



Republic of the Philippines
Supreme Court
Manila

EN BANC

LEONARDO L. SARMIENTO
AND RICHARD G. HALILI,
Complainants,

A.C. No. 11304

Present:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,*
HERNANDO,
LAZARO-JAVIER,
INTING,**
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR. and
SINGH, JJ.

- versus -

ATTY. GREGORIO C.
FERNANDO, JR., *a.k.a.* JERRY
FERNANDO,
Respondent.

Promulgated:

June 28, 2022

X ----- X

DECISION

PER CURIAM:

This resolves the petition for disbarment¹ filed by complainants Leonardo L. Sarmiento and Richard G. Halili (complainants) against respondent Atty. Gregorio C. Fernando, Jr. (respondent).

* On official leave.

** On Leave on Official Time.

¹ Rollo, pp. 2-8.

Complainants are business associates engaged in buying, developing and selling real estate. In 2013, they came to know of respondent during a meet-up set up by one of their broker friends.²

During the meet-up, respondent proposed the sale to the complainants of a 374-square meter parcel of land (subject land), located in Parañaque City and covered by Transfer Certificate of Title (TCT) No. 68952.³ In order to entice the complainants to push through with such sale, respondent made the following representations:

1. He is the absolute owner of the subject land. This is true even though TCT No. 68952 was still in the name of his parents— *i.e.*, the spouses Gregorio and Natividad Fernando. His parents already conveyed the subject land to him by virtue of a Special Power of Attorney (SPA)⁴ dated 14 April 2012. Only an SPA was executed to effect the conveyance in order to avoid payment of taxes for the transfer from his parents to him, and another payment of taxes from him to his buyer.⁵
2. Both his parents are still alive, and their signatures in the SPA are genuine.⁶
3. He is the sole heir of his parents. Hence, no other person will make a claim of ownership over the subject land that is contrary to his.⁷

Persuaded by the foregoing representations, the complainants agreed to purchase the subject land for ₱3,740,000.00. To evidence the agreement, a Deed of Absolute Sale⁸ (deed of sale) was executed between the respondent, as the supposed attorney-in-fact of his parents Gregorio and Natividad Fernando, on one hand, and Sylvia Sarmiento (Sylvia), the wife of complainant Leonardo Sarmiento, on the other. Subsequently, TCT No. 68952 in the name of the spouses Gregorio and Natividad Fernando was cancelled and replaced by TCT No. 010-2013000507⁹ in the name of Sylvia.

Not long after, however, a complaint seeking the nullification of the SPA, Deed of Sale and TCT No. 010-2013000507 was brought before the Regional Trial Court (RTC) of Parañaque City against Sylvia, complainant Leonardo Sarmiento and the respondent. The complaint, which was docketed as Civil Case No. 14-040, was filed by no other than respondent's mother Natividad Fernando and the heirs of respondent's father Gregorio Fernando.

² *Id.* at 2.

³ *Id.* at 9-14.

⁴ *Id.* at 15.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 18-20.

⁹ *Id.* at 29-31.

Ande

In Civil Case No. 14-040, the complainants learned of the falsity of respondent's representations, to wit:

1. Respondent is not the absolute owner of the subject land, and the same was never conveyed to him. The SPA dated 14 April 2012, upon which respondent bases his claim of ownership, is falsified.
2. Gregorio Fernando could not have signed the SPA since the latter already died as of April 4, 1997, as evidenced by a Certificate of Death¹⁰ issued by the County of Contra Costa in California. On the other hand, the forgery of Natividad Fernando's signature in the SPA is made apparent from a comparison between such signature and the latter's legitimate signature as appearing in her Office of the Senior Citizen Affair (OSCA) card.¹¹
3. Respondent is not the only heir of his parents. He has no less than four (4) living siblings, namely Samuel, Clifford, Mildred and Rene Fernando. Samuel, Clifford and Mildred, along with Natividad Fernando, even designated Rene as their attorney-in-fact in prosecuting Civil Case No. 14-040.¹²

Hence, to preserve TCT No. 010-2013000507 and to put an end to Civil Case No. 14-040, Sylvia and complainant Leonardo Sarmiento were constrained to enter into a settlement with Natividad Fernando and the heirs of Gregorio Fernando for ₱2,992,000.00. The complainants equally shared the burden of paying the settlement amount. The settlement was eventually approved by the RTC in an Order¹³ dated 4 November 2014.

The complainants demanded reimbursement of the ₱2,992,000.00 settlement amount from the respondent, but the latter ignored the same.

