

**SUSANA E. FLORES, COMPLAINANT, VS. ARIEL D. PASCASIO,
SHERIFF III, MTCC, BRANCH 5, OLONGAPO CITY, RESPONDENT.**

A.M. No. P-06-2130 (formerly A.M. OCA I.P.I. NO. 04-1946-P). June 13, 2011

Ponente: BRION, J.

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BRION, J.:

This is an administrative complaint filed by Susana E. Flores (complainant) against Ariel R. Pascasio (respondent), Sheriff III in the Municipal Trial Court in Cities (MTCC), Branch 5, Olongapo City, for Grave Misconduct and Grave Abuse of Authority.

In her complaint-affidavit dated June 2, 2004, the complainant narrated that on March 5, 2004, an auction sale of a JVC DVD player and a Sony TV set was conducted by the respondent at the Office of the Clerk of Court, Olongapo City. She submitted a bid of Ten Thousand Two Hundred Pesos (P10,200.00) for the two (2) items. During the public auction, the two items were sold separately, the JVC DVD player for P2,520.00 and the Sony TV set for P2,500.00. The complainant claimed that the respondent manipulated the bidding process to make it appear that she submitted a bid of only One Thousand Two Hundred Pesos (P1,200.00) instead of her bid of Ten Thousand Two Hundred Pesos (P10,200.00). She further alleged that the respondent even scolded her for questioning the conduct of the auction sale. According to her, when she asked the respondent why she lost the bidding, he replied, "Wala kang magagawa dahil ako ang masusunod dito. Ako ang sheriff dito, kung kanino ko gustong mapunta and items, yun ang masusunod." [1]

In his comment [2] dated August 24, 2004, the respondent denied having discriminated against the complainant. He admitted having received the complainant's bid, but because it was not itemized, he disregarded it on ground of technicality. While he listed the complainant's name in the minutes of the auction sale, no amount was placed opposite her name because her bid was invalid. He explained to the complainant that only itemized bids were considered and that she should have submitted separate bids and not just one bid for the two (2) items.

In an Evaluation Report dated November 30, 2005, [3] the Office of the Court Administrator (OCA) submitted its findings:

The respondent stated in his Minutes of the Auction Sale that the complainant submitted a bid only for the DVD in the amount of P1,200.00. But based on the certified photocopies of the bids of all those who participated in the auction sale, complainant's bid of P10,200.00 for the two items was the highest. It must be remembered that this Court has countless times reiterated that the conduct and behavior of everyone connected with an office charged with the dispensation of justice must not only be characterized by propriety and decorum but above else (sic) must be above suspicion.

The conduct of the respondent in disregarding the highest bid of the complainant and his making a false entry in the minutes of the auction sale is clearly an act of dishonesty which erodes the faith and confidence of our people in the judiciary. [4]

The OCA recommended:

- That the instant administrative complaint be REDOCKETED as a result administrative matter;
- That Sheriff Ariel R. Pascasio be found GUILTY of Dishonesty in the performance of his official duties; and
- That Sheriff Pascasio be SUSPENDED for a period of two (2) months and STERNLY WARNED that a repetition of the same or a similar act in the future shall be dealt with more severely. [5]

Pursuant to the OCA's recommendation, the Court, in a Resolution dated February 15, 2006, directed that the complaint be re-docketed as a regular administrative matter and required the parties to manifest whether they were willing to submit the matter for resolution on the basis of the pleadings filed. [6]

On March 21, 2006, the complainant, through her counsel Atty. Randy B. Escolango, filed a Manifestation with Motion [7] manifesting that she would file a Reply to controvert the respondent's allegations in his comment, at the same time asking for an extension of fifteen (15) days for the filing of her reply. Despite several extensions granted, Atty. Escolango failed to file the complainant's reply. He was required to show cause why he should not be disciplinary dealt with or held in contempt for his failure, [8] and was later imposed a fine of P2,000.00. Finally, on August 22, 2008, Atty. Escolango complied, claiming that he could no longer locate and contact the complainant. He presumed that the complainant was no longer interested in pursuing the case as the respondent had already been dismissed from the service; thus, it was no longer necessary to file a reply. [9]

In a Resolution dated December 3, 2008, [10] the Court "[deemed] as waived the filing of complainant's xxx reply." The case was referred to the Executive Judge of the Regional Trial Court (RTC) of Olongapo City for investigation, report and recommendation in a resolution dated March 4, 2009. [11]

In a memorandum dated September 24, 2009, [12] the OCA reported that the respondent had already been ordered dismissed from the service in the Decision of May 7, 2008 in A.M. No. P-08-2454 entitled "Virgilio A. Musngi v. Ariel R. Pascasio, etc." At the time the present administrative case was referred to the Executive Judge of the RTC of Olongapo City, however, the respondent's motion for reconsideration of his dismissal was still pending. It was eventually denied in a resolution dated April 28, 2009. In view thereof, the OCA recommended that the Resolution of March 4, 2009 referring the complaint to the Executive Judge of the RTC of Olongapo City, be set aside for being moot and academic, "respondent Pascasio having been already dismissed from the service and complainant Flores having shown no interest at all to pursue the case." However, the OCA submits that proceedings against respondent may continue without violating his right to due process. He was required to comment on the complaint and he presented evidence to controvert the charges against him.

