



Republic of the Philippines  
NATIONAL PRIVACY COMMISSION

**IN RE: FYNAMICS LENDING  
INC. OPERATING  
PONDOPESO ONLINE  
LENDING APPLICATION**

**NPC 19-910**  
*For violation of the  
Data Privacy Act of 2012*

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**RESOLUTION**

***AGUIRRE, D.P.C.***

For consideration of this Commission is the Motion for Reconsideration filed by Respondent Fynamics Lending Inc., operating the PondoPeso Online Lending Application, and its Board of Directors (Fynamics) of the Decision dated 17 December 2020. In that Decision, this Commission found that the Respondents have violated Section 25 of the Data Privacy Act of 2012 (DPA):

“WHEREFORE, all these premises considered, this Commission hereby:

1. **FINDS** that Respondent Fynamics Lending Inc. and its Board of Directors, namely, ML, CW, KF, JCG, HAD, as responsible officers, have violated Section 25 of the Data Privacy Act; and
2. **FORWARDS** this Decision and a copy of the pertinent case records to the Secretary of Justice, recommending the prosecution of the Respondents for the crimes of Unauthorized Processing under Section 25 of the Data Privacy Act, for its further actions.

SO ORDERED.”<sup>1</sup>

Respondent Fynamics prays for the Decision to be reversed and that the instant case be dismissed.

**The Facts**

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<sup>1</sup> Decision dated 17 December 2020.

On 2 March 2021, Respondent Fynamics filed a Motion for Reconsideration. It argued that the Commission erred in resolving that it was afforded procedural due process and that it violated the provisions of the Data Privacy Act.

Respondent Fynamics argued that it was not afforded procedural due process based on the following grounds:

1. The Commission neglected its own Rules of Procedure by not allowing the respondents to participate in a discovery conference;<sup>2</sup>
2. The Fact-Finding Committee circumvented its Rules of Procedure by not adhering to the Exhaustion of Remedies requirement;<sup>3</sup>
3. The conduct of the *sua sponte* investigation was unnecessary as there are existing pending Complaints against Respondent Fynamics;<sup>4</sup>
4. It was not afforded its right to mediate under NPC Circular No. 18-03.<sup>5</sup>

On the substantive matters, Respondent Fynamics argued that the Commission erred in finding that it violated the provisions of the Data Privacy Act, based on the following grounds:

1. Sections 11, 12, 18, 16, 20 and 21 of the DPA cannot be the basis of criminal prosecution. Thus, the Commission can only hold the respondents administratively liable for violation of these provisions;<sup>6</sup> and
2. As regards the alleged violations of Sections 25, 28, 31 and 32, the Respondent officers did not directly participate in any of

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<sup>2</sup> Motion for Reconsideration dated 2 March 2021, par. 12.

<sup>3</sup> *Id.* at par. 18.

<sup>4</sup> *Id.* at par. 24.

<sup>5</sup> *Id.* at par. 32.

<sup>6</sup> *Id.* at par. 45.

the complained acts or through gross negligence, allowed the commission of any crime.<sup>7</sup>

### **Discussion**

The Commission denies the Respondent's Motion for Reconsideration.

#### *Ruling on the Procedural Issues*

The Commission finds that there are no new material facts alleged by Respondent Fynamics for its consideration and that it merely reiterated the arguments raised in its Answer dated 15 October 2019 and other previous submissions to the Commission. Nevertheless, this Commission will address each of their arguments to further clarify any misconceptions that Respondent Fynamics may continue to have.

Respondent Fynamics gave an interpretation of the *sua sponte* investigation under the NPC Circular No. 16-04,<sup>8</sup> stating thus:

7. At the onset, it bears stressing that under Rule II, Section 3 of Rule IV, Section 23 of the Rules of Procedure, a *sua sponte* investigation is not a special investigation but is similar to the proceeding wherein a Complaint is filed before this Honorable Commission. The main difference lies on the fact that it is the Honorable Commission that initiates a *sua sponte* investigation.

The latest Rules of Procedure of the Commission indeed clarifies that a *sua sponte* investigation is an investigation initiated by the NPC on its own for possible violation by one or more entities of the Data Privacy Act of 2012.<sup>9</sup>

However, the fact that a *sua sponte* investigation is initiated by the NPC precisely makes it distinct from that of a regular complaint. NPC Circular No. 16-04 provides for the procedure in *sua sponte* investigations, thus:

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<sup>7</sup> *Id.* at par. 49.

