

□ Procedure No.: PS/00145/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on to the following:

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated June 5, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against SERVDEBT ESPAÑA, S.L. with NIF B86329752 (in

later, the claimed one).

The reasons on which the claim is based are that for 9 months they have sent emails claiming a debt that is not yours.

Date on which the claimed events took place: 01/08/2020, 03/05/2020 and 04/07/2020.

Relevant documentation provided by the claimant:

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Copy of emails sent on dates 01/08/2020, 03/05/2020, and 04/07/2020 from the sender address ***EMAIL.1 to the recipient ***EMAIL.2 with the subject "File(s) nº(s) ***FILE.1" addressed to B.B.B. and where states that a debt is claimed that it maintains with GUARDIAN SEGUR S.A.I.

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Copy of emails sent on dates 03/05/2020, and 04/07/2020 from the sender address ***EMAIL.2 to the recipient address ***EMAIL.1 with the subject "File(s) nº(s) ***FILE.1" where it is stated that they are sending mail to an address that does not correspond.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant and the facts and documents of which he has had knowledge of this Agency, the Subdirector General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

In addition, the following extremes are noted:

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On 12/10/2020, a request for information is sent to SERVDEBT SPAIN, S.L. The notification is delivered on 12/14/2020. not received reply.

On 03/08/2021, it is verified in ***URL.1 that the company GUARDIAN SEGUR S.A. its sole partner is REEFTOWN INVESTMENTS S.L. with a 100% participation and that GUARDIAN SEGUR S.A. (LUXEMBOURG) participates with 100% in the shareholding of REEFTOWN INVESTMENTS S.L. and is your unique partner.

On 03/15/2021, REEFTOWN INVESTMENTS S.L. sends to this Agency the following information and statements:

That SERVDEBT ESPAÑA, S.L. is mandated by power issued by

1.

REEFTOWN INVESTMENTS S.L. to deal with debts.

A copy of the power of attorney dated May 31, 2019 issued by

REEFTOWN INVESTMENTS S.L. in favor of SERVDEBT ESPAÑA, S.L. where it consists:

"[...]

PROVISIONS

FIRST.- The company "REEFFOWN INVESTMENTS S.L" confers power to

favor of the company "SERVDEBT ESPAÑA S.L.", domiciled in Madrid

(Spain), Avenida de la Transición Española 24, 5th Floor (Parque

Omega Business — Gamma Building) — 28108 Alcobendas, registered in the

Mercantile Registry of Madrid, provided with Tax Identification Number B-

86329752, (hereinafter, "The Representative"), so that in the name and

representation of the Principal may exercise the following powers,

including the power to delegate, with respect to credit management on behalf of

the Company (the "Loans"), some of which may be guaranteed

with mortgages on real estate located in Spain, following the terms

defined in the assignment contract of a loan portfolio entered into between

Guardian Segur, S.A. and Ibercaja Banco, S.A. as of June 16, 2015, and for

practice the following acts in relation to each of the credits,

in accordance with the terms and conditions of the Servicing Agreement executed

between Guardian Segur S.A and ServDebt España, S.L., on April 15, 2019:

a) notify the current ownership of the Loans to debtors, guarantors,

insurers and any other that could be responsible for compliance with

the obligations that affect them;

[...]"

A debt certificate issued by IBERCAJA BANCO, S.A. is provided. with date

“[...

That on 03/06/1997, it was formalized* Savings account, number

***ACCOUNT.1 (“the Credit”) with the following parties:

Holder / Borrower 1 ***CIF.2, C.C.C.

Holder / Borrower 2 ***CIF.1, B.B.B.

CERTIFIES

I.- That the Credit was assigned by the Bank, as assignor, to Reeftown

Investments SL Unipersonal, as assignee, in accordance with the assignment agreement

of credit dated June 16, 2015, elevated to public by virtue of the

two.

September 15, 2015 where it is stated:

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deed granted before the Madrid Notary, Ms. D.D.D. dated June 30

of 2015, with number ***NUMBER.1 of its protocol.

II.- That the amount of the debit under the Credit as of February 28, 2015 was

€219.68.”

3.

That the data they have about B.B.B. are:

Name: B.B.B.;

CIF: ***CIF.1;

Postal address: ***ADDRESS.1, MUNICIPALITY.1 (***TOWN.1)

That the origin of the data they have referred to B.B.B. was the transfer of

Four.

loans and were disclosed to them by the Seller.

