

**ARTURO GRAYDA, COMPLAINANT, VS. NOEL G. PRIMO, SHERIFF IV,  
BRANCH 65, REGIONAL TRIAL COURT, BULAN, SORSOGON,  
RESPONDENT.**

*A.M. No. P-04-1897 (Formerly A.M. OCA IPI No. 02-1300-P). November 11, 2004*

Ponente: AUSTRIA-MARTINEZ, J.

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**AUSTRIA-MARTINEZ, J.:**

The instant administrative complaint arose from an affidavit<sup>[1]</sup> dated November 20, 2001 filed by Arturo Grayda before the Office of the Court Administrator (OCA) charging Sheriff IV Noel G. Primo of the Regional Trial Court, Branch 65, Bulan, Sorsogon (RTC), of dereliction of duty, dishonesty and serious misconduct.

In his affidavit, complainant alleges the following: He mortgaged a parcel of land to Jaime Janer as a security for his loan in the amount of P150,000.00 which was subsequently foreclosed and awarded to the mortgagee in an anomalous public bidding; on February 9, 2000, he delivered the amount of P200,000.00 as redemption money for his foreclosed property to respondent who issued an ordinary receipt; after a week, he inquired from respondent whether the money was already given to Janer, to which respondent replied that it was already received by Janer's son-in-law, a certain "Erning;" a month thereafter, complainant asked respondent again about the money and the latter told him that he gave it to a certain "Lydia" who works at the Register of Deeds and who could prevent the title from being cancelled and transferred to Janer; respondent then instructed complainant to look for a buyer of his foreclosed property; on April 6, 2001, complainant, together with Esperanza Obsum, Leopoldo Balbalosa and Raul Villafranca, went to see respondent to inform him that they already have a buyer; respondent told them to wait for Lydia as the latter was still in Manila and had not released the title to the subject property; sometime thereafter, Janer demanded from complainant the payment of the loaned amount to which complainant replied that the money was already with respondent; Janer told him that respondent never offered him the amount of P200,000.00; since nothing had happened despite payment of the P200,000.00, complainant told respondent to expedite the redemption process as the money paid was only borrowed from a money lender in Manila and the same was earning monthly interest; respondent then suggested that since complainant has P200,000.00 deposited with him, complainant can borrow small amounts from the said P200,000.00, which however, should not exceed P50,000.00 since the remaining P150,000.00 will be for the payment of the principal amount of the loan; based on this arrangement, complainant, together with Esperanza Obsum, obtained a number of loans from respondent, the biggest amount was P15,000.00 with a total loaned amount of not less than P50,000.00 which were all evidenced by ordinary receipts; however, when nothing still happened, complainant finally confronted respondent before the chambers of Judge Adolfo Fajardo, RTC, Branch 65, Bulan, Sorsogon, where respondent claimed that he has no more accountability to complainant since Obsum had already received the remaining balance of P150,000.00 from him on January 22, 2001; Obsum denied this allegation and insisted that the biggest amount she received from respondent was just P15,000.00 and the lowest was P1,000.00; complainant could not believe that respondent would deny his accountability considering that in the months of March, April and May 2001, respondent had consistently admitted to him and his witnesses that the amount was still with him.

Complainant submitted affidavits of witnesses in support of his claim.

In his comment dated 14 March 2002, respondent denied the allegations in the complaint and made the following narration of facts:

Sometime on January 3, 2000, and as Sheriff IV of the Regional Trial Court Branch 65, Bulan Sorsogon, undersigned issued a CERTIFICATE OF SALE (Annex "1") in favor of Mr. Jaime Janer, the only bidder/mortgagee of the parcel of land owned by herein complainant, Arturo Grayda. The said Certificate was issued after all the requirements in the Extra-judicial Foreclosure case of the property of Mr. Arturo Grayda entitled EJP No. 99-22 were duly complied with (certified photo copies of the records are hereto attached as Annexes "2", "3", "4" and "5"). The Certificate was subsequently approved by Hon. Presiding Trial Judge Adolfo G. Fajardo (Annex "1-a").

About a month after the actual public bidding, Mr. Grayda, together with Ms. Esperanza Obsum, (to whom, the undersigned observed, Mr. Grayda, has given his trust and confidence) came to the residence of the undersigned seeking information as to what he should do so that the title of his property would not as yet be cancelled and transferred to Mr. Janer. Undersigned explained to Mr. Grayda that he (Grayda) still has one (1) year from actual registration of Mr. Janer's Certificate of Sale within which to redeem the same and further advised him to prepare the needed amount before the said period expires. Mr. Grayda then related to the undersigned that Mr. Janer would not accept any payment lower than the bid price because of interest and other expenses in filing the application for Extrajudicial Foreclosure and the fact that the mortgage took more than a year before its foreclosure which made Mr. Grayda's obligation to Mr. Janer not just P150,000.00 as stated in the Deed of Mortgage and Notice of Extrajudicial Foreclosure. This is shown by the fact that Mr. Janer's bid during the Auction Sale was already in the amount of P470,000.00 inclusive of unpaid and due interest and expenses (Annex "6").

It was then that Mr. Grayda requested the undersigned to intervene and help him with Mr. Janer despite undersigned's explanation that his role is already over considering that the sale was already made. Mr. Grayda and Ms. Obsum were likewise made to understand by the undersigned that whatever help he can extend to them will be out of good humanitarian relations without any gratification expected. It was not however anticipated by the undersigned that Mr. Grayda would be entrusting to the undersigned the amount of P200,000.00 which, according to Mr. Grayda, was the only amount he can come up with to redeem his property and he doubts Mr. Janer would accept such an amount, being not even half the price of the bid. Through the undersigned however, and this is again according to Mr. Grayda, Mr. Janer might probably understand his situation which can be explained by the undersigned to Mr. Janer without the latter getting irked, as he used to, by his (Grayda's) presence and excuses.

