

**SPS. ALFONSO AQUINO LIM AND DHIDA LABIRAN-LIM,
COMPLAINANTS, VS. OSCAR GUASCH, DEPUTY SHERIFF, REGIONAL
TRIAL COURT, BRANCH XLII, MANILA, RESPONDENT.**

A.M. No. R-711-P. June 29, 1993

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PER CURIAM:

In a Joint Complaint-Affidavit filed with this Court, the spouses Alfonso and Dhida Lim charged respondent Deputy Sheriff Oscar Guasch, Branch 42 of the Regional Trial Court of Manila, with illegal exaction, causing undue injuries to complainants, evident bad faith and gross inexcusable negligence.

In Civil Case No. 85-31514 entitled "Dhida Lim vs. Rosito Bathan, Mary Jane Bathan and Marlon Bathan," a writ of execution was issued by the Judge requiring payment of P17,500.00 as damages to complainants. Respondent Deputy Sheriff went to the defendants' residence, placed the personal property located therein (consisting of a living room set [sofa, three chairs and a center table]; a G.E. radio-phonograph; and a 17" Sony color television set[1]) in custodia legis and set the date of auction sale. The complainants alleged that respondent demanded from them P300.00 for "guards fees" but that, after receipt thereof, he failed to issue a receipt for that amount despite complainants' request therefor. Respondent also solicited P400.00 for "representation, transportation and service expenses," and after receipt of that amount, again did not issue to complainants a receipt; that one day before the date of the auction sale, complainants received a third-party claim from one Teodora Bathan, claiming ownership of all the personal property items levied upon; that on the same day, complainants posted an indemnity bond and paid the premium therefor; that on the date of the auction sale, at 8 o'clock a.m., complainants, with other interested bidders, went to the auction site at defendants' house and waited for respondent Deputy Sheriff for almost four (4) hours, but that respondent did not show up; that no auction sale was conducted; that instead, at around 11:45 a.m. that same day, defendant and other persons took away from the site of the auction sale the articles levied upon, loaded the same on a motor vehicle and drove away; that respondent, after being informed of the foregoing, rescheduled the auction sale for the following week; on the reset date, complainants went back to the auction site but found the defendants' house padlocked and uninhabited.

In his Comment on the sworn Complaint, respondent Deputy Sheriff claimed that: he did not demand money from complainants, there being no legal reason for him to do so; that complainant Mrs. Lim did not submit written receipts to substantiate their charges; that he arrived on the site of the auction sale on the day set therefor at about 9:55 a.m., but the complainants never showed up; that respondent and his assistant left the Bathan residence an hour later and returned to their office, but complainants did not contact them there; that he rescheduled the auction sale to a week later, but this turned out to be futile. Respondent added that he could not conduct the auction sale without complainants because he was unaware of the amount they intended to bid for the articles levied upon. He blamed complainants for failing to haul the levied property to a secure place as agreed upon. He asserted that the complainants merely sought to harass him because he had refused to heed Mrs. Lim's desire to humiliate the Bathans in the course of implementing the writ of execution.

The Court resolved to refer the case to Judge Rebecca G. Salvador of the Regional Trial Court of Manila, Branch

1, for investigation, report and recommendation. The Investigating Judge held a number of hearings where the parties appeared, presented their witnesses and evidence and respectively cross-examined the other parties' witnesses. The Investigating Judge in due time submitted her Report and Recommendation which basically concluded that the complainants had "amply established by substantial evidence their accusation against respondent sheriff." The Investigating Judge found the denials by respondent Deputy Sheriff of the acts complained of as "flimsy" and "unworthy of credence" and unavailing as against the positive declarations of complainants on the matter:

"The complainants have amply established by substantial evidence their accusations against the respondent sheriff. The denial by the respondent of the acts complained of is flimsy, and his claim that he was at the site of the auction sale at 9:55 a.m. and waited for the complainants until 10:55 a.m. is unworthy of credence and cannot prevail over the positive testimony of complainant on the matter.

In the first place, complainants' eagerness and interest in having the auction sale conducted on May 30, 1986 at 10:00 a.m. are incontestable in the light of the fact that on the very same day that the third-party claim on the levied properties was filed (May 29, 1986), they posted without delay an indemnity bond. Moreover, on the morning of May 30, 1986, complainant Dhida Labiran wrote the respondent sheriff a letter, Exhibit '4--F', requesting him to 'please proceed with the auction sale at 10:00 a.m.,' and telling him 'I will see you at auction sale.' Having taken these steps, it would have been unnatural and contrary to human experience in the ordinary course of human affairs for the complainants not to have appeared at the auction sale on the date and hour in question.

In the second place, there was no motive for complainant Dhida Labiran, a lawyer, to testify falsely against the respondent sheriff. The pretense of the latter that complainant Dhida Labiran was mad at him because he refused to be used as an instrument to satisfy her whims and caprices for vengeance against the defendant in the civil case is untenable. Complainants' earnest desire to have the decision in her favor enforced and satisfied was legitimate and proper, she being entitled to the fruits thereof."^[2]

The Investigating Judge also noted that under Section 7, Rule 141 of the Rules of Court, sheriffs are authorized to collect certain specified fees in specified amounts;

- (1) For execution process, preliminary, incidental, and final of any court, for each kilometer of travel in the service thereof, P0.10;
- (2) For serving an attachment against the property of defendant, P4.00 plus a reasonable allowance to be made by the court for expenses incurred in caring for the property attached;
- (3) For executing a writ of process to put a person in possession of a real estate, P4.00;
- (4) For levying an execution on property, P4.00;
- (5) For money actually collected by him by order, execution, attachment, or any other process, 2% on the first P200.00; 1 1/2% on the second P200.00; 1% on all sums between P400.00 and P2,000.00; 1/2% on all sums in excess of P2,000.00.

and that the fees which respondent Deputy Sheriff had demanded and received from complainants were not among those prescribed and authorized by Rule 141.

After careful examination of the records of this case, the Court must agree with the conclusions reached by the Investigating Judge. Respondent's demand for and receipt of moneys which he was not authorized to require from complainants, and for which he refused to issue official receipts, constituted dishonesty and gross misconduct, an offense he compounded by then absenting himself from the scheduled auction sale and failing to secure the levied property for which he was responsible. Respondent's failure without valid cause to appear at the auction sale

which he had himself scheduled, constituted dereliction of duty.[3] Respondent's non-appearance during the scheduled auction sale, without arranging for the protection and security of the personal property levied upon against illicit or unauthorized removal thereof, made possible, and probably encouraged the judgment debtors to cart away the furniture and appliances which had been levied upon also, in effect constituted a lifting of the levy on the part of the respondent sheriff without court approval.[4]

ACCORDINGLY, the Court Resolved to DISMISS respondent Deputy Sheriff Oscar Guasch from the service for dishonesty, grave misconduct and gross negligence in the performance of his duties, with forfeiture of his retirement privileges and benefits, if any, except accrued earned leave or its money value; and to REQUIRE him to return the P700.00 exacted from complainants. This Resolution is immediately executory and respondent Sheriff shall vacate his position forthwith.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on official leave.

[1] Rollo, p. 45

[2] Id., pp. 279-280.

[3] *Francisco v. Berones*, 121 SCRA 221 (1983).

[4] *Tantanco v. Aguilar*, 81 SCRA 599 (1978); *Patangan v. Concha*, 153 SCRA 30 (1987).

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