

## SECOND DIVISION

**[ A.M. NO. P-04-1828 (FORMERLY A.M. OCA IPI NO. 03-1726-P), February 14, 2005 ]**

**TEOFILO C. VILLARICO, COMPLAINANT, VS. ROLANDO G. JAVIER, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 111, PASAY CITY, AND VIRGILIO F. VILLAR, SHERIFF IV, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, PASAY CITY, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

In a Complaint-Affidavit dated July 30, 2003, Teofilo C. Villarico charged Rolando G. Javier, Sheriff IV, Regional Trial Court (RTC), Branch 111, Pasay City, and Virgilio F. Villar, Sheriff IV, RTC-Office of the Clerk of Court (OCC), Pasay City, with gross dereliction of duty relative to the implementation of the writ of execution issued by the RTC Pasay City, Branch 111 in Civil Case No. 01-0054 entitled "*Teofilo C. Villarico v Dionisia Mendoza, et al.*"

The complainant, the plaintiff in the said case, narrated that on November 18, 2002, he gave respondent Javier P200.00 to implement the said writ of execution dated November 12, 2002. Two (2) months thereafter, the complainant called respondent Javier to inquire on the progress of the enforcement of the writ, but their conversation was interrupted and was abruptly cut. When the complainant tried to call back, he could no longer contact the number as the telephone had apparently been hung.

After several days, respondent Javier called up the complainant and informed the latter that the writ could no longer be enforced. He advised the complainant to look for another sheriff. Several more days thereafter, respondent Javier again contacted the complainant and told him that he had been in touch with someone who could implement the writ, respondent Villar of the RTC-OCC, Pasay City. Respondent Javier assured the complainant that he would monitor the progress of the implementation of the writ of execution. Upon respondent Javier's advice, the complainant gave respondent Villar an allowance of P500.00. After this incident, the complainant no longer heard from respondent Villar.

In his Comment dated September 4, 2003, respondent Javier alleged that the court rendered a decision based on ex-parte proceedings against defendant Dionisia Mendoza on March 8, 2002. The court then issued a writ of execution on November 12, 2002. Pursuant thereto, he went to defendant Mendoza's given address on November 20, 2002 to serve the writ, only to be informed that she no longer resided thereat. After receiving information that defendant Mendoza was working at an insurance agency near the Las Piñas City Hall and was frequently seen at Toyota Alabang and City Motors Alabang, he followed up the lead. He was informed that the

said defendant was a sales agent but reported only to transact sales on commission. He then suggested to the complainant that it would be more practical to indorse the writ to the Sheriff of Parañaque or Muntinlupa since he could not stay beyond 5:00 p.m. or arrive as early as 6:00 a.m. to wait for the defendant in the said offices. The complainant eventually agreed to the suggestion, but insisted that another Sheriff of Pasay City should implement the writ. He accompanied the complainant to respondent Villar, who happened to reside near the vicinity of Alabang.

Respondent Javier admitted that he had telephone conversations with the complainant, and during one of them assured the latter that he would monitor the progress of the enforcement of the writ. He later learned that respondent Villar had yet to receive information on the whereabouts of the defendant.

For his part, respondent Villar denied the allegations against him. He explained that the Writ of Execution dated November 12, 2002 addressed to respondent Javier was endorsed to him with the conformity of the complainant on March 8, 2003. Aside from the enforcement of the said writ, he was also assigned to implement and serve other writs and court processes. He further alleged that he went to the defendant's residence on April 8, 2003, but no one was in the house. He returned on April 16, 2003, and was informed that the defendant no longer resided therein. Nonetheless, he passed by the place once in a while to investigate, but found no new information. According to respondent Villar, the complainant himself did not provide any information on the defendant's whereabouts. Thus, in his Sheriff's Return dated June 10, 2003, he informed the court that the writ could not be implemented because the defendant could not be located.

In a Resolution<sup>[1]</sup> dated September 6, 2004, the Court referred the case to Executive Judge Caridad H. Grecia Cuervo, RTC, Pasay City, for investigation, report and recommendation.

In her Report dated December 6, 2004, the Executive Judge made the finding that respondent Javier belatedly submitted his sheriff's return on the Writ of Execution dated November 12, 2002. The Executive Judge noted the absence of the proof of receipt showing that the sheriff's return was submitted and received by the RTC, Branch 111, as claimed by respondent Javier. As regards respondent Villar, the Investigating Judge opined that he exerted all his efforts to serve the writ after it was endorsed to him for implementation on March 8, 2003. Unfortunately, all his efforts were unsuccessful and he was constrained to report the same in his Sheriff's Return dated June 10, 2003.

Thus, the Executive Judge ruled that the respondent sheriffs performed their duties and functions in accordance with Section 14, Rule 39 of the Rules of Court, and made the following recommendation:

IN VIEW OF THE FOREGOING, and considering that the complainant failed to substantiate his allegations by convincing and pertinent evidence, his complaint against respondents ROLANDO JAVIER and VIRGILIO VILLAR for gross dereliction of duty **MUST NECESSARILY FAIL.**

**WHEREFORE,** the undersigned most respectfully recommends the **DISMISSAL** of the above-entitled administrative case for **lack of merit.**