<sup>8</sup> NPC Circular No. 16-03, Rules of Procedure of the National Privacy Commission dated 15 December 2016, Rule IV.

<sup>9</sup> NPC Circular 2021-01, 2021 Rules of Procedure of the National Privacy Commission dated 28 January 2021, Section 4 (p).

SECTION 24. Uniform procedure. – The investigation shall be in accordance with Rule III of these Rules, provided that the respondent **shall be provided a copy of the fact-finding** report and given an opportunity to submit an answer. In cases where the respondent or respondents fail without justification to submit an answer or appear before the National Privacy Commission when so ordered, the Commission shall render its decision on the basis of available information.<sup>10</sup>

Respondent Fynamics contended that it was not afforded due process as it was not allowed to participate in a discovery conference:

14. Worse, the Fact-Finding Committee cited in the Report that “examinations of publicly accessible information and the initial technical evaluation on Fynamics (*sic*) and their online lending application, PondoPeso, show that the company has failed to demonstrate compliance with the DPA”.
15. Apparently, the investigation of the Fact-Finding Committee was conducted without the participation of Respondent Fynamics.
16. Aptly put, Respondent Fynamics was not allowed to avail of discovery proceedings in the said investigation thereby effectively depriving the said corporation of its right to procure the pertinent pieces of evidence in accordance with Rules of Procedure.
17. Plainly speaking, the unavailability of this mode of discovery will hamper Respondent Fynamics’ preparation of its arguments and evidence to rebut the false accusations against it.

The Commission takes this opportunity to explain the difference between a Discovery Conference under Rule III of NPC Circular No. 16-04 and an investigation under Rule IV of the same Circular.

The procedure for a complaint under Rule III of NPC Circular No. 16-04 is as follows: The complaint is evaluated by an investigating officer. If the investigating officer finds that on its face the complaint involves a violation of the DPA and based on the allegations, there is a reason to believe that there is a privacy violation or personal data breach, an Order to confer for Discovery is issued by the investigating officer to

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<sup>10</sup> Section 11, Rule IV, NPC Circular No. 16-04 dated 15 December 2016. Emphasis supplied.

discuss whether discovery of information and of electronically stored information is reasonably likely to be sought in the proceeding.<sup>11</sup> After the discovery conference, a discovery Conference Report is prepared<sup>12</sup> and the respondent is ordered to submit a Responsive Comment to the Complaint together with any supporting documents.<sup>13</sup> The investigating officer, upon his or her discretion, may require the complainant to file a Reply. Such an Order may also require the respondent to file a Rejoinder after receipt of the Reply.<sup>14</sup> The investigating officer shall then investigate the circumstances surrounding the privacy violation or the personal data breach and determine whether additional information, evidence, or investigation is necessary, including the conduct of on-site investigations.<sup>15</sup> Upon termination of the investigation, the investigating officer shall produce a Fact-Finding Report, which shall include the results of the investigation, the evidence gathered, and any recommendations.<sup>16</sup> The report shall be submitted to the Office of the Commissioner.<sup>17</sup> The Commission shall review the evidence presented, including the Fact-Finding Report and supporting documents.<sup>18</sup> It may: (1) promulgate a Decision; or (2) order the conduct of a clarificatory hearing, if in its discretion, additional information is needed to make a Decision.<sup>19</sup> Finally, the Commission shall adjudicate the issues raised in the complaint on the basis of all the evidence presented and its own consideration of the law.<sup>20</sup>

On the other hand, in a *sua sponte* investigation under Rule IV of Circular No. 16-04, the proceedings begin with the conduct of an investigation on a data privacy violation or personal data breach. The investigating officers then create a Fact-Finding Report which serves as a complaint. This Fact-Finding Report is then given to the respondent and the respondent is given an opportunity to submit an Answer, akin to the Responsive Comment under Rule III.<sup>21</sup> It is worth noting that the Responsive Comment under Rule III is only submitted after a Discovery Conference. Under Rule IV,<sup>22</sup> the Responsive

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<sup>11</sup> *Id.* at Section 13.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Id.* at Section 15.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Id.* at Section 16.

<sup>16</sup> *Id.* at Section 18.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Id.* at Section 21.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Id.* at Section 22.

<sup>21</sup> *Id.* at Section 24.

<sup>22</sup> *Id.* at Rule IV.

Comment or Answer is immediately required from the respondent after it receives the Fact-Finding Report.

