Council for Estate Agencies

Note: This case was referred to a CEA Disciplinary Committee (DC) after 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.

S/N 6/2023 – Failing to Advise Clients that 50% of Cash Proceeds from Sale of HDB Flat would be Applied towards Next HDB Property Purchase

Facts of Case

Sometime in February 2021, the Respondent met the owners (the "**Owners**") of a Housing and Development Board ("**HDB**") flat (the "**Property**") to enquire if they were interested to sell the Property. At the meeting, the Owners informed the Respondent that they had purchased the Property with a HDB housing loan. They also informed the Respondent that they wished to use the cash proceeds of the sale to purchase a 5-room resale HDB flat with a second HDB housing loan. They also planned to use the cash proceeds to pay off personal debts amounting to around $30,000 to $40,000 and renovate their next HDB flat.

The Respondent informed the Owners that they would receive cash proceeds of around $45,516 if the Property was sold at $490,000. The Respondent did not advise the Owners that 50% of the cash proceeds from the sale of the Property would have to be applied towards the purchase of their next HDB flat if they financed the purchase with a HDB housing loan (the "**50% Rule**").

The Owners initially decided not to sell the Property because of their outstanding personal debts. However, the Respondent informed the Owners that the Property could be sold at a higher price of $520,000 to $530,000. In late March 2021, the Owners engaged the Respondent to sell the Property at $500,000. They once again informed the Respondent that they would be taking a second HDB housing loan to purchase their next HDB flat, and the Respondent informed the Owners that they would receive cash proceeds of around $55,000 if they sold the Property at $500,000. The Respondent, again, did not inform the Owners about the 50% Rule.

In mid-May 2021, the Respondent informed the Owners that they received an offer of $520,000 for the Property, and the Owners would receive cash proceeds of $75,000 based on the selling price. The Respondent did not inform the Owners about the 50% Rule. Relying on the Respondent's representation that they would receive cash proceeds of $75,000, the Owners agreed to sell the Property and the Option to Purchase was exercised by the buyers (the "**Buyers**") on 21 May 2021.

Pleased with the higher selling price of $520,000 obtained against their asking price, the Owners also agreed to the Respondent's proposition to pay an additional sum of $3,760 as commission, in addition to the original commission of $10,015.20.

On 24 May 2021, the Respondent informed the Owners, for the first time, about the 50% Rule. Based on the Respondent's calculations as of 24 May 2021, the cash proceeds required to be set aside by the Owners amounted to around $44,541. The Owners asked the Respondent to enquire with the Buyers if they would agree not to proceed with the purchase of the Property and accept a return of the option fees paid. However, the Buyers were unwilling to abort the purchase and completion took place in late August 2021.

As a result of having lesser cash proceeds, the Owners had to obtain an unsecured personal loan of $22,000 from a licensed moneylender to fund the renovation of their next HDB flat. With interest, the total sum payable by the Owners for the loan was $29,680.50.

While the Respondent waived the additional commission of $3,760 sought, he still collected and retained a sum of $10,015.20 as his original share of the commission for facilitating the transaction.

Charge

The Respondent faced the following charge:

> **Charge**
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> For failing to conduct his work with due diligence and care, as the salesperson representing the Owners of the Property, by failing to advise them about the 50% Rule, in breach of paragraph 5(1) of the Code of Ethics and Professional Client Care.

Outcome

The Respondent initially claimed trial to the Charge but pleaded guilty nearly 5 months after disciplinary proceedings commenced.

In sentencing, the Disciplinary Committee ("**DC**") noted that at the time of the misconduct, the Respondent was an experienced salesperson with more than 12 years of experience. The Respondent had multiple opportunities to advise his clients about the 50% Rule but failed to do so, despite his personal knowledge about the Owners' financial circumstances. The Respondent only informed them about the 50% Rule after the sale of the Property was agreed upon, which caused much anxiety and frustration to the Owners.

The DC was also of the view that the Respondent lacked contrition given that he proceeded to collect his full contractual commission from the Owners. The Respondent also failed to plead guilty at an early opportunity.

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

> **Charge**: A financial penalty of $10,000 and a suspension of 6 months.

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

Appeal

The Respondent filed an appeal to the Appeals Board against the DC's decision on sentencing and sought a lower sentence for the convicted charge.

The Appeals Board partially allowed the appeal and reduced the sentence to a financial penalty of $8,000 and a suspension of 5 months and 2 weeks.

In arriving at its decision, the Appeals Board noted that as an experienced salesperson, the Respondent should be held to higher expectations, and the Respondent himself in fact admitted that the 50% Rule had been in place since he started work as a salesperson. The Appeals Board also took into account that the Owners suffered actual pecuniary loss, being the difference between the cash proceeds they thought they would receive and what they in fact received, which amounted to a sum of about $30,459 (being about 6% of the sale price).

The Appeals Board further noted that the 50% Rule affected a substantial number of HDB transactions, and a deterrent sentence should be imposed to deter salespersons from neglecting to advise on the applicable rules, and to ensure that salespersons undertake the relevant research to update themselves on the applicable rules.

On balance, the Appeals Board was of the view that a financial penalty of $10,000 would be somewhat excessive and the suspension should be reduced slightly, and considered a financial penalty of $8,000 and a suspension of 5 months and 2 weeks to be more appropriate.