

S/N 8/2018 – Advertising Property Without Consent & Failure to Ensure Correct Floor Area of Property in Advertisement

Facts of Case

X was a joint owner of a private apartment (the “**Property**”) located within a private property development (the “**Development**”).

Sometime in 2015, the Respondent hired Y to tend his home services shop located within the Development. Y concurrently worked as a Personal Assistant (“**PA**”) to the Respondent; his scope of work entailed making cold calls to owners of units in the Development (and the neighbouring property development), matching potential tenants to prospective units in these developments, and coordinating viewings for such units. Y was not a registered salesperson.

For this purpose, the Respondent provided his username and password for his account on the online property portal, PropertyGuru, to Y. The Respondent instructed Y to post and manage advertisements for the sale and rental of prospective properties on his behalf.

In late June 2016, Y posted an advertisement for the rental of the Property on PropertyGuru (the “**Advertisement**”) using the Respondent’s account. Y had obtained X’s unit and contact details from a list provided by the Respondent. At the material time, X had engaged another registered salesperson to market the Property on a non-exclusive basis.

X found out about the Advertisement in early August 2016, after Y cold-called X to arrange for a viewing of the Property. X demanded the removal of the Advertisement; Y complied. At all material times, X did not give the Respondent and/or Y consent to advertise the Property, nor did the Respondent or Y ask X for consent to do so.

X subsequently discovered that Y had marketed the Property for lease at a monthly rent of S\$ 5,000 to S\$ 7,000; X’s asking rent was S\$ 6,800 per month. Consequently, a couple who viewed the Property decided not to rent at X’s asking price. X found out that Y had told the couple that the monthly rent could be negotiated to S\$ 5,000. X believed that she might have been able to close the lease transaction with the couple if Y had not marketed the Property without her consent, and at such a low price.

Further, Y advertised another unit within the Development on the Respondent’s behalf, but the built-up area of the property was wrongly stated as 1,335 square feet (instead of 2,281.95 square feet). Y posted this advertisement to increase exposure for the property, and to circumvent PropertyGuru’s restrictions against the posting of duplicate advertisements for the same property (hence, stating a false and different built-up area for the property).

Charges

The Respondent faced the following 2 charges:

Charge 1 (Proceeded)

For failing to comply with paragraph 3.8 of the Practice Guidelines on Ethical Advertising, by advertising through PropertyGuru that the Property was available for rent without obtaining consent from the Property’s owners, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2

For failing to ensure that the advertisement for the rental of a property located within the Development (which was prepared by Y and advertised through PropertyGuru on the Respondent's behalf) accurately described the property, by wrongly stating the built-up area as 1,335 square feet instead of 2,281.95 square feet, in contravention of paragraph 12(4)(b) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, while Charge 2 was taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee ("DC") noted that the benchmark sentence for such advertising breaches under the Code (i.e. advertising properties for rent without obtaining consent of owners) was a financial penalty of S\$ 3,000.

The DC considered the following relevant aggravating factors:

- (a) X believed she might have been able to close the lease transaction if Y had not marketed the Property without her consent at such a low price; and
- (b) The Respondent had overly relied on Y (who was not a registered salesperson at all material times) to post and manage his advertisements on PropertyGuru; this was a clear abdication of his duty and responsibilities as a salesperson. Public and client confidence in the performance of estate agency work would be undermined if such irresponsible conduct was left unchecked and undeterred.

The DC noted that the Respondent had 7 years of experience at the time of misconduct and was aware of his professional responsibilities when advertising properties. Notwithstanding, the Respondent permitted an unsupervised PA to post an advertisement without the owners' consent.

The DC also took into account the following:

- (a) The Respondent no longer engaged a PA and ensured that he managed and posted his own advertisements. The Respondent also stated in mitigation that he would ensure that any such misconduct would not reoccur; and
- (b) The Respondent had pleaded guilty to Charge 1 and agreed for Charge 2 to be taken into consideration for sentencing.

Accordingly, the DC imposed the following financial penalty on the Respondent:

Charge 1: A financial penalty of S\$ 3,300.

Fixed costs of S\$ 1,000 was also imposed on the Respondent.