



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

**IN RE: NSO LENDING COMPANY INC.
(CASHLENDING ONLINE LENDING
APPLICATION)**

NPC 19-908

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

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RESOLUTION

LIBORO, P.C.:

This refers to the Motion for Reconsideration dated 10 December 2019 filed by NSO Lending Company, Inc., A.I., U.U., L.O., I.A.O., and E.U. (collectively referred to as Respondents) assailing the Resolution dated 02 October 2019 issued by this Commission.

Facts

On 29 August 2019, a Fact-Finding Report (“Report”) was submitted to the Commission containing a brief narration of the material facts and the supporting documentary evidence which showed, among other things, the acts that were allegedly committed by NSO Lending Company, Inc. (“NSO”) in operating the Cashlending Online Lending Application that may result in prosecution under the Data Privacy Act of 2012¹ (DPA).

On 30 August 2019, an Order to File an Answer (“Answer”) was issued by the Commission to the Respondents. The Commission instructed all the Respondents to file their respective Answers to the allegations in the Fact-Finding Report within ten (10) days from the receipt of said Order.

¹ Rep. Act 11073(2012)

On 16 September 2019, Respondents filed their Motion to Dismiss² (“Motion”) instead of an Answer. Respondents argued among other things, that the case is dismissible under the rules on *litis pendentia*, there being pending cases involving Respondent NSO filed by specific individual complainants who appear to be same parties in this case, and that the instant *sua sponte* case failed to comply with National Privacy Commission (NPC) Circular No. 16-04, otherwise known as the Rules of Procedure of the NPC (“Rules”), and hence violated their right to due process.

On 02 October 2019, the Commission issued a Resolution denying the Respondents’ Motion to Dismiss. The Resolution also stated that Respondents “xxx having failed to substantiate their claims for dismissal, should do well to submit their Answer if they truly want to exercise their right to be heard.”

On 10 December 2019, Respondents filed the instant Motion for Reconsideration, which is nothing but a mere rehash of the Respondents arguments in its earlier Motion to Dismiss.

Discussion

The Commission hereby resolves to deny the Motion for Reconsideration of the Respondents.

In the case of *Yap vs. Court of Appeals, et. al*³, it was held that:

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

² Motion to Dismiss dated 16 September 2019

³ *Jesse Yap vs. Court of Appeals, Eliza Chua and Evelyn Te*, G.R. No. 186730, June 13, 2012

Moreover, in the case of *Villarica Pawnshop, Inc. v. Gernale*⁴, the Supreme Court held that:

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

Borrowing the words of the Respondents, “at the risk of sounding repetitive”, the Commission gives emphasis again on the fact that the pending cases with the NPC and the case at hand involve different parties and different causes of action with different prayers for relief. Therefore, the requisites for *litis pendentia* are sorely lacking and the dismissal on the ground of *litis pendentia* by Respondents is devoid of any merit.

Respondents argued on both of its Motion to Dismiss and Motion for Reconsideration that a group of NPC personnel had come up with the Fact-Finding Report with no clear mandate to conduct investigation. Furthermore, Respondents called out the Commission and boldly claimed that the Commission has no power to constitute an investigating body under the NPC Rules.

The power of the Commission to investigate on its own initiative flows from the law creating the Commission itself pursuant to Section 7(b) of the DPA which provides that:

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b) *Receive complaints, institute investigations, facilitate or enable settlement of complaints through the use of alternative dispute resolution processes, adjudicate, award indemnity on matters affecting any personal information, prepare reports on disposition of complaints and resolution of any investigation it initiates, and, in cases it deems appropriate, publicize any such report: Provided, That in resolving any complaint or investigation (except where amicable settlement is reached by the parties), the Commission shall act as a collegial body. For this purpose, the Commission may be given access*

⁴ *Villarica Pawnshop, Inc. v. Gernale*, G.R. No. 163344, March 20, 2009

to personal information that is subject of any complaint and to collect the information necessary to perform its functions under this Act;” (Emphasis supplied)

Furthermore, Section 3 of the Rules in providing definite procedure to the foregoing provision, provides as follows:

