EDITHA S. SANTUYO, COMPLAINANT, VS. HERBERTO R. BENITO, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 27, NAGA CITY, RESPONDENT.

A.M. NO. P-05-1997 (FORMERLY OCA I.P.I. NO. 04-1963-P). August 03, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

This administrative case stemmed from a VERIFIED COMPLAINT[1] dated June 14, 2004, filed by complainant Editha S. Santuyo, charging the respondent, Sheriff IV Herberto R. Benito of the Regional Trial Court (RTC) of Naga City, Branch 27, with Gross Neglect of Duty, Dishonesty, and Gross Misconduct.

Complainant is the attorney-in-fact of one of the plaintiffs in two separate actions for annulment of sale, Civil Cases No. 90-2218 and No. 90-1506, of the RTC of Naga City, Branch 27.

In both cases, complainant obtained for her principals a favorable ruling from the Court of Appeals (CA) in whose decision, of November 29, 1999, nullified the sale of the property subject of the suits and ordered the plaintiffs therein to be placed in the material possession thereof. The CA decision was ultimately affirmed by this Court and judgment was entered on June 5, 2001. A writ of execution[2] was issued on March 13, 2002, followed by a writ of possession[3] on March 10, 2003.

On March 8, 2004, or after the lapse of one year from the issuance of the possesory writ, the trial court issued an order directing the respondent sheriff to continue and complete the execution process and to place the complainant in possession of the 1,200-square meter area of the property whereat stands a Caltex gasoline station and a two-storey residential house which was being occupied by a certain Amado Sanao.

According to the complainant, the respondent sheriff failed to completely carry out the March 8, 2004 order of the trial court even after repeated follow-ups and despite his having withdrawn from the court the following amounts:

> - P5,000. 00 - for the pakyaw laborto haul, carry/transport effects, for cost of hired jeepneys and other miscellaneous expenses, including respondent's meals;
>
> - P16,300.00 - for payment of two (2) days of labor of fifteen (15) persons and five (5) security personnel fencing off the gasoline station and safeguarding the same; and
>
> - P36,000.00 - for the 3-day labor costs of thirty (30) persons ejecting the people inside the house and bringing out their belongings.

Complainant accuses respondent of "charging unreasonable and exhorbitant sheriff's fees thru padded and imaginary charges." Going into details, complainant averred that the P5,000. 00 for the "pakyaw" labor was spent by the respondent in serving the writ of possession on a certain Raul Santos, former owner of the subject premises who was neither its actual or present possessor nor the operator of the gasoline station thereat. Complainant claimed that instead of performing what the writ commanded him to do, the respondent, on his own volition and

without any travel order from or prior notice to the court nor to her, traveled from Naga City to Manila, stayed in an undisclosed hotel for two (2) days in Manila, incurred expenses for his meals and transportation, and thereafter conveniently lost all the receipts and other documents supporting his travel. To the complainant, the respondent's out-of-town trip was unnecessary, and actually a mere scheme resorted to by him to justify his taking of her money.

Complainant added that despite having withdrawn from the court the amount of P16,300. 00 which was to be used as payment for the 2-day labor cost of the fifteen (15) workers and five (5) security personnel, the respondent sheriff still failed to turn over the premises to her, and that during the supposed execution, there were less than ten (10) people to execute the writ, thereby compelling her to hire three (3) additional carpenters and blue guards to assist in the process.

Worse, so complainant claims, the respondent spent P36,000.00 for an independent labor contractor who supplied the ejectment team, but accomplished nothing. She assails such arrangement because the labor contractor is not accountable to the court, aside from the fact that no other detail was given by her as to how the said amount was spent. She alleged that when she went to the premises on the second and third days of the scheduled execution, she did not see a shadow of the supposed thirty-man ejectment team.

Summing up, complainant averred that she was thrice robbed by the respondent in the total amount of P57,300. 00, and insisted that the alleged accounting and liquidation made by the respondent were merely fabricated to conceal hismisappropriation of funds.

