

S/N 8/2024 – Facilitating Leases without Complying with HDB Procedures, Withholding Information from Clients, Failing to Declare Conflict of Interest and Failing to Perform Due Diligence Checks on Occupier

Facts of Case

The Respondent represented the Landlords of a Housing and Development Board (“**HDB**”) flat (the “**Flat**”) to facilitate lease transactions. As the Landlords resided overseas, the Respondent liaised with their niece, Ms B, who was authorised to act on the Landlords’ behalf. Ms B engaged the Respondent to assist with the rental of the Flat.

Under HDB’s Eligibility Conditions and Guidelines; Eligibility to Rent Flat or Bedroom (“**HDB’s Eligibility Conditions**”), non-Malaysian work permit holders from the construction, manufacturing, marine and process sectors are not permitted to rent or occupy an entire HDB flat.

Sometime in 2017, the Respondent facilitated a lease of the Flat to a married couple, Mr and Mrs X, who are nationals from the People’s Republic of China (“**PRC**”). The lease was from mid-2017 to end-2018, for a period of 18 months. When Mrs X signed the tenancy agreement (“**1st TA**”), she was holding an S Pass and eligible to lease the Flat.

Mrs X informed the Respondent that Mr X would also be staying in the Flat with her. However, the Respondent did not perform any due diligence checks to verify Mr X’s immigration status, nor did he inform Ms B or the Landlords to register Mr X as an occupier with HDB.

As Mr X was a Chinese national and a work permit holder in the manufacturing sector, he was ineligible to rent or occupy the Flat. Despite knowing that Mr Xu would be residing in the Flat during the 1st TA in contravention of HDB’s Eligibility Conditions, the Respondent still facilitated the 1st TA and withheld this information from the Landlords and Ms B.

When the 1st TA was nearing expiry, Mr and Mrs X informed the Respondent that they wanted to renew the lease. However, in 2018, Mrs X had changed jobs and held a work permit instead of an S Pass. The Respondent was aware of this.

As such, Mr X’s friend, Mr L, helped to sign a tenancy agreement for a 2-year lease of the Flat from January 2019 to December 2020 (“**2nd TA**”). Mr L was also living in the Flat and held an S Pass.

Despite knowing that Mr and Mrs X were ineligible to rent or occupy the Flat but would continue to live in the Flat, the Respondent facilitated the 2nd TA and again withheld this information from the Landlords and Ms B. The Respondent also did not ask the Landlords or Ms B to register Mr and Mrs X as occupiers with HDB.

Sometime before December 2020, the Respondent introduced Mr W to Mr X. Mr W was also a PRC national and worked as a driver in a house-moving business that the Respondent had with Mr W’s wife.

In December 2020, as the 2nd TA was expiring, Mr and Mrs X sought to renew the lease again, but were unable to do so due to their work pass statuses; Mr L was also no longer living in the Flat. Mr X informed the Respondent of their dilemma.

Mr X later asked Mr W to sign the tenancy agreement on their behalf (i.e. Mr and Mrs X's), which Mr W agreed to. Mr X then informed the Respondent that Mr W would be signing the tenancy agreement. The Respondent verified with Mr W, who claimed he had quarrelled with his wife and would be residing in the Flat. The Respondent then facilitated Mr W's signing of a tenancy agreement for a lease of the Flat from 19 December 2020 to 18 December 2022, at a monthly rent of \$ 2,300 ("3rd TA").

The Respondent knew Mr W and his wife personally, and knew that Mr W had another residence where he lived with his wife since 2019. The Respondent suspected that Mr W would not be staying in the Flat. However, he took Mr W's explanation at face value and did not probe further.

Despite knowing that Mr and Mrs X were ineligible to rent or occupy the Flat but would continue to live in the Flat, the Respondent proceeded to facilitate the 3rd TA and withheld this information from the Landlords and Ms B. The Respondent also did not ask the Landlords to register Mr and Mrs X as occupiers with HDB.

Although the Respondent strongly suspected that Mr W would not reside in the Flat, and knew that Mr and Mrs X were not registered as occupiers with HDB and in fact ineligible to do so, he failed to conduct any follow-up checks or enquire further on whether the 3rd TA was genuine. The 3rd TA turned out to be a sham as Mr W did not stay in the Flat despite having signed it.

Sometime in February or March 2021, the Respondent learnt from Mr W that he had only signed the 3rd TA to help Mr and Mrs X, and had no intention of residing in the Flat. The Respondent did not inform the Landlords or Ms B about this discovery and dishonestly withheld the information to allow the 3rd TA to continue and avoid more troubles for himself.

The Respondent's misconduct was only uncovered when the Flat was raided by the authorities in or around July 2021. During the raid, it was revealed that Mr and Mrs X, while residing in the Flat, had permitted 2 illegal immigrants to stay in the Flat and collected rent from them. It was only then that the Landlords discovered that Mr W was not living in the Flat, and Mr and Mrs X were living in the Flat without their knowledge.

Further, the Respondent had not informed the Landlords or Ms B that Mr W was married to the Respondent's business partner, and had continued to act on behalf of the Landlords when he facilitated the 3rd TA.

HDB eventually issued a warning to the Landlords for the breach of HDB's Eligibility Conditions.

For facilitating the 3rd TA, the Respondent received commission of \$ 2,300. The Respondent did not offer any compensation to the Landlords, nor did he offer to relinquish the commission received.

Charges

The Respondent faced the following 6 charges:

Charge 1

Failing to conduct his work with due diligence and care while facilitating the 1st TA, by failing to perform the necessary due diligence checks on Mr X, a foreigner, who was an intended occupier of the Flat, by failing to check Mr X's original work pass, cross-checking and ascertaining that the particulars on Mr X's passport materially corresponded with the particulars in his work pass and verifying the validity of his work pass with the Immigration & Checkpoints Authority or the Ministry of Manpower, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2

Failing to perform estate agency work in accordance with applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, by facilitating the 1st TA despite knowing that Mr X would be and was living in the Flat during the 1st TA, when he was ineligible to rent or occupy the Flat under HDB's Eligibility Conditions, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Charge 3

Failing to perform estate agency work in accordance with applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, by facilitating the 2nd TA despite knowing that Mr and Mrs X would be and were living in the Flat during the 2nd TA, when they were ineligible to rent or occupy the Flat under HDB's Eligibility Conditions, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Charge 4 (Proceeded)

Failing to perform estate agency work in accordance with applicable laws, regulations, rules and procedures that apply to transactions involving HDB flats, by facilitating the 3rd TA despite knowing that Mr and Mrs X would be and were living in the Flat during the 3rd TA, when they were ineligible to rent or occupy the Flat under HDB's Eligibility Conditions, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Charge 5 (Proceeded)

Failing to render professional and conscientious service to his clients and failing to act with honesty, fidelity and integrity when he facilitated the 3rd TA, by withholding relevant information from the Landlords when he discovered that Mr W had deceived his clients by signing the tenancy agreement on behalf of ineligible occupiers (Mr and Mrs X) and had no intention of living in the Flat, in contravention of paragraph 6(1) read with paragraph 6(2)(d) of the Code.

Charge 6

Failing to declare in writing to the Landlords that Mr W was married to his business partner and continuing to facilitate the 3rd TA where such interest arose in direct or indirect conflict with the Landlords', in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code.

Outcome

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

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

Charge 4: A financial penalty of \$6,000 and a suspension of 7 months; and

Charge 5: A financial penalty of \$5,000 and a suspension of 6 months.

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$11,000 and a suspension of 7 months.

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