SECTION 3. Who may file complaints. – **The National Privacy Commission, sua sponte**, or persons who are the subject of a privacy violation or personal data breach, or who are otherwise personally affected by a violation of the Data Privacy Act, may file complaints for violations of the Act. (Emphasis supplied)

Furthermore, Section 23 of the same Rules provides for the power of original inquiry:

SECTION 23. Own initiative. – Depending on the nature of the incident, **in cases of a possible serious privacy violation or personal data breach, taking into account the risks of harm to a data subject, the Commission may investigate on its own initiative the circumstances surrounding the possible violation.** Investigations may include on-site examination of systems and procedures. If necessary, the Commission may use its enforcement powers to order cooperation of the personal information controller or other persons, with the investigation or to compel appropriate action to protect the interests of data subjects. (Emphasis supplied)

Considering the aforesaid provisions, it is undisputed that this Commission has the power to institute a *sua sponte* proceeding as clearly provided in the DPA, its rules and regulations, and other Circular of this Commission.

Due to the influx of complaints received by the NPC against several online lending mobile applications, on 14 May 2019, the Commission created the NPC Task Force on Online Lending Mobile Application.⁵ The Task Force which is composed of highly respected officials and

⁵ Privacy Commission Special Order No. 028, Privacy Commission Special Order No. 032-A.

not just a “group of personnel” as Respondents called it was later reconstituted by virtue of Special-Order No. 032-A. Under the said issuance, the authority to investigate was validly delegated to the Task Force. It is responsible to investigate the influx of complaints against several online lending companies for potential violations of the DPA. The Task Force is also mandated to provide options and recommendations for the Commission to immediately address concerns of the public. In accomplishing this function, the Task Force submitted fact-finding reports on several online lending companies, one of which is the herein Respondents.

Corollary to the foregoing, the Commission, in the exercise of its quasi-judicial function and acting as a collegial body is acting within its mandate, to receive complaints and investigate possible violations of the Rules by the Respondents, issue an order to create a Task Force to investigate violations of the Rules, and file a complaint *sua sponte*.

The Commission received several complaints against the Respondents. Independently of these complaints from different aggrieved parties, the Commission in the exercise of its *sua sponte* power, delegated to the Task Force the investigation of the herein Respondents in response to allegations of serious and copious data privacy violations allegedly committed upon a large number of data subjects.

It is also worth noting that Respondents’ arguments are nothing but a product of their plain ignorance and misunderstanding of the DPA, its Implementing Rules and Regulation, and the NPC Rules of Procedure. Having failed to substantiate its claims, Respondents must submit its Answer if it truly wants to exercise its right to be heard. Otherwise, the Commission is left with no recourse but to consider the case submitted for resolution. This is pursuant to Rule III, Section 17 of the Rules which provides that, “**Failure to submit a comment results to the submission of the complaint for resolution**”. (emphasis supplied)

It is worth emphasizing that the period to file an Answer by the Respondents have already lapsed, and even this Motion for Reconsideration is filed out of time. It must be noted that on 30 August 2019, the Commission ordered the Respondents to file an Answer to the Fact-Finding Report dated 30 August 2019 no later than ten (10)

days from its receipt. The said Order was received by the Respondents on 11 September 2019. Therefore, Respondents should have until 21 September 2019 to file an Answer.

However, instead of filing an Answer, the Respondents filed a Motion to Dismiss on 16 September 2019. At this point, Respondents have already consumed five (5) days of the ten (10)-day period provided to them to file an Answer.

Pursuant to Section 32 of the Rules, the Rules of Court shall apply in a suppletory character, and whenever practicable and convenient. Considering that the NPC Rules of Procedure is silent on how to treat a Motion to Dismiss, Rule 16 (Motion to Dismiss) of the 1997 Rules of Civil Procedure (Rules of Procedure) shall have a suppletory application.

It is also worth noting that on 29 November 2019, Respondents received the assailed Resolution dated 02 October 2019 that denied their Motion to Dismiss. Instead of filing an Answer, the Respondents further filed a Motion for Reconsideration on 10 December 2019.

Now, Section 4, Rule 16 of the Rules of Procedure finds application, thus, stated:

Section 4. Time to plead. – If the motion is denied, the movant shall file his answer within the **balance of the period** prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period. (Emphasis supplied)

Based on the foregoing provision, the Respondents had already exhausted their remaining period to file for a Motion or an Answer.

