

No. Fax: 11.17.001.007.050 September 12, 2019 Mr. XXXXXXXXXX Auctioneer Complaint/complaint about personal data breach DECISION Facts: On February 25, 2019, a complaint was received at the Office of the Commissioner for Personal Data Protection from Ms. XXXXXX, who had complains that without her consent AstroBank Ltd had given her her personal phone number and personal details to you, where you used them by calling her at around 19:00 on 20/2/19 to ask her for information about a property property she has, because as you mentioned you had found a buyer for her property. The complainant stated that according to your words, you had taken her information from the Bank. 2. Based on the complaint, we requested AstroBank Ltd by letter dated March 1, 2019, to report to us whether the said complaint was justified or not. 3. AstroBank Ltd, through its Data Protection Officer, on April 4, 2019, replied to us that after an internal investigation carried out on the matter, it became clear that in the context of the sale of the complainant and in accordance with the provisions of article 44G(2)(b) of the Transfer and Mortgage of Real Estate Law of 1965 (9/1965), published the details of the property to be sold (including the address). They stated that the information you mentioned to the complainant was collected from your own sources and not from them. 4. On further clarifications we requested, AstroBank Ltd provided us with the relevant file which contained the details of the property under sale, such as the registration number, sheet/plan/lot number, Municipality, location, type, area, registered interest, reserve price, building/cover factor, of the auction and the auctioneer who would conduct the specific auction. We were also referred to Bulletin A, as it had been posted and published as the Law stipulates in two daily newspapers of Pancyriot circulation, but also on the official website of the Ministry of Interior at the link [http://www.moi.gov.cy/moi/auctions.nsf/6404823D6B4A3D59C225839300444EC4/\\$file/4.3.2019%20-%20LARNAKA%20-%20APARTMENT.pdf](http://www.moi.gov.cy/moi/auctions.nsf/6404823D6B4A3D59C225839300444EC4/$file/4.3.2019%20-%20LARNAKA%20-%20APARTMENT.pdf). The above information in no zone, number of floors, date of holding the property 1 case did not contain your name as the designated auctioneer for the specific auction, nor the name and/or phone number of the complainant. 5. Based on this information, we contacted you initially by phone and then in writing, informing you of the specific complaint/complaint. In other words, we informed you that there was an allegation that you used Ms. XXXXXX's personal data, namely her phone number, by calling her to ask her for information about real estate that she had for auction, stating that you had found a buyer for her. 6. You answered us verbally that in the relevant auction sheet there was a photo showing the apartment building from the outside, the municipality, parish etc. and you happen to live right in the apartment building next door. When you got there you saw the names on the letter boxes, called 11892, gave the complainant's name and they told you what her contact number is. You then spoke to the complainant, who reacted strongly. You also stated that

the complainant falsely stated that the Bank had provided you with the information. You added that because of your profession, the bank gives you the details of the auction, which in any case are also mentioned in Form A, but not the owner's phone number. 7. We informed the complainant about your positions, who informed us that her name is not written on the mailbox of the apartment building. The given name is her husband's, and she herself uses her patronymic, not her husband's, which was not known. 8. By our electronic letter dated On May 14, 2019 and a reminder on June 10, 2019, we informed you about the response the complainant had given us regarding finding her name and consequently her phone number. We also asked for clarifications, after studying the Transfer and Mortgage of Real Estate Law of 1965 (9/1965) we found that there is a specific procedure regarding the sale of mortgaged properties by auction, which must be followed and does not provide for the intervention of third party auctioneers in order to find a buyer , before the start of the auction process (see article 44G). Furthermore, from the information provided to us by AstroBank, you were not the auctioneer appointed for this particular auction. Therefore, based on Article 6 par. 4 of GDPR 2016/679, it appears that you have used the complainant's personal data for another purpose for which they should be used, without her prior consent, making the processing of her personal data on your part is illegal. We have asked you to give us your own positions/opinions which refer to the legal basis that may exist that gave you the right to search, locate the phone number of the complainant and use it to approach her to find a buyer, i.e. outside of the already defined frames. July 5, 2019 was set as the final time limit for response. 9. Before the expiration of the above time limit, we also contacted you 2 by phone, in order to confirm the receipt of our letters (initial and reminder). You confirmed to us that you had received them and that you would study them. We told you that you should reply to this particular letter, but despite all that, until July 10, 2019, we had not received any reply. 10. On July 10, 2019, you were notified of the prima facie decision of the Data Protection Commissioner, according to which it was concluded that there was a prima facie violation on your part of Article 6 of GDPR 2016/679 after you had used the personal data of the complainant, without your prior consent and for purposes other than those for which they were collected, and we have invited you to state why you believe that you should not be subject to any remedial action or administrative sanction within 2 weeks of the date of receipt of the decision. 11. On July 23, 2019, you responded in two letters, primarily making new allegations and positions regarding the facts surrounding this case, rather than stating the reasons why you believe you should not be subject to any remedial action or administrative penalty. . 12. No new facts are presented at this stage. You were given the opportunity to respond to the Complainant's allegations by letter sent to you on May 14, 2019 and by reminder on June 10, 2019. You failed to respond to

