

SECOND DIVISION

[A.M No. P-96-1204, March 27, 2000]

**MILA MARTINEZ, COMPLAINANT, VS. CLERK OF COURT
ALEXANDER RIMANDO AND SHERIFF ABRAHAM ALMAZAN, BOTH
OF THE OFFICE OF THE CLERK OF COURT, MTCC, OLONGAPO
CITY,RESPONDENTS.**

RESOLUTION

DE LEON, JR., J.:

Before us is a complaint filed by Mila Martinez, as attorney-in-fact of her sister, Norma Idanan-Oca, against respondents Alexander Rimando and Abraham Almazan, Clerk of Court of the Metropolitan Trial Court in Cities (MTCC) of Olongapo City, Branch 4, and Deputy Sheriff, respectively, charging them with Grave Misconduct relative to the enforcement of an alias writ of execution issued by the said court in Civil Case No. 2748 entitled "Triangle Ace Corporation vs. Norma Oca and her husband, Mr. Oca", for Collection of Sum of Money.

The pertinent facts, as culled from the testimonies of the witnesses and the documentary evidence adduced by the parties, are as follows:

On March 25, 1994, an Alias Writ of Execution^[1] was issued by Judge Cesar Bada of MTCC, Branch 4, Olongapo City, in Civil Case No. 2748 for the satisfaction of the judgment rendered therein.

On April 21, 1994, respondent Deputy Sheriff Almazan issued a Notice of Levy^[2] on a real property of Norma Idanan-Oca and her husband, located at No. 18 National Road, Barrio Barretto, Olongapo City. A Notice of Sheriff's Sale^[3] on the said levied property was made by Sheriff Almazan on the same day, informing the public that the said parcel of land shall be sold at public auction on May 27, 1994 between 9:00 o'clock A.M. to 5:00 o'clock P.M.

On May 27, 1994, the day of the auction sale, a certain Romeo Idanan went to the office of the Clerk of Court of MTCC Olongapo City and talked to respondent Alexander Rimando and Antonio Tulio, Clerk of Court and Assistant Clerk of Court, respectively. Upon their advice, Romeo paid the amount of P22,000.00 representing the judgment debt and costs of the writ of execution in Civil Case No. 2748 so that the auction sale would no longer push through. Tulio, signing in behalf of respondent Rimando, issued a receipt^[4] to Romeo as evidence of the payment made by him. When Romeo left the office of respondent Rimando at 5:00 o'clock P.M., the auction sale has not yet taken place.

The auction sale, however, proceeded despite the notice given to respondent Deputy Sheriff Almazan that the judgment debt and the costs of the writ of execution had been paid by Romeo. Almazan said that he proceeded with the auction sale since he

did not personally receive the money.^[5] Respondent Almazan issued a Certificate of Sale^[6] in favor of the highest bidder, Carmen Cao, who is connected with Triangle Ace Corporation, and who submitted a bid in the amount of P62,400. When Atty. Ocampo, the lawyer of the judgment creditor, computed the amount of the indebtedness, the total indebtedness amounted only to P37,000.00, hence, there was an excess of P25,400.00. Almazan kept the P25,400.00 but deposited it with the Office of the Clerk of Court only on November 19, 1996 when the present administrative complaint was being investigated.

On October 21, 1994, respondent Rimando called up Romeo and asked him to pay P4,000.00, allegedly for publication. Romeo paid accordingly. On the said occasion, Rimando was never informed that the property had been awarded to Cao as highest bidder, during the auction sale held last May 27, 1994.

On July 21, 1995, a Final Bill of Sale^[7] was issued by respondent Deputy Sheriff Almazan. This was approved by respondent Rimando.

The petitioners only came to know about the sale sometime in the latter part of November 1995, when Mila Martinez who was then following up some documents in the Office of the City Assessor of Olongapo City was informed by a staff member of the City Assessor's office that the property of her sister had been transferred in the name of Cao. Upon further verification from the records of the City Assessor's Office, it was confirmed that Norma's property is indeed now registered in the name of Cao. Mila Martinez then tried to see respondent Rimando a number of times but he could not be located.

On January 4, 1996, Mila Martinez filed the present administrative complaint with the Office of the Court Administrator. The case was assigned to Judge Alicia L. Santos of the Regional Trial Court of Olongapo City, Branch 73 for investigation, report and recommendation pursuant to the resolution of this Court dated June 30, 1997.

Respondent Almazan denied the allegations of the petitioner against him. He testified that Tulio notified him that the representative of Norma Idanan-Oca has already paid her indebtedness in the amount of P22,000.00. He asked for the money so that he could pay the plaintiff, but Tulio did not say anything and instead, walked away. Almazan was surprised that nobody called him when somebody was paying the P22,000.00. He claimed that he was ignored as the Deputy Sheriff-in-Charge of the enforcement of the alias writ of execution. And since he did not receive the money, he did not suspend the auction sale. He claimed that he did not believe the letter allegedly signed by Tulio as well as the receipt shown to him as evidence of payment.

Respondent Rimando who testified in his behalf claimed that he was not notified of the scheduled auction sale on May 27, 1994. According to him, after giving instructions to Tulio that day, he left his office and did not know what happened afterwards. He talked to respondent Almazan who informed him that the auction sale pushed through because the sum of P22,000.00 was not delivered to him and that the amount of the judgment obligation was P32,000.00, and hence, short of P6,000.00 to fully cover the obligation. He further testified that the P22,000.00 was not directly given to him by Tulio inasmuch as Tulio gave it to one of his staffs who