

## EN BANC

[ A.M. No. P-98-1265, June 29, 1998 ]

**SEVERIANA GACHO, COMPLAINANT, VS. DIOSCORO A. FUENTES, JR. DEPUTY SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 20, CEBU CITY, RESPONDENT.**

### DECISION

#### PER CURIAM:

The instant administrative matter arose from a letter-complaint of Severiana Gacho dated February 4, 1997, addressed to the Honorable Executive Judge of the Regional Trial Court of Cebu, charging Dioscoro A. Fuentes, Jr., Sheriff IV of Branch 20 of the Regional Trial Court of Cebu City, with grave dishonesty allegedly committed as follows:

"Sometime after I was awarded as a winning bidder of the 25 [l]ots sold at public auction in Civil Case No. CEB-14498 entitled "Fermina O. Consunji, et al vs. Leopolda Cecilio" and on the execution of the Certificate of Sale on December 2, 1996 in my favor for P1,700,000.00, the aforementioned [s]heriff fraudulently demanded from me 10% of the said amount or the sum of P170,000.00 as an alleged sheriff's fee for which I issued Manager's Check No. 006513 in the said amount, dated December 2, 1996; that for the said amount, I was not issued an official receipt and much less even [a] provisional receipt; that what is worst is the fact that said [s]heriff has been avoiding my presence; that I finally verified recently with the Office of the Clerk of Court as to the payment of the sheriff's fee and there I found out that the sheriff's fee for the value of P1,700,000.00 is only P34,080.00; that it was only after the discovery of his anomaly that subject sheriff paid the sheriff's fee of P34,080.00 belatedly; and that subject sheriff had twice requested me for time within which to return the excess of P135,920.00 but had consistently failed to return the said excess even up to the present indicative of his misappropriation thereof."<sup>[1]</sup>

On February 17, 1997 complainant filed an affidavit of desistance,<sup>[2]</sup> praying that the complaint be withdrawn since she had already received a manager's check in the amount of P135,920 representing the excess of the sheriff's fee, and that she had come to terms with respondent.

On March 11, 1997, Deputy Court Administrator Bernardo P. Abesamis (now a member of the Court of Appeals) indorsed the letter-complaint and the subsequent affidavit of desistance to Executive Judge Priscila S. Agana, RTC, Branch 24, Cebu City, for the purpose of determining if there still existed reasonable ground to proceed administratively against respondent sheriff.<sup>[3]</sup>

In a second indorsement letter<sup>[4]</sup> addressed to Judge Galicano Arriesgado, Judge Agana stated that she could not act on the complaint with impartiality, because she had made a prejudgment thereon before it was referred to her by the Office of the Court Administrator. Hence, Judge Arriesgado himself conducted an inquiry. He subpoenaed the complainant and the respondent and advised them to bring witnesses and to obtain the assistance of counsel. In compliance therewith, Complainant Severina Gacho appeared with her counsel, Atty. Basilio E. Duaban, while Respondent Dioscoro Fuentes, Jr. was assisted by Atty. Oliveros Kintanar. Both parties gave their respective testimonies, which were summarized by Judge Arriesgado as follows:

"During the clarificatory examination, Mrs. Severina Gacho, 78 years old, widow, businesswoman and residing at Sabellano St., Pleasant Homes, Cebu City, declared that she had filed a sworn letter-complaint addressed to the Honorable Executive Judge, RTC, Cebu City dated February 4, 1997. She identified her signature on the letter-complaint. The letter complaint was filed because as a winner in the bidding for P1.7 [m]illion, she was made to pay 10% thereof as sheriff's fee for P170,000.00 without any receipt as the payment was only through [a] manager's check of Monte de Piedad with the sheriff, Jun Fuentes, as payee. The manager of the bank handed to the sheriff the manager's check and the same was encashed by him. As he was not issued any receipt, she went to RTC Br. 20 where respondent sheriff is assigned. She went to Atty. Joaquino, the [c]lerk of [c]ourt, and she was told that the sheriff's fee was not P170,000.00 but only P34,080.00. The amount of P135,920.00 was returned to her by Sheriff Fuentes. Confronted with the Affidavit of Desistance executed by her on February 17, 1997, she declared that she was prompted to execute it as Mr. Fuentes pleaded to her that he would just pay the amount and she was asked to pity him because he ha[d] four (4) children and a wife. He might be ousted from his work. The amount was paid to her after the execution of her affidavit. With her execution of the affidavit, she had no more intention to pursue the case against him for as long as he would not do it again. She had executed the affidavit voluntarily, without being coerced or intimidated in any manner whatsoever.

