

FIRST DIVISION

[A.M. No. P-92-747, October 16, 1997]

**ATTY. JESUS R. LLAMADO, COMPLAINANT, VS. ARMANDO
RAVELO, DEPUTY SHERIFF, RTC, BRANCH 75, OLONGAPO CITY,
RESPONDENT.
R E S O L U T I O N**

HERMOSISIMA, JR., J.:

This administrative matter^[1] was initiated by a Report dated August 4, 1992 of Atty. Jesus Llamado,^[2] then Clerk of Court III and Ex-Oficio Sheriff of the Regional Trial Court of Olongapo City. The said report addressed to the Office of the Court Administrator^[3] referred to certain irregularities committed by the respondent sheriff relative to the extra-judicial foreclosure of a real estate mortgage on the property of one Nancy N. Lazo.

According to the complainant, the respondent sheriff, sometime in July 1991, submitted a Certificate of Sale issued by him for approval by the Executive Judge which was coursed through the complainant as the Clerk of Court and Ex-Oficio Sheriff of RTC, Olongapo City.

Upon examination of the documents attached to the said Certificate of Sale, the complainant noticed that the petition for extrajudicial foreclosure^[4] did not bear the date and time it was received by the Office of the Clerk of Court where payment of the corresponding docket/filing fees and assignment of a particular docket number should have transpired. Consequently, the alleged petition was not raffled to any of the deputy sheriffs or to any of the participating publishers duly recognized and authorized by the court.

Further inquiries by the complainant disclosed that Atty. Estanislao L. Cesa who caused the application for the extra-judicial foreclosure in question, on behalf of his client, the mortgagee, Helen D. Gamboa, claimed that he (Atty. Cesa) gave respondent sheriff the amount of P4,900.00 to defray expenses for filing and publication.^[5]

In his Comment,^[6] dated August 31, 1992, the respondent sheriff averred that the extrajudicial foreclosure of the property of the mortgagor, Nancy N. Lazo, referred to him by Atty. Cesa, counsel for the mortgagee, Helen D. Gamboa, did not materialize on account of some arrangements between the mortgagee and the husband of the mortgagor. The respondent sheriff further denied having received the amount of P4,900.00 as alleged by the complainant and supported by his disclaimer by a certification of Atty. Cesa stating that no docket/filing fee was given in connection with his application for extra-judicial foreclosure of Nancy N. Lazo's property.^[7]

In our Resolution,^[8] dated November 9, 1992, we referred this case to Executive

Judge Alicia L. Santos^[9] for investigation, report and recommendation.

After a series of postponements during the proceedings of this case before the Investigating Judge who was granted an extension^[10] of the sixty-day period normally given by this Court within which to conclude the investigation, report and recommendation required, the Investigating Judge submitted her Report,^[11] dated April 1, 1996, recommending dismissal of the instant case against respondent sheriff for want of sufficient proof "to strongly establish the irregularities said to have been committed by respondent Sheriff Ravelo." However, respondent sheriff, in the opinion of the Investigating Judge, should be given a stern warning for having been negligent in losing some of the documents involved in this case.

We cannot adopt the position taken by the Investigating Judge.

As gathered by the Investigating Judge, the antecedent facts of this case are as follows:

"The counsel of the mortgagee, Atty. Estanislao L. Cesa, Jr., involving a real estate mortgage executed by Nancy Lazo in favor of Helen D. Gamboa (pp. 19-20), wrote a letter dated March 19, 1992 (p. 18) addressed to the RTC Sheriff, Olongapo City, requesting for the extrajudicial foreclosure of the above-mentioned real estate mortgage. The said letter which partook the form and nature of a petition for extra-judicial foreclosure of a real estate mortgage was not received by the Office of the Clerk of Court for the payment of the proper docket fee, for an assignment of a docket number, and its raffling among the sheriffs.

The non-compliance of the Standard Operating Procedures (SOP) in the extra-judicial foreclosure of real estate mortgage was discovered by Atty. Jesus Llamado, Clerk of Court and Ex-Oficio Sheriff, herein complainant, when Sheriff Armando Ravelo, Deputy Sheriff, RTC, Branch 75, Olongapo City, herein respondent, submitted to the former a folder which contained the following: (1) application for extra-judicial foreclosure of mortgage; (2) copy of a Tax Declaration bearing TD#004-4076 in the name of Nancy Lazo; (3) deed of mortgage executed by Nancy Lazo in favor of Helen D. Gamboa; (4) notice of sheriff sale; (5) affidavit of publication; (6) three copies of the Zambales Herald where notice of the sheriff sale was published; (7) bid submitted by the mortgagee; and (8) certificate of sale. Sheriff Ravelo submitted those documents to Atty. Llamado for the latter to make his necessary recommendation for the approval of the Certificate of Sale by the Executive Judge.