both of our letters within the time allowed, resulting in the issuance of prima facie decision on July 10, 2019. Despite all this and bearing in mind article 43 of the General Principles of the Administrative Law Law of 1999 (L. 158(I)/1999), what you mention in your letter dated July 23, 2019 will be taken into account for the purposes of issuing this decision. 13. In your first letter dated July 23, 2019 Please mention that as a registered auctioneer you receive daily emails from all banks with future auctions and in particular Bulletin A which contains all the information in detail about the property to be auctioned. 13.1 Regarding the Complainant's claim (that you told her that the Bank had provided you with your phone number), you reply that you never mentioned such a thing, but neither did she ask you where you found the phone number, due to the fact that the Complainant as you say, she was asking and answering by herself monologuing and insulting both you and the Bank. 13.2 The Bank posted Slip A with the Complainant's name on it. Due to this error on the part of the Bank, you learned the name of the Complainant. Also knowing the property and its location, you visited the block of flats and using the truecaller app you searched the Complainant's name and got her phone. Then you say, you called her to ask her if she is the owner of 3 particular property since the truecaller application showed you only one option, that is the Complainant's name and phone number. 13.3 You mentioned that in Form A as you had attached, we could make out all the information as well as the address of the property. You also mentioned that the addresses of the real estates are written on all the Forms A sent to you by the Banks. However, you did not have such a document attached on your behalf, but instead it was attached by the Bank, with the Complainant's name not appearing anywhere. In no case did you justify the legal basis that may have allowed you to communicate with the Complainant, in accordance with Article 6 of the Regulation. 13.4 Along with this letter, you also attached three files named "attached file: Auction - XXXXXX (1).pdf", "attached file: Auction - XXXXXX.pdf" and "attached file: Auction - XXXXXX (1).pdf". 13.5 With a second, supplementary letter dated July 23, 2019, you have attached a "Screenshot_20190723- 111458_Truecaller.jpgscreenshot", which is a screenshot of the truecaller app with the name XXXXXX, phone number and time 11:14. Legal aspect 14. One of the conditions of Article 6 par. 1 of GDPR 2016/679 requires that for a processing of personal data to be lawful, there must be the consent of the data subject for the use of his personal data for one or more aims. When this consent does not exist, then in accordance with Article 6 par. 4 of GDPR 2016/679, the data controller should take into account certain elements in order to be able to justify processing on his part of the personal data of the data subject . Specifically, Article 6 par. 4 of GDPR 2016/679 states. file name with "4. When the processing for a purpose other than that for which the personal data have been collected is not based on the consent of the data subject or on

Union law or the law of a Member State which is a necessary and proportionate measure in a democratic society to ensure the purposes referred to in Article 23 paragraph 1, the controller, in order to ascertain whether the processing for another purpose is compatible with the purpose for which the personal data is initially collected, takes into account, among others: a) any relationship between the purposes for which the personal data have been collected and the purposes of the intended further processing, b) the context in which the personal data were collected, in particular with regard to the relationship between the data subjects and the controller, 4 c) the nature of the personal data, in particular for the special categories of data personal data processed, in accordance with Article 9, or whether personal data related to criminal convictions and offenses are processed, in accordance with Article 10, d) the possible consequences of the intended further processing for the data subjects , e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.' 14.1 Recital (50) explains that: "The processing of personal data for purposes other than those for which the personal data were originally collected should only be permitted if the processing is compatible with the purposes for which the personal data were originally collected. In this case, a legal basis separate from that which allowed the collection of the personal data is not required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of public authority delegated to the controller, Union or Member State law may determine and determine the tasks and purposes for which for further processing to be considered compatible and lawful. Further processing for archiving purposes in the public interest, for the purposes of scientific or historical research or for statistical purposes should be considered a compatible lawful act of processing. The legal basis provided by Union or Member State law for the processing of personal data may also constitute the legal basis for further processing. In order to ascertain whether the purpose of the further processing is compatible with the purpose of the initial collection of the personal data, the controller, if it meets all the requirements for the lawfulness of the initial processing, should take into account, among others: any links between of these purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of the data subject based on his relationship with the controller regarding their further use; the nature of the personal data character; the consequences of the intended further processing for the data subjects; and the existence of appropriate safeguards for both the initial and intended further processing operations. 15. And according to Article 4 par. 1 of GDPR 2016/679, an individual's personal data refers to: "any information concerning an identified or identifiable natural person ("data subject"); the identifiable natural person is that of whose identity can be ascertained, directly or indirectly, in particular by

