



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES RAY AND MARCELINA
ZIALCITA,

A.C. No. 7169

Complainants,

Present:

- versus -

PERALTA, J., *Chairperson*,
LEONEN,
REYES, A., JR.,
HERNANDO, and
CARANDANG,* JJ.

Promulgated:

ATTY. ALLAN LATRAS,

Respondent.

March 11, 2019

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Wilfredo V. Laditan

RESOLUTION

PERALTA, J.:

The case stemmed from an administrative complaint¹ for disbarment filed by spouses Ray and Marcelina Zialcita against Atty. Allan Latras for violation of the notarial law.

The spouses obtained a loan from a certain Ester Servacio to aid in the construction of their commercial building. As security for the loan, a Deed of Sale with Right to Repurchase, for a period of one year, over a commercial land and building, was executed by the spouses in favor of Servacio in the amount of ₱11 Million. The spouses alleged that Servacio and Atty. Latras fraudulently substituted the first page of the Deed of Sale with Right to Repurchase with a Deed of Absolute Sale for ₱2 Million. Furthermore, the spouses contended that Atty. Latras acted as legal counsel and notary public for Servacio, and notarized the deed of absolute sale without their knowledge and appearance in his office.

* Designated as additional member per Special Order No. 2624 dated November 28, 2018.
¹ Rollo, pp. 1-10.

OK

In his Comment, Atty. Latras denied having substituted the first page of the notarized document. He contended that the burden to prove the allegation of such fraud rests upon the complainants. To bolster his defense, he added that it was one of the spouses, Ray Zialcita, who asked for the dispensation of their appearance. He further contended that as long as there was the affirmation as to the contents and truth of what are stated in the document, then such notarization may be considered as substantial compliance with the requirements under the notarial law.

On July 19, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) found that insofar as the violation of the notarial law by Atty. Latras is concerned, there is no doubt that he did not act in accordance with the law. The Commission agreed with the spouses that the notarial act must be done in the presence of the parties personally appearing.

However, the complainants failed to show that Atty. Latras acted fraudulently nor was with connivance with anyone in notarizing the document; hence, the Commission recommended that mere reprimand is sufficient.²

On September 27, 2014, a Resolution³ was passed by the IBP Board of Governors which reads:

RESOLVED to *ADOPT* and *APPROVE*, as it is hereby *ADOPTED* and *APPROVED*, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for violation of the 2004 Rules of Notarial Practice, Atty. Allan Latras' notarial commission if presently commissioned is immediately *REVOKED*.

FURTHER, he is ***DISQUALIFIED*** from being commissioned as Notary Public for two (2) years and ***SUSPENDED*** from the practice of law for six (6) months. (Emphases and italics supplied.)

Atty. Latras moved for reconsideration of the above resolution, but the same was denied.

The Court's Ruling

The Court upholds the findings and recommendation of the IBP Board of Governors.

² *Id.* at 332-335; Report and Recommendation submitted by Commissioner Maria Editha A. Go-Binas.

³ *Id.* at 331.

The 2004 Rules on Notarial Practice emphasizes the necessity of the parties to personally appear before the notary public. Rule II, Section 1 and Rule IV, Section 2 (b) provide:

SECTION 1. Acknowledgment. - "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an integrally complete instrument or document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

x x x x

SEC. 2. Prohibitions. — x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) **is not in the notary's presence personally at the time of the notarization;** and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. (Emphasis supplied.)

In the instant case, it is undisputed that Atty. Latras notarized the subject document without the personal appearance of the spouses. In fact, in his Comment,⁴ he admitted that he indeed notarized the deed. Atty. Latras, however, reasoned out that he only followed the instruction of Ray Zialcita to notarize the same without their presence and that he merely relied on the alleged assurance of the spouses that they would be present on that weekend.

Atty. Latras' contention that there has been substantial compliance with the notarial law holds no water. It is of no moment that he talked with the spouses over the phone and that, through the presence of witnesses, he was able to verify that the signatures in the said document were those of the spouses. This Court has repeatedly stressed in a number of cases the requirement for the parties to personally appear before the notary public in the notarization of documents. The purpose of the requirement of personal

⁴ *Id.* at 38-55.



appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former.⁵

Thus, in *Agagon v. Bustamante*,⁶ the Court explained that notarization of documents is not an empty, meaningless or routinary act:

It cannot be overemphasized that notarization of documents is not an empty, meaningless or routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.⁷

Clearly, Atty. Latras failed to exercise the due diligence required of him as a notary public when he notarized the document without the spouses personally appearing before him.

As regards the alleged conspiracy of Atty. Latras and Servacio to substitute the first page of the deed, it is elementary that in administrative complaints for disbarment and suspension against lawyers, the required quantum of proof is clear and preponderant evidence.⁸ In this case, however, the complainants failed to present any evidence to substantiate their claim of forgery and fraud on the part of Atty. Latras. Hence, the same shall fail.

In *Gonzales v. Bañares*,⁹ the respondent lawyer was meted a penalty of revocation of notarial commission and suspension from the practice of law for six (6) months. The Court held the respondent lawyer administratively liable for notarizing the subject deed of sale without the affiant personally appearing before him. In *Orola v. Baribar*,¹⁰ the Court deemed it proper to impose the penalty of suspension from the practice of law for one (1) year, revocation of incumbent commission as a notary public, and disqualification from being commissioned as a notary public for a period of two (2) years.

⁵ *Orola, et al. v. Baribar*, A.C. No. 6927, March 14, 2018.

⁶ 565 Phil. 581 (2007).

⁷ *Id.* at 587.

⁸ *Cruz v. Atty. Centron*, 484 Phil. 671 (2004).

⁹ A.C. No. 11396, June 20, 2018.

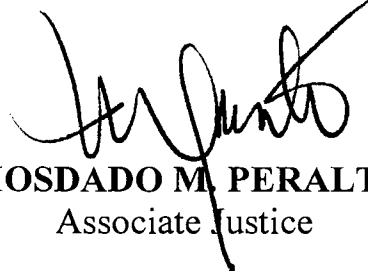
¹⁰ *Supra* note 5.

In line with the foregoing principles, the Court finds Atty. Latras administratively liable for notarizing the subject document without the spouses personally appearing before him. He cannot avoid responsibility by pointing out that he merely complied with the instruction of the complainants to notarize the document without their presence.


WHEREFORE, in view of the foregoing, the Court **SUSPENDS** Atty. Allan Latras from the practice of law for six (6) months, **REVOKES** his notarial commission, if presently commissioned, and **DISQUALIFIES** him from being commissioned as a notary public for a period of two (2) years, all effective upon receipt of this Resolution. The Court further **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Resolution be included in the personal records of Atty. Allan Latras and entered in his file in the Office of the Bar Confidant. Further, let copies of this Resolution be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines, for their information and guidance.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

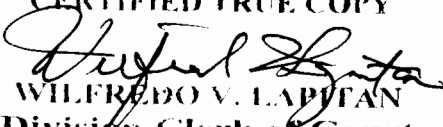
WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice


ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSALARI D. CARANDANG
Associate Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
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