

**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.

## **S/N 14/2023 – Facilitating Room Rental in Breach of HDB’s Regulations, Procuring Signing of Rental Agreement with Blank Commission Field and Failing to Declare Commission to Estate Agent**

### **Facts of Case**

In or around late October 2019, the owner (the “**Owner**”) of a 2-room Housing and Development Board (“**HDB**”) flat (the “**Property**”) engaged the Respondent to lease a bedroom in the Property. The Respondent had about 11 years of experience in the real estate agency industry then. The Respondent listed the Property for rent on an online property listing platform.

In or around early November 2019, a salesperson representing the prospective tenants (the “**Tenants**”) responded to the Respondent’s listing and requested for a viewing. The Tenants viewed the Property and agreed to lease a bedroom at a monthly rent of \$1,200 for a year. The Respondent prepared a room rental agreement (the “**Rental Agreement**”) using her estate agent’s standard room rental agreement form and the Rental Agreement was subsequently signed by the Owner and the Tenants despite the following:

- (a) Under HDB’s regulations at the material time, owners of 2-room HDB flats were not allowed to rent out any bedroom in the flat (the “**Rental Prohibition**”); and
- (b) By facilitating the lease of the Property’s bedroom, the Respondent caused the Owner to infringe HDB’s regulations and the Housing and Development Act (Cap. 129, Rev Ed 2004).

According to the Respondent, she was aware of the Rental Prohibition, but this had slipped her mind at all material times leading to the signing of the Rental Agreement. As a result, the Respondent did not advise the Owner that entering into the Rental Agreement would be in contravention of HDB’s regulations. Such infringement could lead to a compulsory acquisition of the Property by HDB or the imposition of a financial penalty of up to \$50,000 on the Owner.

For facilitating the Rental Agreement, the Owner paid a commission of \$1,284 to the Respondent. In the Rental Agreement, however, the amounts of commission payable by the Owner and the Tenants to their respective salespersons’ estate agents were left blank by the Respondent. The Rental Agreement did not therefore capture the agreement between the Respondent and the Owner in respect of the commission payable.

Further, to conceal the fact that the Respondent had facilitated the entry of the Rental Agreement in breach of HDB’s regulations, the Respondent did not account for or declare the commission of \$1,284 received or submit the Rental Agreement to her estate agent.

In or around April 2020, the Tenants terminated the lease and vacated the Property. In early August 2020, the Respondent messaged the Owner asking about the availability of the Property’s bedroom for rent as she had a potential tenant. When the Owner replied that he already had a tenant for the bedroom, the Respondent’s response was to ask the Owner to inform her when the bedroom becomes vacant and available for lease. Accordingly, despite knowing about the Rental Prohibition, the Respondent still attempted to facilitate another tenancy that would have been in breach of HDB’s regulations.

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The Respondent subsequently wrote an apology letter to the Owner and offered to refund her commission. However, the Owner rejected the Respondent's offer as he no longer wanted to deal with her. The Respondent retained the full sum of \$1,284 received from the Owner as commission.

## **Charges**

The Respondent faced the following 4 charges:

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

Failing to conduct her work with due diligence and care and in compliance with all laws including statutory and regulatory requirements, by facilitating the Rental Agreement despite the Rental Prohibition, leading the Owner to infringe HDB's regulations, in contravention of paragraph 5(1) read with paragraph 5(2)(a) of the Code of Ethics and Professional Client Care (the "**Code**").

### **Charge 2**

Procuring the Owner to sign the Rental Agreement in which the fields for the information on the commission payable was left blank, in contravention of paragraph 9(2)(d) of the Code.

### **Charge 3**

Committing an act which may bring discredit or disrepute to the estate agency trade or industry, by failing to account for and declare a commission of \$1,284 received from the Owner to her estate agent in respect of the Rental Agreement, to avoid disclosing to her estate agent that she had facilitated the Rental Agreement in breach of HDB's regulations, in contravention of paragraph 7(1) of the Code.

### **Charge 4**

Failing to conduct her work in compliance with all laws including statutory and regulatory requirements, when she attempted to introduce a tenant to the Owner despite knowing that the entry of a room rental agreement for the Property was prohibited by HDB's regulations, in contravention of paragraph 5(1) read with paragraph 5(2)(a) of the Code.

## **Outcome**

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

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

**Charge 1:** A financial penalty of \$5,000 and a suspension of 3 months

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