Council for Estate Agencies

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 6/2020 – Failure to Act in a Reasonable Manner Towards the Tenant (who were not her Clients) by Misrepresenting to the Tenant the Floor Area of the Leased Premises

Facts of Case

In or around May 2018, Mr T and Mr Y began searching for a Housing and Development Board ("**HDB**") shophouse for the purposes of setting up a fitness club.

Beginning from mid-2016, the Respondent was the real estate salesperson ("**RES**") marketing a first floor HDB shophouse unit (the "**Unit**") for rent. The Respondent's younger sister ("**Madam S**") and Madam S's husband (collectively referred to as the "**Landlords**") owned the Unit and engaged the Respondent to help them market the Unit for rent.

The Unit was advertised for rent on "*commercialguru.com.sg*" (the "**Website**") in 2015.

From around July 2016 to June 2018, the Unit was rented to an entity for use as a massage parlour (the "**Previous Tenant**"). In or around April 2018, the Previous Tenant informed Madam S that it would not be renewing its lease of the Unit. Madam S then directed the Respondent to advertise the Unit for rent.

At all material times, the Respondent did not take proper steps to ascertain the actual floor area of the Unit. Instead, she had relied on her own visual inspection of the Unit (whilst it was partitioned for use as a massage parlour) to ascertain the total floor area of the Unit.

Notwithstanding this, in or around late April 2018, the Respondent posted an advertisement to rent out the Unit on the Website (the "**Advertisement**"). The Advertisement, amongst other things:

a. contained a Layout Plan (the "**Advertised Layout Plan**");
b. included a description stating, amongst other things, "*[address of the Unit], Retail shop approx. 900 sq.ft*"; and
c. listed the Respondent as the contact agent.

On or around 13 June 2018, Mr Y saw the Advertisement on the Website. On 13 June 2018, Mr Y contacted the Respondent via iMessage, asking if the Unit was still available for rent and if he could view the Unit.

Mr Y also informed the Respondent that the relevant trade was "*[f]itness club*". The Respondent then asked "*Is only about 900 sq. Ft u think enough space*" (the "**13 June 2018 Query**"). Mr Y responded "*Yes enough*", and thereafter arranged a viewing of the Unit with the Respondent.

Mr Y and the Respondent attended a viewing of the Unit on 13 June 2018 on or around 3:30 pm. During the viewing, Mr Y noticed that the Unit was being used as a massage parlour and that the Landlords were not present. Mr Y further noticed that there were many partitions in the Unit, and some of these partitioned rooms were also being used by customers of the Previous Tenant. Mr Y therefore could not make an accurate estimation of the floor area or verify if the estimated area of the Unit indicated in the Respondent's 13 June 2018 Query was true.

After the viewing on 13 June 2018, Mr Y sent a message via iMessage to the Respondent asking for a copy of the Unit's floor plan. Mr Y stated: "*Hi, did u manage to get the floor plan? The one u posted on the website very blur…*".

Mr Y and the Respondent continued their correspondence through WhatsApp messages. On 13 June 2018 and following Mr Y's query in relation to the Unit's floor plan, the Respondent sent a picture of what appeared to be the floor plan of the Unit printed on paper. The picture of this floor plan was unclear and in low resolution. Amongst other details, no measurements could be read.

On 14 June 2018, Mr Y sent a few queries via WhatsApp to the Respondent, one of which read "*can I meet up with u later to confirmed [sic] the floor plan again?*".

In response to Mr Y's queries of 14 June 2018, the Respondent arranged a meeting at 4:30 pm on 14 June 2018.

Both Mr T and Mr Y attended the meeting with the Respondent on 14 June 2018 and viewed the Unit a second time. Mr T likewise observed that there were many partitioned rooms in the Unit and was similarly unable to accurately assess the area of the Unit.

Nevertheless, Mr T and Mr Y expressed interest in renting the Unit, and were in principle agreeable to renting the Unit at the rental rate of S$2,800 per month (as advertised through the Advertisement) on the basis that the Unit was approximately 900 square feet.

