EDDIE M. TIU, REPRESENTED BY ROMANO M. GUTIERREZ, COMPLAINANT, VS. ROMEO A. DELA CRUZ, SHERIFF, RTC, BRANCH 23, NAGA CITY, RESPONDENT.

A.M. NO. P-06-2288 (FORMERLY OCA-IPI NO. 06-2418-P). June 15, 2007

Ponente: TINGA, J.

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TINGA, J.:

This is an administrative complaint filed by Romano M. Gutierrez (complainant) in behalf of Eddie M. Tiu against Romeo A. dela Cruz (respondent), Sheriff of the Regional Trial Court (RTC), Br. 23, Naga City, for Dereliction of Duty, Gross Dishonesty and Fraud relative to a special civil case for damages with prayer for a temporary restraining order (TRO) and writ of injunction, docketed as Special Civil Case No. 2006-0014, entitled "Eddie M. Tiu, represented by Romano M. Gutierrez v. Camarines Sur Electric Cooperative II (CASURECO II), represented by its Manager, Engr. Rodelo Pasumbal."

In the Complaint[1] dated 8 March 2006, complainant alleges that on 8 February 2006, he, as attorney-in-fact of plaintiff Tiu, filed the special civil case against CASURECO II before the RTC. On even date, Executive Judge Pablo Paqueo, Jr. of the RTC of Naga City, issued a 72-hour TRO and set the matter of its extension for hearing on 13 February 2006.[2]

According to complainant, he provided respondent with a vehicle and even personally drove the vehicle for the latter to ensure the prompt service of the TRO and other pertinent papers. In addition, upon respondent's insistence, complainant was compelled to give respondent an additional amount of Three Thousand Pesos (P3,000.00) to effect said service.[3]

Upon reaching the offices of CASURECO II, respondent went inside the office of Engr. Pasumbal, OIC of said company, and allegedly stayed there for almost an hour before returning to the vehicle. Then, respondent informed Gutierrez that he had served the TRO and other documents. Respondent, however, avoided showing to complainant the papers that were returned to him.[4]

The next day, 9 February 2006, plaintiff Tiu and his representative were surprised to find out that CASURECO II had cut off the electric supply to their plant, Mapro Air Products (MAPRO), in Magarao, Camarines Sur, per CASURECO II's job order.[5] Complainant then had the incident recorded in the Magarao police blotter.[6]

Immediately thereafter, complainant and MAPRO's counsel verified from respondent whether he had indeed served the TRO. Respondent assured them that he had. Minutes later, when confronted by Judge Paqueo, respondent confessed that he was not sure whether he had served the TRO. Contrary to his statement, the Sheriff's Return[7] respondent had executed showed that he had served only the summons, complaint, the annexes thereto and the notice of raffle.[8]

Complainant maintains that the non-inclusion of the TRO in the enumeration of the papers respondent had served is indicative of respondent's full awareness of his shortcoming. Had respondent really intended to serve the TRO,

he would have had ample time to correct his failure considering that he prepared the return at three o'clock in the afternoon and CASURECO II's office is a few minutes ride away.[9]

Complainant contends that respondent's malicious and irregular acts constitute willful dereliction of duty, dishonesty and acts unbecoming a public employee.[10]

In his Comment[11] dated 5 June 2006, respondent vehemently denies the charges against him. Respondent counters that on 8 February 2006, shortly before the hour of two, he was at Barangay Triangulo, Naga City, about to serve a writ of possession in an extrajudicial foreclosure, when he received a call on his cellular phone from Ms. Joy Diaz, Interpreter of the RTC, Br. 23, who requested him to report to the trial court as he was to serve a TRO. At the Office of the Clerk of Court (OCC), Mrs. Jovy Cosca, its Stenographer, handed him papers pertaining to the special civil case, to wit: (1) summons and a copy of the complaint; (2) 72-hour TRO dated 8 February 2006; and (3) Notice of Raffle. Respondent likewise received extra copies of each document to be returned to the trial court with written, stamped or printed acknowledgment receipts thereof. [12]

Afterwards, complainant introduced himself to respondent as representative of plaintiff Tiu and offered to drive him to the CASURECO II offices. Respondent denies the allegation that he had demanded and received the amount of P3,000.00 from complainant in connection with the service of the TRO.[13]

