

17 MAY 2016

FINANCIAL PENALTY AND LICENCE CONDITION IMPOSED ON HSR INTERNATIONAL REALTORS PTE LTD UNDER CEA'S DISCIPLINARY FRAMEWORK

The Council for Estate Agencies' Disciplinary Committee sentenced HSR International Realtors Pte Ltd (HSR) to a financial penalty of \$74,000, for two counts of continuing to act on behalf of a client where to do so would place their interests in potential conflict with those of the client, without declaring in writing to the client a conflict of interest. The Disciplinary Committee also imposed a condition on their licence where HSR is not to undertake any collective sale work for one year starting 20 April 2016.

About the Case

2. In September 2010, the Collective Sale Committee of Thomson View Condominium appointed HSR as its marketing agent for the collective sale of the condominium. The Committee comprised eight subsidiary proprietors, appointed to act jointly on behalf of all the subsidiary proprietors for the collective sale. HSR formed a sales investment team to take charge of this collective sale project.

3. In October 2010, on HSR's advice, the subsidiary proprietors approved the minimum sale price (also known as the reserve price) of \$490 million for the condominium. The Collective Sale Committee also proposed a Collective Sale Agreement, which a number of subsidiary proprietors proceeded to sign.

4. By March 2011, the Collective Sale Committee received 58.5 per cent consent of the total share value of the condominium. To encourage more subsidiary proprietors to sign the Collective Sale Agreement, the Collective Sale Committee raised the minimum sale price to \$580 million in July 2011.

5. In October 2011, the Collective Sale Committee received consent of 80 per cent of the total share value of the condominium and proceeded to launch the tender. The first two tenders did not receive any bids, and the third tender in August 2012 attracted a bid of \$590 million from a purchaser, Wee Hur-Lucrum Pte Ltd. The Committee awarded the tender to this purchaser in September 2012, and applied to the Strata Titles Board in October 2012 for a collective sale order.

6. In the same month, however, the minority subsidiary proprietors filed objections to the collective sale. The Strata Titles Board then issued a stop order for the collective sale on 14 January 2013. Subsequently, the Collective Sale Committee brought the matter to the High Court.

In the High Court

7. In April 2013, during the discovery process, it was found that HSR had offered incentive payments to four subsidiary proprietors to sign the Collective Sale Agreement:

- a. The first subsidiary proprietor was offered an additional 10 per cent of the final purchase price of her shop unit, in exchange for her signing the Collective Sale Agreement for her 10 residential units;
- b. The second subsidiary proprietor, a couple, was offered an additional \$185,000 for their unit and their son's unit;
- c. The third subsidiary proprietor, a couple, was offered an additional \$85,886 for their unit; and

- d. The fourth subsidiary proprietor was offered the reimbursement of his wife's business class return air ticket from Europe to Singapore, so that she can sign the Collective Sale Agreement.
8. The Court ruled that the Collective Sale Committee had not acted in bad faith. However, the Court found that HSR had breached its duty as an advisor to the Collective Sale Committee by offering the incentive payments. In particular, these incentive payments brought about a conflict of interest on the part of HSR, which led to the agency placing its own interest (to collect the commission) and the interests of the four subsidiary proprietors over the interests of the minority subsidiary proprietors. The Court also ruled that HSR had breached its duty of transparency by not disclosing the incentive payments to the Collective Sale Committee or the subsidiary proprietors.
9. Since the offer of incentive payments by HSR was a clear breach of its duties and was deemed as an act of bad faith, the Court dismissed the application for collective sale by the majority subsidiary proprietors.

CEA's Investigations

10. The Council for Estate Agencies' (CEA) investigations revealed that the lead property agent in HSR's sales investment team had approval from HSR's management to offer the incentive payments. The intention was to pay out the incentives through the commission from the collective sale. CEA's Disciplinary Committee (DC) therefore took action against both the lead property agent and the licensee (HSR).
11. The licensee, HSR, pleaded guilty to the DC on 12 April 2016, to two counts of breaching para 13(1) read with para 13(2)(a) of the Code of Ethics and Professional Client Care, under the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010. Another two counts of breaching para 13(1) read with para 13(2)(a) of the Code of Ethics and Professional Client Care, under the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010, were taken into account for sentencing.

12. HSR was sentenced by the DC on 20 April 2016 and ordered to pay a financial penalty of \$37,000 for each count. The DC also imposed a condition on their licence, which will disallow HSR from undertaking any collective sale work for one year starting 20 April 2016.

13. Disciplinary action was also initiated against the lead property agent who offered the incentive payments to the subsidiary proprietors. However, the agent passed away before the disciplinary proceedings could be completed.

CEA's Regulatory Framework

14. The duties, business activities, and conduct of property agencies and agents in Singapore are governed by the Estate Agents Act and Regulations, which include the Code of Practice and the Code of Ethics and Professional Client Care. These are in place to raise the ethical and professional standards of the real estate agency industry and to safeguard consumers' interests.

15. CEA has also put in place a system for complaint management, dispute resolution and enforcement. CEA thoroughly investigates reported malpractices and takes appropriate disciplinary actions against errant property agencies and agents. Property agencies and agents who breach the Code of Ethics and Professional Client Care are liable to face disciplinary action by a DC. The DC comprises members who are nominated from a disciplinary panel that includes practicing solicitors and other professionals from the real estate industry.

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About the Council for Estate Agencies

The Council for Estate Agencies (CEA) is a statutory board established in 2010 under the Estate Agents Act to regulate and promote the development of a professional and trusted real estate agency industry. The key responsibilities of CEA are to license estate agents and register salespersons, promote the integrity and competence of estate agents and salespersons, and equip consumers with the necessary knowledge to make informed decisions in property transactions. For more information, please visit: www.cea.gov.sg.