

S/N 4/2020 – Failure to Conduct Business and Work with Due Diligence and Care by Miscalculating the Respective Shares of the Sales Proceeds of the Matrimonial Flat for the Divorced Couple

Facts of Case

In or around March 2016, while divorce proceedings between Madam S and Mr L were ongoing, the divorcing couple engaged the Respondent to market their matrimonial flat for sale.

An Interim Judgment in the divorce proceedings dated 13 April 2016 was issued. The Interim Judgment dissolved the marriage between the couple and was later made final without further amendment on 15 July 2016.

Paragraph 3(b) of the Interim Judgment provides:

“[t]hat the [matrimonial flat] be sold in the open market and the net sale proceeds (after deducting the outstanding loan and costs and expenses of sale) are to be divided in the ratio of 70:30 in favour of [Madam S]. Parties are to refund monies into their respective CPF accounts from their own share of the sale proceeds” (emphasis added).

The following steps were therefore required in order to comply with paragraph 3(b) of the Interim Judgment:

- a. First, from the sale price of the matrimonial flat, the outstanding loan, costs, and expenses of sale were to be deducted;
- b. Second, the remaining sale proceeds after such deductions were to be distributed in the proportion of 70% to Madam S and 30% to Mr L; and
- c. Third, from their own respective shares of the remaining sale proceeds, Madam S and Mr L were to then refund monies into their respective Central Provident Fund (“**CPF**”) accounts.

In March 2016, the Respondent began to market the matrimonial flat at the sale price of \$480,000.

On or around 24 April 2016, the Respondent met the couple. During this meeting, the Respondent issued a handwritten calculation (the “**1st Calculation**”) which stated amongst other things as follows:

“Approx

	<u>\$480,000.00</u>
...	
[Mr L]	- \$105 140.00 CPF
[Madam S]	- \$120 809.00
...	
Cost	<u>\$338 631.19</u>
Balance	\$141,368.81”

By the 1st Calculation, the Respondent calculated the expected net sale proceeds from the sale of the matrimonial flat at S\$141,368.81. In arriving at this sum, the Respondent deducted the sums of S\$105,140 and S\$120,809 prior to the calculation of the said net sale proceeds and treated them as part of costs. The sums of S\$105,140 and S\$120,809 were therefore communicated by the Respondent to the couple as sums that they had to refund into their respective CPF accounts.

According to paragraph 3(b) of the Interim Judgment however, these two sums should not have been deducted prior to the calculation of the said net sale proceeds as part of costs, but should have been deducted only from the said net sale proceeds finally received by the couple respectively.

On 3 September 2016, Madam S forwarded the Interim Judgment which was made final on 15 July 2016 to the Respondent via email. However, the Respondent did not correct the 1st Calculation, or inform the couple that the 1st Calculation was incorrect and not in accordance with the Interim Judgment.

On 31 December 2016, the couple jointly issued an option to purchase in respect of the matrimonial flat at the purchase price of S\$461,000 (the “**OTP**”) to a couple Mr A and Ms H (collectively referred to as the “**Buyers**”).

On 9 January 2017, the Respondent issued a second typed calculation (the “**2nd Calculation**”), which stated amongst other things as follows:

“[Matrimonial Flat] Sales Culculation [sic]
...
Sales: \$461,000.00
Minus
CPF + Accrued Interest
\$105,140.00 ([Mr L]) + \$120,809.00 ([Madam S])
...
Estimated Total Cash Balance
\$121,573.95
...
Estimated Calculation

30%=\$36,472.00
70%=\$85,102.00”.

By issuing the 2nd Calculation, the Respondent again showed that she knew, as the Interim Judgment provides, that the net sale proceeds were to be divided in a 70:30 ratio in favour of Madam S. The Respondent calculated 30% of the expected net sale proceeds from the sale of the matrimonial flat at S\$36,472, and 70% of the same at S\$85,102.

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 Respondent therefore indicated that from the sale of the matrimonial flat, Madam S could expect to receive a net sum of S\$85,102, and Mr L could expect to receive a net sum of S\$36,472.

In arriving at these sums, however, the Respondent again erroneously deducted the sums of S\$105,140 and S\$120,809 prior to the calculation of the said net sale proceeds.

The sums of S\$105,140 and S\$120,809 were the respective sums that Mr L and Madam S had to refund into their respective CPF accounts. According to paragraph 3(b) of the Interim Judgment, as before, these two sums should not have been deducted prior to the calculation of the net sale proceeds, but should have been deducted from the said net sale proceeds finally received by Madam S and Mr L respectively.

