

## THIRD DIVISION

**[ A.M. No. P-02-1655, February 06, 2007 ]**

**EMMANUEL M. PATAWARAN, COMPLAINANT, VS. REYNALDO T. NEPOMUCENO, DEPUTY SHERIFF III, METROPOLITAN TRIAL COURT, BRANCH 77, PARAÑAQUE CITY, RESPONDENT.**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.:**

Before us is an administrative complaint<sup>[1]</sup> dated September 12, 2000 of Emmanuel M. Patawaran (complainant) charging Reynaldo T. Nepomuceno (respondent), Deputy Sheriff, Metropolitan Trial Court (MeTC), Branch 77, Parañaque City, with Dereliction of Duty and Abuse of Authority relative to Civil Case No. 10483 entitled "Emmanuel M. Patawaran v. Miguel P. Acebedo, et al." for Unlawful Detainer.

Complainant alleges: he is the plaintiff in the above-entitled case which was decided in his favor in a decision rendered on December 29, 1997. He was able to obtain a writ of execution but the judgment in his favor has not been satisfied. When the writ of execution was endorsed to respondent, the latter enforced the said writ four times and on those occasions, respondent asked for money which amounted to P25,000.00 saying that said amount is his usual price in implementing writs of execution. Since he is in dire need of recovering the large amount expended in prosecuting the case, he had no other recourse but to give respondent the said amount. Subsequently, some personal properties, *i.e.*, two vehicles, among others, were taken or seized from the defendants, but for reasons known only to respondent, no sheriff's return was submitted to the court despite the lapse of several months. Worse, respondent defied the Order of the court to conduct a public auction sale of the seized personal properties.

In his Comment dated January 27, 2001,<sup>[2]</sup> respondent avers: a writ of execution dated December 3, 1998 was issued by the court. On January 8, 1999, accompanied by complainant, he served the writ of execution upon the defendants, through Felix Acebedo III (Acebedo). Complainant and Acebedo came into an agreement whereby the latter would issue post-dated checks to complainant on January 11, 1999, otherwise, the writ of execution will be enforced. For failure of Acebedo to comply with their agreement, he and complainant returned to Acebedo's office on February 8, 1999, ready to seize personal properties therein to answer for the money judgment in the writ of execution. Acebedo chose to issue four post-dated checks totaling P199,936.46 which were accepted by complainant. On February 15, 1999, he filed his sheriff's return. When the first post-dated check became due on February 23, 1999, Acebedo asked the bank for a stop payment order for all four post-dated checks on the ground that said checks were involuntarily issued as a result of harassment from him and the complainant. On July 21, 1999, the court issued an alias writ of execution. On July 23, 1999, he enforced the writ of execution and levied upon and pulled out some personal

properties of the defendants - one Tamaraw FX with Plate No. UUD790, one Nissan Crewcab with Plate No. TPD866 and one Selex xerox machine. Before he could post his notice of public auction for the said personal properties, defendants' counsel filed a motion on July 28, 1999 questioning his enforcement of the writ of execution, specifically, that he did not give the defendants the option to choose what should be levied from among defendants' properties. On October 5, 1999, the court directed him to allow the defendants to choose properties belonging to them which may be levied, in addition to the offer of P150,000.00 as partial satisfaction of the judgment debt. Defendants' counsel sent a letter to him offering the photocopying machine as the property to be levied and to deposit with the Clerk of Court the amount of P150,000.00. On December 28, 1999, the court directed the defendants to deposit with the Clerk of Court the amount of P200,000.00 as payment of the judgment debt and incidental expenses and ordered him to release the two levied vehicles after deposit is made. Complainant's counsel filed a petition for *certiorari* with the Regional Trial Court of Parañaque City, which issued a temporary restraining order enjoining the release of the two vehicles. Sometime in August 2000, during the pendency of the *certiorari* case, complainant's counsel informed him that he has to sell the levied vehicles at public auction pursuant to the order issued by the MeTC, otherwise, an administrative case for dereliction of duty will be filed against him. No Order was issued by the MeTC to sell the levied properties at public auction. It is very clear from the Order that he can only sell at public auction the property chosen to be levied by the defendants and only upon determination of the insufficiency of the proceeds thereof plus the offer of P150,000.00, that he can proceed to levy on other properties of the defendants. It is not true that he demanded P25,000.00 from the complainant for the enforcement of the writ. The truth is, it was complainant himself who defrayed the expenses in the implementation of the writ of execution as evidenced by the Bill of Costs submitted by complainant's counsel to the MeTC. He strongly denies that he ever told complainant that said amount of P25,000.00 is his usual asking for enforcement of writs of execution. He failed to file his sheriff's return for the alias writ of execution but did so on January 4, 2000 immediately after he became aware that he had not filed a return. The reason for his oversight was the fact that the court was already informed of the proceedings taken on said alias writ of execution through defendants' first omnibus motion questioning the levy. In an Order dated December 18, 2000, the parties have agreed, among others, that the total amount of the judgment debt excluding incidental expenses is P216,000.00. Defendants will deposit the additional amount of P16,000.00 with the MeTC Clerk of Court, and after withdrawal thereof, the levied vehicles will be released to the rightful owners.

