



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

**ELIZABETH RECIO,**

Complainant,

- versus -

**ATTY. JOSELITO I. FANDIÑO**

Respondent.

A.C. No. 6767

Present:

VELASCO, JR., J., *Chairperson,*

PERALTA,

PEREZ,

REYES, and

JARDELEZA, JJ.

Promulgated:

October 5, 2016

x

*[Signature]* x

DECISION

**JARDELEZA, J.:**

Elizabeth Recio, the bonds manager of Oriental Assurance Corporation (ORASCO), seeks the disbarment of Atty. Joselito I. Fandiño due to grave misconduct, gross dishonesty, and conduct unbecoming of a lawyer.

**The Facts**

On June 28, 2005, the Court received an undated Complaint-Affidavit<sup>1</sup> of Elizabeth Recio (complainant) against Atty. Joselito I. Fandiño (respondent). She alleged that sometime in early 2003, ORASCO started to receive several orders from the Court stating that ORASCO bail bonds have been issued and have been in fact confiscated by the various branches of the Regional Trial Court (RTC) of Naga, Legazpi and other RTCs and Municipal Trial Courts (MTCs) of the 5<sup>th</sup> Judicial Region. ORASCO then wrote to the clerks of court of the various branches of the RTCs and MTCs of Naga and Legazpi to request for copies of the bail bonds. Upon verification of the bail bonds received by ORASCO, the latter discovered that the bail bonds were fake, simulated or spurious for the following reasons:

<sup>1</sup> Rollo, pp. 1-3

*[Signature]*

1. The bail bond form used was not the genuine bail bond form being issued by ORASCO;
2. The signatures appearing in the falsified bail bonds were forgeries, being obviously different from the genuine signature of ORASCO's authorized signing officer, Conrado B. Sicat; and
3. That immediately noticeable is a notice stamped in the spurious bail bond stating "SEND ALL NOTICES AT RM 303 PNB BLDG. NAGA CITY" despite the fact that ORASCO does not have any extension office or agency in Naga City much less at the aforestated address.<sup>2</sup>

Complainant alleged that respondent was the Notary Public of the spurious bonds and that the address mentioned in the Notice was the law office of respondent. The latter also signed for and misrepresented himself to be the counsel of the bondsman ORASCO in several pleadings when in fact he was not appointed as ORASCO's counsel nor did anyone in ORASCO even know him. Sheriff Rolando Borja, a sheriff of Naga City also executed a sworn affidavit to the effect that respondent represented himself to be the manager and counsel of ORASCO and further stated that he will just settle the amount subject of a writ of execution by that court. All circumstances of forgery or falsification pointed to respondent as the culprit. Complainant also alleged that there was a strong indication that he solicited and illegally received payments of the premiums of these spurious bail bonds as he has admitted to have been the unauthorized representative or agent of ORASCO. Thus, she prayed that respondent be disbarred due to grave misconduct, gross dishonesty, and conduct unbecoming of a lawyer.<sup>3</sup>

In his Comment<sup>4</sup> dated September 27, 2005, respondent alleged that he maintained in his office an insurance business including the issuance of bail bonds, and that he delegated its operation and management to one Jeanette Cruz (Cruz) with whom he shared his office. However, he claimed that Cruz also conducted her own insurance business, separate and apart from that of his insurance business. Cruz also maintained offices at Legazpi City and Daet, Camarines Norte.<sup>5</sup>

Respondent then alleged that in one occasion, he was asked by one Willy Vargas (Vargas) to refer to the latter clients in Naga City. In gratitude to Vargas who had referred him to insurance agencies, he introduced Vargas to Cruz so Cruz could give business to Vargas. Respondent maintained that he had no actual participation in transactions Vargas made with Cruz involving the issuance of ORASCO bonds.<sup>6</sup>

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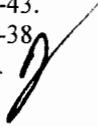
<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 35-43.

<sup>5</sup> *Id.* at 37-38.

<sup>6</sup> *Id.* at 39.



