



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 15, 2023** which reads as follows:*

“A.C. No. 13328 [Formerly CBD Case No. 15-4804] (Ever Electrical Mfg., Inc., represented by Reuel T. Cachuela vs. Atty. Reinier John G. Brofar). — Before the Court is a Verified Complaint¹ for disbarment filed by complainant Ever Electrical Mfg., Inc.² (complainant) against respondent Atty. Reinier John G. Brofar (respondent) with the Commission on Bar Discipline (CBD), Integrated Bar of the Philippines (IBP),³ for violation of the 2004 Rules on Notarial Practice⁴ (Notarial Rules).

Complainant alleged that on 05 February 2014, respondent notarized a document denominated as *Grant of Right of Way*.⁵ The same was required for the application of Catsen Development Corporation (Catsen) with the Manila Electric Company (MERALCO) for the installation of electric facilities for the electricity and power consumption of Catsen’s buildings. According to complainant, it owns the lot adjacent to the property applied for by Catsen.⁶

On 15 February 2014, acting on the strength of the notarized *Grant of Right of Way*, MERALCO proceeded to install electric posts and encroached upon a portion of the property owned by complainant. Consequently, on 19 October 2015, complainant initiated the instant Verified Complaint for disbarment against respondent alleging that: (1) the act of notarization by respondent resulted in the encroachment of complainant’s private property, which then prompted a litigation; (2) that said notarization amounted to conduct unbecoming a public officer, grave/simple misconduct, conduct prejudicial to the best interest of the service contrary to the Code of Professional Responsibility (CPR) for lawyers; (3) the notarized *Grant of Right of Way* has unfilled details in its body and acknowledgment portion,

¹ *Rollo*, pp. 2–11.

² Represented by Atty. Reuel T. Cachuela.

³ CBD Case No. 15-4804.

⁴ A.M. No. 02-08-13-SC. Entitled, “2004 Rules on Notarial Practice.” Approved on: 06 July 2004.

⁵ *Rollo*, pp. 21, 30 and 78.

⁶ *Id.* at 4–5.

which is violative of the Notarial Rules; (4) the unfilled spaces would indicate that respondent did not require the applicant to show competent proof of his identity; and (5) respondent's negligence as a notary public and lawyer damaged complainant's rights over the property, and undermined the integrity of a notary public.⁷

For his part, respondent raised the defense that: (1) the notarization of the *Grant of Right of Way* does not necessarily result in the institution of a subsequent litigation; (2) the incomplete notarial certificate was caused by his secretaries who forgot to fill in the necessary details and to photocopy the affiant's identification cards (IDs); (3) the incompleteness of the notarial certificate was immediately corrected when he requested for the applicant's IDs and attached the same to the *Grant of Right of Way*; and (4) the details needed to effect the intention of the applicant were already in the *Grant of Right of Way*; thus, the unfilled spaces in the body should not affect the validity of the document.⁸

In a Report and Recommendation⁹ dated 01 March 2021, the IBP-CBD recommended that the complaint be dismissed for failure of complainant to prove its case. The IBP-CBD ruled that complainant was not able to present sufficient and reliable evidence in support of its accusations for disbarment and violation of the Notarial Rules. Contrary to the allegation of complainant, the notarization of the *Grant of Right of Way* cannot be the sole basis of the subsequent court litigation. Further, the IBP-CBD found that respondent was not remiss in his duties as a Notary Public despite the unfilled spaces in the document in view of the IDs attached to the document. Accordingly, the IBP-CBD recommended the dismissal of the disbarment case against respondent.¹⁰

In a Resolution¹¹ dated 11 September 2021, the IBP Board of Governors adopted and approved the IBP-CBD's Report and Recommendation, dismissing the complaint against respondent, with the addition of a warning that a similar infraction shall merit a more severe penalty.¹²

The issues for the Court's resolution are: (1) whether respondent is liable for violation of the Notarial Rules; and (2) whether respondent should be disbarred.

