



MEMORANDUM

FOR : The Regional Executive Director
1515 DENR By the Bay Bldg.
Roxas Blvd.Brgy. 888, Ermita, Manila

ATT'N : Chief, Legal Division

FROM : The OIC, PENR Officer
Odiongan, Romblon

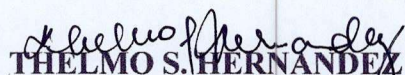
SUBJECT : **INDORSEMENT OF LETTER REQUEST FROM MR. OSCAR M. AMANTE, JR TO OBTAIN A COPY OF THE "AUDIO RECORD" REGARDING THE ALTERNATIVE DISPUTE RESOLUTION (ADR) CONDUCTED LAST SEPTEMBER 30, 2019 BETWEEN THE HRS. OF GIL MAGRAMO AND BIENVENIDO MAGRAMO.**

Referred herein is the letter of Mr. Oscar M. Amante, Jr. requesting a copy of the "audio record" of the ADR proceedings of September 30, 2019.

The conduct of ADR between the Hrs. of Gil Magramo, represented by Aniana Magramo Tullao, Gil Magramo, Jr., Rey Magramo, and Christine Magramo Selosa, and the Hrs of Bienvenido Magramo, represented by Mr. Manuel Amante, Jr., was to amicably settle the dispute regarding the ownership of Lot 4155 Cad 341-D situated at Brgy. Bunsuran, Ferrol, Romblon and was recorded (audio only) for personal reference of the ADR Officer. However, during the proceedings, Mr. Manuel Amante, Jr. lost consciousness after airing his side and was immediately rushed to Romblon Provincial Hospital (RPH). There were neither heated arguments nor violent reactions that could have triggered the condition of Mr. Manuel Amante, Jr. The participants were reminded that they will not be allowed to participate if ever they are not physically fit. Unfortunately, the ADR Officer was not informed and the proceedings proceeded as scheduled, thus, the untimely demise of Mr. Manuel Amante, Jr.

The family of Mr. Manuel Amante, Jr. had been asking this office for a copy of the audio record, however, citing confidentiality we turned down their request. Subsequently, the family of Mr. Manuel Amante, Jr. again asked this office for a copy of the audio record citing Section 11 of RA 9285. Since this matter warrants a legal know-how, this office would like to refer and ask your Office for a piece of legal advice on how to proceed.

For and in the absence of OIC, PENR Officer


THELMO S. HERNANDEZ
Chief, Management Services Division

C.c

MR. OSCAR M. AMANTE, JR.
Blk 63 Lot 9 Longinos St.
Novaliches, Greater Lagro,



Document Routing Slip

Document Number: 2023-100799 **Date Endocded:** 04-Jan-2023

Sender: Oscar M. Amante, Jr.- Requestee (Signed by Patrick M. Amante)

Address: Block 63, Lot 9 Longinos St., Lagro Subdivision, Novaliches, Quezon City, NCR 1118

Subject: Letter dated December 15, 2022 re: Request for a copy of the \"audio record\" regarding the September 30 ADR proceedings

Addressee: Arnoldo A. Blaza, Jr., OIC-PENRO

Attachment(s): Letter; 2 pages

Urgent: Yes; received by Lei-Ane

Date Received: 04-Jan-2023

ROUTING AND ACTION INFORMATION

FROM	DATE RECEIVED	FOR/TO	DATE RELEASED	ACCEPTANCE REMARKS/ACTION REQUIRED/TAKEN REMARKS/STATUS
OP	2023-01-04	PO-MSD	2023-01-04	Date: 2023-01-04 Status: OUT From: leianegracemgan Message: Forwarded to In-Charge of Office, Thelmo S. Hernandez, Chief, MSD, for his info. and instructions. TY
	JAN 04 2023 04 JAN 2023	TSD Maluh RPS	JAN 04 2023	for appropriate action pls. Thanks, for review/evaluation and proper appropriate action. pls. th 1/4/23 pls. acknowledge and draft memo/endorsement to R.O.; Attn. Legal Div. for their Advice cc the requestee. Thanks
		St. Eric 1/11/23	1-5-2023 8:35 am	

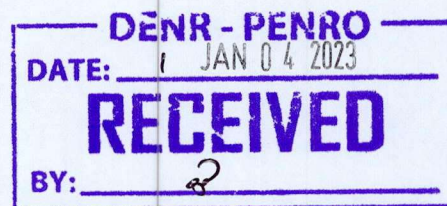
Block 63, Lot 9 Longinos St., Lagro Subdivision,
Novaliches, Quezon City, NCR 1118
December 15, 2022

ARNOLDO A. BLAZA, JR.