Respondent also alleged that he was not the one who notarized the bonds and that he had no knowledge when the bonds were made, accomplished and issued. His signature appearing in the bonds was believed to be actually affixed by Cruz. He also argued that the stamping of the words in the bond to the effect that all notices shall be sent at "RM 303 BLDG., NAGA CITY" was merely made for convenience in an arrangement made by Cruz with Vargas.<sup>7</sup>

However, respondent admitted that he appeared as counsel in connection with the bonds but merely because Vargas solicited his services. Further, the allegations in the pleadings filed before the court were prepared by Cruz. He previously made different kinds of motions that were usually filed in court regarding bond liability and problems, and these were in turn used as patterns. Respondent alleged that he only signed them upon their preparation and argued what was stated in the pleadings when he appeared in court.<sup>8</sup>

As to the sheriff's affidavit, respondent denied that he misrepresented to the sheriff that he was the manager of ORASCO. Moreover, the fact that the sheriff has himself stated that ORASCO does not hold office at "RM 303 PNB BLDG., NAGA CITY" even supported respondent's contention that he never had any participation in the issuance of the subject bonds.<sup>9</sup>

The Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>10</sup>

### **Findings of the IBP**

Commissioner Pedro A. Magpayo, Jr. (Commissioner) ruled in his Report and Recommendation<sup>11</sup> dated March 18, 2009 that it was difficult to state with a high degree of certainty that the signatures of respondent on the bonds were genuine or not because the alleged fake bail bonds which were submitted as evidence were mere photocopies. Thus, they cannot be used as basis for comparison with an acknowledged standard signature of respondent without running the risk of committing serious error.<sup>12</sup>

However, the Commissioner noted that respondent was quick in acknowledging that the bonds were issued by Vargas through Cruz. The latter was the person to whom the actual operation and management of respondent's insurance business were delegated and entrusted. She held office at the law office of respondent during the period material to the

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<sup>7</sup> *Id.* at 39-40.

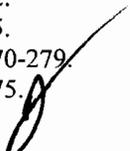
<sup>8</sup> *Id.* at 41.

<sup>9</sup> *Id.* at 42.

<sup>10</sup> *Id.* at 45.

<sup>11</sup> *Id.* at 270-279.

<sup>12</sup> *Id.* at 275.



issuance of the bail bonds. As such co-occupant, she had free access to his notarial records and paraphernalia incident to notarization.<sup>13</sup>

The Commissioner ruled that the freedom and facility enjoyed by Cruz opened the door to the commission of forgery by Cruz and Vargas. Without such liberty gained by Cruz through her association with respondent, the forging of the latter's signature could not have been possible. Also, had he observed prudence and circumspection in his personal dealings with the two, Cruz and Vargas, they could not have easily succeeded in issuing bail bonds, which ORASCO steadfastly claims to be spurious and the premiums of which were not even remitted to the company.<sup>14</sup>

The Commissioner also ruled that the counterfeit ORASCO bonds were made possible on fake bail bond forms which were furnished by Vargas and complemented by the bogus notarization supplied by Cruz. Had Cruz not been equipped with the needed familiarity and given access to respondent's notarial tools, no fake ORASCO bail bond could have been circulated. The negligence and oversight of respondent produced a grave wrong to ORASCO.<sup>15</sup>

The respondent also admitted that: (1) he signed pleadings and/or motions which were manually prepared by Cruz and which were regularly presented in court regarding bond liability and problems; and (2) the averments or allegations were composed by respondent, the draft of which served as pattern for Cruz in the physical preparation of the pleadings submitted in court.<sup>16</sup> The Commissioner ruled that affixing one's signature in the manner mentioned by the respondent to a motion or pleading filed in court, where ORASCO is the bondsman on record, is equivalent to, and not different from, actually representing ORASCO in that case. Such act is indicative of the lack of prudence on the part of respondent.<sup>17</sup>

Thus, the Commissioner recommended that respondent be suspended from the practice of law for a period of six (6) months for negligence for not securing his notarial paraphernalia and for appearing in court without being actually authorized by ORASCO.<sup>18</sup> The Report and Recommendation was adopted and approved by the IBP Board of Governors through Resolution No. XIX-2011-182<sup>19</sup> dated May 14, 2011.

The respondent filed a Motion for Reconsideration<sup>20</sup> dated August 10, 2011 but this was denied by the IBP Board of Governors in Resolution No. XXI-2014-90<sup>21</sup> dated March 21, 2014.