The Rules clearly do not intend the two (2) procedures to be exactly the same. The procedure for a *sua sponte* investigation does not include a Discovery Conference because all the information and evidence in the hands of the Commission are already set out in and attached to the Fact-Finding report when it is provided to the respondent. The respondent is given the opportunity to rebut the sufficiency of evidence in its Answer. The Commission then, after reviewing the evidence presented, including the Fact-Finding Report and its supporting documents,<sup>23</sup> may: (1) promulgate a Decision; or (2) order the conduct of a clarificatory hearing first and thereafter promulgate a Decision.<sup>24</sup>

The Commission emphasizes that while Rule IV of NPC Circular No. 16-04 provides that the investigation be in accordance with Rule III, it includes a proviso, “that the respondent shall be provided with a copy of the Fact-Finding Report and given an opportunity to submit an answer.”<sup>25</sup> Rule IV does not state that the procedure should be exactly identical to the one described under Rule III. As used in Section 24 of Rule IV, “in accordance with Rule III” simply means as far as practicable taking into consideration and giving effect to the differences between the two (2) procedures.

It is a basic principle in statutory construction that the law must be given a reasonable interpretation and be construed in a manner that avoids absurdity.<sup>26</sup> To accept the construction that Respondents seek to impose upon this Commission would not only result in absurdity as it disregards the clear differences between the ordinary complaints procedure and *sua sponte* investigations but it also ignores another basic rule of statutory construction that a special and specific provision prevails over a general provision irrespective of their relative position in the statute.

In *Batangas City, et.al. v. Pilipinas Shell Petroleum Corporation*, the Supreme Court elaborated on this rule, thus:

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<sup>23</sup> *Id.* at Sections 21-22.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Id.* at Section 24.

<sup>26</sup> See, *Millares v. National Labor Relations Commission*, G.R. No. 110524, 29 July 2002; *Microsoft Corporation v. Manansala*, G.R. No. 166391, 21 October 2015.

*Generalis specialibus non derogat.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.<sup>27</sup>

Since there are specific rules for *sua sponte* proceedings, those rules, which do not require a discovery conference, shall apply to this case.

Respondent Fynamics cannot claim that it was deprived of “its right to procure the pertinent pieces of evidence in accordance with Rules of Procedure”<sup>28</sup> when no Discovery Conference was held for this *sua sponte* investigation. Apart from repeating this claim, however, Respondents have consistently failed to allege what pieces of evidence they were deprived of. It bears repeating that in *sua sponte* investigations, all the evidence in the hands of the Commission are already provided to the Respondents when they are provided with a copy of the Fact-Finding Report and given an opportunity to submit their Answer.

Aside from this, the proceedings in this case show that the Respondents were afforded procedural due process appropriate for a *sua sponte* proceeding and were, in fact, given numerous opportunities to be heard.

As narrated in the Decision, the Respondents were ordered to file an Answer after being served a copy of the Fact-Finding Report together with all of its supporting documents. The Commission issued several Orders for the submission of additional documents to verify the claim of the Respondents and called for a clarificatory hearing. Further, all of the Respondents’ Motions for Extension of Time to File and to Reset the Clarificatory Hearing were granted in the interest of an exhaustive investigation.

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<sup>27</sup> Batangas City, et.al. v. Pilipinas Shell Petroleum Corporation, G.R. No187631, 8 July 2015.

<sup>28</sup> Motion for Reconsideration dated 2 March 2021, par. 16.

Respondent Fynamics further contended that the Commission violated its own Rules of Procedure relating to the exhaustion of remedies:

18. *Second*, the Fact-Finding Committee completely circumvented its Rule of Procedure and bypassed Respondent Fynamics and its officers throughout the investigation, which is contrary Section 4 of the Rules of Procedure of the Honorable Commission, which provides that:

Section 4. Exhaustion of remedies. – No complaint shall be entertained unless:

- a. the complainant has informed, in writing, the personal information controller or concerned entity of the privacy violation or personal data breach to allow for appropriate action on the same;
- b. the personal information controller or concerned entity did not take timely or appropriate action on the claimed privacy violation or personal data breach, or there is no response from the personal information controller within fifteen (15) days from receipt of information from the complaint; and
- c. the complaint is filed within six (6) months from the occurrence of the claimed privacy violation or personal data breach, or thirty (30) days from the last communiqué with the personal information controller or concerned entity, whichever is earlier.

