



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LICERIO DIZON ,
Complainant,

A.C. No. 10185

Present:

- versus -

VELASCO, JR., *J.*, Chairperson.
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

ATTY. MARCELINO
CABUCANA, JR.,
Respondent.

Promulgated:

March 12, 2014

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RESOLUTION

MENDOZA, *J.*:

On May 14, 2004, complainant Licerio Dizon (*complainant*) filed a petition against Atty. Marcelino Cabucana, Jr. (*Atty. Cabucana*), before the Integrated Bar of the Philippines (*IBP*), praying for the disbarment of the latter for falsification of public document.

In his petition, complainant alleged that he was one of the would-be-buyers of a parcel of land owned by the heirs of the late Florentino Callangan, namely, Susana, Jun and Angeleta, all surnamed Callangan who were parties in Civil Case No. 1-689 filed before the Municipal Trial Court in Cities, Branch 1, Santiago City (*MTCC*); that on November 6, 2003, a compromise agreement was executed by the parties in the said case and notarized before Atty. Cabucana on the same date it was signed at the MTCC; that at the hearing conducted on December 11, 2003 regarding the due execution and the veracity of the compromise agreement, the signatories therein testified that they signed the instrument in the court room of MTCC but not in the presence of Atty. Cabucana as Notary Public; that because of the irregularity in the due execution of the Compromise Agreement, there was undue delay in the resolution/decision of Civil Case No. 1-689 which

caused damage and injury to complainant; that Atty. Cabucana violated the Notarial Law in notarizing the document in the absence of most of the signatories/affiants; and that he should be sanctioned in accordance with Rule 138, Section 27 of the Rules of Code and Code of Professional Responsibility. Complainant further alleged that Atty. Cabucana uttered grave threats against him on July 20, 2004 after the hearing of the said case in MTCC.

In his Answer, Atty. Cabucana averred that the complaint was intended to harass him because he was the private prosecutor in a criminal case filed against complainant before the MTCC; that complainant had no cause of action as his right was not violated because he was just a “would be” buyer and not a party to the compromise agreement; and that complainant would not suffer any damage by the pendency of the case or by any defects obtaining in the notarization of the compromise agreement.

In its Report and Recommendation,¹ dated January 22, 2007, the Investigating Commissioner found that Atty. Cabucana violated Rule 1.01, Canon 1 of the Code of Professional Responsibility when he notarized the compromise agreement without the presence of all the parties, and recommended that he be suspended as Notary Public for a period of two (2) years and from the practice of law for six (6) months.

In its Resolution,² dated May 31, 2007, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner with modification that Atty. Cabucana be suspended for only six (6) months for violation of his obligation as Notary Public.

On motion for reconsideration, the IBP Board of Governors, in a Resolution,³ modified its earlier resolution and suspended Atty. Cabucana from the practice of law for one (1) month and disqualified him from re-appointment as notary public for one (1) year.

The Court agrees with the recommendation of the IBP Board of Governors except as to the penalty.

Section 1, Public Act No. 2103, otherwise known as the Notarial Law states:

The acknowledgment shall be before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where

¹ *Rollo*, pp. 181-189.

² *Id.* at 180.

³ *Id.* at 179.

the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

The requirement of affiant's personal appearance was further emphasized in Section 2 (b) of Rule IV of the Rules on Notarial Practice of 2004 which provides that:

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.

As a notary public, Atty. Cabucana should not notarize a document unless the person who signs it is the same person executing it and personally appearing before him to attest to the truth of its contents. This is to enable him 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.


WHEREFORE, the Court finds respondent Atty. Marcelino Cabucana, Jr. **GUILTY** of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for three (3) months, **REVOKES** his incumbent notarial commission, if any, and **PROHIBITS** him from being commissioned as a notary public for two (2) years, effective immediately, with a stern **WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this resolution be furnished the Bar Confidant to be included in the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

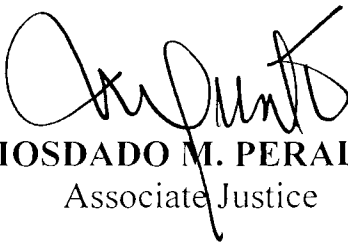
SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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