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<sup>13</sup> *Id.*

<sup>14</sup> *Rollo*, p. 276.

<sup>15</sup> *Id.* at 277.

<sup>16</sup> *Id.*

<sup>17</sup> *Rollo*, p. 278.

<sup>18</sup> *Id.* at 279.

<sup>19</sup> *Id.* at 268-269.

<sup>20</sup> *Id.* at 280-282.

<sup>21</sup> *Id.* at 349.

### Ruling

We affirm the findings of the IBP with modification on the imposed penalty.

Section 27 of Rule 138 of the Rules of Court provides the grounds for discipline, to wit:

*Sec. 27. Attorneys removed or suspended by Supreme Court on what grounds.* — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

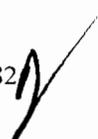
In *Santuyo v. Hidalgo*,<sup>22</sup> Spouses Santuyo accused Atty. Hidalgo of serious misconduct and dishonesty for breach of his lawyer's oath and the notarial law. Denying the authenticity of his signature in a deed of sale, Atty. Hidalgo claimed that at the time the deed of sale was supposedly notarized, he was on vacation. He surmised that complainants must have gone to the law office and enticed one of the secretaries, with the concurrence of the senior lawyers, to notarize the document. He claimed that he was a victim of a criminal scheme motivated by greed.

We found Atty. Hidalgo guilty of negligence in the performance of his duties as notary public and suspended him from his commission as a notary public for a period of two (2) years. We cited the report of the IBP as basis for a finding of negligence, to wit:

**Considering that the responsibility attached to a notary public is sensitive respondent should have been more discreet and cautious in the execution of his duties as such and should not have wholly entrusted everything to the secretaries; otherwise he should not have been commissioned as notary public.**

For having wholly entrusted the preparation and other mechanics of the document for notarization to the secretary there can be a possibility that even the respondent's signature which is the only one left for him to do can be done by the secretary or anybody for that matter as had been the case herein.

<sup>22</sup> A.C. No. 5838, January 17, 2005, 448 SCRA 282



As it is respondent had been negligent not only in the supposed notarization but foremost in having allowed the office secretaries to make the necessary entries in his notarial registry which was supposed to be done and kept by him alone; and should not have relied on somebody else.<sup>23</sup> (Emphasis supplied.)

Here, respondent violated the 2004 Rules on Notarial Practice<sup>24</sup> particularly Section 2(a) and (c), Rule VII, to wit:

Sec. 2. Official Seal. –

(a) Every person commissioned as notary public shall have a seal of office, to be procured at his own expense, which shall not be possessed or owned by any other person. x x x

x x x

(c) When not in use, the official seal shall be kept safe and secure and shall be accessible only to the notary public or the person duly authorized by him.

Complainant successfully showed in her Position Paper<sup>25</sup> that Cruz is the secretary of respondent. This was evidenced by the Affidavit of Service<sup>26</sup> signed by Cruz of a Motion to Withdraw as Bondsman<sup>27</sup> dated June 23, 1999 filed before RTC Branch 22 Naga City. Even so, respondent should not have entrusted everything to his secretary and allowed the latter to have full access to his notarial paraphernalia considering the sensitivity of his responsibility as a notary public. His negligence in giving Cruz absolute freedom and access to his office paved the way for Vargas and Cruz to secure the notarization of the spurious ORASCO bonds. Such act of respondent also constitutes malpractice of law which is a ground for suspension or disbarment under Section 27, Rule 138 of the Rules of Court.

Respondent again manifested his negligence when he purported to represent ORASCO, by signing the pleadings and appearing in court on its behalf, without verifying the authority of Vargas to ask him to act on behalf of ORASCO. As a lawyer, respondent is expected to have exercised due diligence in ensuring that ORASCO indeed sought his representation. In *Manila Memorial Park Cemetery, Inc. v. Linsangan*,<sup>28</sup> we held:

It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature

<sup>23</sup> *Id.* at 286-287.

<sup>24</sup> A. M. No. 02-8-13-SC.

<sup>25</sup> *Rollo*, pp. 115-126.

<sup>26</sup> *Id.* at 151.

<sup>27</sup> *Id.* at 150-151.