Undersigned refused to receive said amount, convincing the two that he is without any capacity or authority to hold the money in their behalf considering that his work as a Sheriff is over in so far as the court's role is concerned but they insisted for the undersigned to receive said amount whom they claimed they trust, averring at the same time that their arrangement with the undersigned is no longer connected with his job as a court sheriff or as public officer but as a friend. Undersigned then received the amount of P200,000.00 from Mr. Grayda in the presence of Ms. Obsum on this assuring statement of Mr. Grayda after issuing an ordinary receipt for the same under the express suggestion of Mr. Grayda.

Soon thereafter and just when undersigned was about to contact Mr. Janer regarding the matter, Mr. Janer came to undersigned's place to clarify about the sale, during which occasion undersigned asked Mr. Janer if he would agree to Mr. Grayda redeeming the property in the amount of P200,000.00 which amount he even assured Mr. Janer to be available anytime. He thought that once Mr. Janer agrees, right there and then, he would hand over to Mr. Janer the amount but Mr. Janer flatly refused saying that he will not accept any amount lesser than P470,000.00 because it includes the interest and other expenses he incurred in the filing of the Petition for Extrajudicial Foreclosure. HOWEVER, he said he is willing to accept the amount of P200,000.00

only as payment of the unpaid interest but not the amount of the mortgage. This incident was related to Mr. Grayda who was even thankful that the undersigned did not give to Mr. Janer that said amount because they would not also agree with the one-sided proposal of Mr. Janer as they would be losing their money and property at the same time.

The second occasion that undersigned was able to talk with Mr. Janer was when the latter went to the office of the undersigned clarifying if really Mr. Grayda had the amount of P200,000.00. The undersigned told Mr. Janer that the said amount is ready anytime he wants but as full redemption payment of the property not just as payment of the interest. Again, Mr. Janer insisted that if ever he will accept the P200,000.00, it will represent only the interest and not the principal amount.

This was again relayed by the undersigned to Mr. Grayda and Ms. Obsum and they became despondent. The undersigned then decided to return said amount but Mr. Grayda and Ms. Obsum wanted the undersigned to be in possession of the same to still try to persuade in whatever way possible Mr. Janer into taking pity upon their present situation and accept the offer.

Then on March 11, 2000, Mr. Grayda requested that the amount of P10,000.00 be deducted from the P200,000.00 in view of a very urgent concern. Again the undersigned suggested the return of the whole amount, but Mr. Grayda averred that money easily slips away from needy hands like theirs and they felt more content with the present arrangement they had with the undersigned. He was even the one who volunteered that a receipt be made for P10,000.00 he has taken (Annex "7").

This was followed by other small amounts of P5,000.00 on March 27, 2000 received by Mr. Grayda (Annex "8"); P6,000.00 on April 7, 2000 received by his trusted friend, Ms. Obsum whom he has earlier endorsed to the undersigned as his representative if he needs to get some amount (Annex "9"); P10,000.00 on May 10, 2000 received by Ms. Obsum (Annex "10"); P10,000.00 on May 20, 2000 received by Ms. Obsum (Annex "11") and P4,000.00 on June 20, 2000 received by Ms. Obsum (Annex "12"). All these amounts were taken by Mr. Grayda and Ms. Obsum from the P200,000.00 earlier entrusted to the undersigned and always with a reminder that the same is already getting smaller and smaller and he might lose the chance to recover his property. During all these occasions when various amounts were being taken, undersigned maintained his desire to return the remaining amount which he never dared to use – not even a centavo- for his own personal need and never made known – not even by his wife- for whatever reasons.

There were also chance occasions during this period that the undersigned met Mr. Janer and the undersigned tried to bring out Mr. Grayda's proposal, but sensing that Mr. Janer has not yet changed his mind, the undersigned never attempted to open the issue anymore.

Again, sometime in November of 2000, Ms. Obsum called the undersigned by phone conveying Mr. Grayda's need for some amount. The undersigned informed Ms. Obsum that the amount of P5,000.00 will be brought to them with a corresponding receipt (to be signed by them and returned to the undersigned) thru Atty. Jose Gojar, counsel of Ms. Obsum in her pending court case since Atty. Gojar would be going home to Bulan that same day. The said receipt was never returned however because according to Atty. Gojar it slipped his mind whether he left it with Ms. Obsum or misplaced it and because of his trust and confidence in Atty. Gojar undersigned did not bother himself about the matter anymore. Ms. Obsum and Mr. Grayda during another meeting with the undersigned soon thereafter confirmed receiving said amount from Atty. Gojar. Regrettably, though, undersigned was not able to ask for a replacement of the said receipt.

Sometime in mid-January 2001, undersigned learned that Mr. Janer has already registered the Certificate of Sale with the Office of the Register of Deeds of Sorsogon for which reason, undersigned knew that recovering the property at a lesser price can no longer be possible and the more that Mr. Janer would stick to his decision not to receive any amount lesser than P470,000.00 even as a redemption price from Mr. Grayda. In view of this development, undersigned, the first chance he had, endeavored to return the remaining amount of P150,000.00 to Mr. Grayda. On January 22, 2001, at about 12:30 p.m., when the undersigned was about to go to the office,

Ms. Obsum arrived and informed the undersigned that they again needed some amount for the payment of their electric bill. The undersigned then informed Ms. Obsum that the Certificate of Sale was already registered at the Register of Deeds by Mr. Janer and insisted that she should receive the remaining P150,000.00 for chances were already slim for the redemption of the property at the price Mr. Grayda was willing to pay. Considering that Ms. Obsum has previously taken small amounts herself from the entrusted amount, and the trusted person of Mr. Grayda as per his instruction, the undersigned did not hesitate to return the remaining amount which Ms. Obsum did not also hesitate to receive. The return of the amount was duly receipted and signed by Ms. Obsum (Annex "13").

