



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

X-----X

**RESOLUTION**

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

Before the Commission is the Partial Motion for Reconsideration (Partial MR) on the Decision dated 17 December 2020 filed by Respondents KF, JCG, and HAD (Respondents). Respondents are directors of Fynamics Lending Inc. (Fynamics or the “Corporation”), the operators of the PondoPeso Online Lending Application.

**Facts**

On 17 December 2020, the Commission issued a Decision finding Respondents liable for violation of 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>

---

<sup>1</sup> Decision, 17 December 2020 at 42, *in* In re: Fynamics Lending Corporation.

On 15 February 2021, Respondents received a copy of the Decision. On 02 March 2021, via registered mail, Respondents filed a Partial MR to the Decision arguing the following:

1. The PondoPeso online lending application (OLA) already existed prior to Fynamics' incorporation with the Securities and Exchange Commission (SEC). Respondents were not aware of the existence of PondoPeso before and after the incorporation of Fynamics.<sup>2</sup>
2. Respondents did not issue or execute any document or board resolution approving or ratifying the establishment or creation of PondoPeso after the incorporation of Fynamics. They did not attend meetings of the Board of Directors (BOD) on the online lending business operations or on any corporate matters, including the elections of the members of the BOD of the Corporation.<sup>3</sup>
3. Respondents did not receive any dividends or compensation whatsoever from Fynamics.<sup>4</sup>
4. Assuming for the sake of argument that Respondents are directors of Fynamics, they still cannot be held criminally liable for the acts of the Corporation. There is no proof that Respondents participated, directly or indirectly, in allowing the commission of the violation of the DPA.<sup>5</sup>
5. Respondents cannot be considered to have acted with gross negligence in allowing the commission of the alleged violation of the DPA since Respondents did not know about the business transactions with "PesoPondo and/or AsiaPac." Respondents did not sign the Master Service Agreement (MSA) entered into with AsiaPac Solutions Corporation (AsiaPac).<sup>6</sup>

On 14 July 2021, Respondent KF emailed the Commission. She requested the Commission to either (1) remove her name from the Commission's article on Fynamics or (2) edit the article in such a way

---

<sup>2</sup> Partial Motion for Reconsideration by KF, JCG, HAD, [Partial MR], 25 February 2021.

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 4.

that the article will not appear in the Google search results of her name.<sup>7</sup> She alleged that, due to the case before the Commission, she could not find a job and continues to suffer from anxiety and depression.<sup>8</sup> In her email, she stated that she is not working with Fynamics and that her name was only used by the Corporation and Emerhub, the company Fynamics engaged for incorporation. She mentioned that Respondents have yet to receive the Commission's decision on the Partial MR.<sup>9</sup> Lastly, in addition to the contents of the Motion for Reconsideration that Respondents filed on 02 March 2021, she alleged the following:

I am not working with the Fynamics corporation. I and the other Filipino citizens are represented by a separate lawyer. Our goal is to simply get our names out of this case. The recent action made for this is filing for a motion for reconsideration, which is very recent at 2021 and we are yet to receive a decision. The first parts of the hearings in 2020 were primarily focused on the Chinese citizens who are currently running the corporation. Nevertheless, I would also like to mention points on how we are not involved in this:

1. The NPC required Fynamics to submit proof that we are part of their company or board. They were not able to submit any proof. No board meetings were made where we were present. No signed documents presenting our involvement in any of their decision-making.
2. Fynamics' incorporation documents have shown our forged signatures. Everything was forged.
3. I did not sign a single document or article involving their company.
4. Fynamics cannot present any proof of their relation to us.
5. Our names were merely used for the incorporation. We are not receiving any equity or dividend, or salary from the company.
6. No proof can be presented to prove that we have any involvement in the violations that the company made. This, according to the law, means we cannot be liable.<sup>10</sup>

Respondent KF attached a copy of the Partial MR, her valid identification cards, and copies of allegedly forged Minutes of a Fynamics' BOD Meetings, board resolutions, Secretary's Certificates, and a Directors' Certificate.

---

<sup>7</sup> Email from KF, respondent director of Fynamics Lending Corporation [Email from KF], 14 July 2021.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

### Issue

Whether the Partial MR filed by Respondents should be granted.

### Discussion

The Commission denies the Partial MR.

