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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 10783. October 14, 2015]

ATTY. BENIGNO T. BARTOLOME, *complainant*, *vs*. **ATTY. CHRISTOPHER A. BASILIO,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; MUST OBSERVE THE HIGHEST DEGREE OF CARE IN COMPLYING WITH THE BASIC REQUIREMENTS IN THE PERFORMANCE OF DUTIES IN ORDER TO PRESERVE THE CONFIDENCE IN THE INTEGRITY OF THE NOTARIAL SYSTEM.— The act of notarization is impressed with public interest. As such, a notary public must observe the highest degree of care in complying with the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system. In the present case, Basilio, as duly found by the IBP, failed to faithfully comply with his duties as a notary public.

2. ID.; NOTARIAL RULES; NOTARIAL CERTIFICATE, DEFINED; *JURAT*, DEFINED.— A notarial certificate, as defined in Section 8, Rule II of the Notarial Rules, requires a statement of the facts attested to by the notary public in a particular notarization x x x. Meanwhile, a *jurat* is, among others, an attestation that the person who presented the instrument or document to be notarized is personally known to the notary public or **identified by the notary public through**

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competent evidence of identity as defined by the Notarial Rules x x x.

3. ID.; ID.; NOTARIAL REGISTER; FAILURE OF THE NOTARY PUBLIC TO RECORD THE NOTARIZED DOCUMENT THEREIN IS TANTAMOUNT TO FALSELY MAKING IT APPEAR THAT THE DOCUMENT WAS NOTARIZED.— Since the notarial register is a record of the notary public's official acts, he is charged with recording therein the necessary information regarding the document or instrument notarized. If the document or instrument does not appear in the notarial records, doubt as to its nature arises so that the alleged notarized document cannot be considered a public document. Considering the evidentiary value given to the notarized documents, the failure of the notary public to record the document in his notarial register is tantamount to falsely making it appear that the document was notarized when, in fact, it was not, as in this case.

4. ID.; ID.; DOCUMENTS WHICH CONTAIN A *JURAT* AND NOT AN ACKNOWLEDGMENT ARE NOT REQUIRED TO BE FORWARDED TO THE CLERK OF COURT.— [W]hile Basilio had also failed to submit a copy of the Joint Affidavit to the Clerk of Court of the RTC, and to retain a copy thereof for his own records, the requirement therefor, as stated under Section 2 (h), Rule VI of the Notarial Rules, applies only to instruments *acknowledged* before the notary public. Documents like the Joint Affidavit which contain a *jurat* and not an acknowledgment are not required to be forwarded to the Clerk of Court. Hence, there should be no administrative infraction on this score.

5. ID.; NOTARIES PUBLIC; SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSON WHO SIGNED THE SAME IS THE VERY PERSON WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND THE TRUTH OF WHAT ARE STATED THEREIN.— A notary public exercises duties calling for carefulness and faithfulness. Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions. In line with this mandate, a notary public should not notarize a document unless the person who signed the same is the very

person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. By failing in this regard, the notary public permits a falsehood which does not only transgress the Notarial Rules but also Rule 1.01, Canon 1 of the Code of Professional Responsibility, which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Verily, a notarized document is, by law, entitled to full faith and credit upon its face; and it is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

APPEARANCES OF COUNSEL

Edward L. Robea for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case stems from a complaint[1] filed by complainant Atty. Benigno T. Bartolome (Bartolome) on May 19, 2009 before the Integrated Bar of the Philippines (IBP) against respondent Atty. Christopher A. Basilio (Basilio) for violation of the 2004 Rules on Notarial Practice[2] (Notarial Rules).

The Facts

In the complaint, Bartolome alleged that Basilio, a notary public in Tarlac City, notarized a document entitled "Joint Affidavit of Non-Tenancy and Aggregate Landholdings"[3] (Joint Affidavit) purportedly subscribed and sworn to before him by Loreto M. Tañedo (Tañedo) and Ramon T. Lim on January 15, 2006, and supposedly recorded as Doc. No. 375, Page No. 75,

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[1] *Rollo*, pp. 2-3.

[2] A.M. No. 02-8-13-SC, July 06, 2004.

[3] *Rollo*, p. 5.

