

THIRD DIVISION

[A.M. No. P-06-2173 (Formerly OCA IPI No. 05-2300-P), January 28, 2008]

SALLY BUNAGAN, Complainant, vs. SHERIFF JOEL FERRAREN, Respondent.

RESOLUTION

AUSTRIA-MARTINEZ, J.:

Sally Bunagan (complainant) charges Joel Ferraren (respondent), Sheriff III of the Metropolitan Trial Court (MeTC), Branch 67, Makati City with dereliction of duty, serious misconduct and conduct prejudicial to the best interest of the service. ^[1]

In her letter-complaint dated September 26, 2005, complainant avers: She is the prevailing party in the decision dated March 7, 2004 of the MeTC in Civil Case No. 04-547, where the defendant therein, was ordered to vacate the subject property.

^[2] Although a writ of execution was issued on April 20, 2005, it was only on September 26, 2005, that the writ was implemented.^[3] Respondent filed a return only on August 15, 2005, upon the request of complainant.^[4] On several occasions, respondent refused to implement the writ due to the rainy weather. There were also instances when respondent could not be found, was absent or unavailable, and then a motion or a petition is filed the succeeding days by the occupants of the property; respondent would thereafter refuse to implement the writ saying that said motion or petition should be resolved first before implementing the writ.^[5] Respondent asked complainant to prepare P10,000.00, when she first approached him in May 2005, for implementation expenses, such as food and compensation of policemen, which amount was reduced to P8,000.00 upon bargaining. Complainant gave respondent P4,000.00 on August 1, 2005 and when she asked for a receipt, respondent replied that no receipts are issued for said purpose. After respondent, together with another sheriff, Bayani Acle (Acle) served the writ on the occupants of the property on August 1, 2005, they asked complainant to leave so they could talk privately with the occupants. Complainant also saw respondent in front of the courthouse on August 19, 2005, discussing the case with the occupants' counsel. ^[6]

In his Comment, respondent contends that: when complainant approached him regarding the execution of said judgment, he advised her to prepare for incidental expenses like food and gasoline for the police; it was in the last week of July 2005 that complainant delivered to him P4,000.00 as partial payment for the incidental expenses of P9,600.00 approved by the trial court only on August 1, 2005; he held in trust said money until full payment and with the knowledge of complainant that the same served as partial payment for sheriff's incidental expenses; it was agreed that the amount was to be deposited with the Office of the Clerk of Court upon full payment of the estimated costs; upon request of complainant for disbursement convenience, however, the amount was not deposited; he also had to spend his own

money to augment the expenses incurred in the implementation of the writ; on August 1, 2005, he and complainant went to the property to serve the writ of execution dated April 20, 2005 with Notice to Vacate giving the defendant and all persons claiming rights under him to vacate within three days after notice; on August 5, 2005, however, and with the agreement of complainant, he desisted from evicting the occupants therein, namely, the Baccay, Benosa and Esparago families, for humanitarian reasons, due to the rains; on August 8 and 9, the writ was not implemented as he got sick; on August 15, 2005, he together with the tanods and complainant went to the property but the same was padlocked; on August 23, 2005, respondent again went to the property and was able to implement the writ but only as to the Esparagos' portion which was not covered by the temporary restraining order issued by the trial court in favor of the Baccays and the Benosas anent their respective one-third portions of the property; on September 6, 2005, he requested the assistance of the police but they were on red alert and were available only on September 20, 2005; on said date, he together with Acle, the *tanods* and several policemen went to the property but due to unexpected heavy rains and with the consent of complainant, the implementation of the writ was again called off; in the succeeding days, the implementation did not proceed as there were no policemen available as they were on red alert; on September 26, 2005, respondent together with Acle, the tanods and the policemen again went to the property and found the same padlocked with the occupants inside; he had to force open the property with caution as the families were armed; on even date, he turned over the property to complainant.^[7]

Complainant filed a Reply dated December 20, 2005 reiterating her allegations and refuting respondent's Comment.^[8]

In the agenda report dated February 27, 2006, the Office of the Court Administrator (OCA)^[9] recommended that respondent be held liable for neglect of duty and conduct unbecoming an officer of the court and that he be suspended for three months without pay with stern warning. ^[10]

In the Resolution dated June 5, 2006, the Court required the parties to manifest if they are willing to submit the case for resolution based on the pleadings filed. ^[11] Complainant filed her Manifestation expressing her willingness to have the case thus submitted.^[12] Respondent on the other hand filed a Manifestation dated July 12, 2006 praying that the records of the case be forwarded to the Office of the Executive Judge of the MeTC, Makati City for trial and presentation of evidence and witnesses.^[13]

