

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 2/2023 – Undertaking Estate Agency Work without Complying with Applicable Laws, Regulations, Rules and Procedures that Apply to HDB Flats and Failing to Perform Due Diligence Checks on Intended Occupier

Facts of Case

The Respondent was at all material times a registered salesperson.

Sometime in November 2019, the Respondent represented the sellers of a Housing and Development Board (“HDB”) flat (the “Flat”) in a sale of the Flat. The new owner (the “Owner”) proceeded to engage the Respondent sometime in March 2020 to represent her in the lease of the Flat to prospective tenants. Prior to this, the Owner departed Singapore sometime in December 2019.

First Tenancy

On 15 March 2020, the Respondent advertised the Flat for rent on an online property portal. At all times, the Respondent knew that the Flat was still under HDB’s Minimum Occupation Period (“MOP”) and was not allowed to be sublet in full. The Respondent also knew that the Owner must live in the Flat during the rental period if bedrooms were rented and the Owner could not simply lock up a bedroom to circumvent this requirement.

On 21 March 2020, a prospective tenant (Ms H) saw the Respondent’s advertisement and contacted the Respondent. Ms H informed the Respondent that she and her husband (both of foreign nationality) were interested to rent the Flat. The Respondent also confirmed for Ms H that the lease would be for the whole Flat.

On 24 March 2020, Ms H viewed the Flat. When asked directly by Ms H whether the other bedroom in the Flat would be locked since the Respondent’s advertisement was only for 1 bedroom, the Respondent replied that the other bedroom would be locked and the Owner would store her items in that room. The Respondent also mentioned that the Owner would not come back to the Flat as she was “too far away [overseas]”. Ms H further enquired if the Owner would be keen to rent out the whole Flat for a higher rental price (\$2,000), to which the Respondent informed Ms H that the market price for renting a whole flat in the area was \$2,300.

On 25 March 2020, Ms H asked the Respondent if the Owner would be returning to the Flat from overseas in view of the COVID-19 pandemic. The Respondent informed her that “no one coming back at all” (*sic*). The Respondent also told Ms H that the Owner wanted a longer lease of 2 years as she was overseas.

After Ms H confirmed that she would be renting the Flat for 2 years at a monthly rent of \$1,700 and wanted to move in on or about 7 April 2020, the Respondent proceeded to prepare a Letter of Intent for Ms H, for which she requested for Ms H and her husband’s particulars. Ms H provided the Respondent with her name and foreign identification number on her Employment Pass, but told the Respondent that her husband had yet to receive his Employment Pass at that point in time. As a result, while the Respondent included the husband’s name as one of the occupiers of the Flat, no further steps were taken by the Respondent to ensure that it was his full legal name as per identification documents.

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The Respondent further prepared the tenancy room agreement (“First Tenancy Room Agreement”) which was signed by the Owner and Ms H on 30 March 2020. Again, the First Tenancy Room Agreement listed Ms H’s husband as one of the occupiers of the Flat without stating his identification details and there was no indication of his full legal name or identification or passport number(s).

On 6 April 2020, Ms H met the Respondent at the Flat to collect the keys to the Flat.

On 10 April 2020, the Owner made payment of \$1,819 (equivalent to one month’s rent of \$1,700 plus GST) to the Respondent as commission.

On or about 3 June 2020, the Owner registered the lease of a bedroom in the Flat with HDB. Only Ms H was registered as a tenant; her husband was not registered with HDB as an occupier of the Flat.

On 2 December 2020, HDB officers inspected the Flat and discovered that the Owner was not living in the Flat. Instead, Ms H was living in the Flat with her husband and her newborn child. Following that, Ms H terminated the tenancy as she felt uncomfortable living in the Flat. As a result of the premature termination of the lease, Ms H suffered losses of \$4,696.35 for, amongst others, forfeiture of her security deposit and pro-rated reimbursement to the Owner of the Respondent’s commission.

Second Tenancy

On 4 December 2020 (2 days after HDB’s inspection of the Flat), the Respondent again advertised the Flat for rent online.

On 17 December 2020, Ms B saw the Respondent’s advertisement and contacted the Respondent to arrange for a viewing. When Ms B viewed the Flat with the Respondent on 18 December 2020, the Respondent told Ms B that the Owner was living overseas and would not move into the Flat. The Respondent was aware that the Owner was busy overseas with the birth of her baby in or around mid-May 2020.

The Respondent subsequently prepared a tenancy room agreement (“Second Tenancy Room Agreement”) which Ms B signed on 20 December 2020. The Second Tenancy Room Agreement provided for Ms B to rent the Flat for a period of 2 years commencing from 1 January 2021 at a monthly rent of \$1,700.

On 30 December 2020, the Respondent met Ms B at the Flat to hand over the keys. The Respondent reaffirmed to Ms B that the Owner would not stay in the Flat and hence Ms B would be responsible for all the items in the Flat save for the locked bedroom.

Ms B was unable to be registered with HDB as a tenant and on 30 January 2021, the Owner called Ms B and asked her to move out of the Flat. Ms B had to abruptly move out of the Flat on or about 31 January 2021 and was only able to retrieve her belongings from the Flat on or about 1 March 2021. Ms B suffered losses of \$1,597.50 for, amongst others, painting and cleaning the Flat, as well as moving fees.

At all material times, the Respondent had full knowledge that:

- (a) the Owner was not physically present in Singapore and could not reside in the Flat;

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- (b) under HDB's requirements, the Owner had to be in continuous physical occupation of the Flat when any one of the bedrooms in the Flat was being rented out; and
- (c) in facilitating the Owner's consecutive leases of a bedroom in the Flat to Ms H and then Ms B, the Owner could be in contravention of HDB's Terms and Conditions for Renting Out Bedrooms.

The Owner subsequently received a written warning from HDB for having rented out the whole Flat without HDB's prior written consent.

Charges

The Respondent faced the following 2 charges:

Charge 1

Failing to conduct her work with due diligence, despatch and care when she failed to perform the necessary due diligence checks on Ms H's husband who was the intended occupier of the Flat, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "Code").

Charge 2 (Proceeded)

Undertaking estate agency work involving a HDB flat without complying with the applicable laws, regulations, rules and procedures that apply to transactions involving such HDB flats, when she facilitated leases of the bedroom of the Flat on behalf of the Owner to Ms H and subsequently to Ms B when the Owner was not residing in the Flat, and thus infringed HDB's Terms and Conditions for Renting Out Bedrooms, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2, with Charge 1 taken into consideration for sentencing.

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

Charge 2: A financial penalty of \$4,000 and a suspension of 5 months

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

In reaching its decision, the DC noted that the Respondent's misconduct in facilitating leases of the Flat to Ms H and Ms B, in blatant contravention of HDB's regulations and rules, was cynical, deliberate and wilful. The Respondent's misconduct was aggravated by the fact that she re-advertised the Flat for rent again just two days after HDB's inspection and discovery of the Owner not physically residing in the Flat.

The DC also noted that the Respondent was an experienced salesperson (since 2011) and there was no justification for her misconduct. The DC further noted the Respondent's antecedent in previous

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disciplinary proceedings in 2013, where the Respondent had claimed trial and was found guilty of using a falsified HDB information sheet to mislead a prospective tenant. The DC observed that the antecedent showed that the Respondent had a disregard of or indifference to what is right and what is wrong. There was also no evidence that the Respondent had relinquished her commission or taken any steps to provide relief for the harm caused to parties.

The DC considered the Respondent's early plea of guilt as a mitigating factor.