5.

That the claimant is not the holder of the debt.

That the email address ***EMAIL.2 was provided by the other

6.

debt holder. That the second owner sent this email on 12/17/2019.

On 03/24/2021, REEFTOWN INVESTMENTS S.L. sends to this Agency the

following information and statements:

That "Regarding this portfolio, Reeftown Investments, S.L. assumes the

1.

position of Data Controller (as defined in the General Regulations of

Data Protection), on behalf of the Assignee, Guardian Segur, S.A.I."

That in relation to the accreditation of the origin of the data ***EMAIL.2 provides a copy

two.

email dated 12/17/2019, as stated, sent from the

address ***EMAIL.2 and where the text is exclusively:

***CIF.2 and B.B.B. ID

"Dear Sirs,

We attach to this email communication about the claim to the BANK OF

SPAIN of commissions unduly charged by IBERCAJA

BANK in the name of C.C.C. ID

***CIF.1-

CURRENTLY DECEASED- in account they had in that bank and

commissions unduly charged from the card that increased in other

so many commissions that were unduly added up to an amount
unfair that IBERCAJA BANCO claimed and that at the time it was not
we were in complete agreement.

Please review documentation.

Sincerely

C.C.C.

DNI ***CIF.2"

That in relation to the information on data protection provided to the

3.

interested in collecting the data ***EMAIL.2 declares:

a.

That the manager of the loans SERVDEBT ESPAÑA, S.L. sent in
representation of the Assignee, the notification, dated July 12,
2019 to debt holders.

It does not provide a copy of the notification.

b.

That in that notification it reported regarding the personal data:

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- "IBERCAJA BANCO, S.A. has provided the new holder with his personal data
related to the assigned credit, precise for its management and enforceability (name,
surnames, NIF/CIF, DNI/NIE, address, bank details and others relevant to
the intended purpose). Data that will be treated with strict confidentiality

and with the exclusive purpose of managing and exercising the rights and actions derived from the assigned credit that is held against you, and for this purpose you may send you communications and letters";

- "For the fulfillment of the contract for the provision of services, our client GUARDIAN SEGUR S.A.I. You have provided us with your personal data relating to the credit, necessary for its management and enforceability. Your personal data will be processed in accordance with the General Data Protection Regulation ("GDPR") - Regulation (EU) 2016/679 of the European Parliament and of the Council European Union, of April 27, 2016 - and with Royal Decree 1720/2007, of April 21, December, which approves the Regulations for the development of the Law Organic 15/1999, of December 13, in force in those articles that do not contradict the RGPD.", and finally

- "In compliance with current regulations, you may exercise your rights to access and information, rectification, withdrawal, limitation, opposition, opposition to treatment, through the e-mail: ***EMAIL.3."

THIRD: On April 8, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Once the initiation agreement has been notified, the entity claimed, by means of a letter of dated April 26, 2021, made, in summary, the following allegations:

"Servdebt, on its website, and without prejudice to the information transmitted in the written communications, has all the necessary information so that the holders of the data can exercise their rights (***URL.2). It is verified that there is an overdraft in the bank account (which is duly justified by the certificate of debt issued by the previous creditor Ibercaja Banco, S.A. on the 15th of September 2015, which is attached as Document #2).

The following persons are responsible for this debt: C.C.C. (CIF ***CIF.2)

and B.B.B. (CIF ***CIF.1).

To verify the legitimacy, Document No. 2 is attached to the power of attorney issued by reeftown. On July 12, 2019, a letter was sent to each of the debtors reporting the date on which the assignment of loans occurred and the new manager of the debts (according to communications attached as Documents No. 3 and 4). Of In this way, it is confirmed that the data that Servdebt has, result from the transfer of loans and were facilitated by his client. In the same communications informed the debtors that their personal data was provided by Guardian Segur, S.A.I. (current creditor) to Servdebt, also reporting how the holders of the data could exercise their rights. The postal address provided to Servdebt was the same for both the debtors (as verified by the analysis of both the communications sent) C/ ***DIRECTORY.1, ***MUNICIPALITY.1 (***TOWN.1).

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In its management actions, Servdebt, through the action of its collaborators, established various contacts with debtors.

On July 23, 2019, we received a call from B.B.B., who indicated that the debt did not exist since the Bank of Spain would issue a decision in this regard, it was requested that we Submit all documentation in this regard. The truth is that he did not send us the aforementioned documentation.