The Commission notes that Respondents received the Decision on 15 February 2021. Section 4, Rule 8 of the 2021 Rules of Procedure of the National Privacy Commission (NPC Circular No. 21-01) provides:

SECTION 4. Appeal. – The decision of the Commission shall become final and executory fifteen (15) calendar days after receipt of a copy by both parties. 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.<sup>11</sup>

Thus, a motion for reconsideration can be filed within the fifteen-day period to appeal. Following this rule, the period to file a motion for reconsideration is until 02 March 2021. The Partial MR was filed by registered mail on 02 March 2021. However, the additional allegations made by Respondent KF in her email were filed only on 14 July 2021.

Although Respondent KF's request and additional allegations in the email were filed out of time, the Commission, in the interest of justice, considers the request and the additional allegations as a supplement to the Partial MR.

Respondents' arguments rely heavily on the allegation that they are not members of Fynamics' BOD. They also stated that even assuming they are directors of the Corporation, they still cannot be held personally liable since they neither, directly or indirectly, participated in the commission of the violation of the DPA nor allowed, by their gross negligence, the commission of the violation of the DPA.

---

<sup>11</sup> National Privacy Commission, NPC Circular No. 21-01, "2021 Rules of Procedure of the National Privacy Commission" [NPC Circ. No. 2021-01], Rule VIII, § 4 (28 January 2021).

These arguments are merely restatements of their arguments in their Answer dated 04 October 2019. Similar to the Answer, Respondents failed to submit evidence to substantiate their allegations. The Commission now discusses the denial of the Partial MR in detail.

*Fynamics' Articles of Incorporation and its General Information Sheet for 2018 show that Respondents are members of its Board of Directors.*

Respondents, in their Answer and Partial MR, admit to being nominee stockholders for the purpose of incorporating Fynamics with the SEC but deny being members of the BOD.<sup>12</sup> The Articles of Incorporation (AOI), however, shows that Respondents are listed as stockholders, incorporators, and directors of Fynamics. In fact, Respondents were named as three (3) of the five (5) directors of the Corporation.<sup>13</sup> Respondents cannot admit to being incorporators and simultaneously deny being members of the BOD when the AOI clearly provides that they also served as the latter. Further, Fynamics' General Information Sheet (GIS) for 2018 shows that Respondents were incumbent directors of the Corporation at the time of the commission of the violation of the DPA.<sup>14</sup>

*Respondents failed to produce evidence to substantiate their allegations and dispute the presumptions in this case.*

Respondents made several statements in their attempt to convince the Commission that Respondents are not members of Fynamics' BOD. Having failed to produce any evidence to support these allegations, the statements have no probative value. It is hornbook doctrine that mere allegations do not constitute proof.<sup>15</sup> As held by the Supreme Court in *GSIS v. PGA et.al.*, "it is basic in the rule of evidence that bare

---

<sup>12</sup> Verified Answer by KF, JCG, HAD, 04 October 2019, at 2; Partial MR, at 3.

<sup>13</sup> Records, at 165-169.

<sup>14</sup> Records, at 170-177.

<sup>15</sup> Government Services Insurance System v. Prudential Guarantee and Assurance, Inc., Development Bank Of The Philippines And Land Bank Of The Philippines G.R. No. 165585, 20 November 2013.

allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.”<sup>16</sup>

Since Respondents failed to provide evidence to support their allegations, the Commission cannot disregard the existing presumptions in this case that Respondents failed to properly dispute or address. According to Rule XII, Section 8 of the 2021 NPC Rules of Procedure, the Rules of Court shall apply in a suppletory character to the Rules of the Commission and whenever practicable and convenient.<sup>17</sup>

Section 3, Rule 131 of the Rules of Court enumerates what are considered disputable presumptions.<sup>18</sup> In *MBTC v. Tobias*, the Supreme Court defined a disputable presumption as:

species of evidence that may be accepted and acted on when there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence (31A C.J.S., p. 197; *People v. de Guzman*, G.R. No. 106025, Feb. 9, 1994; *Herrera*, Remedial Law, Vol. VI, 1999 Edition, pp. 40-41). In fact, Section 3 of Rule 131 provides that the disputable presumptions therein enumerated are satisfactory if uncontradicted but may be contradicted and overcome by other evidence x x x<sup>19</sup>