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Book No. X, Series of 2007 in his notarial register,[4] despite the fact that Tañedo had already passed away as early as December 1, 2003.[5]

In his Answer/Comment[6] dated June 24, 2009, Basilio admitted having notarized the Joint Affidavit but claimed that, prior to the notarization, he verified the identities of the persons who appeared before him through their respective Social Security System (SSS) identification cards and driver's licenses. He further denied any knowledge that the one who appeared before him misrepresented himself as Tañedo and that the latter was already dead as of December 1, 2003.[7]

During the clarificatory hearing, Basilio, who undisputedly notarized the Joint Affidavit, admitted his failure to: (*a*) record the subject document in his notarial book; (*b*) submit a copy of the same to the Regional Trial Court of Tarlac City (RTC); and (*c*) have the notarization revoked or recalled.[8]

The IBP's Report and Recommendation

In a Report and Recommendation[9] dated June 10, 2010 submitted by IBP Investigating Commissioner Randall C. Tabayoyong (Investigating Commissioner), Basilio was found to have manifested gross negligence and a complete disregard of the Notarial Rules. The Investigating Commissioner pointed out that contrary to Section 8, in relation to Section 6, Rule II of the Notarial Rules, Basilio failed to indicate in the Joint Affidavit the details of the SSS identification card and driver's license which were allegedly shown as competent evidence of identity of the persons who appeared before him. Thus, his claim that he verified the identities of the persons who subscribed the

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[4] *Id*.

[5] See Certificate of Death; *id*. at 6.

[6] *Id*. at 8-10.

[7] *Id*. at 8.

[8] *Id*. at 69-77.

[9] *Id*. at 119-123.

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Joint Affidavit could not be given credence. Basilio also failed to record in his notarial register his notarial act on the Joint Affidavit in violation of Section 2 (a), Rule VI of the Notarial Rules. Lastly, the Investigating Commissioner found that Basilio failed to submit a copy of the Joint Affidavit to the Clerk of Court of the RTC, contrary to Section 2 (h), Rule VI of the Notarial Rules.[10] Accordingly, he recommended that Basilio's notarial commission, if still existing, be revoked; he be disqualified from obtaining a notarial commission for a period of one (1) year and suspended from the practice of law for six (6) months.[11]

In a Resolution[12] dated December 29, 2012, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation. Dissatisfied, Basilio filed a motion for reconsideration, which was denied in a Resolution[13] dated September 27, 2014.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the IBP correctly found Basilio liable for violation of the Notarial Rules.

The Court's Ruling

The act of notarization is impressed with public interest.[14] As such, a notary public must observe the highest degree of care in complying with the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system.[15]

In the present case, Basilio, as duly found by the IBP, failed to faithfully comply with his duties as a notary public.

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[10] See *id*. at 121-122.

[11] *Id*. at 123.

[12] See Notice of Resolution No. XX-2012-668 signed by National Secretary Nasser A. Marohomsalic; *id*. at 118.

[13] See Notice of Resolution No. XXI-2014-593; *id*. at 116-117.

[14] *Agbulos v. Viray*, A.C. No. 7350, February 18, 2013, 691 SCRA 1, 8.

[15] *Gokioco v. Mateo*, 484 Phil. 626, 632 (2004).

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Section 5 (b), Rule IV of the Notarial Rules clearly states that:

SEC. 5. *False or Incomplete Certificate*. — A notary public shall **not**:

xxx xxx xxx

(b) affix an official signature or seal on a **notarial certificate that is incomplete**. (Emphases supplied)

A notarial certificate, as defined in Section 8, Rule II of the Notarial Rules, requires a statement of the facts attested to by the notary public in a particular notarization, *viz*.:

SEC. 8. *Notarial Certificate*. — "Notarial Certificate" refers to the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and **states the facts attested to by the notary public in a particular notarization as provided for by these Rules**. (Emphasis supplied)

Meanwhile, a *jurat* is, among others, an attestation that the person who presented the instrument or document to be notarized is personally known to the notary public or **identified by the notary public through competent evidence of identity** as defined by the Notarial Rules:[16]

SEC. 6. *Jurat*. — "Jurat" refers to an act in which an individual on a single occasion:

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[16] Section 12, Rule II of the Notarial Rules provides that:

SEC. 12. *Competent Evidence of Identity*. — The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual x x x; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

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

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

(c) signs the instrument or document in the presence of the notary; and

(d) takes an oath or affirmation before the notary public as to such instrument or document. (Emphasis supplied)

As the records bear out, Basilio affixed his official signature and seal on the notarial certificate of the Joint Affidavit without properly identifying the person/s who signed the same. His claim that he verified the identities of the affiants through their respective SSS identification cards and driver's licenses cannot be given any credence considering the ostensible lack of their details on the face of the certificate. Neither was he able to provide the fact of identification in any way. On the other hand, it has been established that one of the named signatories to the Joint Affidavit was already dead when he notarized the aforesaid document. Hence, it is sufficiently clear that Basilio had indeed affixed his official signature and seal on an incomplete, if not false, notarial certificate.

