

EN BANC

[A.M. No. P-02-1581, October 28, 2003]

MA. CORAZON M. ANDAL, COMPLAINANT, VS. NICOLAS A. TONGA, DEPUTY SHERIFF III, MTCC, LEGASPI CITY, RESPONDENT.

DECISION

PER CURIAM:

The instant administrative case arose when Ma. Corazon M. Andal filed a verified Complaint dated January 11, 2000, charging Nicolas A. Tonga, Deputy Sheriff III, MTCC, Legaspi City, with overcharging "unreasonably high sheriff's fees through padded expenses and imaginary charges,"^[1] relative to the latter's implementation of an alias writ of execution in Construction Industry Arbitration Commission (CIAC) Case No. 41-98.

The complainant is the president of the defendant corporation, Andamar, Incorporated, in the aforementioned case. She had earlier written to Mrs. Josefa Candia, Acting Clerk of Court, Municipal Trial Court in Cities (MTCC), Rawis, Legaspi City,^[2] with the following averments:

Sheriff Tonga claimed that when the records of the case was indorsed to your office for execution, the Sheriff of RTC in Muntinlupa, Melvin Bagubaldo, failed to attach the BPI check which represented the judgment debt, so, Sheriff Tonga allegedly went to Muntinlupa City personally in order to get it.

First, whose fault was it that the subject check was not attached to the records sent to you? Is it not Sheriff Bagubaldo? Why then should the expenses in getting it be reimbursed by us? Are innocent litigants bound to pay for expenses caused by the inefficiencies/mistakes of government servants?

Second, if the check was not included in the records sent to you is it not practical, expedient and inexpensive if you just write Sheriff Melvin Bagubaldo, to send it by mail to your good office? Time is not of the essence here. Sheriff Nicolas Tonga has absolutely no duty to go to Muntinlupa in order to personally get the check.

Third. We were not absolutely benefited by what Sheriff Nicolas Tonga has done. In fact, as losing respondent, we were prejudiced by it. Why then should we reimburse Sheriff Nicolas Tonga when we did not send him to Muntinlupa to get that check? Let the party benefited by his act reimburse him.

Fourth. Look at how unrealistically extravagant the claim is. Does he have to take the plane in going to Manila and charge us P1,800.00 when ordinary citizens take the bus which cost only about P350.00? Does he have to rent a car that cost P4,000.00 to go to Muntinlupa City, which is only 12 km from Makati City? Does he have to stay in Manila for 3 days, only to get one check, then charge us P2,000.00 for his 3 days (*sic*) accommodations? In fact, if he left October 3 and came back October 5, he was in Manila for only 2 days.

What is this, are we maintaining travelling expenses of an executive?^[3]

Attached to this earlier letter was the list of travelling expenses purportedly incurred by the respondent in the said trip to Manila, and submitted to the complainant on October 8, 1999, to wit:

Statement of actual expenses of Sheriff Nicolas A. Tonga in the implementation of the Alias Writ of Execution in CIAC Case No. 41-98 TO WIT;

September 30, 1999-	Transportation Expenses (Tricycle)	P/160.00
October 1, 1999	Transportation Expenses (Tricycle)	
-	ANDAL - RTC	100.00
	RTC - Andamon	50.00
October 2, 1999	Transportation Expenses	
-	Residence - Andamon	150.00
October 3, 1999-	Transportation Expenses	
	Residence - Airport	100.00
	Airport - Residence (Taxi)	400.00
	Plane Ticket	1,800.00
October 4, 5, 1999	Pasig - Muntinlupa City Muntinlupa City Makati) RENT A Makati - Muntinlupa City) CAR Muntinlupa City - Pasig	4,000.00
October 5, 1999	7:00 P.M. - Pasig-Philtranco Terminal	
-	Pasay (Taxi)	350.00
	Bus Ticket (Pasay-Daraga)	357.00
	Manila Accommodation October 3,4, 5, 1999	2,000.00
October 6, 1999	Transportation (Tricycle hired)	250.00
	Meal	150.00
October 7, 1999	Transportation expenses (Tricycle)	<u>200.00</u>
		P/10,067.00 ^[4]

In his Comment, the respondent averred that his claim for reimbursement was made subject to the approval of the Office of the CIAC. Out of his claim of P 10,760,

only P7,638 was approved, as shown in the CIAC Order dated January 18, 2000.^[5] Despite such approval, Andamar, Incorporated did not pay a single cent for sheriff's expenses in the implementation of the alias writ of execution. The respondent also averred that upon serving the writ on Mr. Pol Andal, the complainant's husband, he advised the latter to just issue a replacement check for the one already in the possession of the RTC Sheriff of Muntinlupa City, but Mr. Andal decline According to the respondent -

6. To my mind, the filing of this complaint is a form of harassment to dis[s]uade me from claiming any sheriff's expense which is a legitimate claim as provided by the Rules of Court and perhaps as a form of vengeance for having lost in this case. If this is so, then she is definitely barking up the wrong tree, so to speak.^[6]

Meanwhile, the CIAC had apparently issued a Supplemental Writ of Execution dated November 26, 1999 in favor of the respondent, signed and approved by Sole Arbitrator Joven B. Joaquin, to wit:

By virtue of the authority vested upon me by Executive Order No. 1008, and pursuant to Rule 141 of the Rules of Court authorizing Sheriffs to recover the costs incurred in connection with their implementation of Writs of Execution against the losing parties, you are hereby commanded that, of the goods and chattels of Claimant **ANDAMAR, INCORPORATED**, you cause to be made the amount of P7,638.00 representing your actual expenses duly proven to have been incurred in connection with your implementation of the Writ of Execution issued by this Sole Arbitrator and duly concurred in by the Construction Industry Arbitration Commission (CIAC) on September 20, 1999, to enforce the judgment rendered by this Sole Arbitrator against the Claimant in the above-captioned case.

If sufficient property cannot be found whereof to satisfy this Supplemental Writ of Execution, then you are commanded that of the lands and buildings of the said Claimant, you make the said sum of money in the manner required by the Rules of Court, and make return of your proceedings with this Writ within thirty (30) days from receipt hereof.^[7]

The complainant requested the CIAC for a bill of particulars,^[8] praying that pending clarification of the items, payment of the said sheriff's fees be ordered suspended. The CIAC thereafter issued the January 18, 2000 Order^[9] denying the complainant's prayer for suspension of payment and setting forth the itemized detail of the sheriff's expenses as follows:

Particulars	Amount
1. Philtranco Bus Fare	P 357.00
2. PAL Air Fare	P3,281 .00
3. Elvin Service Rent-A-Car	P4,000.00
TOTAL	P7,638.00

The case was referred to Executive Judge Raymund M. Jacob, MTCC Branch 2, Legaspi City, for investigation, report and recommendation.^[10] In Letter dated