At the CASURECO II offices, respondent went inside Engr. Pasumbal's office to serve the documents in his possession. Not finding him there, respondent waited for about ten (10) minutes. Then, a certain Mr. Borja, who introduced himself as President of the CASURECO II board, informed respondent that Engr. Pasumbal was having a conference with some officers of the National Electrification Administration in another part of the building. After conversing with respondent, Mr. Borja requested someone to deliver the papers to Engr. Pasumbal inside the conference room. After thirty (30) minutes of waiting, said personnel returned from the conference room and handed respondent his copy of the documents. At the time, respondent unfortunately failed to notice that the TRO was not among those documents.[14]

Then, respondent immediately returned to the OCC to accomplish the Sheriff's Return. In his haste to go back to his original assignment, he left the papers with Mrs. Cosca, again without noticing that the TRO was not among the documents returned to him.[15]

The next morning, respondent received a phone call from Atty. Joselito Fandiño, counsel for plaintiff Tiu, informing him that CASURECO II had just cut off Tiu's electrical connection. This led to the discovery that his copy of the TRO was missing from the set of documents returned to him.[16] As such, respondent went back to the CASURECO II offices to look for the personnel to whom he had given the documents. Thereat, no one could tell him who that person was, and they would not even show him the logbook.[17]

Respondent denies the allegation that he ever had a long talk with Engr. Pasumbal while he was serving the TRO. He maintains that it is also not true that he ever avoided showing the documents to complainant. Respondent also denies having told Judge Paqueo that he was not sure whether he had served the TRO. Moreover, in regard to the non-inclusion of the TRO among the documents served in the Sheriff's Return, respondent maintains that the statement therein should not be interpreted to mean that those documents were the only ones served. The omission to include the TRO therein was due to pure inadvertence.[18]

Finally, respondent maintains that complainant is not authorized to represent plaintiff Tiu in this administrative proceeding. Complainant allegedly exceeded the powers conferred upon him by virtue of a special power of attorney.[19]

In its Resolution dated 22 January 2007,[20] the Court referred the administrative matter to a consultant of the

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Office of the Court Administrator (OCA) for investigation, report and recommendation.[21]

Pursuant to the directive, on 21 February 2007, the OCA Consultant and designated Hearing Officer, Hon. Narciso T. Atienza, sent notices of the hearing of the case on 21 and 22 March 2007 to the complainant and respondent.[22]

On 21 March 2007, respondent and his counsel appeared during the hearing. Complainant, however, failed to appear despite receipt of the notice of hearing on 9 March 2007. Complainant likewise failed to appear during the hearing on 22 March 2007.[23] Thus, counsel for respondent moved for the dismissal of the case with prejudice for failure to prosecute.

Apparently, due to complainant's absence on both hearing dates, the Hearing Officer forwent further investigation and proceeded to prepare the Investigation Report on the basis of the pleadings and documents already submitted.

In his Investigation Report, the Hearing Officer observed that there is no extant evidence on record that would show that respondent had demanded and received the amount of P3,000.00 from complainant.[24] In the absence of proof of illegal exaction of money, he recommended that the charge for dishonesty be dismissed for insufficiency of evidence. However, he recommended that respondent be reprimanded for failure to serve personally the papers on the defendant in the special civil case and to exhaustively examine each and every page of the documents returned to him by the CASURECO II personnel.[25]

The Court agrees with the findings and recommendations of the Hearing Officer, except as to the penalty.

At the outset, the Court finds that complainant was clothed with authority to file the instant complaint. The Special Power of Attorney[26] executed by plaintiff Tiu in complainant's favor contains the following provisions, to wit:

> - That I hereby authorized (sic) my Attorney-In-Fact to file any legal complaint against any person or persons or entities in relation of (sic) the above-mentioned business;
>
> - To make, sign, receive, execute any instrument, deeds, and/or represent me in any court of justice in the province of Camarines Sur or in the City of Naga and to attend in any court hearing for in my behalf (sic);
>
> - To do and perform all other acts and things, necessary and requisite to carry out effectively the above cited purpose;[27]

The authority conferred on complainant is comprehensive and broad enough to include the filing of an administrative complaint which stems from the proceedings of the main case involving plaintiff Tiu's company.

That settled, we now go to respondent's liability.

The Court agrees that the charges for fraud and dishonesty have not been proven. Such charges are serious and grave in nature, and as such, substantial evidence is needed to prove respondent's guilt. Due to complainant's absence during the scheduled hearings, no proof was adduced to support his allegations. Accordingly, respondent should be absolved of the charges for fraud and dishonesty.

Likewise, in the absence of evidence other than those on record, there can be no finding of gross neglect of duty. However, the evidence on record suffices to hold respondent liable for simple neglect of duty.