Almost two (2) months passed without so much as a word from both Mr. Grayda and Ms. Obsum. Undersigned thought everything to be all right where he is concerned surmising by then that Mr. Grayda's property must have already been redeemed. However, by March 2001, Ms. Obsum with a woman companion came informing the undersigned that they already have a buyer for the property and reiterating the help the undersigned could extend in again convincing Mr. Janer to agree with their proposal to the surprise of the undersigned. Understanding the situation however, he again agreed although with hesitation to help in convincing Mr. Janer to accept the P200,000.00 as redemption fee. Thereafter, Ms. Obsum introduced her companion to the undersigned as a realty agent. Undersigned told them that he will do his best but they have to prepare the amount in case Mr. Janer agrees. They left with a word that they will just wait for a notice from the undersigned as regards his availability considering his work.

In the early part of May, 2001, Mr. Grayda and Ms. Obsum with another woman whom undersigned's wife is not familiar with, came but the undersigned was not around and they only had a talk with his wife. As related by his wife, undersigned learned that her wife was informed by the group of Mr. Grayda that they already had a buyer and they needed the undersigned to mediate with Mr. Janer to accept Mr. Grayda's offer to redeem the property at the price of P200,000.00. The wife even suggested to the group that considering that their buyer is very much interested to buy the property, they could at least persuade this buyer to augment Mr. Grayda's money to a much higher amount that would be acceptable to Mr. Janer and they would no longer need the presence of the undersigned to do this but they insisted that they still need the undersigned to whose explanations Mr. Janer might listen. At this point, the wife even tried to contact the undersigned by phone but considering that he was outside Sorsogon, the undersigned just told the wife to tell the group that he will be contacting them immediately in Bulan. This was relayed by the wife to the group assuring them, before they left for Bulan but which undersigned was no longer able to do because of his additional work as Court Interpreter which required him to stay in the office during the better part of the day.

Other occasions transpired where the undersigned and the party of Mr. Grayda met but the issue was always the same: to convince Mr. Janer to agree with their proposal of recovering Grayda's property in the amount of P200,000.00. Although there had been times the undersigned would chance upon Mr. Janer and he would try to mention the matter about Mr. Grayda's (sic) the undersigned would no longer pursue the matter, anyway the undersigned thought that it is not obligatory on his part to do such thing. There were even times when the undersigned has asked Mr. Grayda why, of all people, he chose to consider the undersigned as his mediator where Mr. Janer is concerned and Mr. Grayda would answer that it was because he had gathered information from some Bulan residents that undersigned is a person with many friends in the said municipality aside from the fact that Mr. Janer and undersigned's father, who was a retired Municipal Treasurer of Bulan, are friends and Mr. Janer knew the undersigned personally.

Sometime in the month of May 2001, the undersigned was called upon by Presiding Judge Adolfo Fajardo for a confrontation in his chambers with Mr. Grayda and Ms. Obsum regarding the matter. Too much unsavory words were hurled at the undersigned by Mr. Grayda and Ms. Obsum to which undersigned cannot fairly react considering the presence of Judge Fajardo under whose scrutiny his reactions might be misconstrued as a show of disrespect. It will be in fairness this time however to mention that even immediately before this confrontation- when the complainant and Ms.Obsum were claiming to still have a large amount of money in

the possession of the undersigned- the original copies of the receipts were already turned over to Judge Fajardo. This happened in the presence of the Clerk of Court, Atty. Jaime Calleja, and during which the undersigned first inquired from Mr. Grayda if he knew and received all the amounts that Ms. Obsum had obtained from the undersigned and Mr. Grayda answered that he was not sure. Thereafter undersigned gave the complainant copies of the receipts and Mr. Grayda suggested to call upon Ms. Obsum to whom the receipts were shown. Ms. Obsum denied receiving the P150,000.00 from the undersigned. It was then, when Judge Fajardo was about to enter the room (downstairs office of RTC Br. 55, Bulwagan ng Katarungan), that the said original receipts were turned over to Judge Fajardo who subsequently entrusted the same to Atty. Jaime Calleja, his Clerk of Court for safekeeping. Said receipts remained in the custody of the afore-named Clerk of Court and can be easily produced if need arises. Undersigned's act of turning over the receipts to his superior officers is for the purpose of ensuring the integrity of said receipts especially so that one of them had been alleged as falsified. Undersigned never expected Ms. Obsum would DENY to have received the P150,000.00 until the incident stated above happened considering the almost four (4) long months since she received said amount from the undersigned and the fact that during this period when the undersigned had for several times met with Mr. Grayda and Ms. Obsum, she never as much touched on the issue and just remained silent during their conversation and Mr. Grayda never mentioned anything anymore about the money which made the undersigned believe that he had already received the same from Ms. Obsum. As a matter of fact, the last few meetings the undersigned had with the two had been generally about how he can persuade Mr. Janer to accept Mr. Grayda's offer.[2]

In refuting the allegation of anomalous bidding, respondent explained that all the requirements for public bidding conducted in the extrajudicial foreclosure were duly complied with, i.e., the petition for extrajudicial foreclosure was duly accomplished and docketed as EJF No. 99-22 and the notice was duly posted and published; complainant and Janer were present during the auction and Janer, being the only bidder, purchased the lot and the certificate of sale was approved by Judge Fajardo. His issuance of an ordinary receipt for the amount of P200,000.00 was upon the complainant's suggestion and insistence that he keep the money not as Court Sheriff but as a friend; that complainant never raised the issue regarding the ordinary receipt issued to them when he and Obsum were obtaining various amounts from the P200,000.00 he held in trust; that the total amount of P200,000.00 had already been returned to complainant evidenced by the following:

Receipt dated March 11, 2000... P 10,000.00

Receipt dated March 27, 2000... 5,000.00

Receipt dated April 7, 2000 .... 6,000.00

Receipt dated May 10, 2000..... 10,000.00

Receipt dated May 20, 2000..... 10,000.00

Receipt dated June 20, 2000..... 4,000.00

Without Receipt (Atty. Gojar).... 5,000.00

Receipt dated January 22, 2001... 150,000.00

Total amount returned P200,000.00

Anent the affidavits of Gotladera and Villafranca which were attached to the complaint, respondent claims that they were realty agents interested to earn in the property; that they had no personal knowledge of the P200,000.00 held in trust and subsequently returned since they came into the picture after the said amount had already been returned. He pointed out that Obsum received the amount of P150,000.00 on January 22, 2001 as evidenced by the receipt she signed; that Obsum's insincerity in dealing with others was shown by the following cases filed

against her: (1) Civil Case No. 99-97 for sum of money and damages with prayer for preliminary attachment filed by Perlas Burias;<sup>[3]</sup> (2) Civil Case No. 1041 for replevin and damages with prayer for a writ of replevin pendente lite by Ronald G. Sarte;<sup>[4]</sup> (3) Civil Case No. 1062 for sum of money and damages filed by Emma Chua.<sup>[5]</sup> He likewise stated that he was being made to suffer complainant's wrath when he has no one to blame when he bestowed his full trust and confidence on Obsum. He claims that he has been in the government service since 1977 and resigned in 1990 to work abroad and was re-employed as sheriff in 1995 because of no derogatory records.

