

S/N 5/2020 – Failure to Conduct Work with Due Diligence and Care by Preparing a Letter of Intent for a Sub-lease of a HDB Commercial Unit that was in Contravention of HDB Policy

Facts of Case

At all material times, one Mr L was a director and majority shareholder of a company (the “**Company**”). In June 2017, the Company had renewed its lease of a HDB commercial unit (the “**Property**”). The terms of the lease were pursuant to HDB’s Standard Terms and Condition for Renewal (the “**Main Lease**”).

The Main Lease contained, *inter alia*, a term that unless prior written consent of the HDB had been obtained:

- (a) the Company was prohibited from subletting with the actual or legal possession of the Property or any part thereof;
- (b) the Company was prohibited from entering into any agreement whether verbal or written with any person where the effect of the said agreement would be a *de facto* subletting, assignment, licensing or parting with legal or physical possession of the entire Property or any part thereof to that person; and
- (c) the Company was prohibited from effecting any change in the mode of the business, or substantial change in the composition of partners or in the shareholding of the Company. (For the purposes of this provision, if the shareholders of the Company as at the commencement of the tenancy and/or their next-of-kin retains less than 51% shares in the Company, this shall be deemed to be a substantial change in the composition of shareholding of the Company.)

Further, the HDB’s prevailing policy (“**HDB Policy**”) at the time as set out on the HDB website (www.hdb.gov.sg) also stated that tenants of commercial premises could only rent out up to 50% of the trading area.

At all material times, the Respondent was aware that it was impermissible to sublet the entire area of the Property, with only a maximum of 50% allowable space for rent and that, pursuant to the HDB Policy and the terms of the Main Lease, prior consent from the HDB was necessary for any sub-lease (collectively the “**HDB Restrictions**”).

In October 2018, Mr L, on behalf of the Company, engaged the Respondent to assist to either (a) sublet 50% of the area of the Property, or (b) find a “business partner” to utilise the entire Property to operate their business for a monthly payment of \$3,000 to the Company, where this “business partner” would register themselves as a director and/or minority shareholder (i.e. up to 49%) of the Company. It was agreed by Mr L that the Respondent would receive \$4,500 in commission if the Respondent successfully secured a deal for him.

Thereafter, the Respondent posted an online advertisement (the “**Advertisement**”) for the lease of the entire Property. The Advertisement stated, without qualification, that the Property was available immediately for lease at a monthly rent of \$3,000, with a floor area of 139.35 square meters. The requested monthly rental sum and floor area stated in the Advertisement pertained to the entire area of the Property. The Advertisement thus represented that the entire area of the Property was available for rent, contrary to the HDB Restrictions. At all material times before posting the Advertisement, the Respondent did not ascertain if the HDB had given its prior consent for the Property to be sublet in the manner as requested for by Mr L, despite being aware of the HDB Restrictions.

In late October 2018, one Mr S saw the Advertisement and contacted the Respondent to arrange for a viewing of the Property. Mr S informed the Respondent that he was looking to rent a place to start his own business.

Thereafter, the Respondent and Mr S exchanged a series of WhatsApp messages wherein the Respondent informed Mr S that the landlord had applied to HDB to sublet the entire Property, and that according to the landlord, the HDB “*seems fine*” with the subletting. In fact, at no point did Mr L inform the Respondent that he had sent any application to HDB to sublet the entire Property. In fact, no such application existed at the time.

Over the course of the WhatsApp exchanges, the Respondent also put forth Mr L’s offer for the tenant to enter into a shareholding arrangement, whereby Mr S would hold 49% of the Company and Mr S would set up his business under the Company. However, Mr S was not agreeable to the proposed shareholding arrangement. Mr S had also proposed to set up a subsidiary company to circumvent the HDB Restrictions in order to hide the fact that the lease would in fact be an entire sub-letting of the Property. However, his proposal was also not proceeded with.

In early November 2018, Mr S informed the Respondent that he intended to take up the lease and requested for the Respondent to draft a letter of intent. The Respondent thus drafted a letter of intent (the “**Letter of Intent**”) on the basis that Mr L and Mr S intended to enter into a lease in respect of the entire area of the Property, and the clauses within the Letter of Intent were consistent with that of a lease for the entire Property.

During a meeting between the Respondent, Mr S and Mr L, the Respondent procured the signatures of Mr S and Mr L on the Letter of Intent. In accordance with a clause within the Letter of Intent, Mr S paid to Mr L a deposit in the sum of \$3,000.

Subsequently, Mr S was informed by a HDB officer that he was not allowed to lease the entire area of the Property as a sub-tenant of a HDB commercial unit. Mr S then called the Respondent to convey what the HDB officer had told him and requested for a refund of the deposit. Mr S did not receive a refund of the deposit.

The Respondent did not receive any commission for this matter.

Charges

The Respondent faced the following 3 charges:

Charge 1

For causing an advertisement to be made that contains a representation that is misleading, by advertising the Property as available for sub-lease in its entirety, when in fact subletting the entire Property was prohibited by the HDB Restrictions, in contravention of paragraph 12(4)(a) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2

For failing to act in a reasonable manner towards Mr S, by representing to him that Mr L had applied to HDB for the sublet of the entire Property and that HDB “*seems fine*” with the application when in fact no such application was made and no such response from the HDB was given, thereby misrepresenting a relevant fact to Mr S, in contravention of paragraph 6(3) read with 6(4) of the Code.

Charge 3 (Proceeded)

For failing to conduct his work with due diligence and care, by preparing a Letter of Intent for the sub-lease of the entire area of the Property and procuring signatures from Mr S and Mr L, to the Letter of Intent, when a sub-lease of the entire Property was in contravention of the terms of the HDB Restrictions, in contravention of paragraph 5(1) of the Code.

Outcome

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

In sentencing, the Disciplinary Committee (“**DC**”) noted that Mr S did not fall within the definition of a “vulnerable client” as he possessed a high education level, and was both business and financially savvy enough to set up his own company with his own resources. The DC further noted that it was apparent that Mr S was aware of the HDB Restrictions and was even willing to set up a subsidiary company to circumvent the HDB Restrictions and was prepared to hide from the HDB the fact that the entire area of the Property would be sublet.

The DC considered the Respondent’s full cooperation with the authorities and his lack of antecedents as relevant mitigating factors.

However, the DC rejected the Respondent's plea for leniency in consideration of his severe drop in income due to the measures introduced by the Government following the COVID-19 pandemic. The DC cited that the personal circumstances of a respondent could not generally be a strong mitigating factor, and in any event, everyone was affected by the COVID-19 pandemic and thus it could not be a mitigating factor in the Respondent's favour.

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

Charge 3: A financial penalty of \$2,500 and a suspension of 8 weeks.

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