

S/N 1/2022 – Failure to Verify Eligibility and Perform Required Due Diligence Checks Before Facilitating Lease of Flat to Foreigners

Facts of Case

The Respondent was engaged by the landlord of a Housing and Development Board (“**HDB**”) flat (the “**Flat**”) to find new tenants for the Flat.

On or around 25 June 2019, X contacted the Respondent to arrange for a viewing of the Flat. X’s mother, Y, is the director and sole shareholder of X’s company (the “**Tenant**”). The Tenant was interested to rent the Flat to house its foreign workers from China and Vietnam. There was no viewing of the Flat; X and Y offered to rent the Flat at a monthly rent of \$ 1,750.

On or around 29 June 2019, the Respondent went to the Tenant’s office for the Tenant to sign a Letter of Intent (“**LOI**”) for the lease. At the Tenant’s premises, the Respondent observed that the Tenant was in the business of manufacturing metal pipes and components. The Respondent also had sight of the Tenant’s Accounting and Corporate Regulatory Authority’s business profile, and was accordingly aware and had knowledge of the Tenant’s identity and business activities.

At the meeting, the Respondent collected a signed LOI and a security deposit for the lease. Y requested that the transaction be a corporate lease by the Tenant and informed the Respondent that four employees who were foreign workers (the “**Occupiers**”) would be occupying the Flat under the lease.

As the lease of the Flat was intended to be a corporate lease, under the HDB’s terms and conditions for flat rental, the landlord must ensure that the Tenant allow only eligible persons to stay in the Flat and provide the occupiers’ particulars to the HDB. Accordingly, the Respondent, in representing the landlord in the lease, was required to perform the necessary verifications to ensure that the intended occupants were eligible to stay in the Flat, and to also ensure that the intended occupants were lawfully remaining in Singapore.

However, prior to the Tenant’s signing of the LOI or execution of the Tenancy Agreement (“**TA**”) , the Respondent did not fully perform the necessary due diligence checks required under Section 57B(3) of the Immigration Act to verify the Occupiers’ immigration status and ensure that they were not immigration offenders, namely, the Respondent failed to:

- (a) Inspect their original work permits or passes;
- (b) Cross-check and ascertain that the particulars on their passports materially corresponded with the particulars on their work permits or passes; and
- (c) Verify with the Tenant that their particulars corresponded with the Tenant’s records.

At all material times, the Respondent was aware of the HDB’s terms and conditions for the landlord’s rental of the Flat, in particular, that non-Malaysian work permit holders from the manufacturing industry are not permitted to stay in the Flat. However, the Respondent did not inform the landlord or Y about this. Further, the Respondent did not take any steps to ensure that the Occupiers were eligible to occupy the Flat. In fact, prior to the Tenant’s signing of the LOI or execution of the TA, the Respondent

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did not ask for or obtain the Occupiers' work permits or passes to ascertain their identities or particulars, to confirm that they were eligible to occupy the Flat.

On or around 9 July 2019, Y and the landlord executed a TA for the lease in the Respondent's presence. The particulars of the authorised occupants for the lease were left blank and unfilled in the TA. Thereafter, the Respondent lodged the stamp duty fee of \$ 84 payable on the TA, but did not furnish a copy of the Certificate of Stamp Duty to Y. The Respondent had also collected a sum of \$ 90 for the stamp duty and did not return the excess of \$ 6 to Y until much later.

The Occupiers moved into the Flat on or around 11 July 2019. Unknown to all parties, two of the Occupiers did not in fact fulfil the eligibility criteria to occupy the Flat as they were Chinese work permit holders from the manufacturing industry. Only Malaysian work permit holders from the manufacturing sector were allowed to lease an entire HDB flat.

On or around 12 July 2019, Y attempted to register the Occupiers' new residential address with the Ministry of Manpower ("**MOM**") via its website, but was unable to do so. Y informed the Respondent of her difficulties, which appeared attributable to the landlord's failure to register the Occupiers as the occupants of the Flat with the HDB.