The failure to comply with the requirements of this Section shall cause the matter to be evaluated as a request to the National Privacy Commission for an advisory opinion, and for the National Privacy Commission to take such further action, as necessary. The National Privacy Commission may waive any or all of the requirements of this Section, at its discretion, upon good cause shown, or if the complaint involves a serious violation or breach of the Data Privacy Act, taking into account the risk of harm to the affected data subject.

19. Undoubtedly, Respondent Fynamics should have been first informed in writing of their alleged violations and given the



opportunity to institute appropriate actions to rectify the alleged alleged (sic) findings of the Fact-Finding Committee.<sup>29</sup>

The Respondent's interpretation that the Commission should first reach out to respondents to be "given the opportunity to institute appropriate actions to rectify the alleged criminal violations of the DPA" is purpose-defeating, if not plainly absurd. *Sua sponte* investigations are only conducted under specific premises under the Rules of Procedure, thus:

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. 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.<sup>30</sup>

As seen with the abovementioned criteria for a *sua sponte* investigation, complaints are only initiated in cases of a possible serious privacy violation or personal data breach. In these actions, the Commission considers evident risks of harm to a data subject. The privacy violation or personal data breach that can be directly acted upon by the Commission is qualified with a degree of seriousness that makes it different from complaints under Rule III. This degree of seriousness is considered in relation to the level of risks posed to the data subjects, and may be manifested in different ways such as the scale of processing or the number of reports received by the Commission.

Thus, in cases of *sua sponte* investigations, it is futile for the Commission to exhaust remedies by communicating with the respondent. The provision on the exhaustion of remedies is meant to provide an opportunity for parties to amicably settle among themselves and rectify the situation. This is only resorted to when the possibility of rectification still exists.

The nature and purpose of *sua sponte* investigations makes such exhaustion of remedies futile because at the point when the

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<sup>29</sup> Motion for Reconsideration dated 2 March 2021.

<sup>30</sup> NPC Circular No. 16-04 dated 15 December 2016, Rule IV, Section 23. Emphasis supplied.

Commission detects a privacy violation or personal data breach with a degree of seriousness, the opportunity for rectification is no longer available. The requirement of exhaustion of remedies is thus inapplicable to *sua sponte* investigations.

Furthermore, such provision for the exhaustion of remedies is not even an absolute rule that renders all non-conforming complaints invalid. The Commission has previously discussed the purpose for the exhaustion of remedies in the case of NPC 18-038:

This rule was intended to prevent a deluge of vexatious complaints from those who waited for a long period of time to pass before deciding to lodge a complaint with the NPC, unduly clogging its dockets. Notably, however, the same Section provides that the Commission has the discretion to waive such period for filing upon good cause shown, or if the complaint involves a serious violation or breach of the DPA, taking into account the risk of harm to Complainant.

The Respondent, in its Motion for Reconsideration, raises another argument that the conduct of a *sua sponte* investigation is unnecessary as there are several pending complaints filed against it:

24. *Second*, the conduct of *sua sponte* investigations was totally unnecessary considering the existence of pending complaints against Respondent Fynamics.
25. Notably, in the Assailed Decision, this Honorable Commission admitted that the *sua sponte* investigation was conducted in lieu of the several complaints received by the Honorable Commission against Respondent Fynamics.
26. The Fact-Finding Report further mentioned that there are a “total of 113 complaints as of 31 July 2019” which have been filed with the Honorable Commission against Respondent Fynamics.
27. Of the 113 complaints, Respondent Fynamics (*sic*) has been made aware only of 54 complaints and have received files, orders, and pleadings only for 54 complaints, which are in different stages of proceedings and some of them have already been subject to a compromise agreement that was approved by the Honorable Commission while some of them are still undergoing mediation proceedings.

28. In consideration of due process and fairness, this Honorable Commission should have first allowed the individual complaints against Fynamics (*sic*) to be threshed out by the Complaints and Investigation Division, before creating a fact-finding committee. Unfortunately, in this case, the Fact-Finding Report has effectively prejudged the pending individual complaints.
29. Under Rules of Procedure, the *sua sponte* investigation is similar to a complaint filed by a person personally affected by a privacy breach.
30. This Honorable Commission, through the *sua sponte* investigation seemingly filed the Complaint on behalf of these affected persons. Thus, the conduct of *sua sponte* investigation against Fynamics (*sic*) by virtue of the pending complaints somehow makes the *sua sponte* investigation redundant since the investigation has the same causes of action as the pending complaints.
31. To be precise, the issues raised, specifically, the violations attributed to Respondent Fynamics are similar to the pending complaints. A possible issue arises when the individual cases are dismissed and the investigation continues for the same cause of action. Therefore, the reasonable approach would be to let the individual complaints run their course and hold the instant case in abeyance.<sup>31</sup>

The Commission addresses these allegations point by point.