In a Resolution<sup>[6]</sup> dated June 9, 2003, the Court, upon recommendation of the Court Administrator Presbitero J. Velasco, Jr., referred the matter to Presiding Judge Adolfo G. Fajardo, RTC, Branch 65, Bulan, Sorsogon for investigation, report and recommendation.

Judge Fajardo submitted his investigation report on December 10, 2003, where he found respondent guilty of neglect of duty, dishonesty and serious misconduct, recommending as follows:

On the strength of the foregoing findings, therefore, we submit that respondent- sheriff NOEL G. PRIMO, is guilty of NEGLECT OF DUTY, DISHONESTY and SERIOUS MISCONDUCT. In connection therewith we recommend the following:

a) That he be meted out the penalty of SUSPENSION, the duration of which we left to his Honor's discretion to determine, taking into account the mitigating circumstances of being a first offender; his length of service in the judiciary (21 years) without any derogatory record; and giving him likewise the benefit of the spirit of Yuletide Season.

b) Considering that the Php150,000.00 was not deposited with the Court and was not a product of a lawful seizure and taken by legal process and authority, and placed in the possession of a public officer such as sheriff (Don vs. Moya, SP-14833, March 10, 1983, cited in F.B. Moreno, Philippine Law Dictionary, 3rd edition), but was voluntarily placed in the custody of the respondent-sheriff by the complainant- the same was not in custodia legis and never became a public fund. There was, therefore, no misappropriation (Dina Castillo vs. Zenaida C. Buencillo, etc., A.M. No. P-97-1241, March 20, 2001). The respondent- sheriff can only be held liable in his private capacity but not as a public officer. Hence, he must be ordered to restore the Php150,000.00 to the complainant with legal interest reckoned from the filing of the administrative complaint until fully paid.

c) The nullification of the auction sale conducted on December 9, 1999 and the cancellation of the certificate of sale already issued, for failure to comply with the provision of Section 1 of Act 3135, as amended, to the prejudice of the complainant.

In finding respondent guilty of the charges, the investigating judge made the following disquisitions:

- There was inconsistency in respondent's statement, thus: respondent, in his comment, stated that he accepted the P200,000.00 from complainant as redemption money upon the former's suggestion that it was no longer connected with his job as a sheriff but as a friend. In open court, he testified that there was no special relation existing between him and the complainant and the redemption money was given to him because he was the one who auctioned the property.

- Janer, the mortgagee, denied respondent's claim that he went to the latter's office to inquire about the P200,000.00. Notwithstanding some unresponsive answers in the latter part of Janer's incomplete testimony, Janer had established that he did not meet respondent regarding the redemption price nor was he aware that the money was in the custody of respondent. While a woman companion of Janer blurted out something that respondent had offered him the amount of P200,000.00 for Grayda's property but Janer would not accept, the

same is not credible because the utterance was not made under oath and not of her own knowledge because she refused when asked to testify.

- Respondent has found a convenient scapegoat in the person of Esperanza Obsum, who is presently facing some cases in court relative to other financial transactions she entered into. Although there is some grain of truth to respondent's claim that Obsum, being a smart woman with "a gift of gab," hence capable of luring those with whom she had transacted, like her live-in partner, herein complainant, the investigating judge is not convinced that the same is entirely true for the following reasons:

(1) Complainant and Ms. Obsum are ordinary citizens who are ignorant about foreclosure proceedings, thus they were forced to negotiate with an officer of the court for assistance; that they trusted respondent as proved by the fact that complainant did not hesitate to entrust the P200,000.00 to respondent without any official receipt.

(2) Ms. Obsum, a smart woman, with a gift of gab, cannot be smarter than the respondent in matters involving foreclosed properties which usually involved considerable amount of money. Based on respondent's wealth of experience, (1) he would not release amount of P150,000.00 without requiring the presence of Mr. Grayda, knowing beforehand that the woman to whom he will be entrusting such a big amount is a person of allegedly questionable character; (2) he should have made follow-up with Mr. Grayda to confirm receipt of the same; (3) he would not have failed to specify in the paper receipt he issued what the amount of P150,000.00 stands for; (4) he should not have failed to furnish a copy of the receipt to complainant when the former frequented Bulan twice or thrice a week. Complainant only learned about the release of P150,000.00 when they confronted respondent before the investigating judge. The receipt was exhibited for the first time by the respondent in the process of the confrontation.

(3) Ms. Obsum, being the live-in partner of complainant, also has an interest at stake in the transaction since both of them are residents of the house and lot subject of the foreclosure and she could not afford to earn the ire of the complainant knowing fully well that it could be discovered in due time. She was always with the complainant during the entire investigation which is not the normal attitude of one who is guilty of wrong doing. Complainant and Ms. Obsum are just ordinary persons who would not have a heart to pursue this case against respondent, a court personnel, if their rights have not really been violated. Complainant even proposed for respondent to just return the amount and he will forget about the matter, which fell on deaf ears.

