

## **FIRST DIVISION**

**[ A.M. No. P-00-1420, March 07, 2002 ]**

**ROSEMARY P. BERNADEZ, COMPLAINANT, VS. RICKY V. MONTEJAR, PROCESS SERVER, RTC, BRANCH 64, GUIHULNGAN, NEGROS ORIENTAL, RESPONDENT.**

### ***RESOLUTION***

**YNARES-SANTIAGO, J.:**

Sometime in June 1997, complainant Rosemary P. Bernadez, acting as attorney-in-fact of her father, Felimon Palomares, mortgaged a parcel of land covered by Original Certificate of Title No. FV-14575 to secure a loan obtained from the Rural Bank of Guihulngan (Negros Oriental), Inc.

Subsequently, complainant received notice from respondent Ricky V. Montejar, process server of the Regional Trial Court of Guihulngan, Negros Oriental, Branch 64, that the mortgage had been extrajudicially foreclosed in Extra-Judicial Foreclosure Case No. EX-98-005-G, and that the aforesaid parcel of land will be sold at public auction to the highest bidder on October 28, 1998.<sup>[1]</sup>

On October 15, 1998, complainant filed an administrative complaint against respondent Montejar for violation of Section 3 (e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and Usurpation of Authority or Official Functions, as defined and punished under Article 177 of the Revised Penal Code, Gross Misconduct and Conduct Prejudicial to the Best Interest of the Service.<sup>[2]</sup> Complainant averred that respondent failed to comply with the requirement of publication of notice of the extrajudicial foreclosure of mortgage; and that respondent had no authority to issue the notice of foreclosure since he was only a process server and not a sheriff.

Respondent submitted a Counter-Affidavit,<sup>[3]</sup> wherein he alleged that he extrajudicially foreclosed the mortgage pursuant to Office Order No. 002-98 dated February 23, 1998,<sup>[4]</sup> issued by Presiding Judge Felix G. Gaudial, Jr., directing him to perform the duties and responsibilities of Sheriff IV of the office until a regular Sheriff IV is appointed. Respondent further argued that the amount of the unpaid loan was only P30,118.17, inclusive of interest, which exempted it from the requirements of publication of notice pursuant to Section 6, paragraph 3 of the Rural Banks Act of 1992 (R.A. 7353). Respondent also contended that he has not given unwarranted benefits, advantage or preference to the mortgagee bank, has never acted in bad faith, and has never displayed partiality to the said bank in effecting the extra-judicial foreclosure sale of the subject property.

It appears that the scheduled auction sale on October 28, 1998 was not held because complainant caused the payment of the loan to the mortgagee bank, causing the latter to withdraw application for extrajudicial foreclosure.