In his comment,[4] the respondent sheriff claims that on March 14, 2003, at 9:30 a. m. , he received from the court the amount of P5,000. 00 to cover the sheriff's incidental expenses. He allegedly told the complainant that he could not officially turn over the premises subject of the writ of possession because the writ was not yet served on defendant Raul Santos. He even explained to the complainant that he could not leave for Manila without a travel order, and that his schedule for the whole month of March 2003 was already full. While admitting receipt of the amount of P5,000. 00, respondent alleged that he spent the money for his expenses in serving the writ of possession to defendant Raul Santos.

According to him, he actually left for Manila in the evening of March 14, 2003 but was able to serve the writ of possession to the widow of Raul Santos only on March 16, 2003.

Plodding on, respondent claims that he made due manifestations to the court for each of his expected expenses which were all duly approved by the court through orders directing the complainant to deposit the necessary amounts with the Office of the Clerk of Court. Respondent insists that he rendered a liquidation and/or accounting to the court. As regards the amount of P36,000. 00, respondent asserted that the same was actually paid to Mr. Rodolfo Segovia, the person who provided the ejectment team. On July 7, 2003, he issued a Notice to Vacate against Mr. Amado Sanao and the occupants of the property, and on July 10, 2003, he made a letter-request for police assistance.

Further, respondent explains that in the morning of July 14, 2003, the ejectment team "forced open the steel gate of the house with steel cutter and forcibly ejected the people inside the house including their personal belongings. "[5] Even after he allegedly received a temporary restraining order (TRO) at 4:00 p. m. of the same day, he went ahead with the ejectment process because the TRO handed to him was a mere photocopy thereof, and stopped onlythe next day upon his receipt of the certified true copy of the TRO, adding that he even made aquery to the court relative to the TRO. He submitted his sheriff's reports on December 4, 2003 and April 12, 2004.

In her REPLY TO THE COMMENT /ANSWER OF RESPONDENT,[6] the complainant denied the imputation

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that it was thru her constant prodding that respondent left for Manila to serve the writ of possession to Raul Santos. She belied respondent's allegation that as of April 1, 2003, the subject premises had been "officially turned over" to her, and refuted the claim that there was actual ejectment on July 14, 2003 which was supposedly overtaken by a TRO the next day. To her, it would have taken not less than two hours for the ejectment team of allegedly thirty (30) people to enter the premises and eject the few boarders who still occupied the two-storey house of about eighty (80) square meters in floor area.

At the outset, the Court notes that the instant administrative complaint sprung from a decision that had long become final and executory. Thejudgment sought to be executed was entered way back on June 5, 2001, while the writ of execution and writ of possession were issued on March 13, 2002 and March 10, 2003, respectively. The undue delay in the implementation of the subject writs was even highlighted by the fact that the trial court had to issue an order on March 8, 2004, directing the respondent sheriff to continue and complete the execution process.

As aptly observed by the Court Administrator in his February 28, 2005 Report/ Recommendation,[7] respondent's explanations for the delay are suspicious and at best sketchy:

