

EN BANC

[**A.M. No. P-08-2553 (Formerly A.M. OCA IPI No. 98-455-P), August 28, 2009**]

**LEO MENDOZA, COMPLAINANT, VS. PROSPERO V. TABLIZO,
CLERK OF COURT VI, REGIONAL TRIAL COURT, VIRAC,
CATANDUANES, RESPONDENT.**

DECISION

PUNO, C.J.:

Complainant Leo Mendoza charged respondent Prospero V. Tablizo, Clerk of Court VI of the Regional Trial Court of Virac, Catanduanes, in his capacity as *Ex-Officio* Sheriff, with grave misconduct, misfeasance, malfeasance and incompetence in a sworn Letter-Complaint^[1] dated 23 April 1998.

Mendoza, as mortgagee, applied for the satisfaction of the loan obligation of mortgagor David Joson in an extrajudicial foreclosure which he filed in February 1998. Mendoza had paid the filing fee and the cost of the publication of the Notice of the Extrajudicial Sale. However, on 10 March 1998, without the knowledge of the Executive Judge and without notice to Mendoza, Tablizo allegedly cancelled the auction sale. Mendoza was also allegedly informed, through a letter by a Deputy Sheriff, that the interest to be charged should not exceed 12% per annum and not as that stipulated in the Deed of Mortgage. Mendoza later filed another petition for extrajudicial foreclosure against mortgagor spouses Ricardo and Adelina Abrasaldo but Tablizo allegedly refused to accept the same.

Mendoza alleged that Tablizo's actions violated Supreme Court Administrative Order No. 3, Series of 1984, which vested on the Executive Judge direct supervision over the Clerk of Court in connection with all applications for extrajudicial foreclosure of mortgage under Act No. 3135, as amended by Act No. 4118. Mendoza likewise claimed that in another Supreme Court Resolution dated 18 September 1984, the Executive Judge and the Clerk of Court are charged with ministerial duties in relation to the extrajudicial foreclosure of mortgages. Finally, Mendoza cited Central Bank Circular No. 905 which leaves to the discretion of the lender and the borrower the interest rate to be charged.

In a 1st Indorsement dated 17 August 1998, the Court required Tablizo to file his Comment on the administrative complaint but the latter did not comply. He also failed to comply despite the 1st Tracer dated 17 January 2000 which was received by his representative on 7 February 2000 per Registry Receipt No. 1821.

On 10 December 2001, the Office of the Court Administrator submitted an Agenda Report^[2] informing the Court that Tablizo was no longer under the disciplinary powers of the Supreme Court due to his compulsory retirement effective 4 September 2000. As Tablizo had consistently refused to comment in other

administrative matters filed against him, the Office of the Court Administrator recommended that if Tablizo's benefits were still unpaid, a fine of P5,000.00 should be imposed and deducted from his benefits.

The Court, in a Resolution^[3] issued by the First Division, required the Office of the Court Administrator to verify whether Tablizo's benefits had already been fully paid. In a Memorandum^[4] dated 19 March 2002, the Office of the Court Administrator informed the Court that the records of the Office of the Administrative Services-Employees Welfare and Benefits Division and the Financial Management Office show that Tablizo had not filed his application for retirement.

In a Resolution^[5] dated 6 May 2002, the Court directed the withholding of the amount of P50,000.00 from Tablizo's retirement benefits. The Court likewise issued another Resolution^[6] referring the case to the Office of the Court Administrator for evaluation, report and recommendation. In its Memorandum^[7] dated 31 July 2008, the Office of the Court Administrator found Tablizo to have waived his right to defend himself despite the ample opportunity he was given to answer the charges against him. It construed his silence as an implied admission of the truth of the imputations hurled against him by Mendoza. It recommended that the case be re-docketed as a regular administrative case and that Tablizo's retirement benefits, save his terminal leave benefits, be forfeited, with prejudice to re-employment in the government service.

We agree with the findings and recommendation of the Office of the Court Administrator.

The failure of Tablizo to appear and answer the charges against him despite all the opportunities he was given constitutes a waiver of his right to defend himself. As correctly observed in the Memorandum of the Office of the Court Administrator, in the natural order of things, a man would resist an unfounded claim or imputation and defend himself. It is totally against human nature to remain silent and say nothing in the face of false accusations.^[8] In the case at bar, Tablizo's silence may be construed as an implied admission and acknowledgment of the veracity of the allegations stated in the sworn Letter-Complaint filed by Mendoza - the veracity of which he could have easily debunked had he come to the fore to assail them. By his silence, he admitted, albeit tacitly, the allegations subscribed and sworn to by Mendoza that he cancelled the auction sale without the knowledge of the Executive Judge and without notice to Mendoza, and refused to accept another petition filed by Mendoza for extrajudicial foreclosure against mortgagor spouses Ricardo and Adelina Abrasaldo. In both instances, Tablizo failed to discharge his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under Administrative Order No. 3 dated 19 October 1984 which sets the procedure to be followed in extrajudicial foreclosure of mortgages, viz.:

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-Officio* 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;

4. The Executive Judge shall assign with the assistance of the Clerk of Court and *Ex-Officio* Sheriff, the cases by raffle among the deputy sheriffs, under whose direction the auction sale shall be made. Ruffling shall be strictly enforced in order to avoid unequal distribution of cases and fraternization between the sheriff and the applicant-mortgagee, such as banking institutions, financing companies, and others.^[9]

The evidence on record clearly establishes that the first petition filed by Mendoza for extrajudicial foreclosure against mortgagor David Joson was stamped received and docketed as Foreclosure No. F0184.^[10] The corresponding filing fees and cost of publication were paid. The Notice to Parties of Sheriff's Public Auction Sale^[11] and the Notice of Extrajudicial Foreclosure with Auction Sale of Real Property under Act No. 3135, as amended, were likewise issued by Tablizo. Thus, when Tablizo cancelled the auction sale for no reason and without the knowledge and consent of the Executive Judge, he did so in clear violation of his ministerial duties as *Ex-Officio* Sheriff in applications for extrajudicial foreclosure under the Administrative Order.

As to the second petition for extrajudicial foreclosure filed by Mendoza against