The Court agrees with the OCA that the respondent has been accorded due process when he was required to comment on the complaint during the preliminary investigation of the charges against him. While it is true that continued investigation is no longer feasible, the pleadings submitted by both parties are uncontroverted and their submitted evidence are sufficient to determine the respondent's culpability. The respondent filed his comment on the complaint against him. Clearly, he was afforded an opportunity to be heard through his pleadings; hence, his right to due process was not impaired.

The OCA found the respondent guilty of dishonesty in the performance of official duty instead of grave misconduct and grave abuse of authority as charged. As the penalty of suspension is no longer feasible in view of the respondent's dismissal from the service, the OCA recommended that its original recommendation of a two-month suspension be converted into a payment of a two-month salary.

In support of its finding that the respondent is guilty of dishonesty, the OCA, in its Evaluation Report of November 30, 2005, reported that the "respondent stated in [the] Minutes of the Auction Sale that the complainant submitted a bid only for the DVD in the amount of P1,200.00." On the other hand, the respondent, in his

Comment, claimed that he included the complainant's name in the minutes of the auction sale, but he did not place the amount of her bid as the bid was not itemized. A perusal of the minutes of the auction sale, attached to the records of the case, shows that, indeed, the complainant's name was included but no amount of bid was indicated opposite her name. The bid of P1,200.00 for the DVD corresponds to the person listed as no. 13 among those who submitted bids. The complainant's name was listed as no. 14, the last name on the list. No amount was indicated opposite her name. [13]

While the complainant may have failed to itemize her bid and to indicate how much she was willing to pay for each item, it is clear from her bid nevertheless that she was bidding for the two items at the combined price of P10,200.00 when she listed therein, "Item(s): 1. Sony TV-21 inches [and] 2. DVD-JVC." [14] In disregarding the bid of the complainant, which was the highest submitted bid, the respondent violated Section 19, Rule 39 of the Rules of Civil Procedure which directs that sale of personal property should be made in such parcels as likely to bring the highest price. The public auction was conducted by the respondent to sell the levied personal properties in order to enforce the judgment against the defendants in Civil Case No. 16-03 of the MTCC of Olongapo City, Branch 4, to satisfy their indebtedness to the plaintiffs in the amount of P30,000.00. The respondent sold the personal properties for a total of P5,200.00 only, compared to the complainant's bid of P10,200.00. Respondent's failure to consider the complainant's bid prejudiced the plaintiff's right to recover a bigger amount of the defendant's indebtedness.

Sheriffs play an important role in the administration of justice and high standards are expected of them. Their conduct, at all times, must not only be characterized by propriety and decorum but must, at all times, be above suspicion. [15] Part of this stringent requirement is that agents of the law should refrain from the use of abusive, offensive, scandalous, menacing or otherwise improper language. Judicial employees are expected to accord due respect, not only to their superiors, but also to others and their rights at all times. Their every act and word should be characterized by prudence, restraint, courtesy and dignity. [16] The respondent's arrogant behavior, telling complainant, "Wala kang magagawa dahil ako ang masusunod. Ako ang sheriff dito, kung kanino ko gustong mapunta ang items, yun ang masusunod, was an evident violation of these rules of conduct for judicial employees.

The Court defines misconduct as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of the parties or to the right determination of the cause. It generally means wrongful, improper and unlawful conduct motivated by a premeditated, obstinate or intentional purpose. [17] It means intentional wrongdoing or deliberate violations of a rule of law or standard or behavior, especially by a government official.

Dishonesty means a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; and disposition to defraud, deceive or betray. [18]

Given the above parameters, the Court finds the respondent guilty of dishonesty as recommended by OCA. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, dishonesty is punishable by dismissal from the service. Since the respondent had previously been ordered dismissed from the service, suspension is no longer possible. Thus, instead of suspension, the respondent, shall be imposed a fine as alternative penalty. We deem the fine equivalent to three- month salary to be appropriate in light of the penalty of dismissal that it replaces and the potential damage that his dishonesty caused.

WHEREFORE, the Court finds the respondent Ariel R. Pascacio, Sheriff III, Municipal Trial Court in Cities, Branch 5, Olongapo City, GUILTY of Dishonesty and he is hereby imposed a FINE in the amount equivalent to his three-month salary, deductible from the money value of his accrued leave credits, if he has any.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, p. 3.

[2] Id. at 11-12.

[3] Id. at 13-15.

[4] Id. at 14.

[5] Id. at 15.

[6] Id. at 16.

[7] Id. at 18-19.

[8] Id. at 27; Resolution dated January 28, 2008.

[9] Id. at 32-36.

[10] Id. at 41.

[11] Id. at 43.

[12] Id. at 57.

[13] Id. at 7.

[14] Id. at 5.

[15] F.F.I. Dagupan Lending Investors, Inc., etc. v. Vinez A. Hortaleza, etc., A.M. No. P-05-1952, July 8, 2005, 463 SCRA 16.

[16] Quilo v. Jundarino, A.M. No. P-09-2644, July 30, 2009, 594 SCRA 259.

[17] Quilo v. Jundarino, *supra* note 16.

[18] *Ibid.*

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