<sup>28</sup> G.R. No. 151319, November 22, 2004, 443 SCRA 377.

and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. **The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such an inquiry, he is chargeable with knowledge of the agent's authority and his ignorance of that authority will not be any excuse.**

As noted by one author, the ignorance of a person dealing with an agent as to the scope of the latter's authority is no excuse to such person and the fault cannot be thrown upon the principal. A person dealing with an agent assumes the risk of lack of authority in the agent. He cannot charge the principal by relying upon the agent's assumption of authority that proves to be unfounded. The principal, on the other hand, may act on the presumption that third persons dealing with his agent will not be negligent in failing to ascertain the extent of his authority as well as the existence of his agency.<sup>29</sup> (Citations omitted; emphasis supplied.)

In the Urgent Motion for Extension of Time<sup>30</sup> filed by respondent before RTC Branch 22 Naga City to file his comment or opposition to ORASCO's motion to declare the bond null and void, respondent merely explained that his appearance in the case was only due to the request of Vargas who represented himself as an agent of the bondsman. As alleged by complainant in her Position Paper, he was not appointed as counsel of ORASCO and none of ORASCO's officers and employees knew him.<sup>31</sup>

Respondent's negligence in not securing his notarial paraphernalia and in appearing for parties or insurance companies who did not seek representation caused prejudice not only to ORASCO but to the several accused whose bail bonds were confiscated due to the spurious character of the documents.

We, however, modify the IBP recommended penalty on respondent, of suspension from the practice of law for six months. This is the penalty for respondent not securing his notarial paraphernalia and for appearing in court without authority by ORASCO.

Under existing jurisprudence, gross misconduct for violation of the 2004 Rules on Notarial Practice is also meted the penalty of disqualification, revocation of notarial commission and disqualification from appointment as notary public. In *Gonzales v. Ramos*,<sup>32</sup> Atty. Ramos violated the Code of Professional Responsibility and the 2004 Rules on Notarial Practice by notarizing a Deed of Absolute Sale despite the non-appearance of one of the

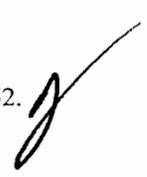
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<sup>29</sup> *Id.* at 391-392.

<sup>30</sup> *Rollo*, pp. 13-15.

<sup>31</sup> *Id.* at 116.

<sup>32</sup> *Gonzales v. Ramos*, A.C. No. 6649, June 21, 2005, 460 SCRA 352.



signatories. Thus, aside from his suspension from the practice of law for one (1) year and revocation of his notarial commission, Atty. Ramos was disqualified from reappointment as notary public for two (2) years.<sup>33</sup> Here, considering that respondent also violated the 2004 Rules on Notarial Practice, the penalty to be imposed on him should include not only his suspension from the practice of law for six months, but also the revocation of his commission and disqualification from appointment as notary public.

**WHEREFORE**, the recommendation of the Integrated Bar of the Philippines is **ADOPTED** with **MODIFICATION**. Respondent Atty. Joselito I. Fandiño is **GUILTY** of negligence in performing his duties as a notary public and of breach of the 2004 Rules on Notarial Practice. Accordingly, he is **SUSPENDED** from the practice of law for six (6) months; his incumbent commission if any is **REVOKED**; and he is **PROHIBITED** from being commissioned as a notary public for two (2) years, effective immediately. He is **WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

The respondent is **DIRECTED** to report the date of his receipt of this Decision to enable us to determine when his suspension shall take effect.

**SO ORDERED.**

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
*Associate Justice*  
*Chairperson*

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<sup>33</sup> See also *Nevada v. Casuga*, A.C. No. 7591, March 20, 2012, 668 SCRA 441, where we found Atty. Casuga guilty of gross misconduct for violation of the 2004 Rules on Notarial Practice and of Canon 16 of the Code of Professional Responsibility by misappropriating his clients' funds and jewelries. In that case, we revoked the notarial commission of Atty. Casuga and disqualified him from being a Notary Public for four (4) years on top of his suspension from the practice of law for four (4) years.

  
**DIOSDADO M. PERALTA**  
*Associate Justice*

  
**JOSE PORTUGAL PEREZ**  
*Associate Justice*

  
**BIENVENIDO L. REYES**  
*Associate Justice*