

## **SECOND DIVISION**

**[ A.M. No. P-04-1897 (Formerly A.M. OCA IPI No. 02-1300-P), November 11, 2004 ]**

**ARTURO GRAYDA, COMPLAINANT, VS. NOEL G. PRIMO, SHERIFF IV, BRANCH 65, REGIONAL TRIAL COURT, BULAN, SORSOGON, RESPONDENT.**

### **R E S O L U T I O N**

**AUSTRIA-MARTINEZ, J.:**

The instant administrative complaint arose from an affidavit<sup>[1]</sup> dated November 20, 2001 filed by Arturo Grayda before the Office of the Court Administrator (OCA) charging Sheriff IV Noel G. Primo of the Regional Trial Court, Branch 65, Bulan, Sorsogon (RTC), of dereliction of duty, dishonesty and serious misconduct.

In his affidavit, complainant alleges the following: He mortgaged a parcel of land to Jaime Janer as a security for his loan in the amount of P150,000.00 which was subsequently foreclosed and awarded to the mortgagee in an anomalous public bidding; on February 9, 2000, he delivered the amount of P200,000.00 as redemption money for his foreclosed property to respondent who issued an ordinary receipt; after a week, he inquired from respondent whether the money was already given to Janer, to which respondent replied that it was already received by Janer's son-in-law, a certain "Erning;" a month thereafter, complainant asked respondent again about the money and the latter told him that he gave it to a certain "Lydia" who works at the Register of Deeds and who could prevent the title from being cancelled and transferred to Janer; respondent then instructed complainant to look for a buyer of his foreclosed property; on April 6, 2001, complainant, together with Esperanza Obsum, Leopoldo Balbalosa and Raul Villafranca, went to see respondent to inform him that they already have a buyer; respondent told them to wait for Lydia as the latter was still in Manila and had not released the title to the subject property; sometime thereafter, Janer demanded from complainant the payment of the loaned amount to which complainant replied that the money was already with respondent; Janer told him that respondent never offered him the amount of P200,000.00; since nothing had happened despite payment of the P200,000.00, complainant told respondent to expedite the redemption process as the money paid was only borrowed from a money lender in Manila and the same was earning monthly interest; respondent then suggested that since complainant has P200,000.00 deposited with him, complainant can borrow small amounts from the said P200,000.00, which however, should not exceed P50,000.00 since the remaining P150,000.00 will be for the payment of the principal amount of the loan; based on this arrangement, complainant, together with Esperanza Obsum, obtained a number of loans from respondent, the biggest amount was P15,000.00 with a total loaned amount of not less than P50,000.00 which were all evidenced by ordinary receipts; however, when nothing still happened, complainant finally confronted respondent before the chambers of Judge Adolfo

Fajardo, RTC, Branch 65, Bulan, Sorsogon, where respondent claimed that he has no more accountability to complainant since Obsum had already received the remaining balance of P150,000.00 from him on January 22, 2001; Obsum denied this allegation and insisted that the biggest amount she received from respondent was just P15,000.00 and the lowest was P1,000.00; complainant could not believe that respondent would deny his accountability considering that in the months of March, April and May 2001, respondent had consistently admitted to him and his witnesses that the amount was still with him.

Complainant submitted affidavits of witnesses in support of his claim.

In his comment dated 14 March 2002, respondent denied the allegations in the complaint and made the following narration of facts:

Sometime on January 3, 2000, and as Sheriff IV of the Regional Trial Court Branch 65, Bulan Sorsogon, undersigned issued a CERTIFICATE OF SALE (Annex "1") in favor of Mr. Jaime Janer, the only bidder/mortgagee of the parcel of land owned by herein complainant, Arturo Grayda. The said Certificate was issued after all the requirements in the Extra-judicial Foreclosure case of the property of Mr. Arturo Grayda entitled EJF No. 99-22 were duly complied with (certified photo copies of the records are hereto attached as Annexes "2", "3", "4" and "5"). The Certificate was subsequently approved by Hon. Presiding Trial Judge Adolfo G. Fajardo(Annex "1-a").