The Court affirms the findings and adopts the recommendation of the IBP-CBD that respondent should not be disbarred. Nonetheless, the Court

⁷ Id. at 5-7, 100-101.

⁸ Id. at 23-27, 101-102.

⁹ Id. at 99-105. Signed by Investigating Commissioner Suzette A. Mamon.

¹⁰ Id. at 103-105.

¹¹ Id. at 97-98. Signed by Assistant National Secretary Jose Angel B. Guidote, Jr.

¹² Id.

disagrees with the finding that respondent is not liable for violation of the Notarial Rules.

Anent the first issue, this Court upholds the ruling of the IBP-CBD that no sufficient evidence was presented to show that the act of notarizing the document amounted to deceit, malpractice, or other gross misconduct, warranting the imposition of disbarment. As aptly put by the IBP-CBD, mere conjectures and surmises of a party cannot be the basis for the imposition of disbarment against respondent, to wit:

On the argument that complainant was constrained to litigate because MERALCO allegedly encroached complainant's property because it [MERALCO] relied on the documentary/Grant of Way, this Honorable Commission posits the stand of herein respondent that the same is an *argumentum non sequitur*.

This Honorable Commission cannot base its resolution and recommendation on mere conjectures and surmises propounded by parties. The complainant as an interested party in any case for that matter must substantiate its allegations by facts or evidence that would reasonably lead to a logical conclusion that herein respondent committed acts prejudicial to the best interest of the service, conduct unbecoming of an officer of the court or misconduct.¹³

As the IBP-CBD correctly pointed out, the notarization of the *Grant of Right of Way* did not necessarily lead to the ensuing litigation. In fact, complainant, other than its bare assertion, was not able to show the nature of the litigation to prove that the notarized document has, indeed, led to a court action. Further, the notarization of the *Grant of Right of Way* did not give the document a blanket authority for any entity to conduct what was embodied in the document. It is not within a notary public's mandate to verify the accuracy or truthfulness of the contents or statements made in a document. A notary public's role is to ascertain the identity of the person who signs the document, the affiant's intent, and willingness to consent, whether the transaction covers an unlawful or immoral act,¹⁴ and the completeness of the document.¹⁵ Notably, the IBP-CBD expounded that MERALCO is the implementing body and the one responsible for conducting the necessary verification whether the property belonged to the client. Therefore, the notarization of the *Grant of*

¹³ Id. at 104.

¹⁴ Notarial Rules, Rule IV, Sec. 4 reads:

SEC. 4. Refusal to Notarize.- A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he[/she] tenders the appropriate fee specified by these Rules if:

- (a) the notary knows or has good reason to believe that **the notarial act or transaction is unlawful or immoral;**
- (b) the signatory shows a demeanor which engenders in the mind of the notary public **reasonable doubt as to the former's knowledge of the consequences of the transaction requiring a notarial act;** and
- (c) in the notary's judgment, the signatory is **not acting of his or her own free will.** (Emphases supplied)

¹⁵ Notarial Rules, Rule IV, Secs. 5 and 6.

Right of Way was not the compelling reason which triggered the subsequent litigation, *viz.*:

[u]ltimately it is MERALCO, particularly its personnel on the field, which determines whether the property it is using/occupying for installation of electrical facilities actually belongs to the client-applicant. Said document is not a blanket authority for MERALCO and it is therefore incumbent upon MERALCO to make the necessary verification whether the property belongs to its client. Henceforth, the alleged encroachment cannot and should not be blamed on the subject document nor be treated as a fault of Notary Public.¹⁶

Further, the quantum of proof needed in administrative cases for disbarment or suspension against lawyers is preponderance of evidence. In such cases, the burden of proof lies with the complainant.¹⁷ “In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.”¹⁸

In the instant case, this Court finds that complainant failed to present clear and preponderant evidence showing that the mere notarization of the *Grant of Right of Way* amounted to deceit, malpractice, or other gross misconduct, warranting the imposition of disbarment. The Court does not give credence to charges based on mere suspicion and speculation.¹⁹

Apropos of the second issue, the Court, however, disagrees with the finding that respondent is not liable for violation of the Notarial Rules.

