

S/N 2/2021 – Failure to Advise her Client on the Seller’s Stamp Duty payable in relation to the Sale of the Client’s Property

Facts of Case

In February 2019, M began to market the Property for sale.

The Respondent came across an advertisement put up by M on 99.co for the sale of the Property. The Respondent contacted M through the WhatsApp messaging application and offered to market the Property for M. M then provided the Respondent with the relevant information relating to the Property via WhatsApp.

From March 2019 onwards, the Property had a potential buyer and the Respondent communicated with the Buyer’s Salesperson via WhatsApp (amongst other means) to arrange for the Buyer to view the Property. Thereafter, the Respondent began to negotiate the sale price with the Buyer’s Salesperson.

On March 2019, M and the Respondent agreed via WhatsApp that the commission payable for the sale of the Property would be 2% of the sale price. After further negotiations on 8 April 2019, between M, the Respondent, and the Buyer’s Salesperson, it was agreed that if the Buyer purchased the Property at S\$1,760,000, then the salespersons will share a commission of 2% of the sale price, plus an additional S\$4,000. In other words, if the Property were to be sold at \$1,760,000, M would pay a commission of S\$39,200 (before Goods and Services Tax).

On 9 April 2019, the Buyer’s Salesperson informed the Respondent that the Buyer had agreed to purchase the Property at S\$1,760,000.

On 10 April 2019, the Respondent arranged her first physical meeting with M. At the meeting the Respondent assisted M with his issuance of the OTP to the Buyer in consideration of an option fee of S\$17,600, passed a cheque from the Buyer for the said option fee to M, and signed an “*Estate Agency Agreement for the Sale of Residential Property*” with M.

On 24 April 2019, the OTP was exercised by the Buyer.

As the date of exercise and acceptance to the OTP was 24 April 2019, the Property was disposed of by M before the expiration of four years since the acquisition of the Property on 22 May 2015.

Per the prevailing laws at the time, M was obliged to pay a Seller’s Stamp Duty (SSD) to the Inland Revenue Authority of Singapore (“**IRAS**”), calculated as 4% of the sale price, i.e. S\$70,400. M would not have been liable to pay SSD if he had disposed of the Property on or after 22 May 2019 (i.e. four years after his acquisition of the Property on 22 May 2015).

At all material times between the Respondent's engagement by M up to the exercise of the OTP by the Buyer, the Respondent failed to advise M that he would have to pay a SSD if the Property was sold before the expiration of the four years from the date of his acquisition of the Property on 22 May 2015.

In June 2019, close to two months after the OTP was exercised, the Respondent messaged M via WhatsApp and asked for the very first time whether M knew that he would have to pay a SSD. It was only then that M was made aware that he was liable to pay a SSD. The sale of the Property was subsequently completed sometime in June 2019.

As a result, M paid a SSD of S\$70,400 to IRAS. M had made a request to IRAS for the remission of SSD, but his request was rejected by IRAS.

Around July 2019, in light of the fact that M was not advised he had to pay a SSD, M and the Respondent agreed that the Respondent would receive less commission. The commission paid by M eventually amounted to S\$32,428 (before Goods and Services Tax).

Charge

The Respondent faced the following charge:

Charge

For failing to conduct her work with due diligence, despatch and care under paragraph 5(1) of the Code of Ethics and Professional Client Care, in that, while advising and acting for her client in the sale of his Property, the Respondent failed to advise her client that he would have to pay a Seller's Stamp Duty if the Property was sold before the expiration of four years from the date of his purchase or acquisition of the Property.

Outcome

In sentencing, the Disciplinary Committee ("DC") considered that the Respondent only faced a single charge. There were no other charges which were taken into consideration for purposes of sentencing. The Respondent also pleaded guilty at the earliest available opportunity.

The DC was also of the view that the Respondent was the party who initiated the discussion to reduce the commission payable for the sale of the property. This demonstrated that the Respondent was sincerely remorseful.

The DC imposed a financial penalty of \$2,500 and a suspension period of 2 months. Fixed costs of \$2,000 was also imposed on the Respondent.