



Republic of the Philippines

Supreme Court

1001

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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**ROMEO A. ALMARIO**  
*Complainant,*

**A.C. No. 10689**  
*[Formerly CBD Case No. 11-3171]*

Present:

- versus -

SERENO, C.J., *Chairperson,*  
LEONARDO-DE CASTRO,  
DEL CASTILLO,  
JARDELEZA, *and*  
TIJAM, J.J.

**ATTY. DOMINICA LLERA-AGNO,**  
*Respondent.*

Promulgated:  
**JAN 08 2018**

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**DECISION**

**DEL CASTILLO, J.:**

This administrative case stemmed from a Complaint<sup>1</sup> filed by complainant Romeo A. Almario (complainant) before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) seeking to disbar Atty. Dominica L. Agno (respondent lawyer), for notarizing a Special Power of Attorney (SPA) without the personal appearance of one of the affiants therein.

***Factual Background***

On July 5, 2006, a Complaint for Judicial Partition with Delivery of Certificate of Title, docketed as Civil Case No. 06115416<sup>2</sup> (civil case), was instituted before the Regional Trial Court (RTC) of Manila by the herein complainant against therein defendants Angelita A. Barrameda and several

<sup>1</sup> Rollo, pp. 2-7.

<sup>2</sup> Id. at 41-46.

other persons. It was therein alleged that complainant is the sole surviving registered owner of a parcel of land situated at No. 973 Del Pan Street, San Antonio, Tondo, Manila, covered by Transfer Certificate of Title (TCT) No. 244909, and that the defendants therein are co-owners of that parcel of land by virtue of intestate succession.

Relative to the said civil case, herein respondent lawyer, as counsel for therein defendants, notarized and acknowledged a SPA<sup>3</sup> which reads:

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

WE, x x x the HEIRS OF THE LATE VICTORIA ALMARIO, to wit: RONALD A. GATDULA, of legal age, Filipino, married, and a resident of 973 Del Pan St., Tondo, Manila and FRANCISCA A. MALLARI, of the same address, do hereby appoint, name and constitute also MA. LOURDES ALMARIO P. PEDIA, above named, to do the following acts and things:

1. To act as our representative and agent in administering our property x x x located at District of Tondo, City of Manila consisting of SEVENTY EIGHT SQUARE METERS AND SIXTY FIVE DECIMETERS (78.65) Square meters, covered by TCT No. T-244909 of the [Register] of Deeds of the City of Manila;

x x x x

HEREBY GIVING AND GRANTING unto our said attorney-in-fact full power and authority, whatsoever requisite to be done in or about the premises, as fully as we might or could lawfully do if personally present and hereby ratifying and confirming all that our said attorney shall do or cause to be done by virtue of these presents until revoked in writing by me.

IN WITNESS WHEREOF, we have signed this instrument on the 26<sup>th</sup> day of July 2006 at Muntinlupa City.

x x x x

HEIRS OF THE LATE VICTORIA A. ALMARIO:

(Signed)  
RONALD A. GATDULA

(Signed)  
FRANCISCA A. MALLARI



<sup>3</sup> Id. at 199-201. Emphasis supplied.

x x x x

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES) SS.  
CITY OF MUNTINLUPA )

BEFORE ME, a notary public for the City of Muntinlupa, personally appeared the following persons on the 26<sup>th</sup> day of July 2006:

x x x x

Ronald A. Gatdula with CTC No. 16785315 issued at Manila on 1-19-06  
***Francisca Mallari with CTC No. 16785314 issued at Manila on 1-19-06***

known to me and to me known to be the same persons who executed the foregoing Special Power of Attorney, consisting of three (3) pages including this page where the acknowledgement is written, signed by the parties and their instrumental witnesses and they acknowledged to me that the same is their own true act and deed.


WITNESS MY HAND AND SEAL.