reference to an identifier such as a name, an identity number, location data, an online identifier or one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question" 16. Article 4 par. 7 of GDPR 2016/679 defines as data controller: 5 "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determine the purposes and manner of processing personal data; when the purposes and manner of such processing are determined by Union law or the law of a Member State, the controller or the specific criteria for his appointment may be provided for by Union law or the law of a Member State'. the publication that accompanied Rationale 17. The telephone number of each data subject is his personal data since it is information that can lead to the identification of its owner. You as the controller determined the purposes and manner of processing both the Complainant's phone number and name, which you located and used to contact her about the auction and the property being sold, without her consent. There was the claim of the Complainant that you had told her that the bank which was selling the apartment had given you the details. You have denied this claim. The Bank, from an internal investigation it carried out, stated that you had found the details of the Complainant from your own sources. In support of her positions she shared with us the relevant documents of the auction, including Bulletin A, none of which mention the Complainant's personal data, nor do you appear to have had anything to do with this auction. Your original claim to us was that on going to where the property is located, you saw the Complainant's name on the mailbox, dialed 11892, gave her name and got her phone number. Your second, later claim was that you found out the Complainant's name from the A-Sheet that the Bank had published, put her name into the truecaller app and it got her phone number. The two claims contradict each other as well as the tangible evidence we have before us, since the Statement A communicated to us by the Bank does not mention the name of the Complainant. Although you had mentioned that you had attached Form A to us, however it had not been attached. The Complainant has stated that the mailbox has her husband's name on it and not hers. She herself uses her father's surname and not her husband's, which was not known. The screenshot you attached to us from the truecaller app, all it proves is that there is the Complainant's name and phone number listed and nothing else. That doesn't mean you could use them to contact her without her prior consent, for the specific purpose you called her. Additionally, someone would have to know either the Complainant's name or her phone number to be able to locate her from this particular application. Therefore, in some other way of yours, which you obviously do not want to mention and without the consent of the Complainant, you gained access to her personal data (name and phone number) and used them for a purpose other than that for which had been given to the

Bank.

18. The only lawful purpose for which the

personal data of the Complainant, was in the context of the procedure n

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which is followed for the sale of mortgaged properties in accordance with the

Transfer and Mortgage of Real Estate Law of 1965 (9/1965). THE

this process in no case provides for intervention by third parties

auctioneers (as long as you were not the one appointed for this particular

auctioneer), before the start of the auction process

(see article 44G).

19. We asked you to give us your own positions/opinions which to

refer to the legal basis that may exist and gave you the right to

search, locate the Complainant's phone number and

use to approach her to find a buyer if you haven't

her consent for this purpose. You have not given any answer about

this.

20. A prima facie judgment was issued, which concluded that there was

violation by you of the provisions of Article 6 of GDPR 2016/679,

since you had identified and used her personal data

Complaining, for a purpose other than that for which they had been collected, without

you have secured her consent. Nor had you satisfied any of them

conditions of Article 6 par. 4 of GDPR 2016/679, presenting some

other legal basis that may have allowed you to use its data

complaining. We have called you under the powers conferred on me by the

Articles 58 and 83 of Regulation (EU) 2016/679, article 24(b) of the Law

125(I)/2018 as you tell us for what reasons you think that you should not

any corrective action or administrative sanction imposed. Not even in this one point you have given an answer, except you have come back with a quote new events, which in any case not to deprive you of the right hearing and regardless of the stage at which they have been put, they have been taken into account.

Conclusion

21. Based on all the above and after judging that there is a violation on the part of of Article 6 par. 1 subsection (a) of GDPR 2016/679 and in accordance with powers granted to me by articles 58 and 83 of GDPR 2016/679 to examination and imposition of a corrective measure or administrative fine, bearing in mind the provisions of article 43 on the General Principles of Administrative Law Law of 1999 but also all the incidents related to the present case, as well as the following mitigating (a - b) and aggravating (c - g) factors, namely:

(a) Apart from the nuisance you caused to the Complainant, it was not caused no actual damage from your action as far as the auction is concerned.

(b) The personal data accessed by you relates to name and telephone number of the Complainant.

(c) Detected by your own means and without her consent Complaining about her personal details in order to approach her about the property under sale, outside the defined frameworks of the Transfer and Real Estate Mortgage Law of 1965 (9/1965) and in violation of GDPR 2016/679.

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(d) As a registered auctioneer, you should have been aware of the provisions of Transfer and Mortgage of Immovables Law of 1965 (9/1965) and to comply with them.

(e) You made various contradictory allegations that manifest fraud and attempt to avoid your responsibilities.

(g) You did not respond to our letters within the specified time frames which we had mentioned to you, something that can even be taken as a partial denial for cooperation with the Supervisory Authority.

I believe that the appropriate measure to be taken is that of enforcement administrative fine.

22. Considering the above, I impose an administrative fine of €2000 on you.

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character

E.X.