

## EN BANC

**[ A.M. No. P-18-3865 (formerly OCA I.P.I. No. 11-3735-P), October 09, 2018 ]**

**ANTONIO K. LITONJUA, COMPLAINANT, VS. JERRY R. MARCELINO, SHERIFF III, METROPOLITAN TRIAL COURT, BRANCH 71, PASIG CITY, RESPONDENT.**

### DECISION

#### PER CURIAM:

This administrative case stems from a letter<sup>[1]</sup> dated June 29, 2009 that was sent by complainant Antonio K. Litonjua (Antonio), as president of Fruehauf Electronics Phil. Corp. (Fruehauf), to the Clerk of Court of the Metropolitan Trial Court (MeTC) of Pasig City, a copy of which letter was furnished the Office of the Court Administrator (OCA).

It was alleged in Antonio's letter that Fruehauf was the winning party in Civil Case No. 10652, an ejectment case entitled "*Fruehauf Electronic Phil. Corp v. Capitol Publishing House, Inc.*" that was resolved by the MeTC of Pasig City, Branch 71. Upon execution of the trial court's judgment, respondent Jerry R. Marcelino (Marcelino), Sheriff III of MeTC, Branch 71, Pasig City, charged Fruehauf the amount of P100,000.000 as sheriff's fees. To prove that the amount was actually paid to Marcelino, attached to Antonio's letter were two vouchers dated May 13, 2005<sup>[2]</sup> and July 14, 2005<sup>[3]</sup> each for the amount of P50,000.00 and indicated to be for the payment of sheriff's fees. Both vouchers bore the name and signature of Marcelino as payee.

When the trial court's decision in Fruehauf's favor was eventually declared null and void by the Court of Appeals, Fruehauf was ordered to return all funds and property that were earlier subjects of execution, plus pay lawful fees for sheriff's services. This prompted Fruehauf to also demand from Marcelino the sheriff's fees that it had previously paid in 2005.<sup>[4]</sup> As Marcelino continuously failed to refund the fees or to at least present official receipts covering the payments made, Fruehauf was prompted to write the letter dated June 29, 2009 to the Clerk of Court of MeTC, Pasig City to request for a certification on the applicable lawful fees for sheriff services, and copies of official receipts for the fees already paid.<sup>[5]</sup>

Atty. Reynaldo V. Bautista (Atty. Bautista), Clerk of Court of the MeTC of Pasig City replied to Fruehauf *via* a letter<sup>[6]</sup> dated August 18, 2009, and explained that per Sheriff's Return<sup>[7]</sup> issued by Marcelino, the following incidents in relation to the execution in Fruehauf's favor transpired:

- i. On May 12, 2005[,], proceed[ed] with the auction sale of the levied property with [Fruehauf] as the highest bidder with a bid of Php

7,100,000.00;

x x x x

p. On June 3, 2005[,] received the replacem[e]nt check from Malayan Insurance Co., Inc. in the amount of Php 17,416,666.00;

x x x x

s. On June 20, 2005[,] received the check in the amount of Php 63,225.64 from Bank of the Philippine Islands and turned-over the same to [Frueauf].<sup>[8]</sup>

Citing Amended Administrative Circular No. 35-2004<sup>[9]</sup>, Atty. Bautista declared Fruehauf liable for the following fees:

As to the amount of Php 7,100,000.00 Sale price of levied property (machiner[y])

JDF	SAJ
Php 160.00	Php 60.00
<u>±</u>	<u>±</u>
141,920.00	70,920.00
Php	Php
142,080.00	71,020.00

As to the amount of Php 17,416,666.00 Money collected from Supersedeas bond

JDF	SAJ
Php 160.00	Php 60.00
<u>±</u>	<u>±</u>
348,253.32	174,126.66
Php	Php
348,413.32	174,186.66

As to the amount of Php 63,225.64 Amount garnished from BPI.

JDF	SAJ
Php 160.00	Php 60.00
<u>±</u>	<u>±</u>
348,253.32	+ 174,126.66
Php	Php
348,413.32	174,186.66 <sup>[10]</sup>

As to Antonio's request for official receipts covering portions of the sheriff's fees that Fruehauf had already paid, Atty. Bautista explained that his office had not received any amount as payment, including the amount of P100,000.00 that was allegedly paid by 'the company directly to Marcelino.<sup>[11]</sup>

The OCA directed Marcelino to comment on Fruehauf's letter.<sup>[12]</sup> In his Comment<sup>[13]</sup> dated August 17, 2009, Marcelino denied having received the P50,000.00 covered by the voucher dated May 13, 2005. He nonetheless admitted receiving the P50,000.00 that was covered by the July 14, 2005 voucher. The check for it was

allegedly voluntarily handed to him by Atty. Benedict Litonjua (Benedict), son of Antonio and a lawyer of Fruehauf, who even escorted him to iBank, Mandaluyong Branch for its encashment. Specifically, Marcelino declared:

