

## **S/N 18/2020 – For Misleading the Buyers That They Would Be Entitled to ABSD Remission of 7% as Long as Property Was Purchased in the Wife’s Name and If Existing HDB Flat Was Sold within 6 Months**

### **Facts of Case**

In September 2017, the Respondent put up an advertisement for the sale of the Property on the PropertyGuru website. The Respondent acted for the owner/seller of the Property. The Property was a landed property.

A couple, Mr and Mrs X, were prospective buyers (the “**Buyers**”) of the Property. Mr X was a Singapore permanent resident (“**SPR**”) and Mrs X was a Singapore citizen (“**SC**”) at all material times.

Sometime in September 2017, the Buyers viewed the Property after responding to the Respondent’s advertisement. During the viewing, the Respondent told Mr X that because he was a SPR, Mr X was not eligible to purchase the Property unless Mr X obtained approval from the Land Dealing Authority Unit (“**LDAU**”). Relying on this representation made by the Respondent, the Buyers considered purchasing the Property in Mrs X’s sole name as she was a SC.

The Buyers were already co-owners of a Housing and Development Board flat (the “**HDB Flat**”). The implication was that if Mrs X were to purchase the Property in her sole name, she would have to pay the 7% Additional Buyer’s Stamp Duty (“**ABSD**”), which was the prevailing ABSD rate for the purchase of a second property by a SC at the time.

On 25 September 2017, the Respondent represented to Mr X that there would be remission of the ABSD chargeable for the purchase of the Property if Mrs X purchased the Property in her sole name and the Buyers sold their jointly-owned HDB Flat within 6 months of Mrs X’s purchase of the Property (“**Representation**”).

The Representation given by the Respondent was erroneous. At the time, Rule 4 of the Stamp Duties (Spouses) (Remission of ABSD) Rules 2013 (“**Remission Rules**”) stated that there would be remission of the ABSD only if the Property was purchased under both the Buyers’ names and the Buyers sold their HDB Flat within 6 months of their purchase of the Property.

If Mrs X had purchased the Property in her sole name, there would be no ABSD remission even if the Buyers were to sell their HDB Flat within 6 months. The Respondent did not ascertain or verify the rules on ABSD remission, before making the Representation.

Subsequently, relying on the erroneous Representation given by the Respondent, the Buyers handed to the Respondent a cheque for 1% of the purchase price of S\$982,888.00 (amounting to S\$9,828.88) as the option money (“**Option Money**”) for the purchase of the Property, which

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was later encashed by the Seller. The Seller subsequently granted an Option to Purchase (“**OTP**”) to “Mrs X &/or Nominee” on 1 October 2017.

On 6 October 2017, at a meeting between the Buyers and their conveyancing solicitor, their solicitor advised the Buyers that the Respondent’s Representation was incorrect, and that there would be no ABSD remission if the Property were to be purchased in Mrs X’s sole name instead of the Buyers’ joint names. The Buyers were very upset on learning about the misrepresentation of the Respondent. If not for the Respondent’s Representation, the Buyers would not have entered into the transaction and paid the Option Money.

The Buyers realised that they would not be able to obtain the 7% ABSD remission if they proceeded with the purchase in Mrs X’s sole name, and if they were to add Mr X’s name in order to obtain the ABSD remission as a joint purchase made by a married couple, the ABSD payable would be 10% (and not 7%) of the purchase price or the market value of the Property (whichever was the higher amount). The Buyers had not budgeted for the additional ABSD to be paid. As such, they could not proceed with the purchase of the Property.

Mrs X did not exercise the OTP, which eventually expired and the Seller forfeited the Option Money amounting to S\$9,828.88. The Buyers also had to pay \$500.00 for legal costs even though the purchase was aborted. The Buyers had suffered a total loss of \$10,328.88 due to the Respondent’s misrepresentation.

## Charge

The Respondent faced the following charge:

### Charge (Proceeded)

For misrepresenting to the prospective buyers of the Property (the “**Buyers**”), that there would be remission of Additional Buyer’s Stamp Duty (“**ABSD**”) chargeable for the purchase of the Property where Mrs X purchases the Property in her sole name and the Buyers sell their jointly-owned Housing and Development Board flat (“**HDB Flat**”) within 6 months of Mrs X’s purchase of the Property, when under the Stamp Duties (Spouses) (Remission of ABSD) Rules 2013 which came into operation on 12 January 2013, there would be remission of ABSD only if the Property is purchased under both the Buyers’ names and the Buyers sell their HDB Flat within 6 months of their purchase of the Property under paragraph 6(3) read with 6(4) of the Code of Ethics and Professional Client Care (CEPCC).

## Outcome

The Disciplinary Committee (“**DC**”) considered that the purpose of the Estate Agents Act (“**EAA**”) is to safeguard the interest of consumers and to uphold the integrity and professionalism of the real estate agency industry. While a salesperson may not be under an

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obligation to advise a non-client, he must still exercise due care and diligence when he chooses to provide any advice or information to the non-client. The DC opined that it is not unusual to expect a non-client, who is a layperson in the sale and purchase of properties, to rely on a salesperson's representation or advice.

The DC noted that the facts of the Respondent's case fit these sorts of situations and if the salesperson did not intend his advice to be relied upon, he should at least qualify the same to the non-client. However, the Respondent did not do so.

The Respondent had argued that the Buyers' need not abort the transaction and the losses were self-inflicted. DC did not agree and was of the view that the Buyers would not have been placed in such an unenviable situation but for the Respondent's misrepresentation.

The DC also considered that the Respondent had not made any reimbursement or compensation to the Buyers for their loss, had no previous disciplinary record, and had admitted early to the charge.

The DC imposed a financial penalty of \$3,000, a suspension period of 4 months and also imposed fixed costs of \$1,000 on the Respondent.