

## SECOND DIVISION

**[ A.M. No. P-08-2570 [Formerly A.M. OCA IPI No. 07-2547-P], September 04, 2009 ]**

**LETICIA L. SALES, COMPLAINANT, VS. ARNEL JOSE A. RUBIO,  
SHERIFF IV, RTC-OCC, NAGA CITY, RESPONDENT.**

### D E C I S I O N

#### **CARPIO MORALES, J.:**

In Civil Case No. 1289, the Municipal Circuit Trial Court (MCTC) of Magarao-Canaman, Camarines Sur rendered judgment in favor of the therein plaintiff-herein complainant Leticia L. Sales. The decision in favor of herein complainant having become final and executory, a writ of execution was issued which was implemented by herein respondent Sheriff IV Arnel Jose A. Rubio by seizing personal properties of the judgment debtor.

It appears that complainant and respondent engaged in an argument over the failure of respondent to seize some other personal property of the judgment debtor, as well as over the demand from complainant by respondent of the amount of P5,000, said to represent expenses for the implementation of the writ. In the course of the argument, respondent employed discourteous words.

The scheduled sale at public auction on October 6, 2006 of the seized properties did not push through, complainant and respondent proffering different reasons therefor.

Hence, spawned the filing by complainant of the present administrative complaint against respondent,<sup>[1]</sup> by letter of November 21, 2006, for dishonesty, bribery, inefficiency, incompetence in the performance of official functions, gross discourtesy, and violation of Republic Act No. 6713<sup>[2]</sup> Rule VI Section 4(a) in relation to Civil Case No. 1289.

After respondent filed his Comment-Answer denying the charges and giving his side of the case, the Court, on recommendation of the Office of the Court Administrator (OCA), referred the case to the Executive Judge of the Regional Trial Court (RTC), Naga City, for investigation, report and recommendation.<sup>[3]</sup>

The Executive Judge found the charges for dishonesty, bribery, and inefficiency and incompetence in the performance of official duties unsubstantiated.<sup>[4]</sup> He, however, found respondent liable for discourtesy, with the recommendation that he be reprimanded, and that he be "sternly warned to [observe] the SC circular directing sheriffs to submit an estimated itemized expense before proceeding with the implementation of the writ."

The Investigating Judge also recommended that respondent and Patricia de Leon, Clerk, Office of the Clerk of Court, Regional Trial Court, Naga City, be formally

administratively charged for Conduct Prejudicial to the Best Interest of the Service for collecting the amount of P3,000.00 from complainant, purportedly representing sheriff's expense in the implementation of the writ, without issuing any receipt therefor.<sup>[5]</sup>

The OCA, after evaluating the Complaint and respondent's Answer *vis-a-vis* the Report and Recommendation of the Investigating Judge, sustained the finding that respondent committed discourtesy, but modified the rest of the findings and recommendations, *viz*:

On the charges of **Inefficiency** and **Incompetence** in the Performance of Official Duties, the evidence presented during the investigation show[s] that the **respondent Sheriff failed to follow the rules on the proper implementation of the subject writ of execution.**

With regard to the **recommended penalty of "warning"** for the failure of the respondent Sheriff to comply with the provisions of the Rules of Court, specifically on the duty of the sheriff to submit to the court the itemized expenses for implementing the writ of execution, we find the same **too light.**

As an officer of the court, the respondent Sheriff should be fully aware of Sec. 10(j) , Rule 141 of the Rules of Court, *to wit*:

"Sec. 10. Sheriffs, and other persons serving processes.

x x x x

(j) For levying on execution on personal or real property, THREE HUNDRED (P300.00) pesos;

With regard to sheriff's expenses in executing the writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guard's fee, warehousing and similar charges, the interested party shall pay said expenses in an amount **estimated** by the sheriff, **subject to the approval of the court.** Upon approval of said estimated expenses, the interested party shall **deposit such amount** with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, **subject to liquidation** within the same period for rendering a return on the process. The liquidation shall be **approved by the court.** Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor." (Underscoring supplied by OCA; emphasis supplied)