From 9 January 2017 until on or around 18 January 2017, the Respondent did not correct the 2nd Calculation, or inform Madam S and/or Mr L that the 2nd Calculation was incorrect.

On 11 January 2017, the Buyers exercised the OTP.

On or around 18 January 2017, Mr L asked the Respondent to calculate again his and Madam S's shares of the sale proceeds.

On or around 18 January 2017 (after the OTP was exercised), the Respondent discovered her mistake in not paying attention to paragraph 3(b) of the Interim Judgment, and that the 2nd Calculation was therefore incorrect.

The Respondent therefore issued a third handwritten calculation on or around 18 January 2019 (the "**3rd Calculation**") which stated amongst other things as follows:

“ \$461,000.00	
- \$98,554.42	<i>LOAN (16/1/2017)</i>
- \$1,500.00	<i>Legal Fee for Sales... ..</i>
- \$7 399.05	<i>Agent Comm ...</i>

\$353,546.53

30%	70%
\$106,063.95	\$246,482.58
- CPF	- CPF
\$105,140.00	\$129,922.43
(24/04/2016)	(16/1/2017)

\$923.95

\$117,560.15

...”

This 3rd Calculation sets out the correct calculation of Madam S’s and Mr L’s respective shares of the net sale proceeds which is in accordance with paragraph 3(b) of the Interim Judgment.

When the Respondent presented this 3rd Calculation to Madam S and Mr L, she admitted her mistake and apologised to them. Notwithstanding her admission and apology, Madam S and Mr L were displeased with the Respondent.

In this 3rd Calculation, the Respondent finally correctly indicated that from the sale of the matrimonial flat, Madam S could expect to receive a net sum of S\$117,560.15 (instead of the S\$85,102 set out in the 2nd Calculation), and Mr L could expect to receive a net sum of S\$923.95 (instead of the S\$36,472 set out in the 2nd Calculation).

On or around 23 February 2017, Mr L remained displeased with the Respondent because he had expected to receive S\$36,472 from the sale of the matrimonial flat based on the incorrect 2nd Calculation, but instead based on the correct 3rd Calculation, he could only expect to receive around S\$923.95 (a difference of S\$35,548.05). As such, he told Madam S that he was not willing to complete the sale of the matrimonial flat.

To placate Mr L and to convince Mr L to complete the sale of the Clementi Flat, the Respondent advised Madam S *inter alia* to amend paragraph 3(b) of the Interim Judgment so that Mr L could receive the net sale proceeds which he initially expected to receive. This necessarily meant that the net sale proceeds which Madam S could have expected to receive in accordance with the original terms of the Interim Judgment would have to be correspondingly (and considerably) reduced.

Following discussions among Madam S, Mr L, and/or the Respondent which took place between February 2017 and March 2017, Madam S took out a Court application on or around 23 March 2017 to amend the wording of the Interim Judgment so that paragraph 3(b) of the Interim Judgment would provide, amongst other things:

“3b(i) That the [matrimonial flat] be sold in the open market. From the sale proceeds, it shall be applied to redeem the outstanding mortgage loan (if any), the necessary refunds of parties’ CPF monies utilized for the purchase with accrued interest, less costs and expenses of the sale, and the balance sale proceeds are to be divided between the Plaintiff and the Defendant in the ratio of 70:30 [sic] favour of the Plaintiff” (emphasis added).

On 27 March 2017, Madam S’s application to amend the wording of the Interim Judgment was granted.

On 18 May 2017, the sale of the matrimonial flat was completed. Mr L received around S\$37,000, Madam S received around S\$80,000, and the Respondent was paid around S\$7,000 as commission.

Madam S was not pleased with the Respondent and laid a complaint against her with the CEA.

Charges

The Respondent faced the following charge:

Charge 1

Miscalculating her clients' (Madam S's and Mr L's) respective shares of their expected net sale proceeds from the sale of their matrimonial flat in a manner that was not compliant with paragraph 3(b) of an Interim Judgment dated 13 April 2016 that stemmed from her clients' divorce proceedings, in breach 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. The DC found the Respondent liable for disciplinary action to be taken against her for the disciplinary breach in the Charge but was of the view that the cause of the financial distress suffered by Madam S was not the Respondent's wrong advice.

Having considered CEA's Sentencing Submissions and the Respondent's mitigation plea, the DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 1: A financial penalty of \$ 2,000 and a suspension of 2 months.

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