In his Reply dated February 21, 2001,<sup>[3]</sup> complainant asserts that respondent cannot deny having received from him the amount of P25,000.00 saying that he was the one who actually gave the said amount to respondent. He also suspects that respondent exacted some other amount from the defendants, the reason why he was delaying the implementation of the supposed writ of execution. He says that there are other litigants who can attest to respondent's illegal practice which is a menace to the judiciary.

On January 23, 2003, upon recommendation of the Office of the Court Administrator (OCA), the matter was referred to Executive Judge Jansen R. Rodriguez, MeTC, Branch 78, Parañaque City for investigation, report and recommendation.

In his Report dated April 12, 2004,<sup>[4]</sup> Executive Judge Jansen R. Rodriguez finds that the respondent cannot be faulted for not selling the seized properties on auction sale. He notes that in an Order dated December 28, 1999, the trial court granted the defendants' motion to replace the seized vehicles with the cash deposit of P200,000.00 which the defendants in fact deposited later. Be that as it may, Judge Rodriguez finds the respondent guilty of delay in filing the Sheriff's Partial Return dated January 3, 2000, and he recommends that respondent be penalized to pay a P5,000.00 fine. As regards the allegation that respondent demanded and received from complainant the amount of P25,000.00, the investigating judge reports that the same is unsubstantiated.

In its Resolution of June 7, 2004,<sup>[5]</sup> the Court referred the matter to the OCA for evaluation, report and recommendation.

In its Memorandum of July 10, 2006,<sup>[6]</sup> the OCA submits as follows:

x x x x

We agree with the findings of the investigating judge that respondent was prevented by the orders of the trial court from proceeding with the public auction of the seized properties. In the order dated 5 October 1999, the trial court, among others, ordered the respondent "to allow the defendants to choose properties belonging to them which may be levied," while in the order dated 28 December 1999, the court directed him to release the two vehicles upon the deposit of P200,000.00 by the defendants. Clearly, with these orders, respondent cannot proceed with the auction sale. We are not unmindful that the sheriff, in the performance of his duties, is deemed to know what is inherently right and inherently wrong and is bound to discharge such duties with prudence, caution and attention which careful men usually exercise in the management of their affairs (*Malmis vs. Bunagbong*, A.M. No. P-03-1721, 30 September 2004, 439 SCRA 538).

Nevertheless, respondent is guilty of neglect of duty for his delay in submitting the sheriff's return on the alias writ and for failure to make the periodic reports. Neglect of duty is the failure to give due attention, especially to the performance of a task or duty, a designed refusal, indifference or unwillingness to perform one's duty (*Magallanes vs. Provincial Board*, 66 OG 7839). Records show that respondent enforced the alias writ of execution on 23 July 1999 where he was able to seize a Tamaraw FX, a Nissan Crewcab, [sic] and a Selex xerox photocopier; however, he filed the corresponding sheriff's return on the writ only on 04 January 2000. No periodic reports were filed by the respondent relative thereto.

Section 14 of Rule 39 of the Rules of Court explicitly mandates the manner in which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or

officer much make a periodic report to the court on the proceedings taken in connection with the writ. Section 14 reads:

**Sec. 14. Return of writ of execution. - The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof furnished the parties.**

[7]

The submission of the return and periodic reports is not an empty requirement. It serves to update the court as to the status of the execution and to give it an idea as to why the judgment was not satisfied. It also provides insights for the court as to how efficient court processes are after judgment has been promulgated. The over-all purpose of the requirement is to ensure the speedy execution of decisions (*Benitez vs. Acosta, A.M. No. P-01-1473, 27 March 2001, 355 SCRA 380*).

Sheriffs, a[s] public officers are repositories of public trust and are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability. They are bound to use reasonable skill and diligence in the performance of their official duties particularly where the rights of individuals may be jeopardized by their neglect (*Spouses Pecson vs. Sicat, Jr., 358 SCRA 606*). It must be borne in mind that the conduct required of court personnel must be beyond reproach and must be always free from suspicion that may taint the judiciary family to work hand in hand in restoring and upholding, rather than destroying the integrity of the courts which they belong (*Atty. Contreras vs. Miranco, A.M. No. P-03-174, 18 September 2003, 411 SCRA 259*).

Inasmuch as respondent denied the accusation that he received from the complainant the amount of P25,000 to facilitate the execution of the judgment, the issue ultimately boils down to the credibility of both the complainant and the respondent. The determination of this issue is primarily lodged in the investigating judge inasmuch as he is in a better position, he having heard them when they testified and observed their deportment and manner of testifying (*Rita M. Melecio vs. Tyrone V. Tan, etc., A.M. No. MTJ-04-1566, 22 August 2005, citing Meneses vs. Zaragoza, A.M. No. P-04-1768, 11 February 2004, 422 SCRA 434*). On this score, we agree with the findings of Judge Rodriguez that "respondent should not suffer from an unsubstantiated accusation which was not independently confirmed by competent evidence or disinterested