Notarization is not an empty, meaningless, or routinary act, but is imbued with substantive public interest. Among others, notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is entitled to full faith and credit upon its face.²⁰ It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of notarial duties; otherwise, the public’s confidence in the integrity of a notarized document would be undermined.²¹

In this case, it is undisputed that respondent failed to live up to the duties of a notary public as dictated by the Notarial Rules.

¹⁶ *Rollo*, p. 104.

¹⁷ *Coquia v. Laforteza*, 805 Phil. 400, 408 (2017) citing *Cruz v. Atty. Centron*, 484 Phil. 671, 675 (2004) and *Atty. Reyes v. Jamora*, 634 Phil. 1, 7 (2010).

¹⁸ *Id.*

¹⁹ *Tan v. Alvarico*, A.C. No. 10933, 03 November 2020, citing *BSA Tower Condominium Corporation v. Atty. Reyes*, 833 Phil. 588, 595 (2018). *See also* *Zara v. Atty. Joyas*, A.C. No. 10994, 10 June 2019.

²⁰ *Bernardo v. Ramos*, 433 Phil. 8, 15 (2002).

²¹ *De Joya v. Madlangbayan*, G.R. No. 228999, 28 April 2021, citing *Dr. Malvar v. Atty. Baleros*, 807 Phil. 16, 30–31 (2017).

First, Section 5(b),²² Rule IV, Notarial Rules, prohibits a notary public from notarizing a document that contains an incomplete notarial certificate. A notarial certificate, as defined in Sec. 8,²³ Rule II, Notarial Rules, requires a statement of the facts attested to by the notary public in a particular notarization. This includes the *acknowledgment* or the 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/her for the purposes stated in the instrument or document, declares that he/she has executed the instrument or document as his/her free and voluntary act and deed, and, if he/she acts in a particular representative capacity, that he/she has the authority to sign in that capacity.²⁴

It is undisputed that respondent notarized the *Grant of Right of Way* even when the acknowledgment remained incomplete, viz.:

“REPUBLIC OF THE PHILIPPINES
CITY OR MUNICIPALITY OF _____ S.S.

BEFORE ME, this _____ day of _____ 20____, personally appeared _____ with Res. Cert. No. A _____ issued at _____ on _____, 20____, and _____ with Res. Cert. No. A _____ issued at _____ on _____, 20____, to me known and known to me to be persons who signed the foregoing instrument and acknowledged to me the he (they) executed the same as his (their) free act and deed (and the free act and deed of _____ thereunto duly authorized for the purpose therein set forth).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 05 day of February, 20 14, at _____, Philippines. (Emphasis supplied)

(Details of notarial commission and notarial seal)²⁵

The spaces provided in the acknowledgement portion are empty except for the date, the notarial seal, the signature of the notary public, and the details of his notarial commission. The facts attested to by the notary public,

²² Notarial Rules, Rule IV, Sec. 5 reads:

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

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

²³ Notarial Rules, Rule II, Sec. 8, reads:

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.

²⁴ Notarial Rules, Rule II, Sec. 1.

²⁵ *Rollo*, pp. 21, 30, 78.

i.e., the date when the affiant personally appeared, the competent evidence of identity presented, the name of the affiant, and the title of the document, are not indicated. Clearly, respondent affixed his official signature or seal on a notarial certificate that is incomplete.

As to complainant's allegation of failure of respondent to require proof of identity, the incompleteness of the notarial certificate is not a conclusive proof of the non-appearance of the affiant considering the copy of his ID in respondent's possession, which was also attached to the *Grant of Right of Way*.

Second, Sec. 6(a),²⁶ Rule IV, Notarial Rules, prohibits a notary public from notarizing an incomplete or blank instrument or document.