(Signed)

DOMINICA L. AGNO  
Notary Public  
Until 31 Dec 2006  
PTR No. 0007769  
Muntinlupa City  
06 January 2006  
IBP Life Roll 00577

Doc. No. 193  
Page No. 55  
Book No. 11  
Series of 2006

It is complainant's contention: (1) that the said SPA was falsified because one of the affiants therein, Francisca A. Mallari (Mallari),<sup>4</sup> could not possibly have executed the same because she was in Japan at the time the SPA was executed, as certified to<sup>5</sup> by the Bureau of Immigration (BI); (2) that this SPA was used in the said civil case to perpetrate fraud and deception against complainant resulting in the filing of Criminal Case No. 452612-CR, for violation of Article 172 of the Revised Penal Code (Use of Falsified Document) against Ma. Lourdes Almario Pedia, (Pedia), the attorney-in-fact mentioned in the SPA; (3) that respondent lawyer notarized



<sup>4</sup> Also known as Francisca Almario Mallari Usui.

<sup>5</sup> *Rollo*, pp.11-12.

the SPA although Mallari did not personally appear before her; (4) that in the process of notarizing the SPA, respondent lawyer also accepted a Community Tax Certificate (CTC), which is no longer considered a competent evidence of identity pursuant to the 2004 Rules on Notarial Practice; and (5) that, therefore, respondent lawyer violated Canons 1 and 10 of the Code of Professional Responsibility, which state —

CANON 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 – A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

x x x x

CANON 10 – A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

In her Answer,<sup>6</sup> respondent lawyer prayed for the dismissal of the complaint and offered the following arguments:

1) On July 12, 2006, Pedia sent the SPA to Mallari in Japan and it was brought back to the Philippines on July 25, 2006 by Mallari's son, Roman Mallari-Vestido;

2) The SPA was notarized on July 26, 2006 for reasons of expediency, because therein defendants were pressed for time in filing their Answer in the civil case, and that in any event, Mallari undertook to have the SPA acknowledged before the Philippine Consulate in Tokyo, Japan on August 28, 2006, (thereby giving it retroactive effect). Respondent lawyer claimed that the aforementioned circumstances showed that she acted in good faith in notarizing the SPA;



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<sup>6</sup> Id. at 22-26.

3) Mallari was able to acknowledge the SPA with red ribbon<sup>7</sup> before the Philippine Consulate in Tokyo, Japan on August 28, 2006;

4) Neither fraud nor deception was perpetrated as the parties in the said civil case executed a Compromise Agreement,<sup>8</sup> which was approved by the RTC;<sup>9</sup>

5) Contrary to complainant's claim, CTCs are still presently accepted as proof of personal identification in cases where no other proof of personal identification is available; and,

6) That, if at all, it was complainant himself who defrauded the RTC when he stated in his verified complaint that Mallari is a resident of No. 973 Del Pan St., San Antonio, Tondo, Manila, even though he knew that Mallari was in Japan at the time of filing of the civil case.

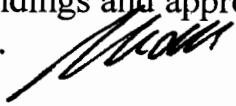
***Report and Recommendation of the Investigating Commissioner***

In a Report and Recommendation,<sup>10</sup> the Investigating Commissioner found respondent lawyer liable for violation of Section 12 of the 2004 Rules on Notarial Practice and recommended that she be suspended for six months as notary public.

According to the Investigating Commissioner, it was evident that respondent lawyer notarized the SPA despite knowing that Mallari, one of the affiants therein, did not personally appear before her.

***Recommendation of the IBP Board of Governors***

On April 16, 2013, the Board of Governors of the IBP issued a Resolution<sup>11</sup> adopting the findings and approving the recommendation of the Investigating Commissioner.



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<sup>7</sup> Id. at 204-208.

<sup>8</sup> Id. at 27-28.

<sup>9</sup> Decision dated July 5, 2007 penned by Judge Silvino T. Pampilo, Jr.; id. at 29-30.

<sup>10</sup> Id. at 181-183.

<sup>11</sup> Id. at 145.

Respondent lawyer filed a verified Motion for Reconsideration,<sup>12</sup> which was denied by the IBP Board of Governors in a Resolution<sup>13</sup> dated May 3, 2014.

Hence, the instant Petition for Review.