(4) A perusal of all the receipts issued by complainant and signed by Ms. Obsum showed that they were all written by respondent. She explained that the contents of the receipts were already written by respondent and she just signed them. With respect to the receipt covering the amount of P150,000.00, Ms. Obsum explained that she was made to sign a blank paper by respondent who was in a hurry. She narrated that she went to respondent's office and talked to him and later borrowed P150.00 for her fare. Her claim that she was made to sign a blank paper was supported by complainant who testified that all the amounts taken by Ms. Obsum from respondent was able to reach him, with the exception only of the P150,000.00;

(5) The testimonies of complainant and Ms. Obsum were corroborated by Raul Villafranca, who testified as follows: On April 6, 2001, he, together with Leopoldo Balbalosa, complainant and Ms. Obsum went to Sorsogon to see respondent in order to show the deed of sale and the buyer of the foreclosed property; he heard complainant asking respondent in passing the whereabouts of the P200,000.00 to which the latter replied that the money was with him and adding that he will not risk his retirement just because of the amount; He saw respondent again in the house of Ms. Obsum and heard complainant and respondent talking about the amount of P200,000.00 and respondent even told complainant and Ms. Obsum to prepare another P50,000.00 to be paid Mr. Janer. The testimony of Mr. Villafranca is given credence as it was candid and there was no showing that he was actuated by any ill motive in testifying against respondent. The testimony showed that it was impossible for respondent to have turned over the amount of P150,000.00 to Ms. Obsum on January 22, 2001 because the amount was still in respondent's hand even on April 6, 2001, hence supporting the claim of Ms.

Obsum that she never received such amount.

(6) It is not disputed that the receipt reflecting the amount of P150,000.00 was written by respondent himself (just like the other pervious receipts issued), thus, it cannot be denied that respondent was at liberty to write whatever amount he desires to write therein since he was the one in control and in custody of the receipt. The claim of Ms. Obsum that when she borrowed P150.00 for her fare, respondent made her to sign a blank document because respondent was in a hurry is credible. This was strengthened by the fact that a copy of the questioned receipt was never furnished the complainant to inform him that the principal amount had already been returned to his live-in partner. The temptation was more on the part of respondent who was in custody of the amount for a considerable period of time, than on the part of Ms. Obsum who was more interested in the redemption of the foreclosed property of her live-in partner. Respondent gave complainant all kinds of excuses just to be able to hold on to the P150,000.00 and not telling Mr. Janer about it showed his malicious intent to possess the same.

(7) Respondent's claim of honesty, good faith and mental lapse could not be accepted because his motive was suspect when he deliberately hid the transaction from his superiors and did not deposit the money with the court or with the treasury office. Although his excuse that it was upon the suggestion of complainant that he should keep the amount in his custody so that the same will be ready anytime Mr. Janer demands for it, although logical, is not at all convincing. As an officer of the court, respondent knows that he is forbidden from entering into private transactions particularly on matters related to his functions as sheriff without the knowledge of the court. For had it not been for his position as a sheriff who conducted the auction sale, complainant would have no business dealing with him privately.

- The investigating judge also found respondent guilty of neglect of duty for disregarding the provision of Section 1, Act 3135, as amended, and for proceeding with the subject extrajudicial foreclosure sale notwithstanding the absence of the requisite special power in the real estate mortgage contract authorizing the mortgagee, Janer, to foreclose the mortgage extrajudicially in case of non-payment.

In a Resolution dated February 9, 2004, we referred the report of Investigating Judge Adolfo G. Fajardo to the OCA for evaluation, report and recommendation.

In a Memorandum dated May 7, 2004, the OCA did not agree with the findings of the investigating judge and recommends for the dismissal of the administrative case against respondent.

OCA finds Investigating Judge Fajardo to have failed to consider several important details in arriving at his conclusions, thus:

First, Judge Fajardo held that respondent is merely using Ms. Obsum as a scapegoat by implying that she is the real culprit in this case. However, Judge Fajardo himself admitted that "there is some grain of truth" in respondent's contention that Ms. Obsum is an intelligent woman with a gift of gab capable of luring the persons she transacts with and that, therefore, she is likewise capable of defrauding her live-in partner, whom she can easily influence at will. This contention of respondent is strengthened by the fact that Ms. Obsum is currently facing several cases in court involving sums of money.

It is also significant to note that Ms. Obsum and complainant met only in the year 2000 – the same year that the property of complainant was foreclosed. Interestingly, they met when Ms. Obsum became the agent of complainant's property. This circumstance also casts suspicion on the character and motive of Ms. Obsum, especially considering that the latest civil case against Ms. Obsum (No. 99-97 for, among, others, collection of a sum of money, the principal of which amounts to P363,500.00) was filed the year before (1999) and she still has another civil case pending in the MTC of Sorsogon. This defeats the finding of Judge Fajardo that "the temptation is more on the part of the respondent sheriff" to keep the amount in question. As between respondent and Ms. Obsum, it is clear that the latter is the one in dire need of money.

Second, in finding respondent guilty of the charges against him, Judge Fajardo gave premium to the testimony of Mr. Janer, the mortgagor, denying the claim of respondent that they met twice in the year 2000 to discuss the redemption of complainant's property. Judge Fajardo, however, failed to take into account that during his direct examination, when he was being made to identify and affirm the manifestation he executed on July 16, 2003 as a witness of complainant, he cannot remember whether he executed the same. According to Mr. Janer, he doubts the contents of the manifestation and "even the signature [he is] not sure." If Mr. Janer could not remember an act he performed only a month before, how can he be expected to remember an event which transpired three (3) years ago? In fact, when he was asked, again on direct examination, whether he made a bid during the auction sale, he categorically stated that he did not. It is clear that Mr. Janer suffers from serious mental lapses and, therefore, any testimony he gives in connection with this case cannot be given probative value.

Also worthy of note is the fact that during the testimony of Mr. Janer, his woman-companion blurted out in a loud voice that respondent was already offering him the amount of P200,000.00 for Mr. Grayda's property but he refused to accept the same. This statement clearly belied the allegation of complainant that Mr. Janer and respondent never met nor talked about the redemption of the property. Judge Fajardo, however, refused to consider this circumstance in the evaluation of this case because according to him, "such utterance was not under oath" and "because when she was asked by the court to testify regarding the transaction, she refused" thereby implying that she has no knowledge about the same. Nevertheless, it cannot be denied that the said statement, which was uttered spontaneously, further casts doubt on the competency of Mr. Janer as a witness for the complainant.

