

□ Procedure No.: PS/00618/2021(EXP202103039)

RESOLUTION OF PUNISHMENT PROCEDURE

Of the actions carried out ex officio by the Spanish Agency for the Protection of Data before the entity, RODALI GESTIÓN INMOBILIARIA, S.L. with CIF: B45811353, (hereinafter "the claimed party"), for the alleged violation of the regulations of data protection: Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons in what regarding the Processing of Personal Data and the Free Circulation of these Data (RGPD) and Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights (LOPDGDD), and attending to the following:

BACKGROUND

FIRST: On 09/27/21, he entered this Agency, a brief presented by Mrs. A.A.A., (hereinafter, "the complaining party"), in which it indicated, among others, that, At the time of making the reservation for the purchase of a flat with this Agency, he did not fill in no clause nor was she informed of the processing of her personal data. Along with the written claim, a copy of the contract is provided: "Documentation of Property Offer" dated 11/13/19, where the personal data of the claimant, as well as, the data of the Real Estate and where the management is agreed, for part of the Real Estate of the purchase of a property.

SECOND: On 10/18/21 and 10/29/21, this Agency transferred the claim to the party complained against so that it could respond to it, in accordance with the provisions of article 65.4 of the LOPDGDD Law. attempts to notification resulted in the following:

- According to a certificate from the Electronic Notifications Service and Address

Electronic, the shipment made to the claimed entity, on 10/18/21, through of the electronic notification service "NOTIFIC@", was rejected in destination on 10/29/21.

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of informative, a copy was sent by mail that was reliably notified in date 11/10/21, being the recipient of this, Ms. BBB ***NIF.1 In said notification, he was reminded of his obligation to interact electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, in thereafter, you will be notified exclusively by electronic means.

THIRD: On 12/23/21, by the Director of the Spanish Agency for Data Protection agreement is issued for the admission of processing of the claim submitted by the claimant, in accordance with article 65 of the LPDGDD Law, to the not receive any response to requests made from this Agency.

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FOURTH: On 02/18/22, by the Director of the Spanish Agency for Data Protection, the initiation of the sanctioning procedure against the party claimed, for the alleged infringement of article 13 of the RGPD, as there are indications of the lack of information offered to customers about the processing of their data personal, when these are obtained directly from them, imposing a initial penalty of 5,000 euros (five thousand euros), based on the provisions of art. 64.2 b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (LPACAP). However, attempts to notify the

agreement to initiate the sanctioning file obtained as a result:

- According to a certificate from the Electronic Notifications Service and Address

Electronic, the shipment made to the claimed entity, on 02/22/22, through

of the electronic notification service "NOTIFIC@", was rejected in

destination on 03/05/22.

- According to a certificate from the State Post and Telegraph Society, the shipment

made to the claimed entity, on 05/30/22 through the service of

Postal notification from Correos, was returned to destination with the legend of

"unknown" on 06/08/22.

FIFTH: After the period granted for the formulation of allegations to the

agreement to initiate the procedure, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the respondent was informed in the agreement to open the proceeding,

establishes that, if allegations are not made within the stipulated period on the content

of the initiation agreement, when it contains a precise statement about

imputed responsibility, may be considered a resolution proposal. In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal

PROVEN FACTS

Of the actions carried out in this procedure and of the information and

documentation presented by the claimant, it has been proven that:

First: At the time of signing the contracts by which the Real Estate becomes charge of the management of the purchase of a property, does not inform in any document about the management of your personal data. The document that is provided together with the claim, "Property Offer Document" dated 11/13/19, appear the personal data of the claimant, as well as the data of the Real Estate, but not there is no clause where the management of personal data is reported obtained by the real estate.

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FOUNDATIONS OF LAW

I-Competition

It is competent to initiate and resolve this Sanctioning Procedure the Director of the Spanish Agency for Data Protection, by virtue of the powers established in Article 58.2 of the RGPD and in the LOPDGDD Law.

II- Summary of the facts:

In the present case, the claimant indicates that, at the time of signing the contract for in which the Real Estate Agency was in charge of managing the purchase of a property, not signed or was informed at any time about the management of their personal data.

III- About the infraction committed due to the lack of information about the treatment of personal data:

Recital 61) of the RGPD establishes that:

“Interested parties must be provided with information on the treatment of their personal data at the time it is obtained from them or, if obtained from another source, within a reasonable time, depending on the circumstances of the case. If the personal data can be legitimately communicated to another addressee, the interested party must be informed at the time the communicated to the recipient for the first time. The data controller that plans to process the data for a purpose other than that for which they were collected must provide the data subject, prior to such further processing, information about that other purpose and other necessary information (...).”

In this sense, article 12.1 of the RGPD establishes, on the requirements that must be comply with the information that the data controller must make available to interested parties, the following:

"1. The person responsible for the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and plain language, in particular any information directed specifically a child. The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by interested party, the information may be provided verbally provided that it is prove the identity of the interested party by other means (...).”