Respondent lawyer admits the infraction imputed against her, and simply pleads that the penalty recommended by the IBP be reduced or lowered. She argues that: (1) this is her first offense since she was first commissioned as a notary public in 1973; (2) the case involved only one document; (3) the notarization was done in good faith; (4) the civil case wherein the questioned SPA was used ended in a Compromise Agreement; and finally (5) she is already 71 years old and is truly sorry for what she had done, and promises to be more circumspect in the performance of her duties as a notary public.<sup>14</sup>

In his Comment<sup>15</sup> to the Petition, complainant insists that respondent lawyer must be disciplined accordingly and that suspension is the appropriate penalty for such infraction.

The sole issue that this Court must thus address is the appropriate penalty to be meted out against respondent lawyer.

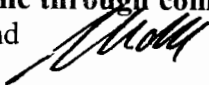
### **Our Ruling**

The importance of the affiant's personal appearance when a document is notarized is underscored by Section 1, Rule II of the 2004 Rules on Notarial Practice which states:

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**



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<sup>12</sup> Id. at 149-155.

<sup>13</sup> Id. at 180.

<sup>14</sup> See Petition for Review; id. at 172-179.

<sup>15</sup> Id. at 240-245.

(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. (Emphasis supplied)

Furthermore, Section 2(b), Rule IV of the same Rules provides that:

(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)

These provisions mandate the notary public to require the physical or personal presence of the person/s who executed a document, before notarizing the same. In other words, a document should not be notarized unless the person/s who is/are executing it is/are personally or physically present before the notary public. The personal and physical presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature/s of the affiant/s therein and the due execution of the document.

Notaries public are absolutely prohibited or forbidden from notarizing a fictitious or spurious document. They are the law's vanguards and sentinels against illegal deeds. The confidence of the public in the integrity of notarial acts would be undermined and impaired if notaries public do not observe with utmost care the basic requirements in the performance of their duties spelled out in the notarial law.

This Court, in *Ferguson v. Atty. Ramos*,<sup>16</sup> held that “notarization is not an empty, meaningless and routinary act[; i]t is imbued with public interest x x x.”

In cognate or similar cases,<sup>17</sup> this Court likewise held that a notary



<sup>16</sup> A.C. No. 9209, April 18, 2017.

<sup>17</sup> *Ocampo-Ingcoco v. Atty. Yrreverre, Jr.* 458 Phil. 803, 813 (2003); *Coquia v. Laforteza*, A.C. No. 9364, February 8, 2017.

public must not notarize a document unless the persons who signed it are the very same persons who executed the same, and personally appeared before him to attest to the truth of the contents thereof. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free and voluntary act and deed.

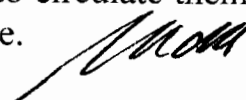
In the present case, the SPA in question was notarized by respondent lawyer despite the absence of Mallari, one of the affiants therein. Mallari could not have personally appeared before respondent lawyer in Muntinlupa City, Philippines where the SPA was notarized on July 26, 2006 because Mallari was in Japan at that time, as certified to by the Bureau of Immigration.

It goes without saying that it was respondent lawyer's bounden duty, as a lawyer and notary public, to obey the laws of the land and to promote respect for legal processes. Respondent lawyer may only forsake this duty at the risk of forfeiting her membership in the Philippine Bar and the revocation of her license as a notary public. Considering however, the circumstances attendant upon this case, we resolve to reduce or lower the recommended penalty on respondent lawyer.

The Court opts to suspend respondent lawyer as a notary public for two months, instead of six months as the IBP had recommended. We are impelled by the following reasons for taking this course of action: first, the apparent absence of bad faith in her notarizing the SPA in question; second, the civil case wherein the flawed SPA was used ended up in a judicial Compromise Agreement; and finally, this is her first administrative case since she was commissioned as a Notary Public in 1973. In addition, respondent lawyer invites our attention to the fact that she is already in the twilight years of her life.

**ACCORDINGLY**, respondent Atty. Dominica L. Agno is hereby **SUSPENDED** as Notary Public for the aforesaid infraction for two months and **WARNED** that the commission of a similar infraction will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Agno's personal record. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.






**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
*Chief Justice*  
*Chairperson*

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

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

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*