Prior to the conclusion of the viewing, Mr T similarly asked the Respondent to send him a clearer copy of the Unit's floor plan.

Between 13 June 2018 and 15 June 2018, the Respondent did not correct or seek to correct the statement, information, and/or representation given to Mr T and Mr Y that the Unit was approximately 900 square feet, as advertised through the Advertisement and as stated in her 13 June 2018 Query. The Respondent also did not send a clear copy of the Unit's floor plan to Mr Y and Mr T.

On the basis of the statement, information, and/or representation provided by the Respondent, Mr T and Mr Y met with the Respondent on 15 June 2018 to execute a

Letter of Intent for the rental of the Unit at the rent of S$2,800 per month ("**LOI**"). During the same meeting, Mr T provided a cheque for S$2,800 to the Respondent as a good faith deposit which would also be treated as an advance payment for the 1st month's rental, in accordance with Clause 4(a) of the LOI.

After executing the LOI, Mr T yet again asked the Respondent to send Mr T and Mr Y a copy of the Unit's floor plan.

The Landlords accepted the LOI on 15 June 2018.

On 22 June 2018, Mr Y informed the Respondent that his and Mr T's fitness club (the "**Fitness Club**") had been registered with the Accounting and Corporate Regulatory Authority ("**ACRA**"), and the Respondent and Mr Y agreed that the tenancy agreement in respect of the Unit should reflect the tenant as being the Fitness Club (the "**Tenant**").

On 23 June 2018, the tenancy agreement in respect of the Unit was executed by the Landlords and the Fitness Club (the "**Tenancy Agreement**"). Amongst other things, the Tenancy Agreement provided that:

a. the term of the lease would be for two years commencing from 21 July 2018;
b. the monthly rent would be S$2,800; and
c. the Tenant was to provide a security deposit of S$5,600.

On 23 June 2018, Mr T also passed the Respondent a cheque for S$5,600, being the security deposit required pursuant to the terms of the Tenancy Agreement.

Between 13 June 2018 and 23 June 2018 and even up to the signing of the Tenancy Agreement, the Respondent did not correct or seek to correct the statement, information, and/or representation given to Mr T and Mr Y that the Unit was approximately 900 square feet, as advertised through the Advertisement and as stated in her 13 June 2018 Query. The Respondent also did not send a clear copy of the Unit's floor plan to Mr T and Mr Y during this period.

On 25 June 2018, Mr Tan again requested via WhatsApp that the Respondent send him a proper floorplan. Amongst other things, Mr T referred to the floor plan which he earlier received from the Respondent, and remarked "*Wording all I can't read*", "*Numbers all can't read*". The Respondent replied "*Mine same. Then must ask landlord goes [sic] and buy again*".

On 26 June 2018, the Respondent sent Mr Y a PDF copy of the Unit's As-Built Drawing dated 25 September 2000 (the "**As-Built Drawing**"). The Respondent remarked: "*Hi [Mr Y] This is the new one the landlord buy again*".

Mr Y forwarded the As-Built Drawing to Mr T who informed the former that based on this document, it was unlikely that the Unit was 900 square feet and was likely only around 600 square feet.

When Mr Y attempted to clarify this with the Respondent via WhatsApp on 26 June 2018, the Respondent replied "*I state is approximate 900 sq ft. In my listing*".

On the same date, Mr Y attempted to clarify with the Respondent what was included in the "*approximate*" floor area of 900 square feet. The Respondent replied stating that she would call him later. The Respondent did not do so.

On 27 June 2018, Mr T sent a WhatsApp message to the Respondent requesting a document that shows the certified square feet of the Unit. The Respondent sent Mr T the same As-Built Drawing, and further stated that the Landlords did not want to reveal the valuation report. The Respondent suggested that Mr T obtain such a report directly from the HDB.