And for its part, article 13 of the RGPD, details the information that must be provided to the interested when the data is collected directly from him, establishing the

Next:

“1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the moment in which these are obtained,

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a) the identity and contact details of the person in charge and, where appropriate, of their representative; b) the contact details of the data protection officer, in your case; c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment; d) when the treatment is based on the article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third; e) the recipients or categories of recipients of the data personal, if any; f) if applicable, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to the adequate or appropriate guarantees and the means to obtain a copy of them or to the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person in charge of the treatment will facilitate the interested party, at the moment in which the personal data, the following information necessary to guarantee a fair and transparent data processing: a) the period during which the will keep the personal data or, when it is not possible, the criteria used to determine this term; b) the existence of the right to request the data controller access to personal data relating to the interested, and its rectification or deletion, or the limitation of its treatment, or to

oppose the treatment, as well as the right to data portability; c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal; d) the right to file a claim with a control authority; e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data; f) the existence of automated decisions, including the profiling, referred to in article 22, sections 1 and 4, and, when least in such cases, meaningful information about the applied logic, as well as the significance and anticipated consequences of such processing for the interested".

Therefore, in the case at hand, the lack of information on the treatment of personal data when obtaining the personal data of the clients supposes, for part of the person in charge of the treatment, the violation of article 13 of the RGPD.

In this sense, article 72.1.h) of the LOPDGDD, considers it very serious, for of prescription, "the omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the RGPD"

This infraction may be sanctioned according to the provisions of article 83.5.b) of the RGPD, where it is established that: "Infringements of the following provisions are shall be sanctioned, in accordance with section 2, with administrative fines of 20,000,000 EUR maximum or, in the case of a company, an amount equivalent to 4% as a maximum of the overall annual total turnover of the financial year

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above, opting for the highest amount: a) the rights of the interested parties to tenor of articles 12 to 22”.

The balance of the circumstances contemplated, with respect to the infractions committed, by violating the provisions of its article 13 of the RGPD, allows to set a fine of 5,000 euros (five thousand euros).

In accordance with the precepts indicated, in order to set the amount of the penalty to impose, it is considered appropriate to graduate the sanction in accordance with the following aggravating criteria established in article 76 of the LOPDGDD:

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The link between the activity of the offender and the performance of treatment of personal data, (section b), considering the level of implementation of the entity and the activity it develops, in which data is involved of thousands of interested parties, having as its main activity, the purchase and sale of furniture and real estate, promotion of buildings, works and reforms. financial broker. consultancy, administration, services to companies, appraisal and appraisal, all these services related to property real estate. This circumstance determines a higher degree of demand and professionalism and, consequently, the responsibility of the entity in relation to the processing of personal data.

IV.- Regarding the corrective measures to be implemented:

Article 58.2. of the RGPD, establishes, on the corrective powers that each control authority may require the offender, among whom is, in his

section d): "(...) order the person responsible or in charge of processing that the processing operations comply with the provisions of this Regulation, when appropriate, in a certain way and within a specified period".

Therefore, it is appropriate to impose, in accordance with the provisions of the cited article, the following corrective action:

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Implement a mechanism in the management of the services performed by the Real estate where customers are informed of the treatment that will be carried out your personal data, in accordance with the provisions of article 13 of the GDPR.

In view of the foregoing, the following is issued:

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RESOLVE

FIRST: IMPOSE RODALI GESTIÓN INMOBILIARIA, S.L. with CIF:

B45811353, a fine of 5,000 euros (five thousand euros), for violation of article 13 of the RGPD, by not conveniently informing customers of the purposes for which allocate the personal data obtained from them.

SECOND: ORDER the entity RODALI GESTIÓN INMOBILIARIA, S.L. with CIF:

B45811353, which, within a month from the notification of this resolution, take the necessary measures to implement a mechanism in the management of the services performed where clients are informed of the treatment that www.aepd.es

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will be made of your personal data, in accordance with the provisions of article 13 of the GDPR.

THIRD: NOTIFY this resolution to the entity RODALI GESTIÓN INMOBILIARIA, S.L. and inform the complaining party of the result.

Warn the sanctioned party that the sanction imposed must be made effective once it is enforce this resolution, in accordance with the provisions of article 98.1.b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad- Public Administrations (LPACAP), within the voluntary payment period indicated in article 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, me- upon deposit in the restricted account N° ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank, S.A. or otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment It will be valid until the 5th of the second following month or immediately after.

In accordance with the provisions of article 82 of Law 62/2003, of December 30, bre, of fiscal, administrative and social order measures, this Resolution is will make public, once it has been notified to the interested parties. The publication is made will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the established in articles 112 and 123 of the LPACAP, the interested parties may interpose have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification
fication of this resolution, or, directly contentious-administrative appeal before the
Contentious-administrative Chamber of the National High Court, in accordance with the provisions
placed in article 25 and in section 5 of the fourth additional provision of the Law
29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the
two months from the day following the notification of this act, according to
the provisions of article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,
may provisionally suspend the firm resolution in administrative proceedings if the interested party
do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing
addressed to the Spanish Agency for Data Protection, presenting it through the Re-
Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to
through any of the other registers provided for in art. 16.4 of the aforementioned Law
39/2015, of October 1. You must also transfer to the Agency the documentation
that proves the effective filing of the contentious-administrative appeal. If the
Agency was not aware of the filing of the contentious-administrative appeal

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tive within two months from the day following the notification of this
resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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