

**EXECUTIVE JUDGE BIENVENIDO V. REYES, COMPLAINANT, VS.
RODRIGO G. BALIWAG, SHERIFF IV, REGIONAL TRIAL COURT,
BRANCH 30, SAN PABLO CITY, RESPONDENT.**

A.M. NO. P-01-1514 [FORMERLY A.M. NO. 01-2-48-RTC]. February 18, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The instant administrative case stems from the Letter of Executive Judge Bienvenido V. Reyes, Regional Trial Court (RTC), San Pablo City, Branch 29, transmitting for appropriate action the documents pertinent to the unauthorized extra-judicial foreclosure sales conducted by Rodrigo G. Baliwag, Sheriff IV, RTC of San Pablo City, Branch 30.

In a Memorandum dated July 15, 1998, Executive Judge Reyes called the attention of the respondent on his apparent unauthorized conduct of extra-judicial foreclosure sales which had not been coursed through the Office of the Clerk of Court as Ex-Officio Provincial Sheriff, to wit:

You are hereby STRONGLY WARNED to desist from conducting any further extrajudicial foreclosure sales unless expressly authorized by the Clerk of Court. This STERN WARNING is without prejudice to whatever administrative action which may be taken later.

In his Explanation dated July 22, 1998, the respondent Sheriff made the following averments:

Sometime in the month of April 1997, the representative of BA Finance Corporation approached me and requested that if possible, I could help them in the sale of the subject vehicles. I told him that it should pass through the Office of the Clerk of Court so that the necessary legal fees would be paid. BA Finance was then in a hurry to have the vehicles sold so that I acceded to their request with the assurance from them that they would pay the necessary legal fees. BA Finance assured me that after the auction sale and if all the papers are alright, they would pay the corresponding legal fees with the Office of the Clerk of Court. ...

The respondent further averred therein that he followed up the matter of the payment of legal fees with BA Finance, and was assured that it would do so. Upon their failure to settle the legal fees with the Office of the Clerk of Court, the respondent refrained from further heeding any more of the corporation's requests.

Executive Judge Reyes enclosed the following documents and papers in his transmittal letter:

- c. Findings of Judge Marivic T. Balisi-Umali, dated July 27, 1998, stating that the explanation submitted by Sheriff Baliwag is unsatisfactory considering his long years in the service which should have made him knowledgeable and strictly observant of the rules on extra-judicial foreclosure sale.
- d. Letter dated July 20, 1998 of Executive Judge Bienvenido V. Reyes addressed to BA Savings Bank, San Pablo City Branch, warning the latter to course all their transactions with the court through proper channels.
- e. Letter dated July 13, 1998 of Mr. Rodolfo Rosal to Executive Judge Bienvenido V. Reyes coursed through Atty. Amy Melba S. Bebulia, Clerk of Court VI, requesting a certified true copy of the Certificate of Sale

issued by Rodrigo G. Baliwag in Extra-Judicial Foreclosure Sale of Chattel Mortgage (EJF No. 1978[97]) entitled “BA Savings Bank vs. Mario Porto” and the original copy of the Sheriff’s Return.

f. Letter-Reply dated July 13, 1998 of Atty. Amy Melba S. Belulia informing Mr. Rodolfo Rosal that the Extra-judicial foreclosure of Chattel Mortgage entitled “BA Savings Bank vs. Mario Porto,” EJF No. 1978(97), was never filed in her office; neither did she have any knowledge of the certificate of sale issued by Sheriff Rodrigo G. Baliwag in the said chattel mortgage. The office docket further showed that EJF No. 1978(97) refers to the extra-judicial case filed by [the] Rural Bank of Victoria (Laguna) Inc. v. Amor Aquino.

g. Notice of Extra-judicial Sale dated March 25, 1997 signed by Sheriff Rodrigo G. Baliwag regarding the sale of one (1) unit of 1986 Isuzu Elf scheduled on April 15, 1997 relative to EJF No. 1978(97) entitled “BA Savings Bank v. Mario Porto.”

h. Certificate of Posting in EJF No. 1978(97), BA Savings Bank vs. Mario Porto, dated March 26, 1997, signed by Sheriff Rodrigo G. Baliwag confirming compliance with the requirements of posting.

i. Letter dated June 2, 1998 of Mr. Mario M. Bartolome to Executive Judge Bienvenido V. Reyes coursed through Atty. Amy Melba S. Belulia requesting a certified copy of the certificate of sale issued by Sheriff Rodrigo G. Baliwag in BA Savings Bank v. Narciso Tangcangco and for the original copy of the Sheriff’s return.

j. Letter-Reply dated June 2, 1998 of Atty. Amy Melba S. Belulia informing Mr. Mario M. Bartolome that the subject extra-judicial foreclosure he was requesting for was never filed in her office; neither did she have any knowledge of the certificate of sale issued by Sheriff Baliwag.