There are four (4) disputable presumptions present in this case that Respondents failed to properly address. These are (1) the ordinary course of business has been followed;<sup>20</sup> (2) there was a sufficient consideration for a contract;<sup>21</sup> (3) a person intends the ordinary consequences of his or her voluntary act;<sup>22</sup> and (4) evidence wilfully suppressed would be adverse if produced.<sup>23</sup>

*First*, pursuant to section 3(q) of Rule 131 of the Rules of Court, the operations of Fynamics was conducted following the ordinary course of business. The BOD of Fynamics is composed of ML, CW, and Respondents.<sup>24</sup> Following this presumption, Fynamics’ actions when

---

<sup>16</sup> *Id.*

<sup>17</sup> NPC Circ. No. 2021-01, Rule XII, § 8.

<sup>18</sup> Supreme Court of the Philippines, A.M. No. 19-08-15-SC “2019 Amendments to the 1989 Revised Rules on Evidence” [Rules of Court], Rule 131, § 3 (1 May 2020).

<sup>19</sup> G.R. No. 177780 January 25, 2012 Metropolitan Bank and Trust Co. (Metrobank), represented by RAS v. AOT.

<sup>20</sup> Rules of Court, Rule 131, § 3(q).

<sup>21</sup> *Id.* at Rule 131, § 3(r).

<sup>22</sup> *Id.* at Rule 131, § 3(c).

<sup>23</sup> *Id.* at Rule 131, § 3(e).

<sup>24</sup> Records at 174.

Respondents served as directors are presumed to have been done in the ordinary course of business. Without any of the three (3) Respondents, the BOD would not have the required quorum to validly conduct business. Thus, the failure of Respondents to offer any evidence proving that they are not directors of Fynamics or that they were not included in meetings of the BOD maintains the presumption that Fynamics acted legitimately through its BOD.

As to the allegation of forgery made by Respondent KF in her email,<sup>25</sup> the Commission is not the proper forum to raise these issues. The documents she submitted together with her email can only be construed by the Commission as legitimate unless the forgery of such documents is proven in a court of law. Absent any proof to the contrary, the Commission cannot conclude that all the issuances of the Fynamics' BOD are forged and its entire operations at that time was illegitimate. The Commission notes, however, that despite her claim that her signatures were forged, it does not appear as if she took any action on this very serious matter.

*Second*, Section 3(r) of Rule 131 provides the disputable presumption that there is a sufficient consideration for a contract.<sup>26</sup> Respondents claimed that they have not received any dividends or compensation from Fynamics as members of its BOD.<sup>27</sup> However, Respondents failed to furnish the Commission with proof to support their claim.

The GIS of Fynamics for the year 2018 shows that Respondents are members of Fynamics' BOD.<sup>28</sup> To serve as a member of the BOD is essentially a contract that requires consent. Under this presumption, there is sufficient consideration for Respondents to agree to being designated as members of Fynamics' BOD.

Moreover, the failure of Respondents to receive dividends or compensation as members of the BOD does not prove that they are not members of Fynamics' BOD. In fact, the Revised Corporation Code provides that members of the BOD shall not receive compensation as directors except reasonable per diems:

---

<sup>25</sup> Email from KF.

<sup>26</sup> Rules of Court, Rule 131, § 3(r).

<sup>27</sup> Partial MR, at 3.

<sup>28</sup> Records, at 170-177.

SEC. 29. Compensation of Directors or Trustees. – **In the absence of any provision in the bylaws fixing their compensation, the directors or trustees shall not receive any compensation in their capacity as such, except for reasonable per diems:** *Provided however,* That the stockholders representing at least a majority of the outstanding capital stock or majority of the members may grant directors or trustees with compensation and approve the amount thereof at a regular or special meeting.

In no case shall the total yearly compensation of directors exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.

Directors or trustees shall not participate in the determination of their own per diems or compensation.

