

LOURDES PADOLINA, COMPLAINANT, VS. RUBEN L. HENSON DEPUTY SHERIFF, RESPONDENT.

Adm. Matter No. P-88-241. May 09, 1989

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PER CURIAM:

A sworn complaint was filed on August 1, 1988 by Lourdes Padolina in the Regional Trial Court, Branch LXI, Angeles City, charging Deputy Sheriff Ruben L. Henson of the Municipal Trial Court in Cities, Branch 2, Angeles City, with malfeasance in the conduct of the auction sale of complainant's electronic appliances worth P30,000 to satisfy a judgment debt of P2,538, plus legal interest, in favor of the Advent Educational System, Inc., plaintiff in a collection suit (Civil Case No. 87-140) against Padolina.

Executive Judge Ramon C. Tuason of the said Regional Trial Court promptly endorsed the complaint to the Court Administrator of this Court for appropriate action.

The facts of this case, as recited in a memorandum prepared by Deputy Court Administrator Reynaldo L. Suarez, and concurred in by then Court Administrator Maximo A. Maceren, are as follows:

On May 25, 1988, the Municipal Trial Court in Cities, Branch 2, Angeles City, issued a Writ of Execution for the satisfaction of a judgment for P2,538 rendered by it against defendant Lourdes Padolina in Civil Case No. 87-140, entitled, "Advent Educational System, Inc. vs. Lourdes Padolina." Respondent Deputy Sheriff implemented the writ on June 9, 1988 by seizing the following personal properties of complainant:

1. One (1) unit Sony colored T.V. Model KV-1546R, 15 inches, valued at P10,000;
2. One (1) unit Teac Stereo valued at P5,000;
3. One (1) unit Fisher Component, Fisher AM/FM Receiver valued at P5,000; and
4. One (1) unit Casio Electronic Organ valued at P10,000.

On June 10, 1988, a Notice of sheriff's Sale was posted by the respondent in three (3) unspecified conspicuous places announcing that the sale would take place at 2:00 P.M. on June 20, 1988 in his office in the Municipal Trial Court, Branch II, Angeles City.

In his Comment, respondent sheriff admitted that three (3) days before the scheduled sale, the complainant paid P2,300 through the Clerk of Court in partial satisfaction of the judgment against her. According to the complainant, she and the respondent had an understanding (which respondent denied), that the sale would not proceed. In spite of it, respondent Henson conducted the auction sale on June 20, 1988, as scheduled, and sold for P3,000 to a certain Edgardo Balingit, as the lone bidder, the two (2) most expensive appliances which he had seized from the complainant, namely: (a) the colored Sony TV set worth P10,000, and (b) the Casio Electronic Organ also valued at P10,000, or P20,000 worth of appliances, to satisfy the balance of P238 plus interest on the judgment debt. Respondent alleged that the levied properties were defective and not worth more than the judgment debt.

After carefully considering the complaint and the comment thereon, We are persuaded that respondent sheriff committed serious misconduct in proceeding with the auction sale, and in selling the complainant's TV set and the electronic organ for a pittance (only P3,000) when their declared value was P20,000. His misfeasance becomes more glaring when we consider the fact that the unpaid balance of the judgment was only P238 plus legal interest, because with Henson's knowledge, the complainant had already deposited P2,300 with the Clerk of Court, three days before the auction sale. The deposit was properly made with the Clerk of Court who was the ex officio sheriff and Henson's immediate superior. Section 11 of Rule 39 of the Rules of Court provides that the writ of execution shall be returnable either to the clerk, or judge, of the court issuing it.

Respondent's allegation, that he proceeded with the sale because the complainant's P2,300-deposit was insufficient to satisfy the judgment, has no merit, for he agreed with the complainant that the sale would not go on. We believe that if he did not agree to suspend the sale, the complainant would have attended it to pay the small balance of P238 plus legal interest she still owed on the judgment. We can perceive no other reason for her paying a substantial portion of the judgment three days before the auction, than her desire to stop the sale of her valuable appliances.

In any event, the meager balance of her debt could have been satisfied by the sale of any of the two cheaper items in the list of levied appliances. But respondent picked not only one, but two, and not the cheaper, but the more expensive, appliances in the list. Obviously, he either wanted to favor the supposed "lone bidder" or he may have coveted the complainant's expensive Sony TV set and Casio electronic organ, and used Balingit so he could acquire them himself for a song. Contrary to respondent's allegation, the Sony colored TV set was not described as "defective" in his list of levied properties, and, although the Casio electronic organ was supposedly "defective," there is no suggestion in the respondent's Comment that it was inoperational.

Section 15, Rule 39 of the Rules of Court provides that "when there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs." In this case, respondent Deputy Sheriff not only made an excessive levy but also sold property of the judgment debtor in excess of the amount needed to satisfy the almost insignificant balance of her judgment debt. We see bad faith and evident intent to defraud the judgment debtor in respondent's implementation of the writ of execution against the complainant. We, therefore, find him guilty of serious misconduct in the discharge of his office (*R.M. Salazar, Jr. Construction, Inc. vs. Espinelli*, 110 SCRA 32). In *Policarpio vs. Fajardo*, Adm. Matter No. P-312, 78 SCRA 210, a sheriff who made an excessive levy was found guilty of gross misconduct and dismissed from the service by this Court.

WHEREFORE, respondent Deputy Sheriff Ruben L. Henson is found guilty of grave misconduct in the discharge of his office and is hereby dismissed from the service with forfeiture of retirement benefits, except the value of his accrued leaves, and with prejudice to future reinstatement in the Government service. Let a copy of this decision be furnished the Ombudsman for appropriate action.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

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