It was only at this juncture that the Respondent arranged to collect a copy of the Occupiers' work permits and passes from Y at the Tenant's office on or around 17 July 2019. Upon sighting the same, the Respondent realised that the Chinese work permit holders were ineligible to occupy the Flat. Instead of informing the landlord or Y of this material fact immediately so that remedial action could be promptly taken, the Respondent decided to leave it to the HDB to inform the landlord. Hence, despite knowing that there was a likely issue with the eligibility of the Chinese work permit holders, the Respondent merely passed the Occupiers' particulars to the landlord to complete the registration of the Occupiers with the HDB.

On or around 22 July 2019, the landlord discovered, through the HDB, that the Chinese work permit holders were not eligible to occupy the Flat. The landlord instructed the Respondent to convey this to Y. The Respondent also informed Y that the Chinese work permit holders had to vacate the Flat immediately, while the remaining Occupiers could continue to stay in the Flat. Y requested to meet with the landlord to discuss and resolve the issue, but the landlord refused to meet with Y, partly due to the Respondent's allegations against Y that gave the landlord a negative impression of Y. Faced with no other alternative, Y arranged to re-house the Chinese work permit holders and they vacated the Flat on or around 3 August 2019.

On or around 4 August 2019, the landlord and the Respondent went to the Flat to conduct a spontaneous inspection. During the inspection, they observed that there were more belongings in the Flat than what they had expected of two occupants, and took the view that all the Occupiers were still staying in the Flat. The landlord decided to terminate the lease and evict all the Occupiers. Despite X's and Y's assurances that the Chinese work permit holders had already vacated the Flat, the landlord refused to negotiate further with the Tenant or to allow the remaining occupants to stay at the Flat and insisted that all the Occupiers vacate the Flat within the day. X and Y had no choice, but to vacate the remaining Occupiers and hand over the Flat to the Landlord on the same day. Consequently, the Tenant had to scramble and find alternative accommodation for the remaining Occupiers as well.

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The landlord would not have proceeded to lease the Flat to the Tenant to house occupants who were ineligible to occupy the Flat. As a result of the Respondent's lapses and failure to conduct the relevant and necessary due diligence checks at the outset, the lease was prematurely terminated, and the landlord was put to the inconvenience of searching for new tenants for the Flat.

Similarly, it was the Tenant's intention to house the Occupiers together as it would be more cost-effective. The Tenant would not have leased the Flat had it known of the issues surrounding the eligibility of the Chinese work permit holders, as it would incur more effort and costs from the premature termination of the lease. The Tenant's total incurred losses were \$ 3,400, as follows:

- (a) Forfeiture of security deposit: \$ 1,750
- (b) Difference between the Occupiers' alternative accommodation (\$ 1,900) and the monthly rental of the Flat (\$ 1,750) for the remaining duration of the lease (approximately 11 months): \$ 1,650

Despite the lease's premature termination, the Respondent still received his share of the commission for the lease, in the sum of \$ 787.29.

Charges

The Respondent faced the following 2 charges:

Charge 1

For failing to conduct estate agency work with due diligence and care, by facilitating a one-year lease of the Flat to the Tenant to house its foreign employees without first carrying out all the due diligence checks required under section 57B(3) of the Immigration Act to verify the Occupiers' immigration status, viz., inspecting the Occupiers' original work permits or passes, cross-checking and ascertaining that the particulars on the Occupiers' passports materially corresponded with the particulars on their work permits or passes, and verifying with the Tenant that the Occupier's particulars corresponded with the Tenant's records, in breach of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2 (Proceeded)

For failing to conduct estate agency work with due diligence and care, by failing to verify the eligibility of the Occupiers to occupy the Flat under the HDB's terms and conditions for the lease of the Flat, before facilitating a one-year lease of the Flat to the Tenant, 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 2), while the remaining charge (i.e. Charge 1) was taken into consideration for purposes of sentencing.

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

Charge 2: A financial penalty of \$ 3,000 and a suspension of 4 months.

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