Corporations vested with public interest shall submit to their shareholders and the Commission, an annual report of the total compensation of each of their directors or trustees.<sup>29</sup>

Even the By-Laws of the Corporation provides for the non-compensation of directors:

c. The directors shall not receive compensation, as such directors, except for reasonable per diems. Any compensation may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) of the net income before income tax of the corporation during the preceding year.<sup>30</sup>

As to dividends, all the stockholders have the right receive dividends when a corporation declares so.<sup>31</sup>

*Third,* Section 3(c) of Rule 131 provides the presumption that a person intends the ordinary consequences of his or her voluntary act.<sup>32</sup> In the Answer, Respondents categorically admitted to acting as nominee stockholders for the purpose of incorporating Fynamics:

---

<sup>29</sup> An Act Providing for the Revised Corporation Code of the Philippines [Revised Corporation Code of the Philippines], Republic Act No. 11232, §29 (2019). Emphasis supplied.

<sup>30</sup> Compliance by Fynamics Lending Corporation., ML, CW and BBS, Annex A, 20 February 2020.

<sup>31</sup> *Id.* at § 42.

<sup>32</sup> Rules of Court, Rule 131, § 3(c).



On 19 June 2018, [R]espondents acted as nominee stockholders for the incorporation of [R]espondent FYNAMICS LENDING INC. before the Securities Exchange Commission.<sup>33</sup>

They also admitted that they “knew upon incorporation that [Fynamics] would engage in a lending business.”<sup>34</sup> Respondents, as incorporators of Fynamics, voluntarily signed the AOI during the incorporation process. It is clear from the AOI they signed that they are three (3) of the five (5) initial directors of the Corporation.<sup>35</sup> In admitting that they are incorporators of Fynamics, Respondents cannot deny the fact that they are Fynamics’ initial directors as well.

Thus, the fact that they voluntarily became nominee stockholders and members of the BOD, as gleaned from the AOI, they should have anticipated the ordinary consequences of their actions which include the obligations and liabilities that come with the position.

*Fourth*, the Commission ordered Fynamics and the members of the BOD to present evidence on the MSA.<sup>36</sup> This includes any board resolutions relating to the authority of the President to enter into the MSA. Respondents, however, did not submit anything.

Respondents rely on the other respondents to validate whether Respondents have been involved with Fynamics’ online lending business.<sup>37</sup> They also alleged that the corporate records of the Corporation or any transaction related to the PondoPeso online lending business would show their non-involvement in any corporate decision.<sup>38</sup> Respondents, however, in alleging that they were not involved with Fynamics, have the burden of proving that they did not serve as members of Fynamics’ BOD or participated in the online lending business.

Section 3(e) of Rule 131 of the Rules of Court provides the disputable presumption that evidence wilfully suppressed would be adverse if produced.<sup>39</sup> Respondents should have provided the Commission with the necessary evidence to prove that they are not members of

---

<sup>33</sup> Verified Answer, at 2.

<sup>34</sup> *Id.*

<sup>35</sup> Records, at 165-169.

<sup>36</sup> Order, 01 October 2020, *in* In Re: Fynamics Lending Corporation.

<sup>37</sup> Partial MR, at 3.

<sup>38</sup> *Id.*

<sup>39</sup> Rules of Court, Rule 131, § 3(e).

Fynamics' BOD. In the regular course of business, Respondents, as members of the BOD should be able to request these documents. Assuming that the Corporation would not produce these documents, a request for the documents that was not entertained or a document showing their non-inclusion in company matters despite being members of the board would have helped support their argument. Despite the opportunity to present evidence on these matters, Respondents chose not to do so, leading to the presumption that had the documents been produced, these would have adversely affected Respondents.

*Respondents, by their gross negligence as members of Fynamics' BOD, are liable for the violations committed by the Corporation.*

Respondents alleged, in the Partial MR, that they "did not process information of the data subjects either in their individual capacity or give their consent to the same."<sup>40</sup> Respondents also alleged that no evidence was presented to show that they participated, directly or indirectly, in allowing the commission of the alleged violation of the DPA.<sup>41</sup> They further alleged that the Commission merely presumed the alleged culpability of Respondents as a result of being listed as directors of Fynamics.<sup>42</sup>

The Commission reiterates that it is an undisputed fact that all Respondents were incumbent members of Fynamics' BOD at the time the violations were committed. The Commission notes that the nature of the DPA violation in this case is tied to the conduct of Fynamics' business as reflected in the MSA they executed with Asiapac. Since the authority of the President to enter into the MSA on behalf of the Corporation is not provided in the By-Laws<sup>43</sup> of Fynamics, it necessarily means that the Fynamics' BOD gave him the authority to do so. Consequently, the directors, including Respondents, should have been aware that the provisions of the MSA contradicted the principles in the DPA.

