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 10/2022 – Failure to Verify If HDB Billed Clients for Costs of Home Improvement Programme Works before Completion

Note: This case is related to S/N 9/2022 and involved the same resale transaction; the Respondent in S/N 9/2022 (i.e. Salesperson Y) had represented the Buyers of the Flat.

Facts of Case

In May 2019, the Respondent was engaged by the Sellers of a Housing and Development Board ("**HDB**") flat (the "**Flat**") to sell their HDB flat for them. It was agreed that the Sellers would pay a commission of 2% of the sale price in the event of a successful sale.

Before May 2019, the Flat had undergone improvement works under the HDB's Home Improvement Programme ("**HIP**"). The billing and costs policy under the HIP includes the following:

(a) The flat owner at the time of billing for the HIP works must pay the HIP costs. If the invoice for the HIP works is issued after completion of the sale and purchase transaction, the new buyers would have to pay the HIP costs as the new owners of the HDB flat.

(b) There is a substantial subsidy for the costs of HIP works for Singapore Citizens, but not for Singapore Permanent Residents ("**SPRs**").

(c) Under Section 65F of the Housing and Development Act (Chapter 129, Rev Ed. 2004) ("**HDA**") at the material time, the owner of the HDB flat at the time that the HIP costs are determined by HDB shall pay the improvement contribution to HDB not later than one month from the date of HDB's written demand.

In June 2019, the Respondent was contacted by Salesperson Y to arrange for a viewing of the Flat. Salesperson Y was engaged by the Buyers to find a resale HDB flat for them. A viewing was arranged for the Buyers on 2 July 2019, during which it was mentioned that both Buyers were SPRs, and the costs of the HIP improvement works done on the Flat had already been paid by the Sellers.

The Sellers agreed to sell the Flat to the Buyers for the price of $305,000. An Option to Purchase ("**OTP**") was granted to the Buyers on 2 July 2019, which included express terms that set out the liability for upgrading works and Section 65F of the HDA.

At a meeting between the Respondent and the Sellers on 2 July 2019, the Respondent queried the Sellers on whether they had paid HDB for the Flat's HIP costs, to which the Sellers informed the Respondent that they had already done so. The Respondent did not obtain any supporting documents from the Sellers to verify that such payment was made.

Separately, Salesperson Y also sought the Respondent's confirmation that the Flat's HIP costs had been paid, to which the Respondent confirmed the same.

Arrangements were made for the Buyers to do a second viewing of the Flat on 8 July 2019, during which it was raised, again, that the Buyers were very concerned with being liable for the full unsubsidized HIP costs for the Flat as they are both SPRs. The Buyers sought the Sellers' confirmation

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that they had already paid for the Flat's HIP costs, to which the Sellers responded that they had already done so. The Buyers and Salesperson Y requested for the Sellers to provide supporting documents of their payment. However, the Respondent did not eventually obtain any supporting documents from the Sellers to verify that payment of the HIP costs was made.

The Buyers exercised the OTP on 16 July 2019. Subsequently, the Respondent and Salesperson X each submitted to HDB a request to process the resale transaction for the Flat on behalf of their respective clients. On 24 July 2019, the Buyers and Sellers were informed by HDB to complete the endorsement of documents required for the resale transaction, which included a letter from HDB to the Buyers that informed them of the HIP billing and costs policy. The letter also stated that a SPR household would not enjoy any subsidy on the Flat's HIP costs and would have to pay the same in full.

On 29 July 2019, the Buyers and Salesperson Y met the Buyers' conveyancing lawyers, during which Section 65F of the HDA and the payment of the Flat's HIP costs was highlighted to the Buyers. Salesperson Y confirmed again that, based on her understanding, the Sellers had already paid the Flat's HIP costs.

The resale transaction was completed in mid-September 2019, following which the Buyers became the owners of the Flat.

In late March 2020, the Buyers abruptly received an invoice from HDB for the Flat's HIP costs, amounting to a significant sum of $19,406.34. It is clear from the invoice that the Sellers did not in fact pay for the Flat's HIP costs before completion. Pursuant to the HIP billing and costs policy, the Buyers (being SPRs) were accordingly liable to HDB for the full unsubsidized sum of the Flat's HIP costs. The Sellers sought clarifications from HDB, who confirmed that the Flat's HIP costs had not been billed previously.

The Buyers appealed to HDB for the Sellers to pay the Flat's HIP costs instead but were unsuccessful. The Buyers had no choice but to pay the Flat's HIP costs by way of instalments. There was no restitution made by the Respondent to the Buyers in relation to the payment of the Flat's HIP costs.

For the resale transaction, the Respondent received a sum of $5,130.84 as her share of the commission paid by the Sellers to her estate agent.

Charge

The Respondent faced the following charge:

Charge

For failing to conduct her business and work with due diligence and care, by failing to verify if the HDB had billed her clients, the Sellers, for the costs of works performed on the Flat under the HIP before the completion of the sale and purchase, in breach of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

Council for Estate Agencies

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Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to the charge.

In sentencing, the Disciplinary Committee ("**DC**") noted there was significant harm (both financial and non-financial) suffered by the Buyers as a result of the Respondent's professional lapse, and the circumstances of the case showed a grave lack of diligence and care.

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

Charge: A financial penalty of $7,000 and a suspension of 5 months.

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

Appeal

The Respondent filed an appeal to the Appeals Board against the DC's decision on sentencing and sought lower sentences for the convicted charge.

The Appeals Board confirmed the DC's decision on the suspension period of 5 months imposed, and partially allowed the appeal on the financial penalty imposed and reduced the financial penalty to $6,000.

In arriving at its decision, the Appeals Board noted that the Buyers were very concerned about the Flat's HIP costs, but the Respondent did not follow up with the Sellers to obtain the supporting documents to confirm that the HIP costs had been paid, notwithstanding that the Buyers and Salesperson Y had requested for the Sellers to provide such supporting documents. As a result of the conduct of the salespersons involved, the Buyers suffered substantial financial harm in the amount of $19,406.34, which represented approximately 6.3% of the Flat's purchase price. The Appeals Board also recognised that a certain element of non-financial harm was suffered by the Buyers, by way of the stress, frustration and anxiety over having discovered after completion that they were liable for such a large additional sum that had not been originally factored into their purchase of the Flat.

The Appeals Board also considered the Respondent's early plea of guilt which ensured that there was no unnecessary wastage of time and resources, as well as the Respondent's cooperation with investigations and her lack of antecedents. However, the Appeals Board also considered the fact that the Appellant had retained a significant sum of commission in full, which showed a certain lack of contrition.

Accordingly, the Appeals Board was of the view that the 5-month suspension imposed by the DC was appropriate, particularly when measured against the sentencing objectives of upholding public confidence in the integrity of the real estate agency industry. The Appeals Board felt that the financial penalty imposed by the DC was somewhat excessive, although it was cognisant that the Respondent ought to be subjected to a financial penalty that exceeded the amount of commission she had obtained from the transaction, and considered a financial penalty of $6,000 to be more appropriate.