k. Certificate of Sale in BA Savings [Bank] v. Narciso Tangcangco, dated October 31, 1997, signed by Sheriff Rodrigo G. Baliwag and subscribed before Assistant City Prosecutor Bimbo A. Mercado, confirming the sale at public auction of one (1) unit of Isuzu dump truck conducted in the manner prescribed by law.

l. Certificate of Posting in BA Savings [Bank] v. Narciso Tangcangco dated October 10, 1997, signed by Sheriff Rodrigo G. Baliwag confirming compliance with the requirements of posting.

m. Notice of Extra-judicial Sale in BA Savings Bank v. Narciso Tangcangco signed by Sheriff Rodrigo G. Baliwag regarding the sale of one (1) Unit of Isuzu Dump Truck scheduled on October 31, 1997.

n. Minutes of the Auction Sale in BA Savings Bank vs. Mario Porto, dated April 15, 1997, signed by Sheriff Rodrigo G. Baliwag.

o. Certificate of Sale in BA Savings Bank vs. Mario Porto, dated April 15, 1997, signed by Sheriff Rodrigo G. Baliwag confirming the sale of one (1) unit of 1986 Isuzu Elf conducted in the manner prescribed by law.

p. Transmittal letters dated April 16, 1997 and November 12, 1997 of Atty. Amy Melba S. Belulia to the Statistics Division of the Supreme Court submitting the report of the court’s processes for the months of March and October 1997. Attached therewith were reports submitted by Sheriff Rodrigo G. Baliwag for the said months.

Pursuant to the recommendation of the Office of the Court Administrator (OCA), Executive Judge Reyes’s Letter of July 30, 1998 in relation to his Memorandum dated July 15, 1998, was treated as an administrative complaint against the respondent Sheriff for gross misconduct.[1]

In his Comment dated September 30, 2001, the respondent averred that the said letter of Executive Judge Reyes, dated July 30, 1998, should not have been treated as an administrative complaint against him, as he had already been penalized with a stern and/or strong warning in Judge Reyes’s Memorandum of July 15, 1998. He further averred that he conducted the foreclosure sales in question in good faith. In his “Supplement to Comment” dated

February 8, 2002, the respondent further explained:

- Earnest efforts were exerted by respondent to locate Mr. Amador Lopez, who requested respondent to auction the vehicles subject of the foreclosure sales involved in the above-entitled matter, but such efforts have so far proven futile;
- Respondent reiterates that there was no intention on his part to prejudice the government, he having only acceded to the request of his brother Rotarian Amador Lopez, respondent being a past president of the Rotary Club of San Pablo City South;
- If there was a victim in this unfortunate incident, it is the respondent who was goaded into helping one whom he considered a friend, being at the time too naïve to realize the consequences of his act;
- Respondent is able, ready and willing to pay the legal fees for the foreclosures subject of this matter, and has already secured ABN-AMRO Manager's Cheques No. 006171 for P6,750.00 and No. 006172 for P19,505.00 for the purpose.

IN VIEW OF THE FOREGOING PREMISES, it is respectfully prayed that the Clerk of Court for the 4th Regional Trial Court sitting at San Pablo City be directed to accept the aforementioned cheques in payment of the legal fees for the subject foreclosures, and that respondent be exonerated from all administrative liability in the above-entitled matter, taking into account his untainted government service of thirty-five (35) long years as of the date thereof.

In its Report dated August 20, 2004, the OCA made the finding that the respondent Sheriff had indeed committed gross misconduct, considering that he violated the procedure in extra-judicial foreclosure of mortgage. The OCA also opined that the respondent's categorical admission that he conducted the auction sale to accommodate BA Finance Corporation despite the latter's non-payment of the necessary legal fees is sufficient to mete disciplinary sanction against him. The recommended penalty was that of suspension for a period of three (3) months with a stern warning that a repetition of the same or similar acts would be dealt with more severely. The OCA also recommended that the respondent be directed to pay the proper legal fees for the foreclosure sales subject of the instant administrative matter.

The foregoing findings are well taken.

As an officer of the court, and having been in government service for a long time, the respondent ought to have known that accommodating a person at the expense of the legal processes tends to frustrate and betray the public trust in the judicial system, and is contrary to the norms of public accountability. It cannot and should not remain unchecked – the interests of the individual must thus give way to the accommodation to the public.[2]

By his own admission, the respondent failed to observe the rules in the conduct of extra-judicial foreclosure of mortgage,[3] which to a sheriff should have been all too familiar:

- All applications for extra-judicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act No. 3135, as amended by Act No. 4118, and Act No. 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also Ex-Officio Sheriff.
- Upon receipt of an application for extra-judicial foreclosure of mortgage, it shall be the duty of the Clerk of

Court to:

2.1 receive and docket said application and to stamp thereon the corresponding file number, date and time of filing;

2.2 collect the filing fees thereof (pursuant to Rule 141, Sec. 7(c), as amended by A.M. No. 00-2-01-SC), and issue the corresponding official receipt;

2.3 examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under the direction of the sheriff or a notary public, pursuant to Sec. 4 of Act [No.] 3135, as amended.

