaction. After the title was allegedly issued in the name of the minor vendee Jesus Carlo [M.] Viray, the same title was allegedly used by Respondent and his wife in mortgaging the property to Crown Savings and Loan Association for THREE HUNDRED THOUSAND PESOS (P300,000.00) on July 15, 1991 both by virtue of Special Powers of Attorney annotated at the back of the TCT No. 362813 PR 9907. The annotation of the cancellation of the THREE HUNDRED THOUSAND PESOS (P300,000.00) loan in ... favor of Crown Savings and Loan Association

under entry number 1226 was allegedly entered in the notarial registry of the Respondent for 1991 when he wasn't commissioned as notary public.

The aforesaid acts of Respondent allegedly constitute not only unprofessional and unethical misconduct unbecoming of a lawyer but also gross and serious malpractice which justifies disbarment.

Respondent for his part alleged in his comment that complainant holds no position at the Masantol Rural Bank Inc. [i]n 1987 and 1997, but is facing criminal charges for having plundered the said bank of millions of pesos and [for] trespass to dwelling; while his father is facing a case before the Securities and Exchange Commission. The sale of the lot by the Masantol Rural Bank Inc. to his son was allegedly done in good faith all the formalities required by law [were] properly complied with and the complaint from all indications is a leverage in persuading him into a possible compromise.

From 1965 to date Respondent alleged that he was always commissioned as notary public and the fact that Pampanga is under several feet of floodwaters, he could not annex all the needed documents to support the allegations. According to Respondent, there was no year in his practice of law that he was not commissioned as notary public. In fact, in the alleged documents he had PTR for that purpose [, and] he would not [have obtained] a commission without the PTR.

After going over the records of this case, the Undersigned noted that although both parties were required to submit their respective memorand[a], only complainant complied with the order.

Complainant submitted certification and the respective orders of the Clerk of Court and presiding judges ... in support of his contention, and previous certification issued by the Clerk of Court of Pampanga to the effect that Respondent Atty. Venancio Viray had been commissioned to act as notary public for the said province on January 2, 1981 to December 31, 1982; January 10, 1983 to December 31, 1984; and January 8, 1995 to December 31, 1996 and had no record of any notarial reports. These therefore negate respondent's allegation that he [has been] commissioned as notary public since 1965 to the present.

Complainant likewise submitted a copy of the Resolution which dismissed the cases filed against the Complainant and his father and the xerox copy of the TCT No. 362813 PR 9907 where the special power of attorney and the annotations for the cancellation of mortgage showed inscription of the same in the notarial register of Venancio Viray on June 4, 1991. Nowhere from the records and evidence[] submitted was there any proof that Respondent was commissioned as notary public in 1987 and 1991, the years the Absolute Deed of Sale was notarized by Respondent as appearing to be May 22, 1987 and the inscription for cancellation of mortgage on the dorsal side of TCT 362813 as June 4, 1991 [sic].

The respondent's contention that he had a PTR for all the documents he prepared is only an indication that the Professional Tax Receipt is a