

REINA EDENLYNE GARCIA, COMPLAINANT, VS. ROBERT V. ALEJO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 142, MAKATI CITY RESPONDENT.

A.M. No. P-09-2627. January 26, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

Reina Edenlyne Garcia (Garcia) filed the present administrative complaint against Robert V. Alejo (Alejo), Sheriff IV of the Regional Trial Court, Branch 142, Makati City (RTC), for Gross Misconduct, Gross Dishonesty and Conduct Prejudicial to the Interest of the Service. The Office of the Court Administrator (OCA) recommended that Alejo be found guilty of dereliction of duty and be suspended for three months without pay.

The Facts

The memorandum from the OCA narrated the facts as follows:

In a Verified-Complaint dated March 14, 2008, Reina Edenlyne Garcia charges Robert V. Alejo, Sheriff IV, Regional Trial Court (Branch 142), Makati City, with Gross Misconduct, Gross Dishonesty and Conduct Prejudicial to the Interest of the Service for having been in the payroll of Concorde Condominium, Inc. (Concorde for brevity), a plaintiff in Civil Case No. 00-1547 entitled "Concorde Condominium, Inc. v. Pulp & Paper, Inc."

The complainant claims to be the legitimate president of Concorde, a domestic corporation engaged in real estate development and management which, since 1999, has been managed and controlled by a group of what she described as usurpers purporting to be the officers of Concorde. The complainant alleges that when the legitimate board of directors took over the management of the corporation, it was discovered that, in order to maintain power, anomalies and irregularities were committed by the usurpers including conspiring with people who willingly cooperated with the former.

The complainant alleges that one of the people with whom the usurpers conspired was Sheriff Robert V. Alejo. She submitted a copy of the summary of expenses for legal fees by Concorde which showed that the respondent was allegedly paid sheriff's fees without court approval on the following dates:

DATE

CASH VOUCHER NO.

AMOUNT

October 28, 2004

5068

P15,000.00

November 22, 2004

5092

25,000.00

February 14, 2005

5173

10,000.00

March 30, 2005

5216

10,000.00

June 30, 2005

GJ-15

12,500.00

The complainant also alleges that Sheriff Alejo had been in the payroll of Concorde since January 2005, having received a monthly allowance of P2,500 as evidenced not only by the aforementioned summary of expenses for legal fees but also by photocopies of the checks issued by Concorde in the respondent's name the dorsal portion of which showed that it was respondent himself who encashed the checks using his Supreme Court identification card. Another cash voucher dated July 27, 2004 showed that the respondent received the amount of P12,500.00 as advanced sheriff's fees, which amount was taken from the rent collected from a tenant of Concorde named Dra. Anduiza.

The complainant asserts that the respondent had been acting as an employee of Concorde by collecting rentals from the tenants of the said corporation and that he had been receiving a monthly allowance of P2,500.00 as compensation.

The complainant claims that these arrangements, i.e., receiving fees without court approval and monthly allowances, explains the respondent's precipitate actions in serving the court's writs and processes to the complainant and to the tenants of Concorde.

For acting as a paid mercenary, the complainant declares that the respondent is not worthy to be an employee of the Court and should be held liable for gross misconduct, gross dishonesty and conduct prejudicial to the interest of the service.

In his Comment dated May 14, 2008, respondent Sheriff Robert V. Alejo vehemently denies the charges made against him by the complainant, declaring the accusations as baseless, groundless, founded on pure speculations and conjectures and devoid of any factual and legal justifications. He avers that the instant complaint is purely a harassment suit against him and that he was merely performing his ministerial functions in serving the writs and processes issued by RTC (Branch 142) in connection with Civil Case No. 00-1547.

The respondent deposes that a condominium unit owned by Pulp and Paper, Inc., the defendant in the said civil case, was levied upon on October 3, 2003. An Alias Writ of Execution was issued against the property and that he served said writ on May 27, 2004 upon the complainant who was the officer-in-charge of the defendant corporation. Thereafter, he served the Notice of Sheriff's Sale to defendant Pulp and Paper, Inc., and upon due notice, posting and publication, sold the unit to plaintiff Concorde, the highest bidder.

