

EN BANC

[A.M. NO. P-05-1976(FORMERLY OCA IPI NO. 04-1835-P), September 09, 2005]

ERLINDA BERGONIA, COMPLAINANT, VS. ROMEO S. GATCHECO, JR., SHERIFF III, MUNICIPAL TRIAL COURT IN CITIES, SANTIAGO CITY, BRANCH 1, RESPONDENT.

DECISION

PER CURIAM:

The instant administrative matter refers to the charges of dishonesty against Romeo Gatcheco, Jr., Sheriff III, Municipal Trial Court in Cities, Santiago City, Branch I, relative to Civil Case No. 1-659, entitled "*Erlinda Bergonia v. Elsa Gamboa*" for collection of sum of money and damages.

In her Complaint^[1] dated November 24, 2003, Erlinda Bergonia alleged that she was the prevailing party in the said case, and that the court issued a Writ of Execution on January 6, 2003. Pursuant to the writ, the respondent conducted the auction sale on August 29, 2003 on a levied refrigerator in the amount of P1,600.00. The respondent, however, had not yet turned over the proceeds of the sale to the complainant.

The Office of the Court Administrator twice required the respondent to submit his comment on the complaint – in a 1st Indorsement^[2] dated January 13, 2004, and in a Tracer Letter^[3] dated March 26, 2004. While the registry return receipts indicate that the respondent received the said directives, he failed to submit his comment.

In a Resolution dated March 14, 2005, the instant case was referred to Executive Judge Efren M. Cacatian, Regional Trial Court (RTC), Santiago City, for investigation, report and recommendation.

In his Report dated June 27, 2005, the Executive Judge made the following findings:

...

4) On December 12, 2003, complainant filed a motion informing the court that respondent sheriff was able to seize and levy a television set and a refrigerator, and that the television was sold at public auction for the sum of Php2,000.00 which proceeds was turned over to her. However, the proceeds of the auction sale held later over the refrigerator for the sum of Php1,600.00 was not remitted to her by the respondent, and since then respondent never appeared, only to learn that the respondent [has] gone AWOL. For this reason, she requested Judge Plata to assign a new or another sheriff to fully [execute] the writ issued in her favor.

5) Thus, in his Order of [December 15, 2003], Judge Plata promptly assigned Sheriff Fernando Balauag in lieu of the respondent.

6) On May 18, 2005, the Civil Docket Clerk, Ms. Tessie L. Duque, of MTCC, Branch 1, Santiago City, certified that respondent sheriff has not submitted any report as to the status of the writ of execution, which fact she confirmed during the investigation.

In the case record of this administrative case there, is a "Notice of Sale of Property on Execution" dated August 13, 2003, signed by respondent sheriff, which reflects that, on January 16, 2003, he levied from Elsa Gamboa, the judgment debtor in Civil Case No. 1-659 above-mentioned, one (1) 5-cubic feet National refrigerator, and said item would be the subject of a public auction to be held on August 29, 2003, from 9:00 a.m. to 2:00 p.m. However, this Notice of Sale does not appear in the case records of Civil Case No. 1-659. More importantly, no report thereafter was ever made by respondent sheriff as to the execution and auction sale conducted by him.

...

The complainant as well as the respondent were duly notified of the hearings set on May 12, 13, 18 and 20, 2005 at 8:00 a.m., but only the complainant appeared, despite due notice to the respondent.

In light of the foregoing facts, the undersigned finds the respondent guilty of the following violations:

1) He violated the provision of Section 14 of Rule 39 of the Rules of Court which provides that:

Sec. 14. Return of Writ of Execution. – The writ shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore (*sic*). Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

and No. 17.3 of the Guidelines and Procedures in the service and execution of court writs and processes, 2002 Revised Manual for Clerks of Court, which also provides that:

17.3. All sheriffs and deputy sheriffs shall submit a report to the judge concerned of the action taken on all writs and processes assigned to them within ten (10) days from receipt