

EN BANC

[A.M. No. P-01-1481(OCA I.P.I. No. 98-447-P),
July 05, 2001]

**RIZAL COMMERCIAL BANKING CORPORATION, *complainant*, vs.
NOEL V. QUILANTANG, SHERIFF IV, RTC - BR. 53, BACOLOD
CITY, *respondent*.**

DECISION

PER CURIAM:

This is an administrative complaint against respondent Noel V. Quilantang, Sheriff IV, RTC-Br. 53, Bacolod City, filed on 30 April 1998 by Rizal Commercial Banking Corporation (RCBC) for Grave Misconduct, Gross Dishonesty, Gross Incompetence, Inefficiency, Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service.

Specifically, complainant RCBC alleged that respondent failed to implement a writ of preliminary attachment issued on 10 February 1998 in Civil Case No. 98-10141^[1] of the RTC-Br. 51, Bacolod City, notwithstanding the fact that respondent had demanded and was given P7,000.00 purportedly for expenses in the implementation of the writ; that said amount was never deposited with the Clerk of Court nor liquidated; that contrary to what respondent stated in his *Sheriff's Partial Return of Service* dated 5 March 1998 respondent failed to attach a lot registered in the name of the defendants or to take possession of their *Honda Civic* car; that as a consequence of such neglect of duty and incompetence the defendants succeeded in transferring their land to a third party on 2 March 1998; and, that the money judgment eventually rendered in favor of complainant was reduced to a mere empty victory as the defendants changed residence and could no longer be located.^[2]

In his *Answer* dated 1 September 1998 respondent alleged that he faithfully complied with his duty to implement the subject writ of preliminary attachment as evident from a copy of the *Notice of Embargo* which clearly showed on its face that it was entered in the *Day Book* of the City Register of Deeds of Bacolod City at 9:25 in the morning of 24 February 1998 and assigned Entry No. 237100;^[3] that if ever the defendants succeeded in transferring their property to third persons, it was not his fault but rather that of the City Registrar of Deeds for failing to annotate at the back of the TCT the *Notice of Embargo* duly served upon her; that he did not take possession of the *Honda Civic* registered in the name of the defendants because he was informed that the car had already been sold to a third person as early as 2 January 1998; and, that he did not deposit the P7,000.00 received from the complainant for expenses in the implementation of the writ because it was the usual practice among sheriffs of the RTC-Bacolod City not to do so since such money might be needed anytime as opportunities for implementation would arise.

In its *Reply* to the foregoing *Answer* complainant RCBC alleged that the City

Registrar of Deeds was not able to annotate the *Notice of Embargo* served on 24 February 1998 because it was not respondent who served the notice but a certain "R. Talisa" who did not leave a copy thereof for annotation. Complainant alleged that respondent himself brought a copy of the notice to the City Registrar of Deeds only when subject land had already been transferred to a third person and the certificate of title in the name of the defendants already cancelled.

On 22 November 2000 we referred this case to the Executive Judge, RTC-Bacolod City, for investigation, report and recommendation. Hearings were conducted on 29 January and 22 February 2001 during which respondent, though represented by counsel, failed to appear and to present his evidence despite due and repeated notices.

On 26 March 2001 Executive Judge Edgar G. Garvilles submitted his *Investigation Report* dated 7 March 2001 finding respondent guilty as charged and recommending his suspension for six (6) months.

We adopt the findings of the Investigating Judge except for the penalty imposed which we here modify as may be warranted by the circumstances.

The rule is that when a writ is placed in the hands of a sheriff it is his duty to proceed with reasonable promptitude to execute it pursuant to its mandate.^[4] His duty to do so is ministerial and not directory,^[5] and one which he must accomplish as early as possible.^[6] Specifically, Sec. 5, Rule 57, 1997 Rules of Civil Procedure mandates that the sheriff shall enforce the writ of preliminary attachment without delay and with all reasonable diligence.