The Respondents only have a remaining balance of five (5) days or up to 04 December 2019 to file an Answer. However, instead of filing an Answer, the Respondents filed the subject Motion for Reconsideration on 10 December 2019, which is already beyond the ten (10)-day reglementary period.

Time and time again, litigants must be reminded of their responsibility to properly adhere to the reglementary period imposed by the applicable rules.

Further, the Respondents will not be able to rely on the application of the fresh period rule, as enunciated by the Court in *Neypes vs. Court of Appeals*⁶ because the rule is only applicable in judicial proceedings. What is applicable in administrative agencies are their own rules of procedures. The jurisprudence is clear on this matter.

In the case of *San Lorenzo Ruiz Builders and Developers Group, Inc. vs. Bayang*⁷, the petitioner's appeal was filed out of time because Paragraph 2, Section 1 of Administrative Order No. 18, s. 1987 provides that in case the aggrieved party files a motion for reconsideration from an adverse decision of any agency/office, the said party has only the remaining balance of the prescriptive period within which to appeal. Thus, stated:

...the subject appeal, i.e., appeal from a decision of the HLURB Board of Commissioners to the OP, is **not judicial but administrative in nature; thus, the "fresh period rule" in Neypes does not apply. (Emphasis supplied)**

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Corollary thereto, paragraph 2, Section 1 of Administrative Order No. 18, series of 1987, provides that **in case the aggrieved**

⁶"To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal, counted from the receipt of the order dismissing a motion for new trial or motion for reconsideration" (*Neypes vs. CA*, G.R. No. 141524, 14 September 2005)

⁷G.R. No. 194702, 20 April 2015

party files a motion for reconsideration from an adverse decision of any agency/office, the said party has the only remaining balance of the prescriptive period within which to appeal, reckoned from receipt of notice of the decision denying his/her motion for reconsideration. (Emphasis supplied)

The Supreme Court emphasized in the case of *Puerto Del Sol Palawan, Inc. vs. Gabaen*⁸ that the fresh period rule was applicable because the specific administrative rules of procedure explicitly provided for the application of the fresh period rule.

Furthermore, it must be noted that the fresh period rule only applies to appeal to a final decision of a court and not in *interlocutory orders*. This case involves a Motion for Reconsideration on preliminary matters and a proceeding on the merits is yet to be held⁹.

Following the state of our jurisprudence in the matter, the NPC Rules of Procedure does not provide for a fresh period when a litigant's motion is denied, in fact it expressly bars the application of the rule in its proceedings. Section 30 of the NPC Rules of Procedure provides:

SECTION 30. Appeal. - The decision of the National Privacy Commission shall become final and executory **fifteen (15) days after the receipt** of a copy thereof by the party adversely affected. **One motion for reconsideration may be filed, which shall suspend the running of the said period**. Any appeal from the Decision shall be to the proper courts, in accordance with law and rules. (Emphasis supplied)

Hence, this Motion for Reconsideration was filed out of time, has no merit, and should be dismissed. Therefore, this case can now be considered as submitted for final resolution.

However, in the interest of substantial justice, this Commission will grant a final and non-extendible period of five (5) days for the Respondents to provide their Answer to the Fact-Finding Report dated

⁸G.R. No. 212607, 27 March 2019

⁹Priscilla Alma Jose v. Romon C. Javellana, Et Al., G.R. No. 158239, 25 January 2012

29 August 2019. The running of the five (5) days shall commence from the actual receipt of this Resolution.

WHEREFORE, premises considered, the Commission resolves that the instant Motion for Reconsideration filed by Respondent NSO Lending Company, Inc. on the Resolution dated 02 October 2019, is hereby **DENIED**. Respondents are **ORDERED** to submit its Answer within five (5) days from date of receipt hereof.

Failure to file an Answer by the Respondents within the above indicated period, the instant case shall be deemed submitted for Resolution of the Commission.

SO ORDERED.

Pasay City, Philippines;
15 January 2020.

(Sgd.)
RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

WE CONCUR:

(Sgd.)
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

(Sgd.)
JOHN HENRY D. NAGA
Deputy Privacy Commissioner

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