

S/N 2/2024 – Undertaking Estate Agency Work without Complying with Applicable Laws, Regulations, Rules and Procedures that Apply to HDB Flats, Failing to Declare Conflict of Interest, Failing to Declare Transactions and Failing to Perform Due Diligence Checks on Tenant and Occupiers

Facts of Case

Mr L is the landlord of a HDB flat (“**Property**”). He is also the Respondent’s son.

The Respondent facilitated two tenancy agreements in respect of 2 bedrooms in the Property between January 2020 and January 2022 as follows:-

- (a) Tenancy agreement between Mr P (“**First TA Tenant**”) and Mr L for the period 2 February 2020 to 1 February 2021 (“**First TA**”); and
- (b) Tenancy agreement between Mr R (“**Second TA Tenant**”) and Mr L for the period 7 January 2021 to 6 January 2022 (“**Second TA**”).

In or around January 2020, the Respondent advertised 2 bedrooms in the Property for rent online on Mr L’s request. The Respondent was contacted by the First TA Tenant, who viewed the Property with his wife. During the viewing, the Respondent informed them that only 2 bedrooms in the Property were available for rent and that the remaining bedroom would be locked to store items belonging to Mr L.

Subsequently, the First TA Tenant and Mr L agreed on a lease of the 2 bedrooms at a monthly rent of \$1,800.

At all material times during the First TA:-

- (a) Mr L did not reside at the Property, but with the Respondent at her residence instead; and
- (b) Mr L kept one bedroom in the Property locked.

In late 2020, after the First TA Tenant confirmed that he would not be renewing the lease, the Respondent advertised the 2 bedrooms in the Property for rent again online on Mr L’s request.

On 2 January 2021, the Second TA Tenant contacted the Respondent and expressed interest to rent the 2 bedrooms in the Property with 3 other occupants (“**Second TA Occupiers**”). The Respondent arranged for them to view the Property, during which the Respondent informed them that 1 of the bedrooms in the Property would remain locked during the tenancy period.

After the viewing, the Second TA Tenant and the Second TA Occupiers agreed to rent the 2 bedrooms at a monthly rent of \$2,000 and moved into the Property sometime in early January 2021.

Prior to facilitating the Second TA, the Respondent failed to carry out the following due diligence checks referred to under section 57B(3) of the Immigration Act (Cap. 133, 2008 Rev Ed) (“**Immigration Act**”)

on the Second TA Tenant and the Second TA Occupiers, who are foreigners, to verify their immigration status:-

- (a) Inspect their original work permits or passes;
- (b) Cross-check the particulars of their original work permits or passes with the particulars in their original passports to ensure that the particulars materially corresponded.

The Respondent was fully aware at all material times that Mr L was not residing in the Property during the First TA and the Second TA since:-

- (a) She had informed the First TA Tenant and the Second TA Tenant that one bedroom was locked; and
- (b) Mr L was residing at her residence during both tenancy periods.

On or around 10 May 2021, HDB officers conducted a check on the Property and discovered that there was a locked bedroom, and that the owner was not in continuous physical occupation of the Property. Following investigations, HDB instructed Mr L to evict the Second TA Tenant and the Second TA Occupiers, who vacated the Property on or around 14 August 2021. HDB eventually compulsorily acquired the Property notwithstanding Mr L's appeal.

As the landlord, it was in Mr L's interest to secure a higher rent for the Property. Conversely, it was in the interest of both the First TA Tenant and the Second TA Tenant to secure a lower rent for the Property, and they would rely on the Respondent to obtain and negotiate the lowest monthly rent possible on their behalf. Notwithstanding that the Respondent had a familial relationship with Mr L and an actual conflict of interest, the Respondent failed to declare the same to the First TA Tenant and the Second TA Tenant, and continued to act for them to facilitate the First TA and the Second TA.

For facilitating both the First TA and the Second TA, the Respondent received commission in the sums of \$963 and \$1,000 respectively. However, the Respondent did not declare both the First TA and the Second TA and the commissions received to her estate agent, notwithstanding that she had procured the signing of commission agreements with the tenants on her estate agent's behalf for the payment of commission. Following the abortion of the Second TA, the Respondent eventually refunded \$500 of the commission received for the Second TA to the Second TA Tenant.

Charges

The Respondent faced the following 7 charges:

Charge 1

Failing to conduct estate agency work in accordance with applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, by facilitating the First TA, notwithstanding that Mr L was not in physical or continuous occupation of the Property and did

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not reside in the Property during the First TA, in breach of Clause 8 of HDB's Terms & Conditions for Application to Rent Out Bedroom(s) ("**T&Cs**"), in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2 (Proceeded)

Failing to conduct estate agency work in accordance with applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, by facilitating the Second TA, notwithstanding that Mr L was not residing in the Property during the Second TA, in breach of Clause 8 of the T&Cs, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Charge 3 (Proceeded)

Failing to declare in writing her familial relationship with Mr L to the First TA Tenant, being an actual conflict of interest, and continuing to act for the First TA Tenant, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code.

Charge 4

Failing to declare in writing her familial relationship with Mr L to the Second TA Tenant, being an actual conflict of interest, and continuing to act for the Second TA Tenant, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code.

Charge 5

Failing to conduct estate agency work ethically, honestly, fairly and in a reasonable manner towards all other persons, by failing to disclose to her estate agent that she had facilitated the First TA, executed a commission agreement on its behalf and received commission of \$963 from the First TA Tenant, in contravention of paragraph 6(3) of the Code.

Charge 6

Failing to conduct estate agency work ethically, honestly, fairly and in a reasonable manner towards all other persons, by failing to disclose to her estate agent that she had facilitated the Second TA, executed a commission agreement on its behalf and received commission of \$1,000 from the Second TA Tenant, in contravention of paragraph 6(3) of the Code.

Charge 7

Failing to conduct her business and work with due diligence and care while facilitating the Second TA, by failing to perform the checks referred to under Section 57B(3)(a) and Section 57B(3)(b) of the Immigration Act to verify the immigration status of the Second TA Tenant and the Second TA Occupiers, by failing to inspect their original work permits or passes and cross-checking the particulars of their original work permits or passes with the particulars in their

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passports to ensure that the particulars materially corresponded, in contravention of paragraph 5(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to 2 charges (i.e. Charges 2 and 3), while the remaining 5 charges (i.e. Charges 1 and 4 to 7) were taken into consideration for purposes of sentencing.

The DC imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 2: A financial penalty of \$6,000 and a suspension of 5 months; and

Charge 3: A financial penalty of \$5,000 and a suspension of 4 months.

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$11,000 and a suspension of 5 months.

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