After months it was possible to contact the other debtor, C.C.C., who indicated exactly the same relative to the decision of the Bank of Spain. It was not

Documentation sent.

On December 13, 2019, A.A.A. (the claimant) who indicated that he was the responsible for dealing with the matter of his father and his brother. Since A.A.A. it is a third party was asked to send us the respective authorization. But the referred authorization was not sent.

On December 17, finally, the decision of the Bank of Spain was sent, by e-mail. The aforementioned email was sent from the email address ***EMAIL.2 (according to Document No. 5 attached).

As can be verified, the email was signed by C.C.C. In addition, the content of the email agrees with the telephone conversations previously held with B.B.B. and with C.C.C., since A.A.A. no information was transmitted.

On December 26, the referred email was answered informing C.C.C. that decision sent did not exonerate from the debt, which is why the contacts were would maintain with the aim of settling the debt amicably. In this sequence, three emails were forwarded to this email address (on the 8th of January 2020, March 5, 2020 and April 7, 2020) according to Document #6 attached.

To the emails of March 5 and April 7, 2020 they responded (in the same address ***EMAIL.2) the company “***EMPRESA.1” and not A.A.A., the claimant – according to Documents No. 7 and 8 that are attached.

Therefore, the person who sent us the email from the electronic address ***EMAIL.2 was C.C.C. and the person who signed the responses was “***EMPRESA.1”. reason why it is false what is alleged by the claimant that Servdebt "for 9 months they send him emails claiming a debt that is not yours.

The first email was sent on December 26 in response to the email from C.C.C. on December 17 and then three emails were sent, the last being

on April 7, that is, three and a half months later.

On the other hand, in the emails sent it was never mentioned that the debt was his, or whatever, Servdebt never demanded payment, nor C.C.C. nor to the company "***EMPRESA.1".

PROVEN FACTS

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1º On June 5, 2020, the claimant states to this Agency that since nine months ago they send emails to the address ***EMAIL.2 with the subject "File(s) nº(s) ***FILE.1" addressed to B.B.B. and claiming one debt that is not due.

2º It is recorded that, on December 13, 2019, the claimant requested information about the debt stating that he was responsible for it being a matter of his father and his brother's.

3º It is verified that on December 17, 2019, it was sent from the address of email of the claimant ***EMAIL.2 the decision of the Bank of Spain, on the debt, to the claimed:

"We attach to this email communication about the claim to the BANK OF SPAIN of commissions unduly charged by IBERCAJA BANCO to name of

C.C.C. DNI ***CIF.2 AND B.B.B. DNI ***CIF.1 -CURRENTLY DECEASED-"

4º On the other hand, it is known that both the claimant, the company, as the debtors and also in the emails sent by the claimed, there is no evidence that it was declared that the debt belonged to the claimant, or to the

company "**** COMPANY.1".

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

Law 39/2015, of Common Administrative Procedure of the Administrations (LPACAP) establishes in its article 89.1 that "the termination of the procedure, with filing of the actions, without the need to formulate of the proposed resolution, when in the instruction of the procedure it is stated

I declare that any of the following circumstances exist:

a) The non-existence of the facts that could constitute the infraction".

III

The defendant is accused of committing an infraction for violation of Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which that the processing of third party data is considered lawful:

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"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

(...)

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679."

IV

In the case at hand, after a detailed study of the documents

operating in this proceeding, and the claims of the respondent, we must state that it is verified that the debt is in the name of the brother and the father of the claimant, now deceased, that the claimant requested information about the debt and that was submitted from the email address ***EMAIL.2 the Bank's decision of Spain, on the debt.

It is clear that they have the same address, both postal and electronic.

debtors, the company and the claimant.

Therefore, the file of this sanctioning procedure proceeds.

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Having seen the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE sanctioning procedure PS/00207/2020, instructed to

SERVDEBT SPAIN, S.L. with NIF B86329752, for having proven that he used a reasonable diligence.

SECOND: NOTIFY this resolution SERVDEBT ESPAÑA, S.L. with NIF B86329752.

In accordance with the provisions of article 50 of the LOPDPGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly
contentious-administrative appeal before the Contentious-Administrative Chamber of the
National Court, in accordance with the provisions of article 25 and section 5 of
the fourth additional provision of Law 29/1998, of July 13, regulating the
Contentious-administrative jurisdiction, within a period of two months from the
day following the notification of this act, as provided in article 46.1 of the
aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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