Prejudiced by the turn of events, the complainants filed two (2) cases against the respondent: an *estafa* complaint,¹⁴ docketed as NPS Docket No. XV-08-INV-15A00026, before the Office of the City Prosecutor (OCP) of Muntinlupa City, and the instant disbarment petition, docketed as CBD Case No. 15-4471, before the Integrated Bar of the Philippines (IBP).¹⁵

Attached to the complainants' petition for disbarment are copies of, among others, TCT Nos. 68952¹⁶ and 010-2013000507,¹⁷ the SPA dated 14

¹⁰ Id. at 39.

¹¹ Id. at 40.

¹² Id. at 42-44.

¹³ Id. at 52-54. Penned by Presiding Judge Fortunito L. Madrona.

¹⁴ Id. at 58.

¹⁵ Id. at 59.

¹⁶ Id. at 9-12.

¹⁷ Id. at 29-31.

Done

April 2012,¹⁸ the Deed of Absolute Sale between Sylvia and respondent,¹⁹ the Certificate of Death of Gregorio Fernando issued by the County of Contra Costa in California,²⁰ the OSCA card of Natividad Fernando,²¹ the SPAs executed by Samuel, Clifford, Mildred Fernando in favor of Rene Fernando²² and the Order dated 4 November 2014 of the RTC in Civil Case No. 14-040.²³

On 9 January 2015, the IBP Commission on Bar Discipline (IBP-CBD) issued an Order²⁴ requiring respondent to file, within fifteen days from his receipt of the said order, an answer to the complainant's petition.

In response to the Order, the respondent filed a letter,²⁵ claiming that the petition for disbarment merely reiterates the estafa complaint before the OCP and had been filed solely for the purpose of harassment. The respondent then urged the IBP-CBD to dismiss the complaint and award damages in his favor in an amount no less than One Hundred Million Pesos (₱100,000,000.00).

On 24 March 2015, the IBP-CBD issued an Order²⁶ setting the hearing of the case at 1:30 PM of 25 May 2015, and requiring the complainants and the respondent to appear thereat.

The complainants attended the 25 May 2015 hearing, but the respondent did not. Thus, in an Order²⁷ of even date, the IBP-CBD regarded the case already deemed submitted for decision.

Yet, on 27 May 2015, the respondent filed an Answer²⁸ praying for the dismissal of the petition on the following grounds:

1. The complainants lack legal personality to file the petition for disbarment as they do not come to IBP-CBD with clean hands. The complainants themselves are guilty of perjury when, in the petition's verification/certification, they stated that: “[they did not] commence any other action or proceeding involving the same issues in xxx any [other] forum.”²⁹ Such statement is clearly false, however, in light of the pendency of the estafa complaint before the OCP.³⁰

¹⁸ Id. at 15.

¹⁹ Id. at 18-20.

²⁰ Id. at 39.

²¹ Id. at 40.

²² Id. at 41-44.

²³ Id. at 52-54.

²⁴ Id. at 59. Signed by the IBP-CBD Director Dominic M. Solis.

²⁵ Id. at 60.

²⁶ Id. at 67. Signed by IBP-CBD Commissioner Eduardo R. Robles.

²⁷ Id. at 82. Signed by IBP-CBD Commissioner Eduardo R. Robles.

²⁸ Id. at 69-72.

²⁹ Id. at 70.

³⁰ Id.

2. The SPA dated 14 April 2012 is not a falsification; it is merely a reiteration of an SPA³¹ dated 22 December 2002 and another SPA dated 22 November 1978. The SPA dated 22 November 1978, however, is currently in the possession of his brother, Rene Fernando.³²

In a Report and Recommendation³³ dated 2 June 2015, the IBP-CBD recommended the disbarment of the respondent based on the following findings and ratiocinations:

The evidence submitted by the complainants sufficiently established that[:]

- a) the Special Power of Attorney allegedly executed by respondent's parents in April 2012 at Mayantoc, Tarlac, was a forgery. Respondent's father died already in 1997, and respondent's mother's signature thereon was not hers;
- b) the Deed of Sale in question was executed by the respondent purportedly in his capacity as attorney-in-fact of his parents, who were the registered co-owners of the subject parcel of land in San Dionisio, Parañaque City, Metro Manila; as indicated earlier, respondent was not an attorney-in-fact of his parents;
- c) respondent received and pocketed the [P]3,740,000.00 paid by the buyers of the subject parcel of land;
- d) the buyers of the subject parcel of land, when sued by respondent's mother and siblings for the recovery of the subject parcel of land, paid an extra [P]2,992,000.00 to respondent's mother and siblings so that the earlier sale of the subject parcel of land to them (buyers) will be honored and respected by the true owners thereof; respondent refused to return to the buyers of the subject parcel of land this [P]2,992,000.00 in spite of proper demands therefor.