Nowhere in the Decision did the Commission “admit that the *sua sponte* investigation was conducted in lieu of the several complaints received by the Honorable Commission against Respondent Fynamics.” On the contrary, the Decision explicitly stated that the *sua sponte* investigation is independent and separate from the individual cases by stating that “the pending cases and the case on hand involve different parties, different causes of action with different prayers of relief.”

There is also no basis to state that the Commission prejudices individual complaints against respondents when it conducts *sua sponte* investigations. Each individual complaint runs its course according to

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<sup>31</sup> Motion for Reconsideration dated 2 March 2021.

Rule III and is weighed according to the quantum of evidence required in administrative cases.

The argument that a *sua sponte* investigation is unnecessary because of its similarity with individual complaints is baseless. The discussion above gives a detailed differentiation between the two (2) proceedings, not to mention the plain fact that there is a separate provision for *sua sponte* investigations in the Rules of Procedure. The individual complaints were only cited to demonstrate the seriousness of the possible data privacy violation. The Commission in its Decision emphasized that:

The citation of allegations from different pending cases illustrate that the effects of the functionalities of Respondent Fynamics' application, the procedures it implemented coupled with its lack of transparency are not imagined but have translated to seriously harmful effects in the lives of their borrowers, all of whom are considered data subjects under the DPA.<sup>32</sup>

On the argument that Respondent Fynamics was not afforded the right to mediate as provided in NPC Circular No. 18-03, the Commission notes that this is not the first time that the Respondents raised the issue of mediation. On 16 September 2019, the Respondents filed an Appearance and Omnibus Motion which included a prayer to refer the case for mediation. On 07 October 2019, the Commission issued a Resolution which included a denial of the prayer of Respondents ML, CW, and BBS for the initiation of mediation proceedings:

As regards the prayer of the Respondents ML, CW, and BBS for the initiation of a mediation proceeding and the suspension of the proceedings pending the resolution of their Omnibus Motion, the Rule on Alternative Modes of Dispute Resolution under NPC Circular No. 16-04 finds application, thus:

Section 26. Mediation officer. – The Commission shall assign a mediation officer to assist the complainant and respondent to reach a settlement agreement, **provided that no settlement is allowed for criminal acts.**

The instant case was initiated through a *sua sponte* investigation of the National Privacy Commission pursuant to

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<sup>32</sup> Decision dated 17 December 2020.

Section 3 of NPC Circular 16-04. The Fact–Finding Report noted certain dangerous permissions in the Android Package (APK) of the Pondo Peso application that are designed to be indispensable for the application to function, as well as the inaccessibility of a Privacy Policy that provides an explanation of this to the user. Based on these, the Fact-Finding report found that “the apparent failure of the company to abide by the directives of the DPA in the protection of data subjects and their personal information constitute violation of the law.” Specifically, the Fact-Finding Report recommends criminal prosecution for the company, represented by their board of directors, for violations of Sections 25, 28, 31, and 32 of the Data Privacy Act.

Upon consideration of the allegations in the Fact-Finding Report and the existing rules under NPC Circular No. 16-04, the Commission finds that there is no basis for the Commission to grant the prayer of respondents ML, CW and BBS for the initiation of a mediation proceeding and the suspension of the proceedings pending the resolution of their Omnibus Motion.<sup>33</sup>

While the Rules on Mediation embodied in NPC Circular No. 18-03 did not provide a distinction between cases which can and cannot undergo mediation, NPC Circular No. 16-04 categorically states that “*no settlement is allowed for criminal acts.*”

The maxim *interpretare et concordare leges legibus est optimus interpretandi* provides that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system.<sup>34</sup> Applying this concept of harmonization of statutes, the rules of procedure of the NPC do not stand separately from each other. They must be interpreted in a way that would produce a harmonious whole. Thus, considering that the Fact-Finding Report alleged prohibited acts committed by the Respondent which incur criminal liability under the Data Privacy Act, together with the fact that it recommended the criminal prosecution of the Respondents, mediation is not applicable in this case.

### *Ruling on the Substantive Issues*

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<sup>33</sup> Resolution dated 7 October 2019.

<sup>34</sup> Philippine Economic Zone Authority v, Green Asia Construction & Development Corporation, G.R. No. 188866, 19 October 2011.