In the instant case the writ of preliminary attachment issued in favor of complainant RCBC was by virtue of an Order dated 10 February 1998 of Judge Ramon B. Posadas, RTC-Br. 51, Bacolod City. The *Notice of Embargo* issued pursuant thereto by Atty. Ildelfonso M. Villanueva, Jr., Clerk of Court VI and Ex-Oficio Provincial Sheriff, RTC-Bacolod City, and addressed to the City Registrar of Deeds was dated 23 February 1998. The duty to implement the writ of attachment and to serve the *Notice of Embargo* was entrusted to respondent as Sheriff of Branch 53 because the Sheriff of Branch 51 was on sick leave.

Although the *Notice of Embargo* was indeed served on the Office of the City Registrar of Deeds on 24 February 1998 as claimed by respondent in his *Sheriff's Partial Return of Service* dated 5 March 1998, it was not respondent himself who served the notice but a certain "R. Talisa" to whom respondent apparently delegated the task. However "R. Talisa" proved completely ignorant of the procedure for the effective annotation of a *Notice of Embargo* on a certificate of title observed in the Office of the City Registrar of Deeds. As a consequence the *Notice of Embargo*, which was ineffectively served, was not annotated at the back of TCT No. 167358 in the name of the defendants. Atty. Milagros de la Cruz, Acting City Registrar of Deeds of Bacolod City, expounded on the blunder -

[O]n February 24, 1998, her office received a "notice of embargo" (Exh. "A") in Civil Case 98-10141 entitled RCBC v. Sps. Rodrigo Legaspi, Jr. and Mary Jane Legaspi. Upon receipt of the document, the Entry Clerk wrote thereon Entry No. "237100 2-24-98 9:25," (Exh. "A-1"). The presenter of

the document, per the office record, was a certain "R. Talisa" who is neither connected with the Office of the Register of Deeds nor with the Office of the Provincial Sheriff. The notice of embargo was not annotated at the back of TCT 16737 (sic) because after the notice was presented to the Entry Clerk for logging in the Entry Book, the presentor who was required to pay the necessary fees to the cashier did not come back to the Entry Clerk for the necessary receipt. Upon submission of the OR, the Entry Clerk should have "annotated" the notice of embargo at the back of the title and the title with annotation should have been forwarded to her as Register of Deeds for signature. But in this particular case, no title with annotation of the notice of embargo was brought to her office for her signature x x x x When Quilantang for the first time personally brought the notice of embargo to her office on March 2, 1998, she denied the request for annotation at the back of the title because the TCT No. 167358 was no longer in the name of Sps. Rodrigo and Mary Jane Legaspi since it was already cancelled and the same was already transferred to another party, Mrs. Imelda Precion, on a deed of sale also dated March 2, 1998. The notice of embargo was brought by Quilantang to the office after the transfer of the title to Precion.^[7]

As a result of respondent's gross neglect of duty in entrusting the service of the *Notice of Embargo* to someone who was neither connected with the Office of the Register of Deeds of Bacolod City nor with the Provincial Sheriff of Negros Occidental and therefore was not conversant with established procedure, the defendants succeeded in transferring their property clandestinely to a third person to the damage and prejudice of complainant. Respondent compounded his infraction by falsely representing in his *Sheriff's Partial Return of Service* dated 5 March 1998 that he was able to attach defendants' property notwithstanding the fact that he knew very well that the attempted annotation on 24 February 1998 was incomplete and ineffectual, and that annotation was eventually refused by the Registrar of Deeds when he himself requested it on 2 March 1998 for the reason that subject property had already been sold to a third person. Although no sufficient evidence exists to prove that respondent was in collusion with the defendants, although we do not discount such possibility, we hold him liable nonetheless for such serious neglect of duty and gross dishonesty.

We also take note of the fact that respondent had requested and admittedly received the amount of P7,000.00 from the complainant on different dates purportedly for expenses in the implementation of the writ. However, Sec. 9, par. (c), Rule 141 of the Rules of Court merely authorizes a sheriff's legal fee of P50.00 for executing a writ of attachment.^[8] Although additional sums may be required from the party requesting the writ certain steps have to be followed first as may be evident hereunder -

In addition to the fees hereinabove fixed, the party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process, or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing or similar charges, in such amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit said amount with the clerk of court and ex-officio sheriff,