When Atty. Llamado noticed the "irregularity" due to the non-observance of the SOP in the extra-judicial foreclosure of real estate mortgage, he returned the folder with all the documents contained therein to Sheriff Ravelo for correction of certain requirements (i.e. payment of the docket fee, assignment of a docket number, and its raffling among the sheriff). He also informed Atty. Cesa, Jr. that the same cannot be recommended for approval by the Executive Judge because of the "irregularity", then he advised Atty. Cesa to refile it so that the corresponding docket fee can be

paid.

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"...at that time I have no intention of filing any administrative case against the Respondent, your Honor." (TSN, Sept. 8, 1993, pp. 31).

However, the application was not refiled immediately as advised.

Thereafter, Atty. Llamado directed Sheriff Ravelo to submit him the folder which he returned to the latter, together with all the documents contained therein. But out of the eight (8) documents that were previously submitted to Atty. Llamado only three (3) were retained, namely: (1) application for extrajudicial foreclosure; (2) copy of the Tax Declaration No. 004-4076 in the name of Nancy Lazo; and (3) real estate mortgage executed by Nancy Lazo in favor of Helen D. Gamboa. For Sheriff Ravelo's failure to return the other documents, he claimed, in his letter dated August 10, 1992 (Exhibit "B-3", p. 6) addressed to Atty. Llamado, that they were already lost or misplaced.

This prompted Atty. Llamado to report the "irregularity" to the Honorable Reynaldo Suarez, Deputy Court Administrator Supreme Court, first, verbally, thereafter, through a letter dated August 4, 1992 (Exhibit "A", p. 25).

Acting upon the letter dated August 4, 1992 of Atty. Llamado, the Honorable Reynaldo Suarez directed Sheriff Ravelo to make his comment thereon. And in his comment dated August 31, 1992 (Exhibit 1, p. 13) Sheriff Ravelo alleged that the foreclosure on the property of the mortgagor Nancy Lazo did not proceed because of some arrangement made between the mortgagee and the husband of the mortgagor, hence, no docket or filing fee has been paid. Attached in his comment was the letter dated July 29, 1992 (Exhibit "1-A", p. 14) of Atty. Cesa in support of the allegation of Sheriff Ravelo.

By virtue of Sheriff Ravelo's comment, Atty. Llamado wrote a subsequent letter dated September 29, 1992 (Exhibit "B", "B-1", "B-2") addressed to the Hon. Reynaldo Suarez reporting therein that Sheriff Ravelo did submit a Certificate of Sale for approval by the Executive Judge; and attached to said certificate were the eight (8) documents as already earlier alleged and enumerated by Atty. Llamado, reiterating that although there was a Certificate of Sale complete in form and substance, he did not act on it because the filing fee was not paid and there was no docket number. Thus, he returned all the said documents to Sheriff Ravelo for correction. When Atty. Llamado asked Ravelo to submit the documents back to him, only the following were submitted which were the Application for Extrajudicial Foreclosure; TD No. 004-4076; and the Deed of mortgage. When Ravelo was asked to explain why only three

were returned, he claimed that the others were lost or misplaced (Aug. 10, 1990 letter of Ravelo to Atty. Llamado; exhibit "b-3", p. 6).^[12]

From the factual findings of the Investigating Judge, it is evident that the respondent sheriff committed acts prejudicial to the best interests of the service.

As a deputy sheriff, respondent ought to know the procedures attendant to applications for extrajudicial foreclosure of mortgage under Act 3135, as amended, owing to the fact that, more often than not, foreclosure sales under the said Act are conducted by a deputy sheriff as the duly authorized representative of the Ex-Oficio Sheriff in the person of the RTC Clerk of Court.

Under our Administrative Order No. 3 dated October 19, 1984, the procedure to be followed in extra-judicial foreclosure of mortgage is set forth as follows:

"1. All application for extra-judicial foreclosure of mortgage under Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Oficio Sheriff;

2. Upon receipt of an application for extra-judicial foreclosure of mortgage, it shall be the duty of the Office of the Sheriff to:

- a) receive and docket said application and to stamp the same with the corresponding file number and date of filing;
- b) collect the filing fees therefor and issue the corresponding official receipt;
- c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under its direction or under the direction of a notary public, pursuant to Sec. 4, of Act 3135, as amended;
- d) sign and issue certificate of sale, subject to the approval of the executive Judge, or in his absence, the Vice-Executive Judge; and
- e) turn over, after the certificate of sale has been issued to the highest bidder, the complete folder to the Records Section, Office of the Clerk of Court, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which the records shall be archived.

3. The notices of auction sale in extra-judicial foreclosure for publication shall be published in a newspaper of general circulation pursuant to Section 1, Presidential Decree No. 1709, dated January 26, 1977, and non-compliance therewith shall constitute a violation of Section 6 thereof;