

## **S/N 5/2022 – Attempting to Facilitate Resale Transaction in Breach of Rules and Regulations, Misrepresentation in Resale Application and Failure to Procure Sellers’ Signatures on Agreement**

### **Facts of Case**

The Respondent was engaged by the sellers of a Housing and Development Board (“HDB”) flat (the “Flat”) to sell the Flat – the sellers had purchased a Built-to-Order (“BTO”) HDB flat that would be ready in June 2020. The sellers were acquainted with the Respondent since 2013 and trusted her to handle transactions relating to the Flat on their behalf. The expected sale price was \$ 820,000.

In or around January 2020, the Respondent was contacted by Salesperson X, who represented the Buyer. The Buyer viewed the Flat twice. At the time, the Flat had two rooms rented out, with each tenant paying monthly rent of \$ 750. The tenancies would end in October 2020 and 2021.

The sellers agreed to sell the Flat to the Buyer at \$ 758,000, with a two-month temporary Extension of Stay (“EOS”) to the sellers post-completion, without cost. It was also agreed that the sellers would pay the Buyer \$ 500 if they required a third month of EOS in the Flat. Further, it was agreed that the Buyer would take over the existing tenancies, and the rental income would go to the Buyer post-completion, together with the security deposits for the tenancies. This, if materialised, would be in breach of HDB’s rules and regulations, which required the sellers to give vacant possession of the Flat to the Buyer upon completion of the resale transaction (i.e. without any existing tenancies).

The Respondent met the Buyer and Salesperson X in late January 2020. During the meeting, the Respondent provided the issued Option to Purchase (“OTP”), and also recorded the projected timeline of the resale transaction and the agreement between parties in relation to the sale of the Flat on a handwritten note (the “Note”). The Note was signed by the Buyer, but did not state her particulars or name. The Respondent was aware that the Note was intended to record the agreement between the sellers and Buyer in relation to the sale of the Flat, but did not proceed to procure the sellers’ signatures on the Note at any point in time.

In late February 2020, the sellers met the Buyer and Salesperson X at the Flat to exercise the OTP. The sellers also signed an exclusive estate agency agreement with the Respondent’s estate agent, agreeing to pay a commission of 1.5% of the transacted price of the Flat (i.e. \$ 12,165.90).

Thereafter, Salesperson X submitted the Request to Process Sale & Purchase of Resale Flat (the “Resale Application”) to the HDB on the Buyer’s behalf. Based on the parties’ agreement, Salesperson X indicated in the Resale Application that the Buyer was agreeable to the sellers’ request for an EOS. The Respondent also attempted to submit the Resale Application on the sellers’ behalf through the HDB’s online portal but was unable to do so, as an error message was automatically generated. The error message appeared to relate to the EOS. The Respondent called the HDB and was informed that the sellers did not qualify for an EOS as the BTO flat they had purchased was an uncompleted property. The Respondent went to the HDB’s website and verified the information provided by the HDB officer.

To proceed with the submission of the sellers’ Resale Application, the Respondent asked Salesperson X to amend the Buyer’s Resale Application to state that the Buyer was not agreeable to the sellers’

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request for an EOS. The Respondent told Salesperson X that the EOS would be a “*private arrangement*” between the sellers and the Buyer instead, and parties would submit the Resale Applications to the HDB without indicating that there was an EOS. At that time, Salesperson X had just joined the industry and the sale of the Flat was his first HDB resale transaction. Salesperson X complied with the Respondent’s request and proceeded to call the HDB to amend the Buyer’s Resale Application. The Respondent then proceeded to submit the seller’s Resale Application by similarly indicating that there was no EOS requested by the sellers. On this basis, the Respondent was able to successfully submit the sellers’ Resale Application to the HDB.

The sellers and the Buyer were subsequently informed by the HDB that the completion of the resale transaction would be delayed to 7 August 2020. The sellers were also informed by HDB that the collection of keys for their new BTO flat would be delayed till January 2021. The sellers enquired about the possibility of extending the EOS beyond three months, but the Buyer was not agreeable.

In the interim, the existing tenants in the Flat also left Singapore and terminated their tenancies – the remaining tenancy was terminated in July 2020, and the sellers informed the Respondent about this a few days before completion. The Buyer learnt about the termination of the remaining tenancy on the day of completion and was unhappy with the situation as it meant a total loss of monthly rental, and she felt that the sellers had not been transparent with her. The Buyer initially sought a sum of \$ 5,000 as compensation from the sellers, but later learnt that the Respondent would be paying the compensation for the sellers and felt that something was amiss. The Buyer went to look up the HDB’s website on the conditions for an EOS and felt that the Respondent had not followed the right procedures and might be trying to cover up her misconduct. The Buyer proceeded to reject any compensation and asked the sellers to move out of the Flat by 23 August 2020 instead.

