

## SECOND DIVISION

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

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

### RESOLUTION

**GARCIA, J.:**

This administrative case stemmed from a VERIFIED COMPLAINT<sup>[1]</sup> 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<sup>[2]</sup> was issued on March 13, 2002, followed by a writ of possession<sup>[3]</sup> on March 10, 2003.

On March 8, 2004, or after the lapse of one year from the issuance of the possessory 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completely carry out the March 8, 2004 order of the trial court even after repeated follow-ups and despite his having withdrawn from the court the following amounts: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 exorbitant 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 his misappropriation of funds.

In his comment,<sup>[4]</sup> 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." <sup>[5]</sup> 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 only the next day upon his receipt of the certified true copy of the TRO, adding that he even made inquiry 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, <sup>[6]</sup> the complainant denied the imputation 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. The judgment 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, <sup>[7]</sup> 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:

- 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?;