In any case, administrative proceedings do not necessarily have to conform to technical rules of evidence. The Supreme Court has, in many instances, set aside technicalities in the interest of justice. Considering this, the undersigned believes that the statement of Mr. Janer's woman-companion should be appreciated in determining the guilt of respondent sheriff.

Third, the investigating judge noted that, during the course of the investigation of this case, Ms. Obsum was always with complainant, giving him all the needed support. According to Judge Fajardo, this is not the normal attitude of one who is guilty of a wrongdoing, particularly against her own live-in partner. Hence, he concluded, contrary to respondent's supposition, Ms. Obsum could not have kept the P150,000.00 to herself. He stressed that a person who is guilty of some offense would normally shy away from any confrontation or investigation, for fear that his wrongdoing would soon be discovered and his guilt exposed.

The same thing, however, could be said of respondent sheriff. If he is indeed guilty of taking the subject amount, he would not have taken steps to defend himself and clear his name. The records of this case clearly show that respondent was vigorous in proving his innocence. Prior to the filing of this case, he did not hesitate to appear before Judge Fajardo for a confrontation with complainant and Ms. Obsum. When the instant administrative case was filed, respondent submitted his 20-page comment within the required 10-day period. A perusal of said comment reveals that he answered the allegations of complainant point by point. During the formal investigation of this case, respondent likewise appeared with a lawyer and maintained his innocence of the charges against him. Lastly, even Judge Fajardo pointed out that only respondent submitted his Memorandum in this case. Complainant did not submit a Memorandum despite the opportunity given him by the investigating judge. Clearly, respondent had done all that is needed to convince the Court of his innocence.

In this connection, it is worth mentioning that there was a verbal proposal on the part of complainant to settle the matter. He asked respondent to return the amount and the whole matter will be forgotten. Respondent refused and his refusal was taken by the investigating judge as stubbornness on the part of the sheriff.

To our mind, however, such refusal on the part of respondent, instead of being a sign of guilt, actually reinforces his plea of innocence. It would have been easier and much simpler on the part of respondent to just return the money instead of going through the entire investigation, needing to hire a lawyer in the process and

investing time, money and energy in the resolution of this case. Respondent, however, stood his ground and maintained his innocence.

Fourth, misconduct in office is defined as “a misconduct such as affects, [the respondent’s] performance of his duties as an officer and not only such as affects his character as a private individual.” This means that the act complained of must have been performed by the erring court personnel in his official capacity.

In this case, it is undisputed that Sheriff Primo received the P200,000.00 as a private individual and not as an officer of the court. Even Judge Fajardo acknowledged this when he stated in his investigating report that the amount was not a product of a lawful seizure or taken by legal process, but was VOLUNTARILY placed in the custody of respondent by the complainant. Thus, Judge Fajardo concluded, if there is any liability on the part or respondent, “he can only be held in his private capacity but not as a public officer.” Respondent, therefore, cannot be held liable for Misconduct. Neither can respondent be held liable for Neglect of Duty. The money was entrusted to respondent in his private capacity. Hence, there was no duty on his part to issue an official receipt for the same. He was likewise under no obligation to deposit the same with the court.

Finally, in the case of *Dionisio vs. Escaño*, the Court held that “the Rules, even in administrative case, demands that, if the respondent should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent. For before any member of the judiciary could be faulted, it should only be after presentation of competent evidence,” especially if the charge is penal in character. The ground for the removal of a judicial officer should be established beyond reasonable doubt. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption, incompetency, etc. In such case, the general rule in regard to admissibility of evidence in criminal trials apply.

Aside from Serious Misconduct, respondent also stands charged for Dishonesty. Under Civil Service rules, dishonesty is punishable by dismissal for the first offense. Hence, the quantum of proof required in order to hold respondent liable for Dishonesty is proof beyond reasonable doubt.

In the case of *Office of the Court Administrator vs. Pascual*, the Court, quoting *People vs. Hernandez*, defined “reasonable doubt” as the inability to let the judicial mind rest easy upon the certainty of guilt after a thorough investigation of the whole evidence.

What precludes the undersigned from “resting easy” in this case is the fact that after twenty-one (21) years of service in the judiciary, this is the very first time that undersigned is being charged administratively. Even Judge Fajardo recognized this fact when he recommended that the mitigating circumstances of being a first offender and length of service in the judiciary WITHOUT ANY DEROGATORY record, be considered in favor of respondent.

Indeed, it is hard to believe that after 21 years of faithful service to the judiciary, respondent will now tarnish his unblemished record. And for the amount merely of P150,000.00, which will not even enable respondent to live a comfortable life should he be dismissed from the service.

The principle of reasonable doubt being applicable in this case, the charges of Dishonesty, Neglect of Duty and Serious Misconduct have not been sufficiently proven.

IN VIEW OF ALL THE FOREGOING, the undersigned most respectfully recommends that the instant administrative case against Sheriff Noel G. Primo be DISMISSED for lack of merit.

We agree with the findings of OCA that Obsum had already received the amount of P150,000.00 from respondent as evidenced by the receipt she signed but disagrees as to the findings that respondent is totally absolved from any administrative liability.

In *Philippine National Bank vs. Court of Appeals*,<sup>[7]</sup> we defined a receipt as:

A written and signed acknowledgement that money has been paid or goods have been delivered. A receipt is merely presumptive evidence and is not conclusive.

A written acknowledgement that money or a thing of value has been received. Since a receipt is a mere acknowledgement of payment, it may be subject to explanation or contradiction. A receipt may be used as evidence against one just as any other declaration or admission. A simple receipt not under seal is presumptive evidence only and may be rebutted or explained by other evidence of mistake in giving it or of non-payment or of the circumstance under which it was given.

