

## **S/N 14/2020 – Extending Validity Period of Exclusive Estate Agency Agreement beyond Permitted Validity Period, Advertising Property as Exclusive Listing without Exclusive Agreement, Knowingly Providing Services to Sellers with Ongoing Exclusive Estate Agency Agreement and Advertising Property with Unregistered Contact Number**

### **Facts of Case**

The Respondent is the Key Executive Officer (“**KEO**”) of his estate agent.

### **Property X**

In end 2016, the Respondent and his estate agent were engaged by the Sellers of a Housing and Development Board (“**HDB**”) flat (“**Property X**”) to market and sell the property on an exclusive basis for a duration of 3 months. An Exclusive Estate Agency Agreement for the Sale of Residential Property (“**EEAA**”) was executed between the Sellers and the Respondent’s estate agent.

The Respondent did not manage to sell the property by the time the EEAA expired. As the Sellers were required to sell the property within 6 months, they sought the Respondent’s help to appeal to HDB for an extension of time. However, the Respondent told the Sellers that he would only help them if they signed another EEAA for a further 6 months. The Sellers were unwilling to do so, but eventually complied. The Respondent amended the prescribed validity period on the 2<sup>nd</sup> EEAA from the maximum 3 months to 6 months, notwithstanding that the prescribed EEAA template and paragraph 1.8.2(c) of the Professional Service Manual (“**PSM**”) provides that the maximum validity period for an EEAA is 3 months, and any extension had to be done by way of a renewal.

The Respondent became unresponsive after the 2<sup>nd</sup> EEAA was signed; the Sellers did not receive updates on the sale of their property. The Sellers were dissatisfied with the Respondent’s services and decided to terminate the working relationship in early June 2017. However, the Respondent reminded them that the 2<sup>nd</sup> EEAA would only expire in late September 2017 and insisted that he would continue to market the property until then.

The Respondent did not manage to sell the property by the time the 2<sup>nd</sup> EEAA expired. The Sellers could only engage other estate agents to help market and sell the property thereafter, and finally managed to sell the property in October 2017. The entire sale process took a long time, with undue stress and anxiety caused to the Sellers, and the situation was exacerbated when they were not allowed to terminate the 2<sup>nd</sup> EEAA before its expiry.

### **Property Y**

In mid-May 2017, the Respondent and his estate agent were engaged by the Seller of a HDB flat (“**Property Y**”) to market and sell the property. The Seller executed an EEAA with the Respondent’s estate agent for a 3-month duration. However, the Respondent subsequently altered the validity period of the EEAA from the prescribed maximum 3 months to 5 months, without the Seller’s prior knowledge or authorisation. Thereafter, the Seller did not receive sufficient updates on the sale of his property and felt that the Respondent was unresponsive. The Seller was dissatisfied with the Respondent’s services and emailed the Respondent’s estate agent to record his unhappiness in early June 2017. The Seller also asked for a copy of the EEAA, as he did not have a copy despite signing the same. Upon receipt of the EEAA, the Seller saw that the validity period had been altered from a duration of 3 months to 5 months. The Seller asked for the validity period to be reinstated to 3 months, but the Respondent claimed that the validity period could be amended by mutual agreement, and the EEAA would automatically expire after 3 months regardless of the written validity period. On this basis, the Seller eventually signed another EEAA that provided for a validity period of 4 months.

In early July 2017, the Seller sought to cancel the EEAs, but the Respondent’s estate agent did not agree to the same. The sale of the property was ongoing by then, and the property was eventually sold in July 2017.

### **Property Z**

In July 2017, the Respondent and his estate agent were engaged by the Sellers of a HDB flat (“**Property Z**”) to market and sell the property. The Sellers had engaged a few estate agents/salespersons to help market the property on a non-exclusive basis, including the Respondent and his estate agent. There was no estate agency agreement executed between the Sellers and the Respondent’s estate agent.

There were approximately 5 advertisements placed for the sale of the property by the estate agents who were marketing the property, including one placed by the Respondent on the online property portal, PropertyGuru (the “**Respondent's Advertisement**”). The Respondent’s Advertisement stated that it was a “*NEW EXCLUSIVE LISTING*”, giving readers the impression that the Respondent’s estate agent was the exclusive estate agent appointed by the Sellers. However, there was no exclusive agreement ever concluded between the Sellers and the Respondent’s estate agent. Further, the Respondent’s contact number in the Respondent’s Advertisement was not the contact number registered with CEA.

