

S/N 15/2022 – Doing an Act that may Bring Discredit or Disrepute to the Estate Agency Trade or Industry by Facilitating Lease of Whole Flat within the Minimum Occupation Period under the Guise of a Room Rental Transaction

Note: This case is related to S/N 14/2022 and involved the same lease transaction; the Respondent in S/N 14/2022 (i.e. Salesperson Y) had represented the owner of the Flat.

Facts of Case

The Respondent was at all material times a registered salesperson.

Sometime in or around January 2020, Salesperson Y became acquainted with the owner of a Housing and Development Board (“HDB”) flat (the “Flat”), Mr L. Salesperson Y was aware that the Flat was still within the Minimum Occupation Period (“MOP”) of 5 years and Mr L desired to rent out both the bedrooms of the Flat, and to reside elsewhere with his wife, although either of them might come back to the Flat and sleep in the living room. Salesperson Y was aware of HDB’s Terms and Conditions for Renting out of Bedrooms which provided, *inter alia*, that only 1 bedroom of a 3-room flat could be rented out and the owner(s) of the flat had to continue living in the flat during the period of rental. Notwithstanding that Salesperson Y was aware of Mr L’s ineligibility to rent out the entire Flat, Salesperson Y continued to advertise the entire Flat as being available for rent on an online property portal .

In or around February 2020, the Respondent was contacted by her clients to facilitate the rental of rooms for them. All three of them were students of foreign nationalities who were studying in Singapore at the material time. As the trio were physically overseas at that point in time, the Respondent agreed to help them source for and attend viewings of prospective properties on their behalf.

The Respondent was aware of HDB’s Terms and Conditions for Renting out of Bedrooms which provided, *inter alia*, that only 1 bedroom of a 3-room flat could be rented out and the owner(s) of the flat had to continue living in the flat during the period of rental. She had in fact advised her clients of this. In particular, when one of her clients sought her advice on a rental listing found online for a “2+1” room flat, the Respondent advised her client that it was an “*illegal rental*” as the owner there had yet to fulfil the MOP requirement and would have to lock one common room.

In March 2020, the Respondent contacted Salesperson Y regarding his listing of the Flat and thereafter viewed the Flat on 20 March 2020. Salesperson Y and his clients (the owner and his wife) were present during the viewing. Salesperson Y also informed the Respondent that while the Flat had not met the MOP, the owner intended to rent out both bedrooms in the Flat.

After the viewing, the Respondent continued to correspond with Salesperson Y to further discuss the rental of the Flat. Salesperson Y informed the Respondent that as the Flat had not met the MOP, they could not prepare a tenancy agreement that would reflect the lease as being for the whole Flat. In response, the Respondent suggested that she would prepare the tenancy agreement. As they were both aware that the owner could not rent out the entire Flat as this would be in breach of the MOP and HDB’s Terms and Conditions for renting out bedrooms, they mutually agreed that the tenancy agreement would indicate that the tenants were renting one bedroom. In actuality, the tenants would instead be renting the whole Flat and using both bedrooms.

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.

The Respondent hence proceeded to prepare a tenancy agreement which indicated that her clients were going to lease one master bedroom in the Flat for a period of 12 months, with an option to renew for a further 12 months. The Respondent also elected not to use her estate agent's template to prepare the tenancy agreement as she was aware that the intended rental transaction was in breach of the MOP and HDB's Terms and Conditions. Neither the Respondent nor Salesperson Y declared having facilitated the transaction to their estate agent, as they were both aware that the actual nature of the tenancy was not permissible under the MOP and HDB's Terms and Conditions.

The tenancy agreement was duly signed by the Respondent's clients on 24 March 2020 and thereafter signed by Salesperson Y's client on 28 March 2020.

Sometime in or around April 2020, the Respondent informed her clients that she had prepared the tenancy agreement as being for a single bedroom while in actual fact her clients were going to rent the whole Flat. The Respondent further informed her clients that she had done so because the owner was not permitted to rent out the whole Flat. She did not at any time advise her clients that they could not or should not have rented the whole Flat, and instead facilitated the lease in contravention of the MOP and HDB's Terms and Conditions by colluding with Salesperson Y.

When one of the Respondent's clients queried her as to why the tenancy agreement only reflected "*1 master bedroom*" rather than "*1 master bedroom & 1 common room*", the Respondent assured her that notwithstanding what was expressly stated in the tenancy agreement, the lease was indeed for 2 bedrooms.

Sometime in or around May 2020, the Respondent also advised one of her clients that if the relevant authorities inspected the Flat, her clients should lie to the authorities and say that the tenants were only staying in one bedroom and that the owners of the Flat were staying in the other bedroom.

Sometime in or around September 2020, HDB officers inspected the Flat and found that the entire Flat had been leased out in breach of the MOP and HDB's Terms and Conditions. The owner was thereafter issued a warning letter by HDB, and the period of unauthorized rental (from 1 June 2020 to 18 November 2020) was excluded from the computation of the MOP applicable to the Flat.

The Respondent, having known that HDB would not permit her clients to rent the entire Flat from the owner, continued to advise her clients to do so and took steps to ensure that her clients' lease of the entire Flat would not be easily detected by the authorities.

The Respondent also proactively suggested to and colluded with Salesperson Y to structure the tenancy agreement as a room rental agreement such that the transaction would, on its face, circumvent the MOP restrictions on the whole Flat being rented out, and had personally prepared the tenancy agreement.

Further, in colluding with and/or acting together with Salesperson Y to mask the lease of the entire Flat under the guise of a room rental transaction, the Respondent intended for HDB to be deceived and/or misled into approving the said rental in the belief that it was in accordance with HDB's Terms and Conditions.

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The Respondent did not retain her share of the commission received from facilitating the lease transaction, which was returned to the tenants.

Charge

The Respondent faced the following charge:

Charge 1 (Proceeded)

For doing an act that may bring discredit or disrepute to the estate agency trade or industry when she, while facilitating her clients' lease of a whole Flat, had colluded and/or acted together with Salesperson Y to facilitate the said lease under the guise of a room rental transaction when her clients were in fact renting the whole Flat, in spite of her knowledge that the owner was not eligible to rent out the whole Flat as he had not fulfilled the 5-year MOP imposed by HDB, in contravention of paragraph 7(1) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1.

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

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

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