While a receipt is not conclusive evidence,[8] a careful review of the records of the case failed to convincingly overturn the acknowledgment made by Obsum that she received from respondent the amount of P150,000.00 on January 22, 2001. Obsum denies having received the money but she does not dispute her signature in the receipt. She tried to explain that on January 22, 2001, she went to the office of respondent to get the title of complainant's foreclosed property from him; that since respondent was in a hurry to attend a hearing, she instead asked for P150.00 for her fare and was asked by respondent to sign a blank paper. Such explanation, however, does not persuade us.

Obsum admitted that in previous times that certain amounts of money were released by respondent from the P200,000.00 they gave to him as redemption money, she affixed her signature in the receipts with the amount of money already written by respondent.[9] This is the acceptable and normal practice in any transaction involving money. It bears stressing that Obsum, a broker,[10] is knowledgeable in transactions involving money, thus we find it rather improbable that she can be asked to just affix her signature in a blank paper knowing fully well that respondent can just write any amount therein. In fact, a perusal of the copies of the complaints in the civil cases[11] filed against Obsum which are attached to respondent's Comment would show that she is an intelligent woman and knows her transactions well.

Moreover, we find it implausible that respondent, who as intimidated by Obsum was in a hurry on January 22, 2001 to attend a hearing, would be concerned in asking Obsum to sign a receipt just for the amount of P150.00. Notably, respondent released through Obsum's counsel, Atty. Gojar, the amount of P5,000.00 in November, and which receipt was no longer returned to him. During this investigation, however, Obsum acknowledged having received the same.[12] If respondent had not asked for Obsum to execute another receipt to replace the unreturned receipt, why would he concern himself with asking her to sign a blank paper for a small amount of P150.00?

To support Obsum's claim that she could not have received the amount of P150,000.00 on January 22, 2001, complainant presented Raul Villafranca, a real estate agent. Villafranca, testified that he met respondent on two occasions: First, on April 6, 2001 when he was with complainant, Obsum and a certain Leopoldo Balbalosa, where during a conversation, he heard Balbalosa asked respondent about the P200,000.00 to which respondent answered that it was with him and will not risk his retirement benefits; second, in the house of Obsum where he heard them talking again about the P200,000.00 and the preparation of additional P50,000.00 for the redemption of complainant's foreclosed property. Assuming *arguendo* that Obsum did not receive the P150,000.00 on January 22, 2001, there was still no basis for Balbalosa or complainant and Obsum to ask respondent in the April 2001 meeting if the P200,000.00 was with the latter since it was not denied that the total amount of P50,000.00 were already released from the P200,000.00 redemption money to complainant and Obsum in 2000. Thus, if at all, respondent should be asked only about the P150,000.00. The accuracy of what Villafranca heard regarding the amount of P200,000.00 is put in doubt specially since his information which came from complainant was limited to the fact that the property was only mortgaged to Janer. The possibility that Villafranca was mistaken in his interpretation regarding the amount of P200,000.00 is not remote.

In giving more credence to the testimony of Obsum that she had not received the money, the investigating judge

observed that Obsum was always with the complainant during the investigation giving the latter the much needed support, which he believed is not a normal attitude of one who is guilty of wrong-doing. However, the opposite interpretation could also be true. It could be that she is always present because she is also protecting her own interests. In such a case, that which is favorable to the respondent should be accorded to him.

Although Janer, the mortgagee and the highest bidder in the foreclosure sale, denied having met respondent with an offer in the amount of P200,000.00 as redemption price for the complainant's foreclosed property, such denial cannot be given much weight as to affect respondent's credibility. Janer, being 84 years old, was somehow forgetful of past incidents. Reading through his testimony, we find that he could not easily remember things. In fact, the investigating judge had to explain to him some questions and he observed that he easily forgets.[13] On the other hand, respondent's meeting with Janer found corroboration from complainant himself when he testified that after he gave the P200,000.00 to respondent on February 9, 2000, he informed Janer of the money and the latter went to the house of respondent.[14] In fact, as stated in the respondent's memorandum which remained uncontroverted, there was a woman companion of Janer who blurted out in a loud voice that respondent had offered Janer the amount of P200,000.00 for complainant's property but he refused to accept. Thus, it cannot be concluded that respondent never offered the redemption money to Janer. Considering that Janer would not accept the amount offered which was below the bidden price as shown in the certificate of sale, respondent then returned the remaining P150,000.00 held in trust to Obsum on January 22, 2001.

Considering the foregoing, complainant and his witnesses failed to adduce sufficient rebuttal evidence against the receipt signed by Obsum acknowledging to have received the amount of P150,000.00 from respondent. The subject receipt remains to be the primary or best evidence or "that which affords the greatest certainty of the fact in question." [15] Complainant failed to support his accusation of dishonesty against respondent.

We, however, find that respondent committed an impropriety for which he should be administratively liable. Respondent admitted that he received from complainant in the presence of Obsum the amount of P200,000.00 as redemption money after the auction sale took place on December 9, 1999. His allegation that he accepted the money upon complainant's insistence and suggestion that he accept the same not in his capacity as sheriff, would not absolve him from liability since he also admitted that complainant approached him because he was the one who auctioned the property. Respondent, by the very nature of his function, must at all times act above suspicion. All moneys accepted by a sheriff should be duly receipted for, otherwise, it would be in violation of the General Auditing and Accounting Rules.[16] Respondent should not have accepted the money considering that by the very nature of things, the money could not be receipted for officially as it was not given to him in his official capacity. We, therefore, find respondent guilty of misconduct in office.

Public office is a public trust. Public officers and employees are duty bound to serve with highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable to the people. Persons involved in the administration of justice, ought to live up to the strictest standard of honesty, integrity in the public service. The conduct of every personnel connected with the courts should, at all times, be circumspect to preserve the integrity and dignity of our courts of justice.[17]

We also find respondent guilty of neglect of duty for his act in extrajudicially foreclosing the property of complainant despite the absence of the requisite special power in the real estate mortgage authorizing the mortgagee Janer to foreclose the mortgage extrajudicially in case of non-payment.

Section 1 of Act 3135, as amended entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," provides:

When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made

as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale or redemption shall be effected, whether or not provision for the same is made in the power.