Similar to the procedural issues, the Commission finds no new material facts for its reconsideration of the substantial issues. The allegations in the Motion for Reconsideration are a mere rehash of the allegations from the respective Answers filed by the Respondents in the course of the proceedings and were already sufficiently addressed in the Decision.

As regards Respondent Fynamics' contention that there is nothing inherently wrong or illegal with taking a "Dangerous Permission" from the user and that doing so have "corresponding legal, commercial, and operational rationale," the Commission reiterates that it does not question the legality of the "Dangerous Permissions" per se, but looks into their declared purposes in comparison to the actual processing done.

In this case, Respondent Fynamics claimed that the READ\_CONTACTS dangerous permission was justified by its need to determine, at the point of the loan application, whether the mobile phone was newly purchased. This is part of their verification process, before approval of the loan. This is determined through the number of entries in the contact list at the moment of application.

While the purpose behind the access of the list of contacts was explained, Respondents have not disputed that it retained the contacts of data subjects and kept the data in a form that allowed them to further process even after the loan applications' approval.

The issue is the retention of these contacts. The excerpts from the cited individual complaints in the Fact-Finding Report pertained to the collection practices made possible because of the retained personal information. Such retention is considered processing of personal information and must be justified under the lawful criteria provided under the DPA. As detailed by the Commission in the Decision, no such lawful criteria is present in this case. Respondent Fynamics failed to prove that their retention of data is supported by consent or any other lawful criteria provided under the Data Privacy Act.

On the contention that the Respondent officers did not directly participate in any of the complained acts or through gross negligence, allowed the commission of any crime, the Data Privacy Act is clear that the liability of the responsible officers in cases where the offender is a corporation does not rely on active participation alone. Gross

negligence is explicitly stated in the Data Privacy Act as a ground for criminal liability.

There is no reason for the Commission to reverse its earlier finding that the Respondent officers are liable for gross negligence. As stated in the Decision:

The Supreme Court has consistently defined gross negligence as “the negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.”<sup>35</sup>

In this case, the Board of Directors of Fynamics did not deny the fact that a Master Service Agreement was entered into between Respondent Fynamics and Asiapac, with the President as the signatory. The Board of Directors should have been aware of the terms in this Agreement, considering that it concerns a vital aspect of their operations as a lending company. Consequently, they should have been aware that the provisions of the Master Service Agreement contradicted the principles in the DPA. It included a provision that sought to surrender its accountability as a Personal Information Controller to Asiapac.<sup>36</sup>

Notwithstanding the provision in the Data Privacy Act that the responsibility to prevent unauthorized processing cannot be subcontracted by Personal Information Controllers, the Commission reiterates that Respondent Fynamics was not entirely powerless under the Master Service Agreement. Respondent Fynamics could have exercised its responsibility under the law through certain provisions in the Master Service Agreement which contained remedies that they should have exercised as the Personal Information Controller after voluminous complaints were filed against it.<sup>37</sup> However, the Respondents failed to prove that they exercised due diligence in protecting the personal data of their borrowers and failed to act upon the unprofessional debt collection practices that have led to the hundreds of complaints filed before the Commission.

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<sup>35</sup> Fernandez v. Office of the Ombudsman, G.R. No. 193983. 14 March 2012.

<sup>36</sup> Compliance dated 20 February 2020, Annex “C”. Emphasis supplied.

<sup>37</sup> Fact-Finding Report, Annex “B”. Emphasis in the original.

The Commission emphasizes that the Respondent has not provided any new or material allegations that justify the reversal of the Decision. Having sufficiently addressed all the points raised by Respondent Fynamics in its Motion for Reconsideration through this Resolution and the previously rendered Decision, the Commission finds no basis to overturn its Decision.

**WHEREFORE**, premises considered, the Commission resolves to **DENY** the Motion for Reconsideration filed by Respondent Fynamics Lending, Inc. The Decision of the Commission dated 17 December 2020 is hereby **AFFIRMED**.

**SO ORDERED.**

City of Pasay, Philippines  
11 March 2021.

**Sgd.**  
**LEANDRO ANGELO Y. AGUIRRE**  
*Deputy Privacy Commissioner*

WE CONCUR:

**Sgd.**  
**RAYMUND ENRIQUEZ LIBORO**  
*Privacy Commissioner*

**Sgd.**  
**JOHN HENRY D. NAGA**  
*Deputy Privacy Commissioner*

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**GENERAL RECORDS UNIT**

National Privacy Commission