3. For the voucher dated July 14, 2005, said check was received by the undersigned from [Benedict], son of [Antonio] and lawyer of [Fruehauf] who even escorted me to iBank, Mandaluyong Branch to encash the same;

4. Said amount/check was voluntarily given by [Benedict] as a token of appreciation, having been satisfied by the proceedings made by the undersigned sheriff.<sup>[14]</sup>

The foregoing claims of Marcelino prompted Antonio to file with the OCA an Affidavit<sup>[15]</sup> by which he accused the sheriff of deception and dishonesty in the exercise of official functions. Marcelino allegedly misrepresented in the collection of the sheriff's fees, as Antonio averred in his affidavit:

5. After [Marcelino] conducted the auction of the machiner[y] on May 12, 2005 amounting to Seven Million One Hundred Thousand Pesos (PhP7,100,000.00), he immediately demanded for the partial payment for sheriff fees. The undersigned personally disbursed cash from his own funds to the sheriff on May 13, 2005 to satisfy this demand, the amount to be reimbursed later by [Fruehauf]. This disbursement is evidenced by the corresponding personal Cash Voucher of [**Antonio**], duly signed by [Marcelino] specifically for the purpose stated therein, of a **"Partial payment of sheriff fees for pesos 50,000.00"**. x x x.

6. On June 3, 2005[, ] Malayan Insurance paid the bond in the amount of Seventeen Million Four Hundred Sixteen Thousand Six Hundred Sixty Six Pesos (PhP17,416[, ]666.00). On June 20, 2005[, ] the amount of Sixty Three Thousand Pesos and Sixty Four Centavos (Php63,223.64) was collected from the Bank of Philippine Islands. For the completion of the above, a second demand was made by [Marcelino] for the sheriff's fees and on July 14, 2005[, ] [Fruehauf] issued a check for the **"payment of sheriff fees for Pesos 50,000.00"** duly acknowledged in the accompanying Check Voucher of [Fruehauf], x x x and a copy of the [Fruehauf's] returned check (with the dorsal portion with [Marcelino's] signature) x x x.<sup>[16]</sup>

Attached to the affidavit were the two vouchers and the encashed check. Also attached was an affidavit<sup>[17]</sup> executed by Benedict in which he explained that the money given to Marcelino was from Fruehauf and/or Antonio, and intended as sheriff's fees for the execution of the judgment in the corporation's favor. It was not meant to be a mere token of appreciation.

After an evaluation of the respective accounts of Antonio and Marcelino, the OCA submitted to the Court its reports dated February 5, 2013<sup>[18]</sup> and May 11, 2018.<sup>[19]</sup> In both reports, the OCA found Marcelino guilty of dishonesty and dereliction of duty and then recommended that he be "DISMISSED from the service with forfeiture of

all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations."<sup>[20]</sup>

The Court agrees with the OCA's evaluation and recommendations, both as to the guilt of Marcelino and the appropriate penalty for his wrongful acts.

Marcelino himself admitted that he received the amount of P50,000.00 from Fruehauf through the latter's counsel, Benedict. To his mind, the amount was a voluntary payment of the winning litigant and thus, he did not turn over the money to the court and instead appropriated the amount for himself. For its part, on the other hand, Fruehauf believed that the total amount of P100,000.00 that was directly paid to Marcelino would be applied as partial payments for the required sheriff's fees, and would then be remitted to the office of the Clerk of Court in accordance with applicable rules. Regardless of the amount actually received by Marcelino and the purpose for which it was paid, whether as sheriff's fees or as a gratuitous payment, the commission of an act that was prohibited from him as a sheriff was patent.

Time and again, the Court has ruled against the acceptance by sheriff's of voluntary payments from parties in the course of the performance of their duties.<sup>[21]</sup> Doing so would be inimical to the best interests of the service, as it might create the suspicion that the payments were made for less than noble purposes.<sup>[22]</sup>

Clearly, in this case, the purpose for which Marcelino allegedly received the money was not sanctioned under the rules. He might have thought that his claim of voluntary payment was sufficient defense for his failure to remit the amount to the court. Such voluntary payments or gratuities, however, are proscribed under the rules and covered by settled jurisprudence. "A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps otherwise, it would amount to dishonesty and extortion. And any amount received in violation of Section 10, Rule 141 of the Rules of Court constitutes unauthorized fees."<sup>[23]</sup> Even as the Rules of Court allows payments to sheriff's, it limits the amounts they could receive from parties in relation to the execution of writs, and likewise prescribes the manner by which the sums should be handled, particularly:

Sec. 10. Sheriffs, process servers and other persons serving processes.

x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by