---

<sup>40</sup> Partial MR at 2.

<sup>41</sup> *Id.* at 4.

<sup>42</sup> *Id.*

<sup>43</sup> Compliance *by* Fynamics Lending Corporation., ML, CW and BBS, Annex A, 20 February 2020.

Moreover, as discussed in the Decision, the failure of the BOD to address the violations, which led to the voluminous cases filed with the Commission, shows gross negligence on their part. Fynamics' counsel stated during the clarificatory hearing on 01 October 2020, that Fynamics was not aware of specific actions that it took against Asiapac on the unlawful processing of personal information.<sup>44</sup>

In the case of *AC vs. Secretary of Justice*, the Supreme Court held that the BOD shall be held criminally liable for violations committed by the corporation when by reason of the latter's negligence to supervise its employees, it has caused the corporation to commit acts in violation of the law:

Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense. The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law.

x x x

A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.

---

<sup>44</sup> Transcript of 01 October 2020 Clarificatory Hearing, at 39.

The principle applies whether or not the crime requires the consciousness of wrongdoing. **It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act.** Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.<sup>45</sup>

The Commission emphasizes that a BOD has the duty of diligence. In *Bernas v. Cinco*, the Supreme Court stated that:

The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to itself the power of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of the corporate affairs.<sup>46</sup>

It is the persons behind Fynamics who allowed the harassment of its borrowers through the MSA that surrendered all accountability to its subcontractor. These persons provided the necessary approvals for the PondoPeso application's functionalities and dangerous permissions. They failed to supervise the representations Fynamics made to all its borrowers through the Privacy Policy and the terms and conditions of the PondoPeso application.

Had the PondoPeso application confined itself to the purposes Fynamics itself declared in the Privacy Policy, the collection agents would only have had access to the reference contacts the borrowers willingly provided in their applications.

Due to the existing presumptions, the burden of proof lies with Respondents to prove that they are not members of Fynamics' BOD. However, while Respondents were given several opportunities to dispute the fact that they are members of Fynamics' BOD, they failed to provide any evidence to support their allegations. Had they proven

---

<sup>45</sup> AC v. Secretary of Justice, G.R. No. 164317 (2006). Emphasis supplied.

<sup>46</sup> Bernas v. Cinco, G.R. Nos. 163356-57 (2015).

their non-involvement with Fynamics with sufficient evidence, the discussion on the liability of the BOD would not have applied to them.

The Commission reiterates that, technically, Fynamics' BOD cannot function without Respondents' participation since the required quorum for Fynamics to conduct business cannot be met without any one of them.

Considering the foregoing, Respondents, as members of Fynamics' BOD, are liable for the violations of the Corporation.

*Request to remove KF's name in the Commission's article on Fynamics.*

The Commission denies the request of Respondent KF to remove her name from the Commission's article. Respondent KF is a member of Fynamics' BOD. She, along with the other directors, are parties to the case filed against the Corporation. If the Commission grants Respondent KF's request to remove her name from the article, then it presupposes that the Commission has granted KF's prayer to drop her as a respondent in the case. Since KF has not been dropped as a respondent in the case, the Commission cannot allow the removal of her name from the article.

**WHEREFORE**, premises considered, the Commission resolves to **DENY** the Partial Motion for Reconsideration filed by Respondents KF, JCG, and HAD. The request to remove KF's name in the Commission's article on Fynamics Lending Inc. is likewise **DENIED**.

The Decision of the Commission dated 17 December 2020 is hereby **AFFIRMED**.

**SO ORDERED.**

City of Pasay, Philippines.  
29 July 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

Copy furnished:

**GG & ASSOCIATES**  
*Counsel for Respondents KF, JCG  
and HAD*

**GONZALES AND QUISMORIO LAW OFFICES**  
*Counsel for Respondents Fynamics Lending, Inc.,  
ML, CW and BBS.*

**COMPLAINTS AND INVESTIGATION DIVISION**  
**ENFORCEMENT DIVISION**  
**GENERAL RECORDS UNIT**  
National Privacy Commission