In early September 2017, the Sellers decided to engage a salesperson (“**Salesperson A**”) and his estate agent to market and sell the property on an exclusive basis. Salesperson A informed the Sellers about the advertisements placed by the other estate agents and drafted an SMS message (the “**SMS**”) for the Sellers to send to the salespersons who had placed the advertisements. The SMS stated that the Sellers

had appointed an exclusive agent for the property and instructed the recipients to remove all advertisements for the property.

The Respondent received the SMS and was aware of its contents. Further, the Respondent spoke to one of the Sellers and was again informed about the EEAA signed between the Sellers and Salesperson A's estate agent. Notwithstanding, the Respondent continued to advertise the property and also arranged for potential buyers to view the property on at least 4 occasions. The Respondent did not obtain consent from Salesperson A or his estate agent to continue to market the property for sale.

Salesperson A subsequently noticed that the Respondent had not removed the Respondent's Advertisement (unlike the other salespersons who had also posted advertisements for the property). The Respondent's Advertisement continued to contain the misleading representation that it was an exclusive listing, and was last re-posted on PropertyGuru in late November 2017.

## **Charges**

The Respondent faced the following charges:

### **Charge 1 (Proceeded)**

For failing to perform his work in accordance with applicable laws, by amending and extending the validity period of an EEAA for Property X from 3 months to 6 months, beyond the maximum permitted validity period of 3 months prescribed under paragraph 1.8.2(c) of the PSM, 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 perform his work in accordance with applicable laws, by amending and extending the validity period of an EEAA for Property Y from 3 months to 5 months, beyond the maximum permitted validity period of 3 months prescribed under paragraph 1.8.2(c) of the PSM, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code.

### **Charge 3**

For failing to perform his work in accordance with applicable laws, by amending and extending the validity period of a 2<sup>nd</sup> EEAA for Property Y from 3 months to 4 months, beyond the maximum permitted validity period of 3 months prescribed under paragraph 1.8.2(c) of the PSM, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code.

#### **Charge 4**

For causing or allowing the Respondent's Advertisement to be made that contained a misleading representation/claim that Property Z was a "*NEW EXCLUSIVE LISTING*", when the Sellers had not concluded any EEAA with his estate agent, in contravention of paragraph 12(4)(a) of the Code.

#### **Charge 5 (Proceeded)**

For failing to perform his work in accordance with applicable laws, by continuing to place the Respondent's Advertisement for the sale of Property Z on PropertyGuru despite knowing that the Sellers had an ongoing or existing EEAA in force, without the consent of the exclusive estate agent or its salesperson, in breach of paragraph 2.1.3 of the Practice Guidelines on Conduct Between Salespersons (PG 02/2014), in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code.

#### **Charge 6**

For failing to ensure that he was correctly and clearly identified in all his advertisements, by causing or allowing to be made the Respondent's Advertisement on PropertyGuru for the sale of Property Z, which stated a contact number that was not registered with CEA, in contravention of paragraph 12(1)(a) read with paragraph 12(2)(a) of the Code.

#### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1 and 5, while Charges 2, 3, 4 and 6 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee ("**DC**") noted that the Respondent, as KEO, was an experienced salesperson in a position of seniority and responsibility. The Respondent was expected to set a benchmark and model for his salespersons to follow, but had failed to conduct himself in a manner expected of and consistent with a person in his position.

Further, the Respondent had not exhibited genuine remorse despite filing an admission to plead guilty, as he was uncooperative and protracted the proceedings unnecessarily by repeatedly changing his stance and seeking to negotiate for the unreasonable removal of certain facts in the Agreed Statement of Facts. His actions and behaviour led to the incurring of unnecessary time, costs and inconvenience for all parties involved in the proceedings.

In relation to Charge 1, the DC also noted that there was clearly a conscientious disregard by the Respondent for what had been set out in the prescribed EEAA form;

the Respondent had deliberately amended the EEAA despite the caution on the form. There was also no excuse for the Respondent to not have known that he could not extend the validity period of the EEAA beyond the maximum period of 3 months given that CEA had sent circulars to specifically inform and warn all salespersons of the prohibition.

Accordingly, the DC imposed the following financial penalties and disciplinary orders on the Respondent:

**Charge 1:** A financial penalty of \$ 3,000 and a suspension of 4 months.

**Charge 5:** A financial penalty of \$ 4,000 and a suspension of 4 months.

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$ 7,000 and a suspension of 4 months.

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