The Court in the Resolution dated November 13, 2006, referred the case to the Executive Judge of the MeTC, Makati City for investigation, report and recommendation.^[14] On January 19, 2007, MeTC Executive Judge Rowena De Juan-Quinagoran issued an order setting hearing dates for the case.^[15] Complainant's counsel, Atty. Santiago T. Gabionza, in an Urgent Manifestation and Motion dated January 31, 2007, stated that he repeatedly tried to contact complainant. However, despite repeated and diligent efforts, he could no longer locate her. Atty. Gabionza prayed that the January 19, 2007 Order of the court be sent to the address of complainant.^[16]

At the scheduled hearing on February 1, 2007, only complainant's counsel and respondent appeared. Judge De Juan-Quinagoran then reset the hearing of the case to February 22, 2007 and issued a subpoena for the complainant. [17] Said subpoena however was returned to the court, unserved. [18] On February 22, 2007, again only complainant's counsel and respondent appeared. Atty. Gabionza moved that the case be considered submitted for resolution based on the evidence on record.[19]

In a Manifestation dated March 20, 2007, respondent stated that he will no longer present further evidence and moved that the case be deemed submitted for resolution. He also stated that complainant, who failed to appear in all settings despite notice, was not able to substantiate her complaint, and such non-appearance shows that she is no longer interested in the prosecution of the case. He also stated that complainant's failure to appear in all settings prejudiced his right to confront and cross-examine his accuser as well as her witnesses.[20]

On March 30, 2007, the records of the case were forwarded to the new MeTC Executive Judge Henry E. Laron[21] who, on June 5, 2005, forwarded his Report and Recommendation to the Court.[22]

In his Report, Judge Laron found respondent guilty of conduct unbecoming a court personnel for his failure to comply with Section 10 (1), Rule 141 of the Rules of Court regarding sheriff's fees. Judge Laron recommended that respondent be fined P5,000.00 with a stern warning.[23]

Judge Laron's Report was referred to the OCA for evaluation, report and recommendation.[24]

In the Memorandum dated September 30, 2007, the OCA recommended that respondent be held liable for dereliction of duty and conduct prejudicial to the best interest of the public, and that he be suspended for three months without pay with stern warning. [25]

The OCA found that respondent incurred delay in the implementation of the writ of execution; that respondent disregarded the requirements in Section 10, Rule 141 of the Rules of Court when he directly demanded and received money from complainant for the implementation of the writ and when he did not submit a liquidation report; and that respondent belatedly submitted his sheriff's report, as he filed the same only on August 15, 2005 or almost four months from April 20, 2005 when the writ of execution was issued by the court.[26]

The Court agrees with the OCA's findings and recommended penalty.

Preliminarily, it is well to clarify that even though complainant failed to appear before the Investigating Judge, the Court retains authority to decide the same. A complainant's lack of interest in pursuing the case will not exonerate the respondent from any administrative action; neither will it divest this Court with jurisdiction to determine the truth behind the complaint, as the need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities

should not be made to depend on the whims and caprices of the complainants who are, in a real sense, only witnesses therein.^[27]

As correctly found by the OCA, respondent failed to observe Sec. 10, Rule 141 of the Rules of Court regarding sheriff's fees. Said provision, which was taken from Sec. 9, Rule 141, prior to the amendment of SC Resolution No. 04-2-04 dated August 16, 2004, provides that:

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions x x x, 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 the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

As the Court has held many times before, the sheriff executing the writ must submit for the court's approval an estimate of the expenses to be incurred and for the interested party to deposit the amount with the Clerk of Court and the *ex-officio* sheriff which expenses shall then be disbursed to the executing sheriff subject to his liquidation within the same period for rendering a return on the writ.^[28]

In this case, respondent admitted having received from complainant in the last week of July 2005, the amount of P4,000.00 as partial payment of the approved incidental expenses of P9,600.00 which amount was approved only on August 1, 2005. Although complainant claims that she gave the amount of P4,000.00 on August 1, 2005, respondent himself in his Comment admitted having received the amount before any estimate could be approved by the court. Respondent also directly received the money from the complainant, in contravention of the procedure aforestated.

The fact that complainant gave the money voluntarily is of no moment. Neither would it exculpate respondent if the money, whether in whole or in part, had indeed been spent in the implementation of the writ.^[29] A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedure. To do so would be tantamount to dishonesty or extortion.^[30]

Records also show that respondent failed to file a timely return, as he filed it only on August 15, 2005^[31] or four months after the issuance of the writ of execution. It is mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it and if the judgment cannot be satisfied in full within 30 days after his receipt of the writ, the officer shall report to the court and state the reason or reasons therefor. The officer is also tasked to make a report to the court every 30 days on the proceedings followed therefor until the judgment is satisfied in full or its effectivity expires. ^[32]