

**JOVITA R. CASAL, COMPLAINANT, VS. FRANCISCO CONCEPCION, JR.,
DEPUTY SHERIFF, REGIONAL TRIAL COURT, BRANCH 78, QUEZON
CITY, RESPONDENT.**

A.M. No. 93-942. April 06, 1995

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PER CURIAM:

This is an administrative complaint against respondent Francisco Concepcion, Jr., Deputy Sheriff of the Regional Trial Court, Branch 78, Quezon City, for dereliction of duty and violation of the Anti-Graft and Corrupt Practices Act.

I

Complainant was the plaintiff in Civil Case No. 48859, titled "Jovita R. Casal v. Spouses Nicolas Laude and Ligaya Laude," filed with the Regional Trial Court, Branch 78, Quezon City. A decision was rendered based on a compromise agreement entered into by the parties and respondent was deputized to implement the writ of execution.

To facilitate the implementation of the writ, complainant gave respondent on separate occasions a total amount of P23,190.00 (Rollo, p. 40). Some payments were covered by receipts (Rollo, pp. 7-11). Notwithstanding the amounts paid, respondent failed to fully implement the writ and alias writs of execution issued by the court.

At respondent's demand for an additional P10,000.00, complainant remitted P3,000.00 on March 29, 1993 and promised to pay the balance upon the eviction of all the tenants. Subsequently, complainant was forced to part with an additional P6,000.00. After receipt thereof, respondent disappeared.

Complainant was compelled to move for the appointment of a special sheriff to implement the alias writ of execution in the said case (Rollo, p. 12).

On May 21, 1993, complainant executed and filed a complaint-affidavit against respondent (Rollo, p. 5). In his comment, respondent denied the charges. He attributed the delay in the eviction of all the tenants to the motion to quash the alias writ dated June 14, 1991 and the expiration of the life of said writ.

Respondent further alleged that he had an understanding with complainant that he would only eject a few tenants, in the hope that the other tenants would voluntarily vacate the premises thereafter. He claimed that he was successful in the partial execution of the judgment, as evidenced by the sheriff's partial returns dated December 19, 1991, January 31, 1992 and November 25, 1992.

Anent the implementation of the fourth alias writ of execution, respondent was able to partially implement the same only with respect to a few tenants since the houses of the other tenants were padlocked. He could not execute any further without an order of demolition (Rollo, p. 32).

Respondent denied pocketing the money paid by complainant. In his statement of account, respondent listed how

the monies were spent for the transportation and meals of the helpers (Rollo, p. 40).

Hearings were conducted with complainant's counsel, Atty. Gaudencio de Lunas, as her lone witness. He testified on the several payments made to respondent for the implementation of the writs of execution. He denied respondent's claim that the payments were applied to necessary expenses because he personally provided for the transportation and meals of the other personnel on various occasions (TSN, October 18, 1993, pp. 34-36).

Respondent failed to testify despite several opportunities, and the case was submitted for resolution.

Pending investigation of the matter, respondent applied for a leave of absence for the period August 2 to October 29, 1993. Thereafter, he failed to return to work and had not been reporting for work since then. On May 18, 1994, he tendered his resignation letter dated January 31, 1994, citing health reasons (Rollo, p. 61).

II

We find respondent guilty of dereliction of duty.

Respondent failed to exert reasonable efforts to fully implement the writs of execution in a simple ejectment case, even after the lapse of two years from the issuance of the original writ. We are not unmindful of the fact that there were partial executions of the judgment, however, the records show that of seventeen tenants to be evicted, respondent was only successful in evicting three of them (TSN, October 18, 1993, p. 28).

Respondent cannot attribute the delay of the implementation of the writ to the motion to quash the alias writ or the petition for certiorari filed by the defendants with the Court of Appeals. Well-settled is the rule that a decision on a compromise agreement is final and executory (*Master Tours and Travel Corporation v. Court of Appeals*, 219 SCRA 321 [1993]; *Mobil Oil Philippines, Inc. v. Court of First Instance of Rizal, Branch VI*, 208 SCRA 523 [1992]), and unless otherwise enjoined by a restraining order, the implementation of a writ of execution thereof cannot be prevented (cf. *Government Service Insurance System v. Court of Appeals*, 218 SCRA 233 [1993]).

Respondent's excuse, that complainant and he had an understanding that he would evict only three of the tenants, is self-serving and is contradicted by the fact that he continued to solicit money from complainant for the full execution of the writ.

A sheriff is primarily responsible for the speedy and efficient implementation of writs of execution to prevent delay and miscarriage of justice. Respondent dismally failed in his duty.

Respondent failed to account for the monies he got from complainant. A perusal of his statement of account to liquidate the advances, shows that some expenses were exorbitant and were not covered by receipts. He also failed to controvert Atty. de Lunas' testimony regarding the separate advances he made for such expenditures. We reiterate our ruling in *Tan v. Herras*, 195 SCRA 1 (1991), that a sheriff cannot receive gratuities and voluntary payments from parties he is ordered to assist in the course of his duties.

We deplore respondent's lackadaisical deportment from the inception of this case, when he failed to appear and testify in the hearings. The evidence of the complainant therefore remained un rebutted.

A certification issued by the Branch Clerk of Court of Quezon City attested that respondent had not been reporting for work since October 29, 1993 (Rollo, p. 64). Respondent's letter of resignation dated January 31, 1994 was received by the Office of the Executive Judge of the Regional Trial Court of Quezon City only on May 11, 1994. The resignation letter does not alter the fact that he had abandoned his office for failing to report for work or to file the appropriate leave. His absence without official leave, during the investigation of the administrative case against him, is indicative of his guilt in the same way as flight in criminal cases.

WHEREFORE, respondent is DISMISSED from the service with FORFEITURE of all benefits and with prejudice to his re-employment in any branch or service of the government, including government-owned and controlled corporations.

This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

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