

## **S/N 1/2020 – Failure to Properly Advise Clients on Applicable Restrictions to Use of Central Provident Fund Monies for Purchase of Flat**

### **Facts of Case**

In or around November/December 2017, the Respondent was engaged by a couple (the “**Buyers**”) to assist on their purchase of a Housing and Development Board (“**HDB**”) flat (the “**Property**”). It would be their first property purchase and they informed the Respondent that they intended to take a loan from HDB and to use the monies in their Central Provident Fund (“**CPF**”) Ordinary Accounts to help finance the HDB housing loan.

At all material times, the Property had a remaining lease duration of less than 60 years (but at least 30 years), and there were restrictions on the maximum amount of CPF monies that could be used in the purchase of such HDB flats (the “**CPF Restrictions**”). The CPF Restrictions were contained in a CPF circular (titled “*Use of CPF for the purchase of HDB flats with Remaining Lease of less than 60 years*”) dated 27 June 2013. A CEA Practice Circular (PC 05-13) dated 10 July 2013 issued to all estate agents also attached and highlighted the CPF circular and reminded estate agents and salespersons to act in accordance with the additional rules set out in the CPF circular when advising consumers and/or performing estate agency work related to HDB flats with remaining leases of less than 60 years. Amongst others, the CPF circular set out a formula for the calculation of the maximum amount of CPF monies that could be utilised for the purchase of HDB flats with a remaining lease duration of less than 60 years (the “**CPF Formula**”).

After the Buyers viewed the Property in early January 2018, they expressed interest to purchase the Property for long-term stay. The Respondent had a discussion with the Buyers on the purchase and informed them that the Property had a remaining lease duration of less than 60 years and would be subject to the CPF Restrictions. However, the Respondent had a wrong understanding of the CPF Restrictions and was under the misapprehension that the CPF Restrictions would only apply to the initial withdrawal of monies from the Buyers’ CPF Ordinary Accounts for the down payment, when in fact the CPF Restrictions would apply to all payments for the purchase, including monthly mortgage payments for any housing loan for the Property.

Based on the Buyers’ combined funds in their CPF Ordinary Accounts, the Respondent advised them that they would be unaffected by the CPF Restrictions. Following the viewing, the Respondent also sent a WhatsApp text message to the Buyers stating, “*Both of you are not affected by the cpf usage for house below 60 years old*”.

Relying on the Respondent’s statements and advice that they would be unaffected by the CPF Restrictions, the Buyers eventually agreed to purchase the Property at a price of \$565,000, with the intention of servicing a HDB housing loan for a repayment period of 25 years. An Option to Purchase was granted to them, which they exercised in late

February 2018. The Buyers were not aware of the following in relation to the CPF Restrictions that would in fact apply for their purchase of the Property:

- (a) That a withdrawal limit applied to all payments for the Property, not just the down payment. Using the CPF Formula and based on a remaining lease duration of 57 years and the Property's valuation price, the withdrawal limit was approximately 46% of the Property's valuation limit (i.e. \$ 253,000); and
- (b) That the withdrawal limit meant that the Buyers would not be allowed to make any further withdrawals from their CPF Ordinary Accounts for any payments for the Property (including monthly mortgage payments) once the withdrawal limit was reached. This also meant that they would have to service any housing loan for the Property in cash only after the withdrawal limit was reached.

In mid-April 2018, the Buyers received a letter from the CPF Board (the "**CPF Letter**") stating that as the Property's remaining lease was less than 60 years, the maximum amount of CPF monies that could be collectively withdrawn by the Buyers was \$253,000, and no further withdrawal would be allowed once this amount was reached. The Buyers sent an image of the CPF Letter to the Respondent and sought his clarification and advice. However, the Respondent insisted there was no issue and claimed again that the CPF Restrictions applied only to the down payment of the Property.

Unconvinced by the Respondent's explanation, the Buyers sought clarifications with the CPF Board and HDB, who confirmed that the CPF Restrictions applied to the monthly mortgage payments for their HDB housing loan as well. This news came as a great shock to the Buyers and caused them great distress, as they had planned to use their CPF monies to service part of their HDB housing loan for the entire duration of the loan's repayment and thought they could do so without restrictions.

When confronted on his erroneous advice, the Respondent continued to be mistaken and displayed a certain cavalier attitude despite the gravity of the matter. The Respondent claimed he had also called the authorities and maintained that his advice was correct. The Respondent also suggested that the Buyers sell the Property after meeting the Minimum Occupation Period ("**MOP**") (i.e. 5 years), but which was not what the Buyers had envisioned when they purchased the Property for long-term stay. The Buyers were also concerned that there would be difficulties selling the Property after the MOP, given the Property's age and its remaining lease.

Based on calculations, and after factoring in the grants given, the Buyers could service part of their HDB housing loan using their CPF monies for only about 7 years before the withdrawal limit would be reached. Thereafter, the Buyers would have to service their HDB housing loan using cash only. Based on their financial circumstances, the Buyers were of the view that there would be much difficulty for them to do so after the withdrawal limit was reached.

The Buyers would not have proceeded with the purchase of the Property if the Respondent had accurately and properly explained the CPF Restrictions and the implications on their purchase to them. By the time the Buyers correctly understood the CPF Restrictions from the CPF Board and HDB in mid-April 2018, they had already exercised the Option to Purchase and the resale process was already underway. The sellers of the Property had also committed to purchase another property. The Buyers, therefore, felt that they had no choice but to complete the purchase of the Property to avoid forfeiting the deposit paid and exposing themselves to potential legal action from the sellers, and to prevent exposure to liability from the potential abortion of the sellers' purchase of their next property.

## **Charges**

The Respondent faced the following 2 charges:

### **Charge 1 (Proceeded)**

For failing to perform his work with due diligence and care, by failing to properly advise the Buyers that the CPF Restrictions applied to all payments for the Property, including monthly mortgage payments, and not just to the down payment, before they exercised the Option to Purchase for the Property, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

### **Charge 2**

For failing to perform his work with due diligence and care, by failing to properly advise the Buyers on the meaning and effect of the CPF Letter and wrongly advising them that the CPF Restrictions applied only to the initial down payment for the Property when in fact they applied to all payments for the Property, including monthly mortgage payments, in contravention of paragraph 5(1) of the Code.

## **Outcome**

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

In sentencing, the Disciplinary Committee ("**DC**") noted that the Respondent had dealt mainly with HDB transactions throughout his nine-year career and ought to have known in detail all the CPF restrictions that applied to HDB properties with remaining lease duration of less than 60 years, as these are important restrictions when dealing with older HDB properties. The Respondent faced serious charges; clients were

expected to have confidence in and be entitled to rely on a salesperson's integrity and duty of care to give the correct advice appropriate to the property transaction.

Further, there was a clear opportunity for the Respondent to redress his mistaken advice, but he sought to ignore it and rely on his own mistaken beliefs about the CPF Restrictions instead. A prudent salesperson would have considered the conflicting advice received from the authorities as a red flag that warranted further examination. Instead, the Respondent claimed he had called the authorities and that the policy was as he had described, which even suggested that he had received wrong advice from CPF. The circumstances were such that one could infer the Respondent was guilty of wilful blindness that went beyond mere negligence.

The DC also noted that the Respondent had no ill-intent and the case was one of gross negligence. The Respondent was also cooperative and had accepted his wrongdoing.

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

**Charge 1:** A financial penalty of \$3,500 and a suspension of 4 months.

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