

**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 1/2024 – Undertaking Estate Agency Work without Complying with Applicable Laws, Regulations, Rules and Procedures that Apply to HDB Flats**

### **Facts of Case**

Sometime in October 2021, the Respondent was engaged by the owner (“**Owner**”) of a Housing and Development Board (“**HDB**”) flat (the “**Flat**”) to help him sell or rent the Flat. The Respondent then listed the Flat for both sale and rent on an online property listing platform. The Owner entered into an exclusive estate agency agreement with the Respondent’s estate agent on 10 October 2021 for the sale of the Flat, agreeing to pay a commission of 2% of the selling price.

In early November 2021, Salesperson V, who represented a prospective buyer (the “**Buyer**”), responded to the Respondent’s sale listing of the Flat and requested for a viewing. On 8 November 2021, the Buyer and Salesperson V viewed the Flat. Later that evening, the Buyer made an offer of \$340,000 for the purchase of the Flat, which the Owner accepted. The Buyer transferred the \$1,000 option fee to the Owner, and the Respondent prepared an Option to Purchase (“**OTP**”) which was granted by the Owner to the Buyer on 16 November 2021. Under the terms of the OTP, the Buyer had until 7 December 2021 to exercise the OTP.

On 14 November 2021, a prospective tenant (“**Mr B**”) saw the Respondent’s lease listing of the Flat and approached the Respondent, expressing interest in renting the Flat. The Respondent informed Mr B that the owner of the Flat was selling the Flat and could only grant a 4-month lease of the Flat. Both Mr B and the Owner agreed to a 4-month lease. After some negotiations through the Respondent, the monthly rent was agreed at \$1,700.

The Respondent then prepared the tenancy agreement for the lease of the Flat (“**Tenancy Agreement**”) and obtained the Owner’s and Mr B’s signatures to it. The Tenancy Agreement was dated 20 November 2021 and stated that the tenancy would be from 23 November 2021 to 22 March 2022, at a monthly rent of \$1,700. Mr B paid a security deposit of \$1,700 to the Respondent. Mr B also paid a commission of \$700 to the Respondent in lieu of the Owner.

On 23 November 2021, Mr B and his family moved into the Flat.

On 28 November 2021, the Buyer exercised the OTP and transferred the \$4,000 option exercise fee to the Owner. Parties sought the required HDB approval for the sale and purchase of the Flat, which was granted by HDB on 29 December 2021. Completion of the sale was eventually deferred to 2 March 2022. The Buyer was not aware that the Flat was tenanted from the time she viewed the Flat on 8 November 2021, and only found out on 26 February 2022 during the pre-completion inspection of the Flat with Salesperson V, when she saw Mr B and his family residing in the Flat.

On 2 March 2022, which was also the completion date of the Flat, the Buyer notified HDB that the Flat was occupied by tenants. In response, HDB informed the Owner that the tenants should vacate the Flat immediately, so that the Owner may hand over vacant possession of the Flat to the Buyer.

On the same day, the Respondent informed Mr B that he had to move out of the Flat within 3 days. Mr B protested to this. On 5 March 2022, the Respondent and the Owner visited the Flat and told Mr B’s family to move out as soon as possible. At their behest, Mr B and his family moved out of the Flat on 11 March 2022. The Buyer only received the keys to the Flat on 12 March 2022. Despite Mr B’s

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departure, the Flat was still not vacant as it was occupied with furniture and personal belongings, which were only removed from the Flat on 18 March 2022.

For facilitating the sale of the Flat, the Owner paid a commission of \$6,800 (excluding Goods and Services Tax) to the Respondent's estate agent, of which the Respondent's share of the commission amounted to \$6,120.

At all material times, the Respondent was aware that:

- (a) Under HDB's rules, the seller must give vacant possession of the flat to the buyer on completion of the resale transaction, and flat owners are not allowed to rent out the flat on a short-term basis of less than 6 months;
- (b) The Owner would have been unable to give vacant possession of the Flat to the Buyer on the completion date as Mr B would still be residing in the Flat; and
- (c) By facilitating the sale and lease of the Flat and the 4-month tenancy of the Flat, the Respondent caused the Owner to infringe HDB's rules.

The Owner only refunded \$300 out of the \$1,700 security deposit that Mr B paid, as the Owner claimed that some of his personal belongings from the Flat were missing. The Owner also did not return the pro-rated rent that Mr B paid for the period of 12 March 2022 to 22 March 2022 despite Mr B moving out early on 11 March 2022. The pro-rated rent was in the amount of approximately \$167.90.

Conversely, the Respondent returned Mr B the \$700 commission received from him, intending for this to offset the \$1,400 security deposit which the Owner did not return. Mr B's estimated financial losses therefore amounted to approximately \$867.90 (i.e. \$1,400 + \$167.90 - \$700). Subsequently, in the course of the disciplinary proceedings, the Respondent made a further restitution of \$700 to Mr B.

## **Charges**

The Respondent faced the following 2 charges:

### **Charge 1 (Proceeded)**

Undertaking estate agency work without complying with the applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, when he facilitated both the sale and lease of the Flat, which resulted in the Owner being unable to give vacant possession of the Flat to the Buyer on completion of the sale, in breach of HDB's Terms and Conditions for Sale and Purchase of an HDB Resale Flat, in breach of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Ethics and Professional Client Care (the "**Code**").

### **Charge 2**

Undertaking estate agency work without complying with the applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, when he facilitated a 4-month tenancy of the Flat by the Owner to Mr B for the period 23 November 2021 to 22 March 2022,

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despite such short-term tenancy being in breach of HDB's Terms and Conditions for Renting out of Flat, in breach 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 1, with Charge 2 taken into consideration for sentencing.

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

**Charge 1:** A financial penalty of \$4,000 and a suspension of 4 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 a sale and lease of the Flat was intentional and involved a deliberate flouting of HDB's rules and regulations. The DC noted the policy need to protect the reputation and integrity of the real estate agency industry and ensure compliance with HDB's rules and regulations.

The DC considered it mitigating that the Respondent made restitution, although this went towards the fact that losses had been mostly compensated for and not as a sign of remorse, given that full restitution was only made late during the disciplinary proceedings.