Again, respondent violated the said prohibition, *viz.*:²⁷

GRANT OF RIGHT OF WAY

KNOW ALL MEN BY THESE PRESENTS:

That I (We) Catsen Development Corp. with address at _____ for and in consideration of extension of electric service, and other good and valuable consideration, receipt whereof is hereby acknowledged, do hereby give, grant and bequeath unto the Manila Electric Company, its successors or assigns a permanent easement of right of way over my (our) property located at Brgy. Makiling, Makiling, Calamba, Laguna and covered by OC/TCT No. _____ Tax Dec. No. _____; for the installation of electrical facilities (_____) pole(s) and an electrical line, and all the accessories and appurtenances connected therewith, including erection of guy wires, trimming of trees, free access for repairs inspection and other work, and all other acts and/or structures; necessary to public safety and the preservation of said electric line, in accordance with the sketch attached hereto/ printed at the back of this instrument and made a part hereof, in order to extend service to _____ and other customers that may in the future need electric service in the said vicinity.

Should it become necessary that any or all of the poles, wires, and/or appurtenances connected therewith be relocated or removed, the same shall be done at the expense of the party (Manila Electric Company or the undersigned) for whose benefit the relocation or removal is to be made.

This grant of right of way shall be binding upon my (our) heirs, successors and assigns.

²⁶ Notarial Rules, Rule IV, Sec. 6 reads:

SEC. 6. Improper Instruments or Documents. - A notary public shall not notarize:

(a) a **blank or incomplete instrument or document**; or (Emphasis supplied)

²⁷ *Rollo*, pp. 21, 30, 78.

WITNESS my (our) hand(s) at _____, this _____ day of _____, 20__.

WITNESSES:

GRANTORS:

(signature)

Winston Sena

On its face, the document, titled *Grant of Right of Way*, is a *pro forma* document. Indeed, the details on the names of the parties, the general location of the property, and the purpose of the easement of right of way are indicated in the document. However, the specific address, the Transfer Certificate Title (TCT) / Original Certificate Title (OCT) No., date when the document was executed by the grantor, and the names and signatures of the witnesses are missing. At this juncture, it is important to point out that having a completely executed document, *i.e.*, without unfilled spaces, protects the document from malicious insertions after notarization. Evidently, respondent is guilty of violating Sec. 6(a) when he notarized the instrument despite its apparent incompleteness.

For violating the Notarial Rules, respondent also failed to adhere to Canon 1 of the Code of Professional Responsibility, which requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes.²⁸

Considering the attendant circumstances of this case, the violations committed, and consistent with jurisprudence,²⁹ respondent should be meted out with the penalty of immediate revocation of his notarial commission, if any, disqualification from being commissioned as a notary public, and suspension from the practice of law, the terms of which may vary based on the circumstances of each case.³⁰ Nonetheless, since this is respondent's first offense as a notary public since being commissioned, the Court deems it judicious to temper the penalty.

WHEREFORE, finding respondent Atty. Reinier John G. Brofar **GUILTY** of violating the 2004 Rules on Notarial Practice and Canon 1 of the Code of Professional Responsibility, the Court **REVOKES** his notarial commission and **PROHIBITS** him from being commissioned as a notary public for six months, effective immediately. He is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

²⁸ *Ong v. Bijis*, A.C. No. 13054, 23 November 2021, citing *Ko v. Uy-Lampasa*, A.C. No. 11584, 06 March 2019. See also *Cabanilla v. Cristal-Tenorio*, A.C. No. 6139 (Formerly CBD 02-954), 461 Phil. 1, 17 (2003).

²⁹ *Ong v. Bijis*, supra; *Ko v. Uy-Lampasa*, supra; and *Sanchez v. Inton*, A.C. No. 12455, 05 November 2019.


³⁰ *Ong v. Bijis*, supra.

Let copies of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

The Notice of Resolution No. CBD-XXV-2021-09-19 dated 11 September 2021 of the Integrated Bar of the Philippines' Board of Governors, transmitted by Letter dated 31 January 2022 of Atty. Avelino V. Sales, Jr., Director for Bar Discipline, Integrated Bar of the Philippines, together with the records and flash drive file, is **NOTED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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APR 11 2023

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