The Respondent conveyed the Buyer’s decision to the sellers, who questioned her on the EOS that the Buyer had agreed to. The Respondent conveyed the Buyer’s position that the Note was invalid as an agreement between the parties, and further told the sellers that there was nothing much she could do in the situation, save to help them search for alternative accommodation and reduce their commission by \$ 2,000.

The sellers had initially planned to stay in the Flat for three months post-completion. Instead, they had to move out of the Flat and look for a place to stay at short notice within two weeks. The sellers had to rent a bedroom from the neighbours as alternative accommodation and arrange for some of their belongings to be moved into storage. The approximate financial impact on the sellers was about \$ 3,200, based on the difference between: (i) what the sellers would have paid for a three-month EOS in the Flat (\$ 500); and (ii) the amount of rent and storage/moving costs incurred from 24 August 2020 to 7 November 2020 (\$ 3,700).

The sellers vacated the Flat by 23 August 2020. The Sellers also paid an eventual sum of \$ 9,165.90 as commission to the Respondent’s estate agent for the sale, after a deduction of \$ 3,000 by the Respondent’s estate agent. The Respondent received \$ 7,709.63 as her share of commission for the resale transaction. There is no other known restitution made to the sellers.

## **Charges**

The Respondent faced the following 4 charges:

### **Charge 1**

For not performing her work in accordance with applicable laws, by attempting to facilitate the sale of the Flat with two tenancies, in breach of the applicable laws, regulations, rules and procedures that apply to resale transactions involving HDB flats, in breach of paragraph 4(1) read with 4(2)(e) of the Code of Ethics and Professional Client Care (the “Code”).

### **Charge 2 (Proceeded)**

For not performing her work in accordance with applicable laws, by attempting to facilitate the sale of the Flat with an EOS when the sellers did not qualify for an EOS, in breach of the applicable laws, regulations, rules and procedures that apply to resale transactions involving HDB flats, in breach of paragraph 4(1) read with 4(2)(e) of the Code.

### **Charge 3**

For failing to act honestly, fairly and/or in a reasonable manner towards the HDB when facilitating the sale of the Flat, by misrepresenting to the HDB in the sellers’ Resale Application that the sellers were not requesting an EOS after completion, despite knowing that the sellers had agreed with the Buyer for an EOS, and despite being informed by the HDB that the sellers were ineligible for an EOS, in breach of paragraph 6(3) read with 6(4)(c) of the Code.

### **Charge 4**

For failing to ensure that all agreements concerning financial obligations and commitments in respect of any transaction are in writing, by failing to procure the sellers’ signatures on an agreement between the sellers and the Buyer in relation to the sale of the Flat, in breach of paragraph 9(1) read with 9(2)(a) of the Code.

## **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to 1 charge (i.e. Charge 2), while the remaining 3 charges (i.e. Charges 1, 3 and 4) were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“DC”) noted that there were a number of aggravating factors. The Respondent had knowingly and deceptively facilitated a breach of the HDB’s terms and conditions for an EOS and sought to actively circumvent and evade the same. The Respondent had also presented false information to the HDB in the sellers’ resale application, and colluded with Salesperson X to present false information to push the resale transaction through. The Respondent’s misconduct caused adverse financial loss to her clients (i.e. the sellers), as well as immense stress and

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inconvenience. Notwithstanding the reduction of \$ 3,000, the sellers still had to pay a substantial sum of \$ 9,165.90 as commission.

The DC noted that the Respondent had 15 years of experience and should have been conversant with the rules and regulations in place; the Respondent should not have acted with deception and dishonesty to circumvent the HDB's terms and conditions. Such misconduct would bring disrepute to the real estate agency industry and cast it in a negative light. The DC also considered the three charges to be taken into consideration in sentencing and noted a pattern of deception/dishonesty/recklessness on the Respondent's part.

The DC was of the view that there was a need to send a strong message to the real estate agency industry and salespersons to refrain from encouraging or condoning sellers and buyers to enter into private arrangements that would circumvent the HDB's rules and regulations. This shows a lack of professionalism on the part of salespersons, and also makes a mockery of the relevant rules and regulations in place. Such private arrangements will also unlikely be upheld at law as an element of illegality is involved.

The DC also considered that the Respondent had a lack of antecedents, pleaded guilty at the earliest opportunity, and rendered full cooperation to the authorities.

Accordingly, the DC imposed the following financial penalty and disciplinary order on the Respondent:

**Charge 1:** A financial penalty of \$ 5,000 and a suspension of 5 months.

Fixed costs of \$ 2,000 was also imposed on the Respondent.