

## **S/N 13/2022 – Failing to Conduct Business and Work with Due Diligence and Care by Wrongly Advising Buyer on Acquiring Private Residential Property on Trust and Failing to be Aware of HDB’s Regulations on Minimum Occupation Period of HDB Flat**

### **Facts of Case**

The Respondent was at all material times a registered salesperson.

Sometime in or around May 2016, the Respondent was engaged by his client (Mr Y) to assist in the intended purchase of a private residential property.

At all material times, Mr Y and his wife were registered owners of a Housing and Development Board (“HDB”) flat that was acquired in or around 21 February 2013 (the “Flat”).

On 21 May 2016, the Respondent met Mr Y. At this meeting, Mr Y told the Respondent that he was interested in acquiring a private residential property for his parents who were residing overseas at that time. However, Mr Y was not keen on having his parents registered as the legal owners of the property that would be purchased as his parents were foreigner citizens. Mr Y and his wife were also not eligible to acquire a private property as they were owners of the Flat and the Minimum Occupation Period (“MOP”) had not been fulfilled.

In response, the Respondent advised Mr Y that he could acquire a private residential property by entering into a trust arrangement with Mr Y’s infant child such that he would hold the said property on trust for his child. The Respondent advised that the Flat would not be affected and there would not be a breach of HDB’s MOP regulations as the child would be the beneficial owner of the private residential property under the trust arrangement.

The Respondent’s advice was entirely false and inaccurate. Under the prevailing HDB regulations then, the owner of a HDB flat that was still under MOP was not allowed to acquire private residential property to hold on trust for another person. The Respondent did not take any steps at all to ascertain the relevant laws, rules, regulations and policies relating to the acquisition of a private residential property on trust for another person by a registered owner of a HDB flat which was still under the MOP, and did not verify with HDB the veracity of his representation to Mr Y.

Between 21 May 2016 and October 2016, the Respondent arranged for Mr Y to view various private residential property developments. On 24 October 2016, the Respondent reiterated that Mr Y was able to purchase a private residential property to hold on trust for his child. This advice was again entirely false and inaccurate as the prevailing HDB regulations relating to limitations imposed on owners of HDB flats under MOP remained unchanged. The Respondent again did not verify with HDB the veracity of this representation.

On or about 5 November 2016, Mr Y decided to purchase a private residential property in a condominium development (the “Property”) in reliance on the Respondent’s wrongful advice. Mr Y issued a cheque of \$38,750, being the booking fee, in exchange for an Option to Purchase to be issued. The Respondent also arranged for a law firm to act for Mr Y in the purchase of the Property, including the preparation of a Deed of Declaration of Trust which was subsequently signed by Mr Y.

**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.

Thereafter, Mr Y entered into a sale and purchase agreement for the purchase of the Property and proceeded to pay Buyer's Stamp Duty amounting to \$17,850.

For facilitating Mr Y's purchase of the Property, the Respondent received a co-broke commission of \$6,975.

On or around 3 February 2020, HDB notified Mr Y that he had potentially infringed HDB regulations when he acquired an interest in a private residential property within the MOP of his Flat, and that such infringement may cause the Flat to be repossessed by HDB.

A financial penalty of \$45,000 was eventually imposed by HDB on Mr Y in lieu of compulsory acquisition of the Flat. Mr Y and his wife were required to make the penalty payment by cashier's order in one lump sum, failing which the Flat would be subject to compulsory acquisition. Mr Y paid the said financial penalty of \$45,000.

At all material times, the Respondent was not conversant with and was unaware of HDB's MOP regulations, namely, that an owner of an HDB flat could not acquire interest in private property while the flat was still within MOP, even if the private property was acquired to be held on trust by the owner for another person. In spite of his unfamiliarity with the subject matter, the Respondent did not take any steps to conduct due diligence to ensure that his advice to Mr Y was accurate.

### **Charges**

The Respondent faced the following charges:

#### **Charge 1**

Failing to conduct his business and work with due diligence and care when he wrongly advised Mr Y on or around 21 May 2016 that he was able to acquire a private residential property to hold on trust for his minor child during the MOP of the Flat, when in fact Mr Y could not do so without infringing HDB's regulations on the MOP, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "Code").

#### **Charge 2 (Proceeded)**

Failing to conduct his business and work with due diligence and care when he wrongly advised Mr Y on or around 24 October 2016 that he was able to acquire a private residential property to hold on trust for his minor child during the MOP of the Flat, when in fact Mr Y could not do so without infringing HDB's regulations on the MOP, in contravention of paragraph 5(1) of the Code.

#### **Charge 3**

Failing to ensure that he was fully conversant with the relevant laws, regulations and rules that apply to property transactions, namely HDB's MOP regulations, by failing to be aware that HDB's regulations on the MOP of an HDB flat prohibited Mr Y from purchasing a private residential property, whether on trust or otherwise, during the MOP of the Flat, in contravention of paragraph 4(1) read with paragraph 4(2)(b) of the Code.

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## **Outcome**

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

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

**Charge 2:** A financial penalty of \$8,000 and a suspension of 6 months.

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