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.

S/N 2/2020 – Failure to Accurately Calculate Expected Cash Proceeds from Sale of Client's Flat

Facts of Case

On or around 19 January 2018, the Respondent met the owners (collectively, the "**Sellers**") of a Housing and Development Board ("**HDB**") flat (the "**Property**") to have a discussion on the sale of the Property. At the meeting, the Respondent erroneously calculated that the Sellers would receive cash proceeds of around $35,585.46 from the sale of the Property based on an estimated resale price of $535,000. The figures used in the computation were provided to the Respondent by the Sellers during the discussion.

The Respondent also helped one of the Sellers, R (who was more than 55 years old), to calculate the estimated amount of excess Central Provident Fund ("**CPF**") savings that he would be able to withdraw from his CPF retirement account after deducting the applicable CPF minimum sum, following the sale of the Property and the expected refund into his CPF account. The calculation written down on a separate piece of paper showed a possible cash withdrawal of $40,9771.51 from the sale of the Property.

On this basis, at the end of the meeting, the Sellers appointed the Respondent as their salesperson to assist them in the sale of the Property, and also entered into an exclusive Estate Agency Agreement with the Respondent's estate agent. Based on the Respondent's calculations at the meeting, the Sellers agreed to a sale price of $535,000 for the Property, and to pay a commission of 2% of the sale price, plus GST.

On or around 21 March 2018, the Sellers granted a couple (collectively, the "**Buyers**") an Option to Purchase the Property at $535,000 (the "**OTP**"). The Buyers exercised the OTP on or around 10 April 2018.

R subsequently informed the Respondent that the estimated completion date provided by HDB was 21 June 2018. In response, the Respondent told R that he would get the cash proceeds from the sale of the Property by way of cheque. The Sellers subsequently went to the offices of their appointed conveyancing firm (the "**Firm**") to sign some paperwork for the sale, and were also asked to provide their bank details for the expected cash proceeds.

On or around 14 June 2018, however, the Sellers received a letter from the Firm (the "**Letter**") informing them that there were insufficient sale proceeds to effect a full refund back to the Sellers' CPF accounts and to cover expenses incurred for the sale. The Letter further indicated that there was a shortfall of $17,123.19 that the Sellers had to top up in order to proceed with completion of the sale. Accordingly, the Sellers were requested to prepare cashier's orders for the total sum of $17,123.19 by 21 June 2018.

The Respondent also received a copy of the Letter. At the Respondent's request, R forwarded a photograph of the Respondent's calculations on 19 January 2018. The Respondent then realised that she had miscalculated the Sellers' cash proceeds from the sale of the Property. The Respondent informed R that there was an error in her calculations and the sale of the Property was in fact a negative sale. The correct estimated cash proceeds, based on the figures used by the Respondent on 19 January 2018, should in fact be -$22,414.54. The cash proceeds, based on the figures in the Letter, would be -$2,849.19. In other words, the Sellers would not receive any cash proceeds from the sale of the Property and had to top up in cash to proceed with the completion of the sale of the Property.

R informed the Respondent that the Sellers had no monies to pay for the shortfall upfront that was necessary to complete the sale of the Flat. R suggested that the Respondent pay for the shortfall, since she was responsible for the miscalculation in the first place. The Respondent agreed and paid the shortfall with her own monies, in the total sum of $6,528.38, which was necessary for a smooth completion of the sale of the Property.

Thereafter, the Respondent tried to obtain a return of the monies she had paid for the Sellers, as well as the commission of $11,449 that remained outstanding to her estate agent. The Sellers maintained the position that they had no monies to return/pay the same, as they had sold the Property at a price of $535,000 based on the expectation that they would receive cash proceeds of about $35,585.46 (before deduction of expenses) from the sale. The Sellers did not pay the Respondent the sum of $6,528.38, or the commission of $11,449 to her estate agent – these sums were eventually waived by the Respondent and her estate agent.

Charges

The Respondent faced the following charge:

> **Charge**
>
> For failing to perform her work with due diligence and care, by failing to accurately calculate the expected cash proceeds from the sale of the Property for her clients (i.e. the Sellers), in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge.

In sentencing, the Disciplinary Committee ("**DC**") noted that the Respondent's error pertained to a core aspect of her work as a salesperson. It was very likely that the Sellers had engaged the Respondent and decided to proceed with a sale of the

Property relying on the expectation that they would be receiving cash proceeds from the sale. The consequences were therefore serious.

The DC also noted that the Respondent's failings were not caused by any inadequacies or failings in her knowledge of the law, relevant regulations or practice guidelines. Rather, it was a single, inexplicable careless mistake in calculation. The figures used by the Respondent in her computation were correct, but the Respondent had made a calculation error such that the estimated cash proceeds were erroneous. The DC also accepted that the waiver of claims by the Respondent and her estate agent involved a substantial sum and demonstrated remorse by the Respondent.

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

Charge: A financial penalty of $3,000 and a suspension of 2 months.

Fixed costs of $1,000 was also imposed on the Respondent.