The respondent claims that the foregoing incidents were the cause of the complainant's ill-feeling towards him which became worse when the court issued an order directing him to place Concorde in possession of the property. Pursuant to the said order, the respondent issued a Notice to Vacate to defendant Pulp and Paper, Inc. through the complainant.

The respondent asserts that the Sheriff's Commission on Sale had been duly collected and duly receipted by the Office of the Clerk of Court of RTC Makati City. As to the monthly allowances he had been receiving from Concorde, he avers that it was the administrator of Concorde, Mr. Adrian Castano, who asked the former to assist the latter in the collection of rentals from certain tenants of the condominium. The respondent claims that he initially declined the request but that Mr. Castano was insistent. The respondent says that Mr. Castano told him that he (the respondent) had gained the latter's trust and confidence. Being also a friend of Mr. Castano, the respondent says that he was prevailed upon to accept the offer on the condition that he would be assisting Concorde after office hours and during Saturdays or Sundays in order that the extra work would not interfere with his duties as sheriff.

The respondent likewise claims that he rejected the offer of compensation because of the existing prohibition on court employees. He, however, finally consented to accept the minimal amount of P2,500.00 to cover transportation and other incidental expenses.

The respondent argues that the complainant's assertions are bare and unsubstantiated and prays for the dismissal of the complaint for utter lack of merit.[1]

Garcia filed a Verified Complaint[2] dated 14 March 2008 before the OCA. Then Court Administrator Zenaida N. Elepaño (CA Elepaño) directed Alejo to file his comment within ten days from receipt of the indorsement from OCA. Alejo moved for an extension of time to file comment,[3] which the OCA granted.[4] Alejo filed his Comment [5] dated 14 May 2008.

The OCA's Ruling

On 2 March 2009, the OCA, under then Court Administrator Jose P. Perez [6] and Assistant Court Administrator Thelma C. Bahia, issued its Evaluation and Recommendation on Garcia's complaint.

The OCA took notice of Alejo's receipt of sheriff's fees without court approval and moonlighting activities. The OCA stated that Alejo failed to observe the procedure provided in Section 10(1)(2), Rule 141 of the Rules of Court. The OCA found Alejo guilty of dereliction of duty, which has the corresponding penalty of suspension of one month and one day to six months for the first offense. The OCA also found that Alejo's moonlighting activities gave rise to understandable suspicions regarding Alejo's independence of judgment in performing his official duties. Moreover, Alejo's position as Sheriff may have a direct bearing on why he was commissioned by Concorde as its collecting agent, "for the authority of the judicial office he represented undoubtedly played a major influencing factor in effecting collection from otherwise difficult tenants or lessees." [7] Alejo's role as collecting officer, though allegedly performed outside of normal working hours, is "incompatible with the performance of his duties and responsibilities since it would appear that the work would adversely reflect on the integrity of the judiciary." [8]

The OCA's recommendation reads as follows:

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

- That the administrative complaint against Sheriff Robert V. Alejo, Regional Trial Court (Branch 142), Makati City, be RE-DOCKETED as a regular administrative matter;
- That Sheriff Alejo be found GUILTY of dereliction of duty in the performance of his official duties and

violation of office rules and regulations and of the Code of Conduct for Court Personnel; and

- That Sheriff Alejo be SUSPENDED for a period of three months without pay, with a stern warning that the commission of a similar or graver offense in the future shall be dealt with more severely.[9]

This Court, in a resolution [10] dated 30 March 2009, re-docketed administrative complaint OCA-IPI No. 08-2773-P as regular administrative matter A.M. No. P-09-2627.

In a Manifestation [11] dated 7 September 2010, Alejo submitted a Consolidated Resolution dated 15 February 2010 from the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices dismissing Garcia's complaint against Alejo in a related case. Garcia filed consolidated criminal complaints against several persons, Alejo included, for Malicious Mischief, Robbery, Grave Coercion, Delaying Release, Grave Slander, Arbitrary Detention, Violation of Domicile, and Trespass to Dwelling for allegedly invading Garcia and her husband Maximo B. Dilla's office and for arresting and detaining them.