- The Clerk of Court shall sign and issue the certificate of sale, subject to the approval of the Executive Judge, or in his absence, the Vice Executive Judge. No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in Secs. 7 and 9 of Rule 141, as amended by A.M. 00-2-01-SC, shall have been paid; Provided that in no case shall the amount payable under Rule 141, Section 9(1), as amended, exceed P100,000.00.

- After the certificate of sale has been issued to the highest bidder, the Clerk of Court shall keep the complete records, while awaiting any redemption within a period of one (1) year from the date of registration of the certificate of sale with the Register of Deeds concerned, after which records shall be archived. Juridical persons whose property is sold pursuant to an extra-judicial foreclosure, shall have the right to redeem the property until, but not after, the registration of the certificate of foreclosure sale which in no case shall be more than three (3) months after foreclosure, whichever is earlier, as provided in Sec. 47 of Rep. Act No. 8791, as amended.

- Where the application concerns the extra-judicial foreclosure of mortgages of real estates and/or chattels in different locations covering one indebtedness, only one filing fee corresponding to such indebtedness shall be collected. The collecting Clerk of Court shall, apart from the official receipt of the fees, issue a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real estates and/or chattels mortgaged and their respective locations, which certificate shall serve the purpose of having the application docketed with the Clerks of Court of the places where the other properties are located and of allowing the extrajudicial foreclosures to proceed thereat.

- The notices of auction sale in extra-judicial foreclosure for publication by the sheriff or by a notary public shall be published in a newspaper of general circulation pursuant to Sec. 1 of Pres. Decree No. 1079, dated January 2, 1977, and non-compliance therewith shall constitute a violation of Section 6 thereof.

- The Executive Judge shall, with the assistance of the Clerk of Court and Ex-Officio Sheriff, raffle applications for extra-judicial foreclosure of mortgage under the direction of the sheriff among all the sheriffs, including those assigned to the Office of the Clerk of Court, and Sheriffs IV assigned in the branches.

The Executive Judge shall supervise the raffle with the assistance of the Clerk of Court. A sheriff to whom the case has been raffled shall be excluded in the succeeding raffles and shall participate again only after all other sheriffs shall have been raffled a case each.

- The name/s of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

- The implementing sheriff shall submit to the Clerk of Court a quarterly report to include all foreclosure sales he has conducted, dates of the auction sales, descriptions of the properties, sale prices, names of the highest bidders, numbers of the official receipts issued for the fees paid, and amounts paid. The Clerk of Court shall certify the report and submit the same to the Financial Management Office, Office of the Court Administrator within fifteen (15) days after the end of each quarter.[4]

Thus, as pointed out by the OCA, extra-judicial foreclosure sales should be conducted under the direct supervision and control of the Executive Judge and the Clerk of Court as Ex-Officio Sheriff. Because of the respondent's actuations, the prescribed procedure was not followed.

It must be stressed that sheriffs play an important role in the administration of justice, and as agents of the law, high standards are expected of them.[5] Being ranking officers of the court and agents of the law, they must discharge their duties with great care and diligence.[6] It is well to remind all persons serving the Government through its Judicial Arm that the conduct and behavior of every person connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, is tasked with a heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but also above suspicion.[7] Good faith on the part of the respondent sheriff, or lack of it, in proceeding to properly execute his mandate would be of no moment, for he is chargeable with the knowledge that being an officer of the court tasked therefor, it behooves him to make due compliance.[8]

We find that the penalty of three (3) months' suspension is not commensurate to the gravity of the respondent's transgression. Indeed, the Court will not tolerate or condone any conduct of judicial agents or employees which would tend to or actually diminish the faith of the people in the Judiciary.[9] The respondent must be disciplined therefor. Considering, however, his long years in government service, the Court resolves to mitigate his liability.

WHEREFORE, for gross misconduct, respondent Sheriff Rodrigo G. Baliwag is hereby **SUSPENDED** for a period of Six (6) Months without pay. He is **STERNLY WARNED** that any repetition of the same or similar acts in the future shall be dealt with more severely. He is further **DIRECTED** to forward to the Office of the Clerk of Court, Regional Trial Court, San Pablo City, the legal fees due on the foreclosure sales subject matter of the instant administrative complaint.

Let a copy of this decision be entered in the respondent's personal record.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

* Retired as of March 22, 2002.

[1] Resolution dated July 18, 2001.

[2] See *Mutia-Hagad v. Denila*, 341 SCRA 682 (2000).

[3] A.M. No. 99-10-05-0, as amended, March 1, 2001 and August 7, 2001.

[4] The 2002 Revised Manual for Clerks of Court, Vol. I, pp. 477-480.

- [5] Llamado vs. Ravelo, 280 SCRA 597 (1997).
- [6] Magat vs. Pimentel, Jr., 346 SCRA 153 (2000).
- [7] Bornasal, Jr. v. Montes, 280 SCRA 181 (1997).
- [8] Chupungco v. Cabusao, Jr., 417 SCRA 365 (2003).
- [9] Philippine Bank of Communications v. Torio, 284 SCRA 67 (1998).

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