

**SANTOS SY, COMPLAINANT, VS. IBRAHIM T. BINASING,
OFFICER-IN-CHARGE/SHERIFF, REGIONAL TRIAL COURT, OFFICE
OF THE CLERK OF COURT, COTABATO CITY, RESPONDENT.**

A.M. No. P-06-2213 (Formerly OCA IPI No. 06-2378-P). November 23, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Metropolitan Trial Court, Branch 75 of Marikina rendered a judgment in Civil Case No. 03-7464 in favor of the therein plaintiff-herein complainant Santos Sy, Managing Director of Starbenz Inc., against one Ang Ping, doing business under the name and style of Ang Ping Enterprises.

Its decision having become final and executory, the trial court issued a Writ of Execution on June 21, 2004.

The writ of execution was referred by complainant's counsel to respondent Officer-in-Charge/Sheriff Ibrahim T. Binasing of the Office of the Clerk of Court, Regional Trial Court, Cotabato City for implementation upon the defendant, "c/o Ang Mart Enterprises, 25 Sinsuat Ave., cor. Jose Lim St., Cotabato City."

By letter of September 22, 2004 addressed to respondent, complainant, through counsel, reiterated his request for the implementation of the writ. The request was followed by another letter dated December 6, 2004. Despite receipt of the letters and the required expenses for the implementation of the writ, respondent failed to implement it.

In a February 28, 2005 letter, complainant's counsel warned respondent that "failure to do your work may constrain us to bring this matter to the proper authority for appropriate sanctions x x x." The warning was reiterated in a letter of July 26, 2005 to respondent.

Replying, respondent, by letter of August 15, 2005, asked complainant's counsel for the bank account number of complainant. By a subsequent letter dated November 15, 2005, respondent informed complainant's counsel, however, that the money judgment was "not yet in [his] hands" and that the delay in the implementation of the writ was due to the numerous requests from different courts of Maguindanao for implementation of writs of demolition and he was the only sheriff assigned for the purpose.

Hence, arose the present administrative case filed on February 3, 2006 with the Office of the Court Administrator (OCA) for neglect of duty.

In his Comment of March 9, 2006, respondent asserts that the complaint has become moot because he had already implemented the writ of execution, and that he deposited the money judgment to the bank account of complainant on December 29, 2005.

Respondent in fact attached to his Comment complainant's Affidavit of Desistance dated February 20, 2006. He thus prays for the dismissal of the complaint.

The OCA, on evaluation of the case, found respondent "grossly negligent" in failing to immediately implement

the writ. It accordingly recommended that respondent be fined in the amount of P5,000 and sternly warned that any repetition of the same would be dealt with more severely.

By Resolution of July 24, 2006, the Court directed the parties to manifest in 10 days whether they are willing to submit the case for decision on the basis of the pleadings/records already submitted. In compliance with the said Resolution, respondent, by letter of September 15, 2006, reiterates his information that he had already implemented the writ and his prayer for the dismissal of the complaint in view of complainant's execution of an affidavit of desistance.

The OCA's evaluation of the case is well-taken, but not its recommended penalty.

Respondent's liability for neglect of duty – failure to implement the writ of execution for more than one year and six months – is clearly indubitable.

Complainant's execution of an Affidavit of Desistance does not render the complaint moot.

. . . [A]n affidavit of desistance by a complainant in an administrative case against a member of the judiciary does not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint or otherwise to wield its disciplinary authority because the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. Its efforts in that direction cannot thus be frustrated by any private arrangement of the parties. Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel. . .[1]

On the penalty. Under the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty of which, under the facts of the case, respondent is liable, is penalized by suspension of one (1) month and one (1) day to six (6) months. It appearing, however, that respondent has not been previously administratively faulted, so as not to hamper the performance of the duties of his office,[2] instead of suspending him, he is fined an amount equivalent to his three months salary.

WHEREFORE, respondent IBRAHIM T. BINASING, Officer-in-Charge/Sheriff, Regional Trial Court, Office of the Clerk of Court, Cotabato City, is found guilty of simple neglect of duty and is FINED an amount equivalent to his THREE MONTHS SALARY, with WARNING that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Pineda v. Pinto, A.M. No. RTJ-04-1851, October 13, 2004, 440 SCRA 225, 232-233.

[2] Vide: Jacinto v. Castro, A.M. No. P-04-1907, July 3, 2007; Morta v. Bagagñan, A.M. No. MTJ-03-1513, November 12, 2003, 415 SCRA 624; Aquino v. Lavadia, A.M. No. P-01-1483, September 20, 2001, 365 SCRA 441.

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