Respondent was presented as the only witness for himself. He declared that he [was] 43 years old, married and a resident of Talo-ot, Argao, Cebu and presently Sheriff IV, Regional Trial Court, Branch 20, Cebu City. He was a deputy sheriff for about three (3) years. He [knew] Severiana Gacho, a lone bidder in a bidding conducted by him in a sale of execution. She was known to him for 3 months before the bidding. After the bidding, he informed Mrs. Gacho that being the highest bidder and not being a party to the case, she ha[d] to pay him the sum of P1,700,000.00 as her bid price and an amount corresponding to the payments due to the government and somebody close to her who were termed as "ahente sa mga yuta", real estate brokers for the sum of P170,000.00 or ten percent (10%) of P1,700,000.00 because this would be the amount due the government. He issued to Mrs. Gacho a Certificate of Sale.

It was further testified by respondent that the sum of P170,000.00 really went to the government. After deducting the amount of P34,800<sup>[5]</sup> representing the government commission under Rule 141, Rules of Court, capital gains tax and documentary stamps were to be paid to the Bureau of Internal Revenue. Another amount was also to be paid to the Register of Deeds for the registration of the certificate of sale. He did not issue any receipt to complainant in the amount of P1,700,000.00 and the P170,000.00 because there were 2 checks which she gave through the manager of the bank both in the name of respondent. He admitted that the amount actually payable [was] only P34,080.00 and not P170,000.00. The amount of P135,020.00 [was] an excess amount from P170,000.00 after deducting P34,080.00 paid to the Office of the Clerk of Court but it did not necessarily mean that the excess amount went to his pocket. He returned the P135,020.00 to her to pay the capital gains tax with the BIR and to pay the registration fees with the Register of Deeds.

Mr. Fuentes also declared that he did not receive a formal complaint against him. He only received an Affidavit of Desistance executed by [C]omplainant Severiana Gacho. The execution of the affidavit of desistance was upon request of respondent who pleaded to her that he ha[d] 4 children and a wife.

xxx xxx xxx"

Concluding, on the basis of the foregoing, that "the act complained of [was] an established matter," Judge Arriesgado explained:

"With the declaration of the complainant and the admission of the respondent, the fact of the commission of the act complained of is an established matter. There is however an extenuating evidence adduced during the whole inquiry[:] the assertion of the respondent that although he received P170,000.00 and P34,080.00 was paid representing the government commission (sheriff's fee) under Rule 141, Rules of Court, yet the sum of P135,920.00 was intended to pay capital gains tax, [and] documentary stamps to the Bureau of Internal Revenue and another sum to be paid to the Register of Deeds for the registration of the Certificate of Sale. Respondent claimed that nothing of such amount went to his pocket. Even assuming that what he declared [was] true, yet as a sheriff, it [was] not proper for him to receive any amount of money other than what is termed as sheriff's fee for which proper receipt must [have been] issued therefor. He was not supposed to receive other sums of money as payments of capital gains tax, documentary stamp tax and registration of documents as this could be handled by the interested party, the complainant herself. A government employee must, like Caesar's wife, appear not only upright, but above suspicion. A public office is a public trust."<sup>[6]</sup>

In a memorandum dated February 11, 1998 addressed to the Chief Justice, the Office of the Court Administrator (OCA) agreed with the findings of Investigating Judge Arriesgado and recommended that Deputy Sheriff Dioscoro A. Fuentes be dismissed from the service for grave dishonesty and grave misconduct.