Moreover, by the same account, Basilio violated Section 2 (b), Rule IV of the Notarial Rules which prohibits the notarization of a document if the person involved is not personally known to the notary public or has not identified himself through competent evidence of identity:

SEC. 2. Prohibitions. – x x x

xxx xxx xxx

(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**

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evidence of identity as defined by these Rules. (Emphasis supplied)

To add, Basilio himself admitted that he failed to record his notarial act on the Joint Affidavit in his notarial register, contrary to Section 2 (a), Rule VI of the Notarial Rules, which states:

SEC. 2. *Entries in the Notarial Register*. — (a) **For every notarial act, the notary shall record in the notarial register at the time of notarization** the following:

(1) the entry number and page number;

(2) the date and time of day of the notarial act;

(3) the type of notarial act;

(4) the title or description of the instrument, document or proceeding;

(5) the name and address of each principal;

(6) **the competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary**;

(7) the name and address of each credible witness swearing to or affirming the person's identity;

(8) the fee charged for the notarial act;

(9) the address where the notarization was performed if not in the notary's regular place of work or business; and

10) any other circumstance the notary public may deem of significance or relevance.

x x x (Emphases supplied)

Since the notarial register is a record of the notary public's official acts, he is charged with recording therein the necessary information regarding the document or instrument notarized. If the document or instrument does not appear in the notarial records, doubt as to its nature arises so that the alleged notarized document cannot be considered a public document.[17] Considering the

[17] See Minute Resolution issued in *Robles v. Jungco*, A.C. No. 8062, February 08, 2010.

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evidentiary value given to the notarized documents, the failure of the notary public to record the document in his notarial register is tantamount to falsely making it appear that the document was notarized when, in fact, it was not,[18] as in this case.

It should be clarified, however, that while Basilio had also failed to submit a copy of the Joint Affidavit to the Clerk of Court of the RTC, and to retain a copy thereof for his own records, the requirement therefor, as stated under Section 2 (h),[19] Rule VI of the Notarial Rules, applies only to instruments *acknowledged* before the notary public. Documents like the Joint Affidavit which contain a *jurat* and not an acknowledgment are not required to be forwarded to the Clerk of Court. Hence, there should be no administrative infraction on this score. Nevertheless, Basilio's afore-discussed violations of the Notarial Rules are grave enough to warrant sanctions from the Court.

A notary public exercises duties calling for carefulness and faithfulness.[20] Notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[21] In line with this mandate, a notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein.[22] By failing in this regard, the notary public permits a falsehood which does

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[18] See *id*.

[19] SEC. 2. *Entries in the Notarial Register.* – x x x

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(h) A certified copy of each month's entries and a duplicate original copy of **any instrument acknowledged before the notary public** shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required. (Emphasis supplied)

[20] *Gemina v. Madamba*, 671 Phil. 541, 550 (2011).

[21] *Maria v. Cortez*, A.C. No. 7880, April 11, 2012, 669 SCRA 87, 94.

[22] *Agbulos v. Viray*, *supra* note 14, at 7.

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not only transgress the Notarial Rules but also Rule 1.01, Canon 1 of the Code of Professional Responsibility, which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."[23] Verily, a notarized document is, by law, entitled to full faith and credit upon its face; and it is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

As herein discussed, Basilio's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization. In fine, he should be meted out with the modified penalty of disqualification from being commissioned as notary public for a period of two (2) years and suspension from the practice of law for one (1) year. Although there is no showing that Basilio prepared the document in question, his utter disregard of the Notarial Rules as exhibited during the proceedings before the IBP, together with his admitted failure to revoke or recall his notarization despite his knowledge of its irregularity, warrants the same treatment as the errant lawyer in *Agbulos v. Viray*:[24]

> [T]he Court finds the need to increase that recommended by the IBP which is one month suspension as a lawyer and six months suspension as notary public, considering that respondent himself prepared the document, and he performed the notarial act without the personal appearance of the affiant and without identifying her with competent evidence of her identity. With his indiscretion, he allowed the use of a CTC by someone who did not own it. Worse, he allowed himself to be an instrument of fraud. Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is meted the penalties of revocation of his notarial commission, **disqualification from being commissioned**

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[23] *Almazan, Sr. v. Suerte-Felipe*, A.C. No. 7184, September 17, 2014, 735 SCRA 230, 235-236.

[24] *Supra* note 14.

as a notary public for a period of two years, and suspension from the practice of law for one year.[25] (Emphasis supplied)

WHEREFORE, the Court finds respondent Atty. Christopher A. Basilio **GUILTY** of violating the 2004 Rules of Notarial Practice and Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission as a notary public, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years, effective immediately. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perez, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-08-2102. October 14, 2015]
(Formerly A.M. OCA IPI No. 07-2762-RTJ)

SUGNI REALTY HOLDINGS AND DEVELOPMENT CORPORATION, REPRESENTED BY ITS CHAIRMAN/PRESIDENT, CYNTHIA CRUZ KHEMANI, *complainant*, *vs*. **JUDGE BERNADETTE S. PAREDES-ENCINAREAL, [THEN IN HER CAPACITY AS ACTING PRESIDING JUDGE, BRANCH 10, REGIONAL TRIAL COURT, IN DIPOLOG CITY], PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 12, OROQUIETA CITY,** *respondent*.

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[25] *Id*. at 9.