Paragraph 2 and 2 (c) of Administrative Order No. 3[18] specifically provides that it is the duty of the Office of the Sheriff to examine, upon receipt of an application for extrajudicial foreclosure of real estate mortgages whether the applicant has complied with all the requirements under Act 3135.

The deed of real estate mortgage between complainant and Janer provided among others that:

....It is hereby agreed upon by the Mortgagor that the former will pay the amount of P150,000.00 to the Mortgagee within a period of THREE (3) MONTHS from and after the signing of this instrument then this Mortgage shall be declared null and void and of no force and effect; otherwise this Contract is enforceable in a manner provided for by law.

Respondent failed to ascertain that the application for extrajudicial foreclosure of mortgage did not contain any statement regarding the requisite special power of attorney conferring upon the mortgagee the power to sell the mortgaged property at public auction in the event of mortgagor's failure to pay his debts. Such absence should have alerted him and he should have referred to the attached deed of real estate mortgage where he could see the absence of such authority. Sheriffs are bound to discharge their duties with prudence, caution and attention which careful men usually exercise in the management of their affairs.[19]

WHEREFORE, we find respondent NOEL G. PRIMO GUILTY of simple misconduct and neglect of duty and hereby imposes upon him a FINE in the amount of Ten Thousand Pesos (P10,000.00) with WARNING that commission of same or similar acts or omission will be dealt with more severely.

Let a copy of this Resolution be attached to the 201 file of respondent.

**SO ORDERED.**

Callejo, Sr., and Chico-Nazario, JJ., concur.  
Puno, J., (Chairman), on official leave.  
Tinga, J., on leave.

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[1] Rollo, pp. 2-3.

[2] Id., pp. 20-27.

[3] Filed with RTC, Branch 65, Bulan, Sorsogon.

[4] Filed with Municipal Trial Court, Sorsogon, Sorsogon.

[5] Ibid.

[6] Rollo, p. 77.

**[7] 256 SCRA 309, 315-316 (1996).**

[8] Ibid.

[9] TSN, August 6, 2003, pp. 29-31.

[10] Id., p. 24.

[11] In Civil Case No. 99-97 filed by Perlas Burias for sum of money and damages with prayer for preliminary attachment, the complaint states:

.....

- That initially, defendant got some advances from plaintiff in the amount of P50,000.00. When defendant was not able to pay, she secured and paid it by executing a Sale with Right to Repurchase over a parcel of residential land;

- That due to the execution of the said sale, plaintiff resumed giving advances unto the defendant, thus from 1996 up to the present, plaintiff gave a total amount of THREE HUNDRED SIXTY THREE THOUSAND FIVE HUNDRED PESOS, Philippine currency, which are all duly represented with receipts signed by the defendant;

....

- That what worries the plaintiff is the fact that the consideration in the Sale with Right to Repurchase is merely P50,000.00, and the amount of P363,500.00 is not covered by the sale;

- That what further worries the plaintiff is that the defendant is trying to sell the said land and may just pay P50,000.00, unto the plaintiff and may pocket whatever is the remaining purchase price without paying the much bigger sum of P363,500.00, thus plaintiff will be left holding an empty bag;

- That in order to amply protect the plaintiff there is an urgent need for this Honorable Court to issue a Writ of Attachment over the property covered by the Sale with Right to Repurchase and such other properties of the defendant which may be raised and proved during the hearing for the issuance of the Writ.

In Civil Case No. 1041 filed by Ronald G. Sarte for replevin and damages with prayer for a writ of replevin pendente lite. The complaints states:

- That defendant Esperanza Obsum, on December 2, 1988, purchased on installment from the plaintiff one (1) unit Westinghouse refrigerator,.... in the amount of P11,079.00, and made a down payment of P2,295.00, and the remaining balance of P8,784.00 to be paid in twelve equal monthly installments.....

- That the said defendant, after making the down payment, executed a Chattel Mortgage in favor of the plaintiff, involving the refrigerator in question.....

- That the defendant Esperanza Obsum has still an outstanding obligation of P6,768.00 as of September 17, 1989, .....

- That unfortunately however, and to make matters worse, and to cause further damage to the plaintiff, defendant Esperanza Obsum deliberately and maliciously transferred/conveyed or disposed of the said refrigerator to her co-defendant Rosalina Valeriano, the latter of whom is now in possession of the said property in question; that as to how the alleged disposal /transfer was made by the said defendants, the plaintiff does not know anything about the matter, but what is certain is that, there was deceit, fraud and other machinations effected in the illegal transfer of the unit, aimed at depriving the plaintiff of the lawful ownership and possession thereof, as defendant Esperanza Obsum had not fully paid the full consideration thereof, and that the surreptitious transfer of the property in question is intended to conceal and hide the property from the plaintiff.

In Civil Case No. 1062 filed by Emma Chua for sum of money and damages which alleged among others that on January 26, 1990, defendant obtained on credit several items and for such items defendant executed a promissory note dated January 26, 1990 in the amount of P16,081.00 which was due last December 1990; that despite repeated demands defendant failed to pay the obligation. Defendant failed to file her responsive pleading thus declared in default and was ordered to pay the debt with legal interest.

[12] TSN, August 20, 2003, pp. 3-4.

[13] TSN, August 6, 2003, p. 10.

[14] August 20, 2003, p. 26.

[15] Philippine National Bank vs. Court of Appeals , supra, citing Francisco, Ricardo, J., Evidence, Rules of Court in the Philippines, Rules 128-134, 1993 Edition, p. 2.

[16] Hernandez vs. Borja, 242 SCRA 162.

[17] Ibid.

[18] Amended by A.M. No. 99-10-05-0 effective January 15, 2000, which was further amended, March 1, 2001, and August 7, 2001, making it now the specific duty of the Clerk of Court to examine the applications for extrajudicial foreclosure of mortgage.

[19] Casano vs. Magat, 374 SCRA 508 (2002) citing Evangelista vs. Penserga, 242 SCRA 702.

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