



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

HNT

Complainant,

-versus-

NPC 18-155

*For: Violation of the Data
Privacy Act of 2012*

EASTWEST BANK

Respondent.

X-----X

DECISION

Before this Commission is a complaint filed by Complainant HNT against Respondent Eastwest Bank for an alleged violation of the Data Privacy Act of 2012.

In his complaint, Complainant states:

I applied for an Eastwest Bank credit card through x x x their credit card sales agent. The application was approved when I got my card. My biggest problem now is that he has been using my name to encourage applications from my Facebook friends and colleagues, and worst, to our HR employees who are my Facebook friends too. I called his attention already but he continuously used it as a practice to get the customers attention and he uses and drops my name to associate it with him x x x My application was for myself and not for other people. I am depressed, humiliated and I feel really bad about this incident.¹

The parties were ordered to appear at a Discovery Conference on 06 June 2019,² but both parties failed to appear.³ The Discovery Conference was reset to 18 July 2019. Only Respondent, through counsel, appeared and manifested that they are willing to reschedule for a possible mediation.⁴ The Discovery Conference was reset to 22 August 2019.⁵

¹ Complaint dated 04 October 2018.

² Order dated 13 April 2019.

³ Order dated 13 June 2019.

⁴ Order to Confer for Discovery dated 18 July 2019.

⁵ *Ibid.*

On 6 August 2019, Complainant filed an Urgent Motion for Postponement stating that he failed to receive the Order setting the conference on 18 July 2019, and that he was not available for the forthcoming one on 22 August. He prayed for the Conference to be reset on either 28 or 29 August.⁶

The Discovery Conference was held on 28 August, where both parties appeared. Each party manifested their willingness to explore the possibility of settling their dispute through mediation.⁷

The complaint proceedings were thus suspended and the parties were ordered to appear before the mediation officer for the preliminary mediation conference.⁸ Due to the parties' failure to appear for two (2) consecutive mediation conferences, the mediation officer issued a Notice of Non-Settlement of Dispute on 31 October 2019. The parties were then ordered to appear for the resumption of the complaint proceedings.⁹

On 6 December 2019, Complainant appeared for the Discovery Conference and manifested that the parties already executed a Settlement Agreement dated 17 October 2019. He attested, verified and confirmed that he knowingly, willingly and voluntarily entered into the settlement.¹⁰ After examining the document, however, the investigating officer noted that the Settlement was not sworn before an administering officer. The parties were then given fifteen (15) days to submit a notarized Settlement Agreement.¹¹

On 22 January 2020, the parties submitted a notarized settlement agreement where they agreed to the following terms:

1. Complainant agrees to accept payment in the form of a personal check...in the amount of Fifty Thousand Pesos (Php50,000.00), which check will be given by respondent Bank within ten (10) days from notice of the confirmation of this Agreement by the Honorable Commission;
2. Complainant hereby acknowledges that he has no cause of action, complaint, claim or case, whether alone or jointly with one another, against the Bank, in respect to any matter relative

⁶ Urgent Motion for Postponement dated 30 July 2019.

⁷ Application for Mediation dated 28 August 2019.

⁸ Order to Mediate dated 28 August 2019.

⁹ Order for Resumption of Complaint Proceedings dated 31 October 2019.

¹⁰ Order dated 06 December 2019.

¹¹ *Ibid.*

or incident to or arising out of the incident which leads to the filing of this Complaint. Complainant further warrant that he will not instate any action, whether alone or jointly with one another, and will not continue to prosecute any pending action, if any, against the Bank, its principals, affiliates, subsidiaries and related companies, their stockholders, directors, agents, officers or employees;

3. Complainant hereby remise, release and forever discharge, and by these presents do, for himself, is heirs, successors and assignees, remise, release, and forever discharge the Bank and ECR Card Marketing Inc., and its principal, affiliates, subsidiaries and related companies, its stockholders, directors, officers, agents, or employees xxx

6. Complainant agrees that the Bank may bring action to seek an award for damages resulting from his breach of this Mediated Settlement Agreement;

7. Complainant further declares that he has read and fully understood this entire document and the Mediated Settlement Agreement hereby given is made by the Complainant willingly and voluntarily and with full knowledge of his rights under the law;

8. With the signing of this Compromise Agreement, parties jointly pray that CID Case 18-J-155 be dismissed and terminated;

9. Parties jointly move that the Honorable Commission approve this Mediated Settlement Agreement and respectfully pray that a judgment based on the Mediated Settlement Agreement be rendered by the Honorable Commission in the above entitled case.¹²

It is the mandate of the Commission to settle disputes through the use of alternative dispute resolution processes.¹³ The Commission also recognizes the policy of the State to actively promote party autonomy in the resolution of disputes and the freedom of the parties to make their own arrangements to resolve their disputes.¹⁴

In this case, it was Complainant himself who appeared before the Commission to manifest and submit the Settlement Agreement executed by and between the parties and to attest to the voluntariness of its execution. The Commission finds the document to have been willingly and voluntarily executed, without any indication of fraud, deception, or misrepresentation.

¹² Mediated Settlement Agreement filed on 22 January 2020.

¹³ Section 7(b), R.A. 10173.

¹⁴ Section 2, Republic Act No. 9285 (Alternative Resolution Dispute Act of 2004).

The Commission also notes that a voluntary settlement between parties is considered as one of the grounds for a Motion to Dismiss under the Rules of Court, thus:

Section 1. Grounds. Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

xxx

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished.¹⁵

WHEREFORE, all these premises considered, this Commission resolves to **DISMISS** the complaint filed by HNT against Respondent Eastwest Bank.

SO ORDERED.

Pasay City, 8 June 2020.

(sgd)
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

WE CONCUR::

(sgd)
RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

(sgd)
JOHN HENRY DU NAGA
Deputy Privacy Commissioner

¹⁵ The 1997 Rules of Procedure, Rule 16.