

S/N 4/2021 – Undertaking Estate Agency Work in Respect of HDB Flats without Complying with the Applicable Rules by Facilitating a Whole Unit Rental of an HDB Flat within Its Minimum Occupation Period

Facts of Case

Sometime in October 2015, Mdm S purchased an HDB flat (the “**Flat**”) under the HDB’s Build-to-Order Scheme. The Flat is a 3-room HDB unit with one master bedroom and one common bedroom. The Flat had a Minimum Occupation Period (“**MOP**”) of 5 years that would have been fulfilled sometime in October 2020.

The 1st Tenancy

In March 2018, Mdm S engaged RES A to help her to source for tenants for the Flat as she had moved to stay in Johor Bahru, Malaysia. At all material times, RES A was aware that the Flat was still within its MOP and that Mdm S was staying in Johor Bahru. Nevertheless, RES A proceeded to advertise a whole unit rental of the Flat online.

In December 2018, RES A found a tenant (the “**1st Tenant**”) who agreed to lease the Flat. RES A prepared a tenancy agreement for a 2-room rental at a monthly rent of \$1,600 (the “**1st Tenancy Agreement**”). Although the 1st Tenancy Agreement ostensibly stated that it was a 2-room rental, RES A informed the 1st Tenant that the tenancy was for a whole unit rental of the Flat. The 1st Tenant moved into the Flat in mid-December. Throughout the period of the 1st Tenant’s lease, Mdm S did not stay in the Flat.

RES A did not receive any commission for the facilitation of this tenancy.

In January 2019, RES A attempted to register the 1st Tenant as a room rental tenant with HDB on Mdm S’s behalf. The registration ultimately failed to proceed as Mdm S was in the midst of transferring ownership of the Flat.

In April 2019, the 1st Tenant informed Mdm S that he would terminate the lease of the Flat in May 2019. In mid-May 2019, the 1st Tenant ended the lease of the Flat and handed the Flat back to Mdm S.

The 2nd Tenancy

In April 2019, RES A advertised a whole unit rental of the Flat online. In May 2019, RES A found another tenant (the “**2nd Tenant**”) who was interested to lease the Flat. RES A arranged for a viewing of the Flat for the 2nd Tenant. On the same day of the viewing, the 2nd Tenant agreed to lease the Flat at a monthly rent of \$1,600. Similarly, RES A informed the 2nd Tenant that the tenancy was for a whole unit rental of the Flat. Throughout the period of the 2nd Tenant’s lease, Mdm S did not stay in the Flat.

RES A received a commission from Mdm S for the facilitation of the second tenancy. RES A did not inform his estate agent that he had received a commission for facilitating the second tenancy.

Charges

RES A faced the following 5 charges:

Charge 1 (Proceeded)

For undertaking estate agency work in respect of HDB flats without being fully conversant and without complying with the applicable laws, regulations, rules and procedures that apply to transactions involving such flats, by facilitating a whole unit rental of the Flat within its 5-year MOP to the 1st Tenant, contrary to HDB's Terms & Conditions, in contravention of paragraph 4(1) read with 4(2)(e) of the Code of Ethics and Professional Client Care ("**CEPCC**").

Charge 2

For failing to record the exact agreement between the 1st Tenant and Mdm S, by recording the whole unit rental of the Flat as a 2-room rental in the 1st Tenancy Agreement between the 1st Tenant and Mdm S, in contravention of paragraph 9(1) of the CEPCC.

Charge 3

For bringing discredit or disrepute to the estate agency industry by attempting to register the 1st Tenant as a room rental tenant with HDB even though the exact agreement between the 1st Tenant and Mdm S was for a whole unit rental of the Flat, in contravention of paragraph 7(1) read with 7(2)(a) of the CEPCC.

Charge 4 (Proceeded)

For undertaking estate agency work in respect of HDB flats without being fully conversant and without complying with the applicable laws, regulations, rules and procedures that apply to transactions involving such flats, by facilitating a whole unit rental of the Flat within its 5-year MOP to the 2nd Tenant, contrary to HDB's Terms & Conditions, in contravention of paragraph 4(1) read with 4(2)(e) of the CEPCC.

Charge 5

For failing to act ethically, honestly, fairly and in a reasonable manner towards other persons, by failing to notify his estate agent of the commission received

from the transaction between the 2nd Tenant and Mdm S, in contravention of paragraph 6(3) of the CEPCC.

Outcome

Pursuant to a plea bargain, RES A pleaded guilty to Charges 1 and 4, while Charges 2, 3 and 5 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) noted that RES A had 3 charges taken into consideration. As such, the DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 1: A financial penalty of \$ 2,000 and a suspension of 8 weeks.

Charge 4: A financial penalty of \$ 2,000 and a suspension of 8 weeks.

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