About a month after the actual public bidding, Mr. Grayda, together with Ms. Esperanza Obsum, (to whom, the undersigned observed, Mr. Grayda, has given his trust and confidence) came to the residence of the undersigned seeking information as to what he should do so that the title of his property would not as yet be cancelled and transferred to Mr. Janer. Undersigned explained to Mr. Grayda that he (Grayda) still has one (1) year from actual registration of Mr. Janer's Certificate of Sale within which to redeem the same and further advised him to prepare the needed amount before the said period expires. Mr. Grayda then related to the undersigned that Mr. Janer would not accept any payment lower than the bid price because of interest and other expenses in filing the application for Extrajudicial Foreclosure and the fact that the mortgage took more than a year before its foreclosure which made Mr. Grayda's obligation to Mr. Janer not just P150,000.00 as stated in the Deed of Mortgage and Notice of Extrajudicial Foreclosure. This is shown by the fact that Mr. Janer's bid during the Auction Sale was already in the amount of P470,000.00 inclusive of unpaid and due interest and expenses (Annex "6").

It was then that Mr. Grayda requested the undersigned to intervene and help him with Mr. Janer despite undersigned's explanation that his role is already over considering that the sale was already made. Mr. Grayda and Ms. Obsum were likewise made to understand by the undersigned that whatever help he can extend to them will be out of good humanitarian relations without any gratification expected. It was not however anticipated by the undersigned that Mr. Grayda would be entrusting to the undersigned the amount of P200,000.00 which, according to Mr.

Grayda, was the only amount he can come up with to redeem his property and he doubts Mr. Janer would accept such an amount, being not even half the price of the bid. Through the undersigned however, and this is again according to Mr. Grayda, Mr. Janer might probably understand his situation which can be explained by the undersigned to Mr. Janer without the latter getting irked, as he used to, by his (Grayda's) presence and excuses.

Undersigned refused to receive said amount, convincing the two that he is without any capacity or authority to hold the money in their behalf considering that his work as a Sheriff is over in so far as the court's role is concerned but they insisted for the undersigned to receive said amount whom they claimed they trust, averring at the same time that their arrangement with the undersigned is no longer connected with his job as a court sheriff or as public officer but as a friend. Undersigned then received the amount of P200,000.00 from Mr. Grayda in the presence of Ms. Obsum on this assuring statement of Mr. Grayda after issuing an ordinary receipt for the same under the express suggestion of Mr. Grayda.

Soon thereafter and just when undersigned was about to contact Mr. Janer regarding the matter, Mr. Janer came to undersigned's place to clarify about the sale, during which occasion undersigned asked Mr. Janer if he would agree to Mr. Grayda redeeming the property in the amount of P200,000.00 which amount he even assured Mr. Janer to be available anytime. He thought that once Mr. Janer agrees, right there and then, he would hand over to Mr. Janer the amount but Mr. Janer flatly refused saying that he will not accept any amount lesser than P470,000.00 because it includes the interest and other expenses he incurred in the filing of the Petition for Extrajudicial Foreclosure. HOWEVER, he said he is willing to accept the amount of P200,000.00 only as payment of the unpaid interest but not the amount of the mortgage. This incident was related to Mr. Grayda who was even thankful that the undersigned did not give to Mr. Janer that said amount because they would not also agree with the one-sided proposal of Mr. Janer as they would be losing their money and property at the same time.

The second occasion that undersigned was able to talk with Mr. Janer was when the latter went to the office of the undersigned clarifying if really Mr. Grayda had the amount of P200,000.00. The undersigned told Mr. Janer that the said amount is ready anytime he wants but as full redemption payment of the property not just as payment of the interest. Again, Mr. Janer insisted that if ever he will accept the P200,000.00, it will represent only the interest and not the principal amount.

This was again relayed by the undersigned to Mr. Grayda and Ms. Obsum and they became despondent. The undersigned then decided to return said amount but Mr. Grayda and Ms. Obsum wanted the undersigned to be in possession of the same to still try to persuade in whatever way possible Mr. Janer into taking pity upon their present situation and accept the offer.

Then on March 11, 2000, Mr. Grayda requested that the amount of P10,000.00 be deducted from the P200,000.00 in view of a very urgent concern. Again the undersigned suggested the return of the whole amount, but Mr. Grayda averred that money easily slips away from needy hands like theirs and they felt more content with the present arrangement they had with the undersigned. He was even the one who volunteered that a receipt be made for P10,000.00 he has taken (Annex "7").

This was followed by other small amounts of P5,000.00 on March 27, 2000 received by Mr. Grayda (Annex "8"); P6,000.00 on April 7, 2000 received by his trusted friend, Ms. Obsum whom he has earlier endorsed to the undersigned as his representative if he needs to get some amount (Annex "9"); P10,000.00 on May 10, 2000 received by Ms. Obsum (Annex "10"); P10,000.00 on May 20, 2000 received by Ms. Obsum (Annex "11") and P4,000.00 on June 20, 2000 received by Ms. Obsum (Annex "12"). All these amounts were taken by Mr. Grayda and Ms. Obsum from the P200,000.00 earlier entrusted to the undersigned and always with a reminder that the same is already getting smaller and smaller and he might lose the chance to recover his property. During all these occasions when various amounts were being taken, undersigned maintained his desire to return the remaining amount which he never dared to use – not even a centavo- for his own personal need and never made known – not even by his wife- for whatever reasons.