OIC, PENR Officer

PENR Office

Formilleza St., Brgy. Tabinogdagat, Odiongan, Romblon



Sir:

Thank you very much for your Letter dated November 1, 2022 responding on my request for a copy of the **"audio record"** regarding the **"September 30 proceedings"**. I am very much pleased that you admitted in no uncertain terms in your response letter the existence of such **audio record of September 30 proceedings**, albeit, you just cannot provide me a copy thereof because of the **"confidentiality"** being accorded by **Section 36 of the DENR Administrative Order No. 2016-30 [Guidelines in the Conduct of Alternative Dispute Resolution (ADR)]**.

While I do understand Sir that an ADR proceeding is indeed protected by **"confidentiality rule"** under **"Section 36 of said Administrative Order"** – thus, precluding you from issuing a copy of such **"audio record"** of the **"September 30 proceeding"** in my favor, however, such **"confidentiality rule"** is **NOT ABSOLUTE** as **"Section 11 of RA 9285,"** otherwise known as **"The ADR Law,"** provides exceptions thereto, to wit:

"SEC. 11. Exceptions to privilege. –

(a) There is no privilege against disclosure under Section 9 if mediation communication is:

(1) In an agreement evidenced by a record authenticated by all the parties to the agreement;

(2) Available to the public or that is made during a session of mediation which is open, or is required by law to be open to the public;

(3) A threat or a statement of a plan to inflict bodily injury or commit a crime of violence;

(4) Intentionally used to plan a crime, attempt to commit, or commit a crime, or conceal an ongoing crime or criminal activity;

(5) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a public agency is protecting the interest of individual protected by law; but this exception does not apply where a child protection matter is referred to mediation by a court or public agency participants in child protection mediation;

(6) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator in a proceeding; or

(7) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party participant, or representative of a party based on conduct occurring during a mediation.

... " [Emphasis supplied].

Moreover, Section 10 of the same law provides:

"SEC. 10. Waiver of Confidentiality. – x x x

x x x

A person who discloses confidential information shall be precluded from asserting the privilege under Section 9 of this Chapter to bar disclosure of the rest of the information necessary to complete understanding of the previously disclosed information. x x x". [Emphasis supplied].

Based on the foregoing provisions of law, the "**confidentiality privilege**" of an ADR proceeding does not apply when the "**information**" being sought is intended to **prove or disprove a perceived abuse, neglect, abandonment, or exploitation in a proceeding**, i.e., why your Mediation Officer has allowed the presence and the active participation of **Atty. Rolly F. Roldan** and **Christine Magramo Selosa** despite of the fact that they are not among those parties who were been summoned by your good Office to attend said "**September 30 proceeding**"?

Additionally, your good Office has already provided us a copy of the "**minutes of the September 30 proceeding**", although the information contained therein are quite incomplete because the rest of which are contained in the "**audio record**" of such proceeding. Under Section 10 of RA 9285, if a person has already provide a part of an information pertaining to an ADR proceeding, he is deemed by law to have waived the "**confidentiality privilege**" as to the rest of such undisclosed information. Such provision of ADR law fittingly applies in this case. Thus, the privilege finds no application anymore as your good Office has already made a disclosure of the part of the information being sought.

Penultimately, it would not be amiss to note in this case that "**Section 36 of your DENR Administrative Order No. 2016-30**" conflicts with "**Sections 10 and 11 of RA 9285**". Under "**paragraph 3, Article 7 of RA 386 or The Civil Code of the Philippines**", any "**administrative orders that runs counter to the laws or the Constitution are considered invalid**". Truly, the water cannot rise beyond its own source. Thus, a mere administrative order cannot be invoked to defeat the express provisions of a law.

Ultimately, there is a presumption in law that "**if an evidence is deliberately suppressed, the same would be adverse of presented**". If there is nothing to hide, then, there can no reason at all to suppress such requested "**audio record**".

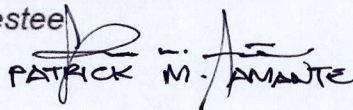
In the name of truth that always sets us free, I am still hoping for your favorable response on this concern of mine. Thank you very much Sir.

Very truly yours,

FR:

OSCAR M. AMANTE JR.

Requestee


PATRICK M. AMANTE