

**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 7/2023 – Undertaking Estate Agency Work without Complying with Applicable Laws, Regulations, Rules and Procedures that Apply to HDB Flats, Failing to Exercise Due Diligence and Care and Failing to Declare Transaction to Estate Agent**

### **Facts of Case**

In February 2020, the Respondent saw an online advertisement on Gumtree Singapore pertaining to the rental of a HDB flat ("**Property**"). The Respondent contacted the owner's son and was informed that:

- (a) The owner was the sole owner of the Property and a Singapore Permanent Resident;
- (b) The owner ran a foreign domestic worker employment agency, and part of the Property was occupied by the owner's foreign domestic workers on an interim basis;
- (c) 2 common bedrooms were used for storage by the owner; and
- (d) The owner and her family were not residing at the Property.

The owner, through her son, agreed to engage the Respondent's services to market the Property for room rental and agreed to pay commission of 50% of one month's rent. Thereafter, the Respondent placed advertisements to market the Property for rent.

Mr A subsequently responded to the Respondent's advertisements, and the Respondent arranged for Mr A and his then-girlfriend, Ms N, to view the Property in early April 2020. Prior to the viewing, the Respondent had, by way of a WhatsApp message, informed Mr A that the owner was not staying at the Property.

Mr A and Ms N (the "**Tenants**"), who are foreigners, agreed to rent the master bedroom of the Property. The Respondent asked for a copy of their employment pass and S pass respectively, and a copy of their passports. While the Tenants provided a copy of their employment pass and S pass, they did not provide a copy of their passports. The Respondent did not follow up on this, nor did he inspect the Tenants' original work passes.

The Respondent failed to perform the following due diligence checks on the Tenants pursuant to the Immigration Act (Cap. 133, 2008 Rev Ed) ("**Immigration Act**"), to verify their immigration status before facilitating the lease:

- (a) Inspect the Tenants' original work passes; and
- (b) Cross-check and ascertain that the particulars of the Tenants' work passes materially corresponded with the particulars in their original passports, including cross-checking their photographs against their actual persons to ensure that they were the same persons.

In fact, at all material times, the Respondent never met the Tenants in-person or via electronic/digital means.

In early April 2020, the Respondent forwarded a Customer's Particulars Form to the owner's son and requested for the owner to sign and fill in her occupation in the said form. The owner's son duly returned the signed form to the Respondent, wherein the owner's occupation was stated as "Information Technology". Despite being informed and aware that the owner operated a foreign

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domestic worker employment agency, the Respondent did not highlight the discrepancy or otherwise query whether “Information Technology” was an accurate description for the owner’s occupation. The Respondent also failed to thoroughly verify the owner’s identity and cross-check the owner’s photograph in the copy of the NRIC that was provided to him against her actual person to ensure that she was the same person. At all material times, the Respondent did not meet the owner in-person or via electronic/digital means and did not communicate with the owner directly, but only through her son. The Respondent also did not verify if the owner’s son was duly authorized to instruct him on behalf of the owner.

Thereafter, the Respondent facilitated the signing of a tenancy agreement between the owner and the Tenants for the rental of the master bedroom of the Property for a monthly rent of \$1,000. The Tenants moved into the Property in early May 2020.

The owner, however, failed to obtain prior approval from HDB to rent out the room to the Tenants, and the Respondent failed to advise the owner of this requirement and ensure that the owner obtained the necessary approval. The owner also failed to register the tenancy and the Tenants’ details with HDB; the Respondent assumed that the owner’s son would handle this and failed to ensure that the owner had registered the Tenants’ details with HDB.

In early November 2020, Mr A filed a police report as there were more than 9 people staying at the Property and the foreign domestic workers were too noisy. HDB officers swiftly conducted an inspection and found 6 foreign domestic workers residing at the Property. Thereafter, HDB informed the owner that she had infringed HDB’s Terms and Conditions for Renting out of Bedroom(s) (“T&Cs”) and the Housing and Development Act 1959 (“HDA”), and eventually imposed a financial penalty of \$40,250 in lieu of compulsory acquisition of the Property.

For facilitating the lease transaction, the Respondent received a sum of \$500 as commission. However, the Respondent did not declare the lease transaction and the commission received to his estate agent, notwithstanding that he was registered with his estate agent and had utilized the tenancy agreement form supplied by his estate agent to record the tenancy agreement for the lease.

## **Charges**

The Respondent faced the following 5 charges:

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

Undertaking estate agency work in respect of HDB flats notwithstanding that he was not fully conversant with or had complied with the applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, by facilitating a rental of the master bedroom of the Property despite being aware that the owner was not residing and did not intend to reside at the Property during the period of rental, in breach of paragraph C.8 of HDB’s T&Cs and Section 56(1)(h) of the HDA, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Ethics and Professional Client Care (“Code”).

### **Charge 2**

Failing to conduct his business and work with due diligence and care, and in compliance with all laws including statutory and regulatory requirements, by failing to conduct the due diligence checks required under Section 57B(3) of the Immigration Act to verify the

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immigration status of the Tenants, viz. inspecting the Tenants' original work passes, and cross-checking and ascertaining that the particulars on the Tenants' passports materially corresponded with the particulars set out in their work passes, in contravention of paragraph 5(1) of the Code.

### **Charge 3**

Failing to conduct his business and work with due diligence and care, by failing to thoroughly verify the owner's identity and personal particulars, in contravention of paragraph 5(1) of the Code.

### **Charge 4 (Proceeded)**

Failing to conduct his business and work with due diligence, dispatch and care, and in compliance with all laws including statutory and regulatory requirements, by failing to take all reasonable precautions and do all reasonable acts to ensure that no law is infringed by any person, by failing to ensure that the owner obtained HDB's approval before renting out the master bedroom and provided HDB with the Tenants' particulars and other rental details as required, in breach of paragraphs C.2 and C.3 of HDB's T&Cs and Section 56(1)(h) of the HDA, in contravention of paragraph 5(1) read with paragraph 5(2)(b) of the Code.

### **Charge 5**

Failing to act ethically, honestly, fairly and in a reasonable manner towards all other persons, by failing to declare the transaction and the commission received to his estate agent, in contravention of paragraph 6(3) of the Code.

## **Outcome**

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

The Disciplinary Committee ("DC") imposed the following financial penalties and disciplinary orders on the Respondent:

**Charge 1:** A financial penalty of \$5,000 and a suspension of 5 months; and

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

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$9,000 and a suspension of 5 months.

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