



Republic of the Philippines
NATIONAL PRIVACY COMMISSION

MPM,

Complainant,

-versus-

NPC Case No. 19-569

(Formerly CID Case No. 19-G-569)

For: Violation of the Data Privacy Act of 2012

PERA4U,

Respondent.

x-----x

DECISION

NAGA, D.P.C.:

Before this Commission is a Complaint by MPM (Complainant) against Pera4U (Respondent) for a violation of the Data Privacy Act of 2012 (DPA).

Facts of the Case

Complainant alleged that Respondent made several offensive calls to her to demand payment of her loan. She likewise alleged that Respondent called and sent text messages to her contact list disclosing her personal information, including the details about her unsettled obligation, *viz:*

“Tawag ng tawag para mangaway at maningil. Turuan ka pa nila na manghiram sa iba para mabayaran sila.¹

xxx

Sinabi po nila about my loan and kung magkano²”

As a result, Complainant’s colleagues knew of her unpaid loan with Respondent causing her embarrassment and to have sleepless

¹ Complaint-Assisted Form, page 3.

² Id. Page 4.

nights. The Complainant also applied for a temporary ban on the processing of personal data against the Respondent.

At the Discovery Conference set on 06 September 2019, both parties failed to appear. Hence, the Discovery Conference was reset on 03 December 2019.³

On 08 October 2019, the parties were ordered to appear for a Summary Hearing.⁴ On 15 October 2019, Complainant failed to appear. This prompted the Respondent to manifest to reset the Summary Hearing to another date.⁵ The request was granted, and the parties were ordered to appear for another summary hearing on 15 November 2019. However, Complainant still failed to appear.⁶

During the second Discovery Conference on 03 December 2019, both parties failed to appear.⁷ Respondent was then ordered to submit its Responsive Comment.

In Respondent's Responsive Comment, it contended that there is no good cause shown neither is there any violation or breach present in the instant case. It argued that Complainant merely alleged that they unlawfully accessed his contacts where in fact the Complainant consented to the same when he applied for his loan with Pera4U.⁸

Respondent further asserts that Complainant has given consent for them to access her contacts especially the reference contacts. It was even Complainant who provided the contact references to them. This information would be helpful to make sure that Complainant can be contacted in case of default on the obligation and if she refuses to answer their calls or reminders.⁹

Respondent denies the allegation of harassment and threat claiming that they have Quality Assurance in place to help prevent such incidents of harassment and threats from happening and Respondent has issued certain guidelines as to how each collecting agent must collect from its customers.¹⁰ Respondents also contended

³ Order dated 10 September 2019

⁴ Order for Summary Hearing dated 08 October 2019.

⁵ Order dated 15 October 2019.

⁶ Attendance Sheet for Summary Hearing dated 15 November 2019.

⁷ Attendance Sheet for Discovery Conference dated 03 December 2019.

⁸ Pera4u Comment, page 4 (18)

⁹ Id., page 7 (27)

¹⁰ Id., page 7 (30)

that the Complainant only made allegations that the Respondent threatened and harassed her and her contacts asking the Complainant to pay her obligations. No proof as to these allegations were presented.¹¹

Issue

Whether Respondent committed a violation of the Data Privacy Act.

Discussion

The Complaint lacks merit.

In the Complaint filed by Complainant, she plainly alleged the violations committed against her by Respondent. As Complainant described it, "*Tawag ng tawag para mangaway at maningil. Turuan ka pa nila na manghiram sa iba para mabayaran sila.*" However, nowhere in the said Compliant did Complainant stated the content of the message that caused her sleepless nights and embarrassment. She likewise failed to identify the receivers of the alleged text message that were sent by Respondent. Further, no proof was submitted to substantiate her claim. Lastly, Complainant failed to cite or refer to a specific provision of the DPA that was allegedly violated by the Respondent.

Despite several opportunities given to Complainant to prove her allegations at the two (2) Discovery Conferences scheduled on 06 September 2019 and 03 December 2019, Complainant still failed to appear without prior notice nor justification.

In consideration of the circumstances of this case, the Commission is bound to adjudicate in accordance with the provision of the NPC Circular 16-04 or the NPC Rules of Procedure, *viz*:

Section 22. Rendition of decision. – The Decision of the Commission shall adjudicate the issues raised in the

¹¹ Id., page 8 (34)

complaint **on the basis of all the evidence presented** and its own consideration of the law.¹²

As the Supreme Court held in *Government Service Insurance System v. Prudential Guarantee*, “it is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.”¹³

Further, as held by the Supreme Court in the case of *Wong v. Wong*, “The rule is well-settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. Thus, his self-serving assertion cannot be given credence.”¹⁴

Hence, bearing only allegations without any corresponding pieces of evidence to support Complainant’s claim that Respondent disclosed her personal information which includes the details about her unsettled obligation to her contact list, from which caused her sleepless night and embarrassment, cannot merit a favorable decision from this Commission.

The Complainant herein also prayed for the temporary ban on the processing of her personal data against the Respondent.¹⁵ The issuance of this is governed by the NPC Rules of Procedure which provides:

Section 19. *Temporary Ban on Processing Personal Data.* – At the commencement of the complaint or at any time before the decision of the National Privacy Commission becomes final, a complainant or any proper party may have the National Privacy Commission, acting through the investigating officer, impose a temporary ban on the processing of personal data, if on the basis of the evidence on record, such a ban is necessary in order to preserve the rights of the complainant or to protect national security or public interest.

a. A temporary ban on processing personal data may be granted only when: (1) the application in the complaint is verified and shows facts entitling the complainant to the relief demanded, or the respondent or respondents fail to appear or submit a responsive pleading within the time specified for within these Rules; xxx¹⁶

¹² NPC Circular No. 16-04 dated 15 December 2016 (“NPC Rules of Procedure”), Section 22. Emphasis supplied.

¹³ G.R. No. 165585, 20 November 2013, *citing* Real v. Belo, 542 Phil. 109 (2007).

¹⁴ G.R. No. 180364, 03 December 2014.

¹⁵ Complaints-Assisted Form, p. 7.

¹⁶ *Supra* Note 11, at Section 19.

Considering that the Complainant failed to substantiate her allegations as already provided above, the application for temporary ban should likewise be denied by this Commission for lack of substantial evidence.

WHEREFORE, premises considered, the Complaint is hereby **DISMISSED** for lack of merit. This Commission also resolves to **DENY** the application for temporary ban on processing personal data filed by Complainant MPM.

This is without prejudice to the filing of appropriate civil, criminal or administrative cases against Respondent before any other forum or tribunal, if any.

SO ORDERED.

Pasay City, Philippines;
19 November 2020.

Sgd.
JOHN HENRY D. NAGA
Deputy Privacy Commissioner

WE CONCUR:

Sgd.
RAYMUND ENRIQUEZ LIBORO
Privacy Commissioner

Sgd.

LEANDRO ANGELO Y. AGUIRRE

Deputy Privacy Commissioner

COPY FUNISHED:

MPM

Complainant

PERA4U LENDING

Respondent

COMPLAINTS AND INVESTIGATION DIVISION

ENFORCEMENT DIVISION

GENERAL RECORDS UNIT

National Privacy Commission