

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 5/2023 – Wrongly Advised Clients on Refund of CPF Monies in Event of Negative Sale

Facts of Case

On or around April 2020, the owners of a Housing and Development Board (“HDB”) flat (the “Property”) engaged the Respondent to sell the Property, who had about 9 years of experience in the real estate agency industry.

For the purposes of calculating the estimated sale proceeds, the Respondent requested from the owners (the “Sellers”) certain information, which included the amount from their Central Provident Fund (“CPF”) accounts used towards the purchase of the Property, and the balance remaining in their CPF accounts.

The Respondent realised that the Property would be sold at a negative sale unless the selling price of the Property was at or above \$522,000. As the Respondent was unfamiliar with negative sale transactions, she approached the CPF Board, who informed her that if the Property was sold at or above market valuation, the Sellers need not top up the shortfall in cash. The Respondent conveyed this to the Sellers, without taking any further steps to verify the implications of a negative sale of the Property on the Sellers.

In early April 2020, the Respondent provided her preliminary financial calculations to the Sellers based on the selling price of \$522,000. The Sellers agreed for the Respondent to market the Property for sale at a negotiable price of \$530,000. In mid-May 2020, the Sellers informed the Respondent that the Property must minimally be sold at \$500,000.

In mid-August 2020, the Sellers received an offer of \$470,000 from a couple (the “Buyers”), and a selling price of \$480,000 was eventually agreed upon. Throughout the negotiations with the Buyers, the Respondent did not provide the Sellers with updated financial calculations based on the selling price of \$480,000 to indicate the amount of loss they would suffer, nor did she take steps to ascertain her advice to the Sellers on the financial implications of a negative sale.

In late August 2020, the Respondent provided financial calculations based on the sale price of \$480,000 to the Sellers, which reflected negative cash sale proceeds of \$42,000. The Respondent later updated her financial calculations to reflect the Sellers’ outstanding HDB loan amount and the amount utilised from their CPF accounts towards the purchase of the Property with accrued interest. The updated financial calculations showed that the Property would yield negative cash sale proceeds of \$60,000 and the Sellers could expect to receive a combined refund of \$287,000 to their CPF accounts. The Respondent repeated her advice to the Sellers that they only need to top up the shortfall in cash if the Property was sold below market valuation, and that their CPF accounts would be fully refunded upon completion.

Relying on the Respondent’s advice and financial calculations, the Sellers issued an Option to Purchase (“OTP”) in late August 2020 for the sale of the Property at \$480,000, which was exercised in late September 2020.

In early September 2020, a valuation report was received for the Property, which showed that the Property’s market value was \$455,000. The Sellers, relying on the Respondent’s advice, believed that

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they need not top up the shortfall in cash and would be receiving a full refund of monies utilised from their CPF accounts with accrued interest.

In late October 2020, the Sellers received a letter from HDB setting out the estimated sales proceeds, which showed a negative sale of \$78,933.55. The refunds to be made to the Sellers' CPF accounts would amount to a combined sum of \$303,521.41.

In mid-November 2020, the Sellers received another letter from HDB, stating that a combined refund of \$229,027.76 was made to the Sellers' CPF accounts. Relying on the Respondent's earlier advice that they would be refunded in full eventually, the Sellers did not notice the discrepancy in the CPF amounts and proceeded to purchase a private property.

In January 2021, the Sellers discovered to their shock and horror that there was a combined shortfall of \$78,933.55 in their CPF accounts when they were required to finance the purchase of their new property. The Sellers discovered that the negative sale proceeds from the sale of the Property were in fact recovered from their CPF accounts on a pro rata basis. Accordingly, the Sellers only received an aggregate refund of \$229,027.76 to their CPF accounts, being a difference of \$57,972.24 from what they had expected to receive (with the difference amounting to 12.1% of the sale price).

The Sellers contacted the Respondent about the amounts refunded to their CPF accounts, which were different from the estimates provided by the Respondent previously. The Respondent maintained her advice that the Sellers ought to have received a full refund of their CPF monies plus accrued interest in accordance with her financial calculations. It was only when the Respondent subsequently clarified with her estate agent that she learnt that the negative sale proceeds would be recovered from the Sellers' CPF accounts in lieu of cash.

As the Sellers had already sold the Property and committed to the purchase of their next property, they had no choice but to fork out the shortfall from the remaining balance in their CPF accounts and in cash to proceed with their purchase. The Sellers would not have proceeded with the sale of the Property and committed themselves to the purchase of a new private property had they been accurately advised about the implications of a negative sale on the refunds to their CPF accounts.

For facilitating the sale of the Property, the Respondent received \$9,345.79 as her share of commission. The Respondent did not offer any compensation to the Sellers for their losses.

Charges

The Respondent faced the following 2 charges:

Charge 1

For failing to conduct her work with due diligence and care, by not taking adequate steps to accurately ascertain the implications of a negative sale of the Property before facilitating its sale, in breach of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2 (Proceeded)

For failing to conduct her work with due diligence and care, by wrongly advising the Sellers that they would receive a full refund of the monies utilised from their respective CPF accounts plus

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accrued interest, when only a pro rata balance of the sale proceeds, after deducting the outstanding housing loan amount, would be refunded back into their CPF accounts in the event of a negative sale of the Property, in breach of paragraph 5(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2, with the remaining charge (i.e. Charge 1) taken into consideration for purposes of sentencing.

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

Charge 2: A financial penalty of \$6,500 and a suspension of 3 months

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