Note: This case was referred to a CEA Disciplinary Committee (DC) after 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 8/2022 – Failure to Properly Inform and Advise Client on Seller's Stamp Duty and Wrongly Advising Client on Occupancy and Stamp Duty Waiver

Facts of Case

The Respondent was engaged by the seller of a Housing and Development Board ("**HDB**") flat (the "**Flat**") to sell the Flat. It was agreed that the seller would pay a commission of 1% of the transacted sale price in the event of a successful sale.

The Respondent would typically work as a team with her line manager, Salesperson X. For the sale of the Flat, the Respondent had marketed the Flat for sale, liaised with the seller and advised the seller on the resale transaction, with Salesperson X providing assistance where necessary.

In mid-September 2019, the seller met the Respondent to discuss the sale of the Flat. The seller informed the Respondent that she was looking to sell the Flat within the Minimum Occupation Period ("**MOP**") due to personal reasons, and that the Flat was over its third year of occupancy. The seller subsequently obtained HDB's approval to sell the Flat before the expiry of the MOP, following which the Respondent placed an advertisement online to market the Flat for sale.

In or around October 2019, Y, who was authorised to act on behalf of her mother (the "**Buyer**"), contacted the Respondent about the Flat. The Buyer expressed her interest to purchase the Flat after a viewing. On or around 21 October 2019, while discussing the sale of the Flat via WhatsApp, the seller informed the Respondent that she wished to minimise any losses that she would incur from the sale. During this discussion, the Respondent explained the possible scenarios if the seller sold the Flat at various projected prices, and brought up the issue of the "*potential SSD*" (i.e Seller's Stamp Duty ("**SSD**")) payable in relation to the sale of the Flat. The seller asked what SSD was and told the Respondent that she was unsure about this as the HDB did not specify any sum and only informed her that she might have to pay SSD. The text messages exchanged between the Respondent and the seller do not show any explanation or elaboration on the payment of SSD in general, or any advice to the seller on the amount of SSD payable to the Inland Revenue Authority of Singapore ("**IRAS**") if she sold the Flat at that point in time.

The Respondent also told the seller that the Flat would be in its third year of occupancy in March 2020, and that it was "*really like a waiting game*", whereby the sale price would potentially drop further if they waited longer to sell the Flat. This gave the seller the impression that she would have to defer the sale of the Flat for some time if she wanted to avoid incurring any SSD, if payable at all, during which time the sale price might continue to fall and cause her to incur further losses. The seller asked the Respondent to strategise the sale such that she would not suffer too much loss.

In fact, the Flat would have completed its fourth year of occupancy on 17 November 2019, after which the seller would not be required to pay any SSD to IRAS.

The Respondent and the seller had a further discussion on the sale of the Flat via WhatsApp on 23 October 2019, during which the Respondent updated the seller on the status of negotiations with the Buyer and raised the SSD as a point to consider. However, the text messages exchanged between the Respondent and the seller, again, do not show any explanation or elaboration on the payment of

Council for Estate Agencies

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SSD in general, or any advice to the seller on the amount of SSD payable to IRAS if she sold the Flat at that point in time.

Further, the Respondent proceeded to represent to the seller that she could simply appeal to a Member of Parliament ("**MP**") to waive any SSD payable and told the seller that *"[w]orse come to worse we just appeal to mp to waive [the SSD] off. But at this point. We dun alert iras or write in okie*". Accordingly, the seller was given to understand that she may not incur any SSD, and that in any event she could just write to her MP to waive any payable SSD. On that understanding, she told the Respondent that she was not going to write to IRAS, given that there was no confirmation that she had to pay SSD at that point in time.

In fact, such stamp duty cannot be easily waived in general, and only under exceptional and extenuating circumstances. Further, any appeals for waiver are to be made to IRAS.

On or around 26 October 2019, the seller issued an Option to Purchase ("**OTP**") to the Buyer, who exercised it on or around 10 November 2019. The sale price of the Flat was $ 275,000. An exclusive estate agency agreement was signed between the seller and the Respondent's estate agent, with the seller agreeing to pay a sum of $ 2,750 as commission for the sale.

In early January 2020, the seller informed the Respondent that she had received an email from the HDB notifying her that she had to pay SSD of $11,000 to IRAS (being 4% of the sale price) for the sale, as the Flat was sold within a holding period of 3 to 4 years from its purchase. The Flat would have completed its four-year holding period on 17 November 2019, being 22 days from the seller's issuance of the OTP.

The seller applied to IRAS for a waiver of the SSD payable but was unsuccessful. Consequently, the seller had no choice but to pay the SSD of $ 11,000 to IRAS. The Respondent made no restitution to the seller in relation to the SSD.

For the sale of the Flat, the Respondent received a sum of $ 1,156.54 as her share of the commission paid by the seller.

Charges

The Respondent faced the following 3 charges:

Charge 1 (Proceeded)

For failing to conduct estate agency work with due diligence and care, by failing to inform and advise the seller on the sum of SSD payable to the IRAS if the seller sold the Flat within 4 years of its purchase, in breach of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

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Charge 2

For failing to conduct estate agency work with due diligence and care, by wrongly advising the seller that the Flat would be in its third year of occupancy in March 2020, when in fact the Flat would have completed 4 years of occupancy on 17 November 2019, in breach of paragraph 5(1) of the Code.

Charge 3

For failing to conduct estate agency work with due diligence and care, by improperly advising the seller that she could appeal to an MP to waive any SSD payable to the IRAS in relation to the sale of the Flat, in breach of paragraph 5(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to 1 charge (i.e. Charge 1), while the remaining 2 charges (i.e. Charges 2 and 3) were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee ("**DC**") was of the view that the Respondent lacked remorse as she had retained her share of commission without any restitution or compensation to the seller, and also pleaded guilty at a very late stage in the proceedings. The DC also took the view that the amendments under the Estate Agents (Amendment) Act 2020 did not apply in this case.

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

Charge 1: A financial penalty of $ 6,000 and a suspension of 3 months.

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

Updated on 25 January 2024