The Court's Ruling

We adopt the recommendation of the OCA.

Pertinent portions of Section 9, Rule 141 of the Rules of Court read:

Section 9. Sheriffs and other persons serving processes. - x x x. In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fees, warehousing and similar charges, in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

A sheriff may collect fees for his expenses from the party requesting the execution of a writ but only in accordance with the procedure laid down in the aforecited provision.

Clearly, the steps that have to be followed before additional sums may be required are: first, the sheriff must make an estimate of the expenses to be incurred by him; second, he must obtain court approval for such estimated expenses; third, the approved estimated expenses shall be deposited by the interested party with the Clerk of Court and ex-officio sheriff; fourth, the Clerk of Court shall disburse the amount to the executing sheriff; and fifth, the executing sheriff shall disburse liquidate his expenses within the same period for rendering a return on the writ.[12]

Sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interest of the service because even assuming *arguendo* such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Sheriffs cannot receive gratuities or voluntary payments from parties they are ordered to assist.[13] Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.[14]

The Court notes the OCA's finding about Alejo's receipt of voluntary payments:

x x x It must be noted that [Alejo] failed to refute [Garcia's] legations that in six (6) instances (the five instances were listed in the summary of expenses of Concorde and the one instance where in the cash voucher

of the amount of P12,500.00 was signed by [Alejo] himself), he received sheriff's fees in the total amount of P85,000.00 without court approval. In fact, he never categorically denied having received said fees. He did not even question the veracity of the summary of expenses presented by [Garcia] . Instead, in order to prove that his actions were above board he merely submitted a copy of the Sheriff's Commission on Sale duly collected and duly receipted by the Office of the Clerk of Court of RTC Makati City but which was never raised as an issue in the complaint.[15]

Moreover, Alejo received money for extra work he rendered for Concorde. Alejo's defense that he is not using government time in doing his duties is not tenable considering that there is a prohibition for all officials and employees of the judiciary to engage directly in any private business, vocation or profession even outside office hours. [16] Alejo's acts can be considered as moonlighting, which, though not normally considered as a serious misconduct, amounts to malfeasance in office. [17]

Thus, for failure to observe the procedure in Section 9, Rule 141 of the Rules of Court, Alejo is guilty of dereliction of duty. Under the Uniform Rules on Administrative Cases in the Civil Service, dereliction of duty calls for a suspension of one month and one day to six months. [18] Alejo's moonlighting activities, on the other hand, constitute violation of reasonable office rules and regulations of which reprimand is the penalty for the first offense, suspension for 1-30 days for the second offense, and dismissal for the third offense. According to Section 55 of the Revised Uniform Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances. Alejo also had been previously admonished in A.M. No. P-08-2428 for abuse of authority. We modify the OCA's recommendation of suspension for a period of three months without pay to suspension for a period of six months without pay.

WHEREFORE, Robert V. Alejo, Sheriff IV, Regional Trial Court, Branch 142, Makati City, is SUSPENDED for six (6) months without pay for dereliction of duty and violation of office rules and regulations as well as the Code of Conduct for Court Personnel. Alejo is also STERNLY WARNED that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.

Nachura, Peralta, Abad and Mendoza, JJ., concur.

[1] Rollo, pp. 29-31.

[2] Id. at 1-2.

[3] Id. at 13.

[4] Id. at 14.

[5] Id. at 15-17.

[6] Now Supreme Court Justice.

[7] Rollo, p. 32.

[8] Id. at 33.

[9] Id. at 33-34.

[10] Id. at 38.

[11] Id. at 41.

[12] Rizal Commercial Banking Corp. v. Quilantang, 413 Phil. 13, 22 (2001).

[13] Bernabe v. Eguia, 458 Phil. 97, 105 (2003).

[14] Section 4, Canon 1, Code of Conduct for Court Personnel.

[15] Rollo, p. 31.

[16]Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr., A.M. No. P-93-811, 2 June 1994, 232 SCRA 707, 712.

[17] Id.

[18] Geronca v. Magalona, A.M. No. P-07-2398, 13 February 2008, 545 SCRA 1.

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