The respondent failed to meet the issues squarely. He also failed to discredit/impeach the evidence against him.

That the respondent employed chicanery in his dealings with the buyers of the subject parcel of land is beyond question. Equally beyond question is that the respondent tried to cheat out of their inheritance his mother and siblings. Not the least of respondent's sins is his dishonesty.

By all measures and standards, the respondent is a legal misfit. He cannot be allowed to practice the legal profession.³⁴

³¹ Id. at 75.

³² Id. at 73.

³³ Id. at 87-89. Signed by IBP-CBD Commissioner Eduardo R. Robles.

³⁴ Id. at 88.

On 20 June 2015, the IBP Board of Governors (IBP-BOG) issued Resolution No. XXI-2015-531³⁵ adopting the recommendation of the IBP-CBD. Hence, this administrative case.

OUR RULING

The Court adopts the recommendation of the IBP-CBD and IBP-BOG.

The evidence on record is damning against the respondent. Taken together, the complainants' evidence engendered reasonable conclusions that the SPA dated 14 April 2012 was falsified, and that respondent used such falsified SPA, along with other deceitful representations, in order to sell and profit from a property that he knew was not his or his to sell. Worse, as the established facts disclose that he was the only one who benefited from his use of the falsified SPA, respondent may also be presumed to have been the material author of the falsification himself.³⁶

Respondent, on the other hand, was unable to repudiate the evidence against him. We fail to see how the existence of an SPA dated 22 December 2002, or of any other prior SPA for that matter, can prove that the SPA dated 14 April 2012—the very deed he used to convince the complainants to push through with the purchase of the subject land—was genuine. Even assuming the existence of previous SPAs in respondent's favor, the fact remains that the SPA dated 14 April 2012 was still executed after the death of Gregorio Fernando in 1997 and, just the same, bears the forged signature of Natividad Fernando.

Neither could respondent's attack against the personality of the complainants to file the present administrative case be given serious consideration. Contrary to respondent's assertion, the complainants did not perjure when they stated in their petition's verification/certification that they did not commence any other action or proceeding involving the same issues in any other forum. The reason is obvious. Though they may be based on the same facts, the preliminary investigation for estafa initiated by the complainants is distinct from and does not involve the same issues as the present administrative case. The purpose of the preliminary investigation proceedings is the determination of whether there is probable cause to file a criminal indictment against the respondent for estafa, while the issue underlying this administrative case is whether the respondent may be administratively sanctioned as a lawyer. Hence, the complainants' mere filing of an estafa complaint against the respondent cannot, as it did not, preclude them from instituting disciplinary proceedings against the respondent.³⁷

³⁵ See *id.* at 85-86.

³⁶ *Pacasum vs. People*, 603 Phil. 612, 636 (2009).

³⁷ See *Tomlin II vs. Moya*, 518 Phil. 325, 331-332 (2006).

It is indubitable that respondent's actions constitute gross violations of Rules 1.01 and 7.03 of the Code of Professional Responsibility (CPR), viz:

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

X X X X

RULE 7.03 A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

In *Brennisen vs. Contawi*,³⁸ (*Brennisen*) We meted the ultimate penalty of disbarment against a lawyer who used a falsified SPA to mortgage, sell and profit from the property of another. In justifying the imposition, the Court held in that case, thus:

Indisputably, respondent disposed of complainant's property without his knowledge or consent, and partook of the proceeds of the sale for his own benefit. His contention that he merely accommodated the request of his then financially-incapacitated office assistants to confirm the spurious SPA is flimsy and implausible, as he was fully aware that complainant's signature reflected thereon was forged. As aptly opined by Commissioner De Mesa, the fraudulent transactions involving the subject property were effected using the owner's duplicate title, which was in respondent's safekeeping and custody during complainant's absence.

X X X X

In *Sabayle vs. Tandayag*, the Court disbarred one of the respondent lawyers and ordered his name stricken from the Roll of Attorneys on the grounds of serious dishonesty and professional misconduct. The respondent lawyer knowingly participated in a false and simulated transaction not only by notarizing a spurious Deed of Sale, but also — and even worse — sharing in the profits of the specious transaction by acquiring half of the property subject of the Deed of Sale.

In *Flores vs. Chua*, the Court disbarred the respondent lawyer for having deliberately made false representations that the vendor appeared personally before him when he notarized a forged deed of sale. He was found guilty of grave misconduct.