> One, respondent reasoned that he could not implement at once the writ of possession without first serving a copy of the same to defendant Raul Santos who lives in Manila. This is sophistry and is belied by the circumstances viz:
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> - His manifestation to the court dated 7 March 2003 already asked for amount to execute the writ of possession. Why ask for funds to implement the ejectment when he knew he could not yet carry out the same and what he actually needed were funds meant for another purpose?;
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> - There was no travel order for his supposed travel to Manila;
>
> - His deviation from the standard procedure was unjustified, and he did not even have the prudence to notify the court or immediately made his report about it as mandated by the Rules;
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> - He submitted his liquidation report thereon only after more than one year, or on 22 March 2004, with only an affidavit, also executed that same date, alleging that he lost all the receipts and documents evidencing his travel. Said affidavit does not even mention the Hotel where he stayed or other details of his meal expenses;
>
> - His own evidence discloses that his schedule for the month of March 2003 is already full, with travel order for each day;
>
> - To prove his travel to Manila, all that respondent has is his self-serving assertion. Even his claim that he actually served the writ of possession to the widow of Raul Santos, who allegedly acknowledged receipt but refused to sign, is suspect since the widow herself confided that her family no longer has claims over the property.
>
> Two, his subsequent manifestation for sheriff's expenses --- albeit basically for the same purpose as the first --- more than tripled the amount in the first manifestation. Three, there was no basis to pay the independent contractor in full since the task contracted was actually halted. Four, complainant has steadfastly remitted the proper amount as sheriff expenses. This notwithstanding, and despite a long period of time, respondent still failed to execute the writs to completion.n Five, Respondent's query to the court of appeals relative to the TRO is but another scheme to indirectly justify the delay. It was made only on 22 September 2003, or long after the TRO ceased to be effective, and only after complainant's counsel had written respondent exhorting him to fulfill his bounden duty. Moreover, the TRO apparently erroneously named him as an employee of Branch 62, not of Branch 27, besides the fact that the same bears a different case number from the case pending in his branch. If indeed respondent doubted the TRO, why did he wait for it to lapse before raising the query? Respondent only submitted his report on the implementation of the writ of possession on 4 December 2003, and on 12 April 2004, in patent disregard of his reportorial duty under Rules of Court. The presiding Judge had

> to issue an order dated 8 March 2004 directing respondent to continue and complete the execution of the writs in the subject cases. This not only shows the delay, but it also brings to fore the fact that respondent only made the liquidation reports including his affidavit of loss, on 22 March 2004, or only after the issuance of the said order.

Not only was there an unreasonable delay in the implementation of the writs of execution and possession. Respondent also failed to satisfactorily justify the items for the expenses he allegedly incurred in connection therewith.

In Smith Bell and Co. v. Saur,[8] the Court has made it clear that the duty of sheriffs to promptly execute a writ is mandatory and ministerial. Sheriffs have no discretion on whether or not to implement it. There is no need for the litigants to "follow-up" its implementation.

Sheriffs play an important role in the administration of justice. They are tasked to execute final judgments of the courts. If not enforced, such judgments become empty victories for the prevailing party. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence. In serving court writs and processes and in implementing court orders, sheriffs cannot afford to err without affecting the integrity of their office and the efficient administration of justice.[9]

The conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, are circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but above all, beyond suspicion.[10]

Here, the respondent sheriff was clearly remiss in performing his ministerial duty of implementing promptly and expeditiously the possessory writ issued by the court. He was likewise tardy in the submission of his report relative thereto.

Accordingly, the Court finds the respondent guilty of conduct prejudicial to the best interest of the service, an offense which, under Section 23 (t) of the Civil Service Law, carries the penalty of suspension for six (6) months and one day to one (1) year, for the first offense.

WHEREFORE, respondent, Sheriff Herberto Benito, is hereby adjudged GUILTY of conduct prejudicial to the best interest of the service and is SUSPENDED for a period of SIX MONTHS without pay, with WARNING that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Azcuna, JJ., concur.

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[1] Rollo, pp. 1-8.

[2] Id. at 37.

[3] Id. at 49-50.

[4] Id. at31-36.

[5] Id. at 35.

[6] Id. at 115-119.

[7] Id. at 120-124.

[8] Adm. Matter No. P-1142, March 31, 1980, 96 SCRA 667.

[9] Teresa T. Gonzales Laó and Co. , Inc. v. Sheriff Jadi T. Hatab, A. M. No. P-99-1337, April 5, 2000, 329 SCRA 646.

[10] Neeland v. Villanueva, A. M. No. P-99-1316, October 29, 1999, 317 SCRA 652.

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