

S/N 21/2021 – Facilitating Lease of Entire HDB Flat during Minimum Occupation Period

Facts of Case

Sometime in 2017, the Respondent was engaged by the owners of a Housing and Development Board (“HDB”) flat (the “Flat”) to rent out the whole Flat. The Owners acquired the Flat in 2016 and did not live in the Flat from July 2017 onwards.

The Respondent was aware that the Flat was still within the Minimum Occupation Period (“MOP”) of 5 years, and that HDB’s consent was required for the Owners to sublet the whole Flat. The Respondent accompanied one of the Owners to an HDB branch office to seek HDB’s approval to sublet the whole Flat within the MOP, but the application was rejected. The Owners then appealed against HDB’s decision (the “Appeal”).

Despite knowing that the Appeal was still pending, the Respondent nevertheless proceeded to facilitate the signing of a tenancy agreement in July 2017 for a lease of the Flat to Tenant A for a period of 12 months. The Respondent did not follow up on the status of the Appeal or confirm that the Appeal was successful prior to and during the facilitation of the lease transaction.

The Respondent received a sum of \$850 as commission from the Owners for facilitating the lease, but he did not submit the details of this transaction to his estate agent, as he knew that his estate agent would take notice of and object to the insufficient documentation accompanying the submission, including the Owners’ failure to obtain HDB’s consent to sublet the whole Flat.

In early August 2017, HDB sent an email to the Owners to inform them that while the Appeal was being considered, they must not sign or enter into any tenancy agreement with any tenants until approval was received from HDB. In late August 2017, HDB informed the Owners that the Appeal was unsuccessful.

Sometime in 2019, the Respondent was again engaged by the Owners to rent out the whole Flat. The Respondent was aware that the Flat was still within its MOP and that HDB’s prior written consent was required for the Owners to rent out the whole Flat. The Respondent prepared an email for the Owners to seek HDB’s consent, but the email was not sent by the Owners.

The Respondent did not verify if the Owners had sent the email or follow up with the Owners on whether HDB had consented to the subletting. Nonetheless, the Respondent proceeded to facilitate the signing of a tenancy agreement for the Owners to lease the Flat to Tenant B for a period of 8 months.

Similarly, the Respondent did not submit the details of the transaction to his estate agent, as he knew that his estate agent would take notice of and object to the insufficient documentation accompanying the submission, including the Owners’ failure to obtain HDB’s consent to sublet the whole Flat.

In May 2019, the HDB conducted an unscheduled inspection of the Flat and discovered that it had been sublet without HDB’s prior written consent. The tenancy agreement was terminated shortly after the inspection and HDB eventually imposed a financial penalty of \$23,500 on the Owners in lieu of a compulsory acquisition of the Flat for their infringement of the Housing and Development Act (Cap. 129) (“HDA”).

Note: This case was referred to a CEA Disciplinary Committee (DC) before the operationalisation of the Estate Agents (Amendment) Act 2020 on 30 July 2021. With the Act amendments, the maximum financial penalty for disciplinary breaches has been raised and a DC can impose a higher financial penalty on errant offenders.

Charges

The Respondent faced the following 2 charges:

Charge 1

Failing to conduct his work with due diligence and care, by facilitating the rental of the Flat without taking all reasonable precautions and doing all reasonable acts to ensure that the Owners did not infringe Section 56(1)(h) of the HDA, *viz*, ensuring that the Owners obtained the requisite prior written consent from HDB to rent out the whole Flat within the MOP, prior to the Owners entering into a tenancy agreement with Tenant A, in breach of paragraph 5(1) read with paragraph 5(2)(b) of the Code of Ethics and Professional Client Care (the “Code”).

Charge 2 (Proceeded)

Failing to conduct his work with due diligence and care, by facilitating the rental of the Flat without taking all reasonable precautions and doing all reasonable acts to ensure that the Owners did not infringe Section 56(1)(h) of the HDA, *viz*, ensuring that the Owners obtained the requisite prior written consent from HDB to rent out the whole Flat within the MOP, prior to the Owners entering into a tenancy agreement with Tenant B, in breach of paragraph 5(1) read with paragraph 5(2)(b) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2, with Charge 1 taken into consideration for the purposes of sentencing.

In sentencing, the Disciplinary Committee (the “DC”) noted that the Respondent was fully aware that HDB had rejected the Owner’s application to rent out the whole Flat during the MOP and that the Appeal was still pending. Further, the Respondent knew that approval from HDB to rent out the whole Flat was on a case-by-case basis and therefore took a risk when he decided to proceed with facilitating the transactions. The DC was also of the view that the Respondent’s act of not reporting his estate agency work in relation to the Flat to his estate agent indicated that he intended to hide the fact that he had engaged in such work.

The DC also considered the Respondent’s apparent genuine remorse, his lack of antecedents, and his otherwise exemplary record as a salesperson.

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

Charge 2: A financial penalty of \$3,500 and a suspension of 8 weeks.

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