As such, Mr T decided to do his own search. Based on his findings, Mr T understood that it was not possible to buy a valuation report from HDB. Instead, Mr T purchased a copy of the Lease in respect of the Unit from the Singapore Land Authority (the "**Lease**"). The "*Elevation Sketch Showing Strata Lots and House Nos.*" (or the "**Sketch**") which was annexed to the Lease showed that the Unit measured 58 square meters (equivalent to 624 square feet), which was not anywhere close to 900 square feet.

When Mr T confronted the Respondent with this information via WhatsApp on 27 June 2018, the Respondent stated via WhatsApp "*Wow! So the HDB is selling [the Landlords] the wrong size […] maybe both of them don't even know*".

On 28 June 2018, Mr Y informed the Respondent via WhatsApp that Mr T and Mr Y had discussed the matter. They proposed that as she had listed a price of S$3.11 per square foot in the Advertisement, their monthly rental should be reduced to S$1,934.40 based on the Unit's actual area of 624 square feet (i.e. Mr T and Mr Y had proposed a price of S$3.10 per square foot). The Respondent, Mr Tan and Mr Yap then met on the same day, and further negotiations took place during that meeting.

Negotiations on a new rate of rent in respect of the Unit were unsuccessful. Mr T then proceeded to lodge a complaint with Council for Estate Agencies ("**CEA**") against the Respondent the next day on 29 June 2018.

On 27 July 2018, Mr Y sent a WhatsApp message to the Respondent informing her that they had decided not to rent the Unit and requested compensation of S$11,668, comprising:

a. A refund of the security deposit of S$5,600;
b. A refund of the advance rental for the 1st month of S$2,800;
c. A refund of the stamp fees of S$268; and
d. Compensation for legal fees, time spent, and storage space rental of S$3,000.

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.

On or around 6 September 2018, a settlement agreement between the Landlords and the Fitness Club through their respective solicitors was reached and amongst other things, Madam S had to pay the Fitness Club a sum of money (being part of the Fitness Club's claims) in full and final settlement of the Landlords' claims.

Accordingly, the Fitness Club had to find another location to set up their fitness club.

Charges

The Respondent faced the following 3 charges:

Charge 1 (Proceeded)

Failing to act in a reasonable manner towards other persons i.e. the Tenant (who was not her client) when she misrepresented to the Tenant that the floor area of the Unit to be approximately 900 square feet, when in fact, it was 624 square feet when she facilitated her clients' (the Landlords') lease of the Unit to the Tenant for 2 years commencing on 21 July 2018 at the monthly rental of S$2,800, in breach of paragraph 6(3) read with paragraph 6(4)(c) of the Code of Ethics and Professional Client Care ("**CEPCC**").

Charge 2

Failing to conduct her work with due diligence and care when she failed to conduct proper checks to ascertain the floor area of the Unit prior to advertising the Unit for rent, marketing the Unit for rent, and facilitating the closing of the lease of the Unit between her clients the Landlords and the Tenant for 2 years commencing on 21 July 2018 at the monthly rental of S$2,800, in breach of paragraph 5(1) of the CEPCC.

Charge 3

Causing to be made an advertisement containing misleading information of the Unit on the Website stating that the Unit had an area of approximately 900 square feet, when its actual area was in fact 624 square feet, which misled the Tenant into renting the Unit for 2 years commencing on 21 July 2018 at the monthly rental of S$2,800, in breach of paragraph 12(4)(a) of the CEPCC.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1 while Charges 2 and 3 were taken into consideration for the purpose of imposing the penalty for Charge 1 on the Respondent.

Council for Estate Agencies

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.

The Disciplinary Committee ("**DC**") found the Respondent liable for disciplinary action to be taken against her for the disciplinary breach in Charge 1. The DC was of the view that in this case, the Respondent could not simply rely on the Landlords to give her accurate information or believe them wholeheartedly. The Respondent ought to have satisfied herself that she had a reasonable basis to believe the information.

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

Charge 1: A financial penalty of $1,500 and a suspension of 3 months.

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