In this case, respondent's established acts exhibited his unfitness and plain inability to discharge the bounden duties of a member of the legal profession. He failed to prove himself worthy of the privilege to practice law and to live up to the exacting standards demanded of the members of the bar. It bears to stress that “[t]he practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability.”

³⁸ 686 Phil. 342 (2012).

Moreover, respondent's argument that there was no formal lawyer-client relationship between him and complainant will not serve to mitigate his liability. There is no distinction as to whether the transgression is committed in a lawyer's private or professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.

With the foregoing disquisitions, the Court thus finds the penalty of disbarment proper in this case, as recommended by Commissioner De Mesa and the IBP Board of Governors. x x x³⁹ (Emphases supplied, citations omitted).

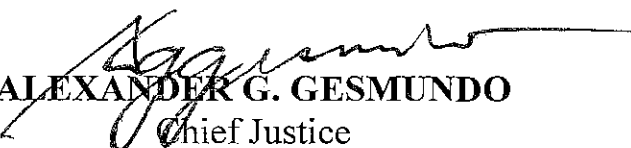
The respondent deserves the same fate. As said, respondent's employment of deceit and use of a forged SPA to gain personal wealth at the expense of the complainants was well substantiated by the evidence. The evidence on record too left no doubt that respondent's dishonest actions inflicted, not only grave inconvenience to his own mother and siblings who were forced to file a suit just to undo what he had done, but also tremendous prejudice to the complainants who practically had to pay for the subject land twice over. Yet, despite all these, respondent made no attempt to right his wrongs, and showed absolutely no remorse. Indeed, he even failed to appear at the hearing set for the present administrative case in clear disobedience to the IBP-CBD's order.

Like the lawyer in *Brennisen*, respondent exhibited his unfitness to remain a member of the legal profession. Respondent showed himself unworthy of the privilege to practice law. Hence, We abide by the recommendation of the IBP-CBD and IBP-BOG.

WHEREFORE, the Court finds respondent Atty. Gregorio C. Fernando, Jr. a.k.a. Jerry C. Fernando **GUILTY** of gross violations of Canon 1, Rule 1.01 and Canon 7 of Rule 7.03 of the Code of Professional Responsibility. Accordingly, he is hereby **DISBARRED** from the practice of law and his name is ordered stricken off from the Roll of Attorneys, effective immediately.

Let a copy of this Decision be entered in the personal records of respondent as a member of the Bar, and furnish copies thereof to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

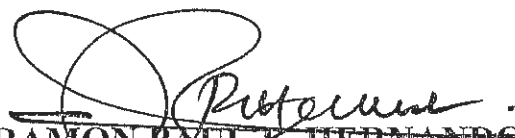

ALEXANDER G. GESMUNDO
Chief Justice

³⁹ Id. at 348-350.

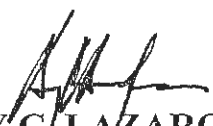


MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice

ON OFFICIAL LEAVE
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

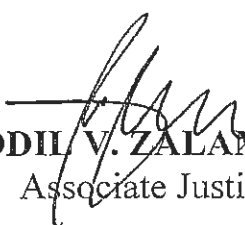


RAMON PAUL E. HERNANDO
Associate Justice

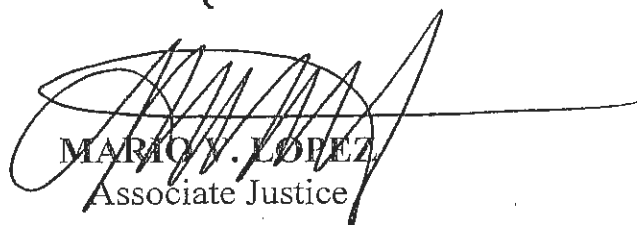


AMY C. LAZARO-JAVIER
Associate Justice


ON LEAVE ON OFFICIAL TIME
HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



MARIO Y. LOPEZ
Associate Justice



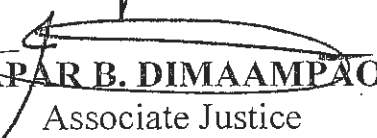
SAMUEL H. GAERLAN
Associate Justice



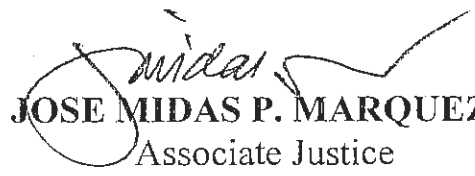
RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
Associate Justice




JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice




ANTONIO T. KHO, JR.
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

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MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court