There were also chance occasions during this period that the undersigned met Mr. Janer and the undersigned tried to bring out Mr. Grayda's proposal, but sensing that Mr. Janer has not yet changed his mind, the undersigned never attempted to open the issue anymore.

Again, sometime in November of 2000, Ms. Obsum called the undersigned by phone conveying Mr. Grayda's need for some amount. The undersigned informed Ms. Obsum that the amount of P5,000.00 will be brought to them with a corresponding receipt (to be signed by them and returned to the undersigned) thru Atty. Jose Gojar, counsel of Ms. Obsum in her pending court case since Atty. Gojar would be going home to Bulan that same day. The said receipt was never returned however because according to Atty. Gojar it slipped his mind whether he left it with Ms. Obsum or misplaced it and because of his trust and confidence in Atty. Gojar undersigned did not bother himself about the matter anymore. Ms. Obsum and Mr. Grayda during another meeting with the undersigned soon thereafter confirmed receiving said amount from Atty. Gojar. Regrettably, though, undersigned was not able to ask for a replacement of the said receipt.

Sometime in mid-January 2001, undersigned learned that Mr. Janer has already registered the Certificate of Sale with the Office of the Register of Deeds of Sorsogon for which reason, undersigned knew that recovering the property at a lesser price can no longer be possible and the more that Mr. Janer would stick to his decision not to receive any amount lesser than P470,000.00 even as a redemption price from Mr. Grayda. In view of this development, undersigned, the first chance he had,

endeavored to return the remaining amount of P150,000.00 to Mr. Grayda. On January 22, 2001, at about 12:30 p.m., when the undersigned was about to go to the office, Ms. Obsum arrived and informed the undersigned that they again needed some amount for the payment of their electric bill. The undersigned then informed Ms. Obsum that the Certificate of Sale was already registered at the Register of Deeds by Mr. Janer and insisted that she should receive the remaining P150,000.00 for chances were already slim for the redemption of the property at the price Mr. Grayda was willing to pay. Considering that Ms. Obsum has previously taken small amounts herself from the entrusted amount, and the trusted person of Mr. Grayda as per his instruction, the undersigned did not hesitate to return the remaining amount which Ms. Obsum did not also hesitate to receive. The return of the amount was duly receipted and signed by Ms. Obsum (Annex "13").

Almost two (2) months passed without so much as a word from both Mr. Grayda and Ms. Obsum. Undersigned thought everything to be all right where he is concerned surmising by then that Mr. Grayda's property must have already been redeemed. However, by March 2001, Ms. Obsum with a woman companion came informing the undersigned that they already have a buyer for the property and reiterating the help the undersigned could extend in again convincing Mr. Janer to agree with their proposal to the surprise of the undersigned. Understanding the situation however, he again agreed although with hesitation to help in convincing Mr. Janer to accept the P200,000.00 as redemption fee. Thereafter, Ms. Obsum introduced her companion to the undersigned as a realty agent. Undersigned told them that he will do his best but they have to prepare the amount in case Mr. Janer agrees. They left with a word that they will just wait for a notice from the undersigned as regards his availability considering his work.

In the early part of May, 2001, Mr. Grayda and Ms. Obsum with another woman whom undersigned's wife is not familiar with, came but the undersigned was not around and they only had a talk with his wife. As related by his wife, undersigned learned that her wife was informed by the group of Mr. Grayda that they already had a buyer and they needed the undersigned to mediate with Mr. Janer to accept Mr. Grayda's offer to redeem the property at the price of P200,000.00. The wife even suggested to the group that considering that their buyer is very much interested to buy the property, they could at least persuade this buyer to augment Mr. Grayda's money to a much higher amount that would be acceptable to Mr. Janer and they would no longer need the presence of the undersigned to do this but they insisted that they still need the undersigned to whose explanations Mr. Janer might listen. At this point, the wife even tried to contact the undersigned by phone but considering that he was outside Sorsogon, the undersigned just told the wife to tell the group that he will be contacting them immediately in Bulan. This was relayed by the wife to the group assuring them, before they left for Bulan but which undersigned was no longer able to do because of his additional work as Court Interpreter which required him to stay in the office during the better part of the day.