The TRO that respondent was supposed to serve was issued to restrain CASURECO II from disconnecting the electric service to MAPRO for the next 72 hours from its issuance.[28] In view of the urgency of the matter, complainant gave respondent a ride in his car to the CASURECO II offices to expedite the service of the TRO. When respondent did not find Engr. Pasumbal at the latter's office, respondent should have reasonably waited for

him or proceeded to the conference room where the latter was having a meeting to effect the personal service of the documents in his possession. But instead, respondent entrusted the documents to a person, whose name he did not even know, and who was merely requested to hand the papers to Engr. Pasumbal by a certain Mr. Borja, a person respondent had just met. Moreover, after the person allegedly delivered the papers to Engr. Pasumbal, respondent did not verify whether all the duplicate copies have been returned to him. In addition, the Sheriff's Return did not reflect the supposed service of the TRO which he had allegedly accomplished.

Respondent ought to be reminded that he is duty-bound to exercise reasonable skill and diligence in the performance of his official duties. Respondent should be zealous, even punctilious, in the performance of his duties. As the facts demonstrate, respondent has fallen short of this standard of responsibility. Obligated to serve the documents personally, respondent entrusted the same to an unidentified person. Required to exercise utmost care in the handling of the documents in his custody, respondent failed to confirm whether the stamped-received copies of the documents he was obliged to serve have all been returned to him. Compelled to personally serve all the documents in his possession, it did not matter to him that the Sheriff's Return shows no proof of service of the TRO. It is reasonable to believe that the TRO was not served at all and consequently, MAPRO's supply of electricity was disconnected to the damage of complainant's principal.

Respondent's inefficiency and irresponsibility in the performance of his duties are reprehensible. While there may be no evidence that his acts were tainted with bad faith, he nevertheless failed to discharge his duties with judiciousness and proficiency. All employees in the judiciary should be examples of responsibility, competence and efficiency. As officers of the court and agents of the law, they must discharge their duties with due care and utmost diligence.[29] The judiciary expects the best from all its employees. Respondent's performance is clearly wanting. Not only did his neglect delay the administration of justice; it also impaired public confidence in the judiciary.[30]

As such, the Court finds the sanction of reprimand too light a penalty for his transgression.

The degree of respondent sheriff's culpability makes him liable for simple neglect of duty, as earlier intimated. Neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[31] Under

the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is a less grave offense and carries with it the penalty of suspension from work for one (1) month and one (1) day to six (6) months, for the first offense and dismissal, for the second.[32]

Under the circumstances, however, we deem it appropriate to impose a fine equivalent to respondent's one-month salary, to enable him to perform the other duties of his office.[33]

WHEREFORE, respondent Romeo A. Dela Cruz, Sheriff, Regional Trial Court, Br. 23, Naga City, is meted out a FINE equivalent to his one-month salary. He is WARNED that a repetition of the same or similar acts will be dealt with more severely. Let a copy of this resolution be entered in respondent's personal record.

SO ORDERED.

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

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[1] Rollo, pp. 1-6.

[2] Id. at 2.

[3] Id. at 3.

[4] Id.

[5] Id. at 12.

[6] Id. at 3 and 13.

[7] Id. at 14.

[8] Id. at 4.

[9] Id.

[10] Id. at 6.

[11] Id. at 19-26.

[12] Id. at 19-20.

[13] Id. at 21.

[14] Id.

[15] Id. at 22.

[16] Id.

[17] Id.

[18] Id. at 22-23.

[19] Id. at 24-25.

[20] Id. at 33.

[21] Id. at 33.

[22] Id. at 32.

[23] Id. at 6.

[24] Id. at 8.

[25] Id. at 7-9.

[26] Rollo, p. 9.

[27] Id.

[28] Id. at 10.

[29] Aquino v. Lavadia, 417 Phil. 770, 776 (2001).

[30] Musni v. Morales, 373 Phil. 703, 710 (1999).

[31] Sangil Vda. de Dizon v. Tensuan, A.M. No. RTJ-05-1943, 9 August 2005, 466 SCRA 68, 77; Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Cruz, Laguna, A.M. No. 04-6-332-RTC, 5 April 2006, 486 SCRA 500, 518.

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[32] Report on the Alleged Spurious Bailbonds and Release Orders Issued by the RTC, Br. 27, Sta. Cruz, Laguna, Supra note 31 at 519.

[33] Aquino v. Lavadia, supra note 29 at 777.

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