

THIRD DIVISION

[A.M. NO. P-07-2342 (FORMERLY OCA I.P.I. NO. 01-1188-P), August 31, 2007]

ROELA D. CO, COMPLAINANT, VS. ALLAN D. SILLADOR, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 62, BAGO CITY, RESPONDENT.

DECISION

NACHURA, J.:

Before us is an administrative complaint^[1] charging Allan D. Sillador, Sheriff of the Regional Trial Court (RTC), Branch 62, Bago City, with partiality and malfeasance in office arising from his alleged irregular acts in enforcing the judgment in Civil Case No. 754^[2] which held the defendants Teodoro Borlongan, Corazon Bejasa, and Arturo Manuel, Jr., jointly and severally liable with Urban Bank.

Complainant, Atty. Roela D. Co, is the counsel of the defendants in Civil Case No. 754 for Recovery of Agent's Compensation, Damages and Attorney's Fees.

On June 15, 1999, upon the judgment obligee's motion, the RTC granted execution pending appeal. Thereafter, defendants Borlongan, Bejasa, and Manuel (judgment obligors) received a notice of sale on execution of real property involving their respective lots. The auction sale of the levied properties was scheduled on June 8, 2001 at 9:00 a.m. in front of the Bago City Hall of Justice.

Subsequently, on June 7, 2001, Ma. Dolores E. Borlongan, Ma. Theresa R. Manuel, and Nestor B. Bejasa filed their respective Notices/Affidavits of Third Party Claim^[3] with respondent. The third party claimants similarly alleged that they are the spouses of the judgment obligors in Civil Case No. 754, and that the properties levied upon for execution sale are included in their respective conjugal estates.

Thus, on June 8, 2001, the scheduled date of the auction sale, respondent issued three Orders directing the judgment obligee to post indemnity bonds not later than 4:00 p.m. on even date; otherwise, the levied properties shall be released to the third party claimants.^[4] During the auction sale which began at 3:40 p.m., the judgment obligee, who failed to comply with respondent's Orders, insisted that the third party claims of the judgment obligors' spouses were fatally defective^[5] and, as such, should be ignored by the respondent who, thereafter, should proceed with the scheduled auction sale. On the other hand, complainant pointed out that since the judgment obligee failed to file the required indemnity bonds, the levied properties should be released to the third party claimants, and the scheduled auction sale held in abeyance. Yet, over complainant's objections and notwithstanding the late hour, respondent continued with the auction sale which ended at 4:45 p.m.

In his answer,^[6] respondent explained that the delay in the auction sale was caused by the complainant who undertook to submit documents relating to the value of the levied properties, but failed to do so. Respondent posited that he was constrained to recall his Orders because the third party claims did not indicate the individual values of the properties. Under the circumstances, he had no basis for fixing the indemnity bonds pursuant to Section 16, Rule 39 of the Rules of Court.

Upon our Resolution^[7] dated February 3, 2003, this administrative matter was referred to Executive Judge Henry J. Trocino, RTC, Branch 62, Bago City, for investigation, report and recommendation.

The investigation revealed that the judgment obligee was belatedly furnished copies of the third party claims, denying him the opportunity to comment on the same. The investigating judge likewise found that the third party claims were defective, as these failed to allege the value of the levied properties, and thus, respondent had no basis for setting the amount of the indemnity bonds. Further, the scheduled auction sale started at 3:35 p.m. and ended at 4:45 p.m. on the same day. However, the delay cannot be imputed solely to the respondent who was made to wait for the tax declarations on the levied properties to properly determine the amount of the indemnity bonds. Ultimately, the respondent failed to comply with paragraph 2, Section 15(d), Rule 39 of the Rules of Court which mandates that the auction sale shall be conducted not earlier than 9:00 a.m. and not later than 2:00 p.m.

For not strictly complying with the procedure regarding the conduct of the auction sale, the investigating judge found respondent liable for simple negligence and recommended that he be reprimanded with a warning that a repetition of the same or similar offense will be dealt with more severely. The investigating judge also recommended that complainant's other charges be dismissed for insufficiency of evidence and lack of merit.

Meanwhile, on August 29, 2003, complainant filed a Supplemental Complaint against respondent relative to the alleged irregularities committed by the latter in the redemption of the properties sold during the questioned auction sale.

Apparently, the spouses of the judgment obligors, the third party claimants, timely filed a Notice of Redemption on February 11, 2003, and requested from the respondent a breakdown of the amounts to redeem the properties. On February 26, 2003, since respondent had yet to respond to the request, the third party claimants, through their counsels, including herein complainant, each tendered payment in the amount of P1,260,000.00 in checks which respondent initially refused. Eventually, however, respondent was prevailed upon to accept the checks upon complainant's undertaking to pay any deficiency.

Curiously, the very next day, respondent returned the checks at the complainant's office. Complainant was, thus, constrained to consign the redemption payment with the RTC Bago.

In another turn of events, the judgment obligee became amenable to accepting the checks previously tendered and consigned with the RTC Bago. He signed the acknowledgment receipt but with a notation "subject to any deficiency claim." Accordingly, the respondent issued Certificates of Redemption for the redeemed

properties.

Notwithstanding the foregoing, however, respondent caused a re-levy on the same properties for the unsatisfied portion of the judgment award which was annotated on the titles thereof. Thus, complainant filed a Motion to Cancel Notice of Re-levy, which was opposed by the judgment obligee.

In response, the respondent maintains that he did not act irregularly in causing the re-levy of the subject properties considering the unsatisfied portion of the judgment award. In fact, he emphasizes that he acted in good faith in the discharge of his functions pertaining to the execution proceedings in Civil Case No. 754 before the RTC Bago.

Assessing the parties' respective claims, the Office of the Court Administrator (OCA) concurred with the findings of the investigating judge that respondent held the auction sale way beyond the time provided in Section 15, Rule 39 of the Rules of Court. The OCA also found respondent liable for irregularities committed in connection with the redemption of the levied properties.

We see no reason to depart from the findings of the OCA.

The absence of bad faith notwithstanding, respondent cannot escape administrative liability for his failure to comply with the mandatory procedure for the conduct of the auction sale and the redemption of properties.

Rule 39 of the Rules of Court unequivocally provides the time in which the auction sale is to be conducted as well as the procedure to be followed in the redemption of the properties.^[8] Respondent's justification for the delay in the conduct of the auction sale is not well-taken. To begin with, respondent's Orders requiring the judgment obligee to post indemnity bonds were patently defective. Before issuance thereof, respondent should have determined the respective values of the levied properties in order to fix the exact amount of the indemnity bonds. Section 16, Rule 39 of the Rules of Court, explicitly mandates that the indemnity bond shall be in a sum not less than the value of the property levied on. It was incumbent upon respondent, as the officer effecting the levy, to ascertain the veracity of the third party claims, and not simply rely on the third party claimants' representations as to the value of the levied properties, prior to issuing the said Orders. He could have easily asked for the tax declarations thereon when presented with the third party claims. Thus, the delay in the conduct of the auction sale and the procedural shortcuts taken thereon are attributable to the respondent.

Moreover, the Orders requiring the judgment obligee to post indemnity bonds for the levied properties were issued on the date of the auction sale itself, giving the judgment obligee only until 4:00 p.m. of that very day to post the indemnity bonds.^[9] Evidently, even if the judgment obligee complied therewith, respondent would still continue with the scheduled auction sale in direct violation of our rules thereon.

Concededly, respondent recalled his Orders considering the defective third party claims. However, the recall was undoubtedly belated. To reiterate, respondent should have desisted from issuing the Orders in the first place, and he did not have to wait for the submission of the tax declarations on the levied properties before