

S/N 11/2017 – Failing to Act with Due Diligence and Care when Facilitating a Sale Transaction Involving a Vulnerable Client and Procuring Client’s Thumbprint on an Option To Purchase with Key Information Missing

Facts of Case

The Respondent was engaged by an owner, X, to sell his HDB flat (the “**Flat**”), which he jointly owned with his wife, Y. The first contact with the Respondent was made through the Respondent’s wife, C. The Respondent visited the Flat and was informed by X that his wife Y was “senile” and had been residing in an old folk’s home for the past 10 years as no one was able to care for her. The Respondent managed to locate the nursing home that Y was staying in through the internet. The home was a purpose-built home for people with dementia.

The Respondent, together with X and X’s friend, visited Y at the home. The Respondent then approached an employee of the nursing home to ask for an inkpad and for the said employee’s help to procure Y’s thumbprints on the Option to purchase (“**OTP**”) for the sale of the Flat, an Estate Agency Agreement (“**EAA**”) and an Exclusive Estate Agency Agreement (“**Exclusive EAA**”). Key information in the OTP such as the option date, flat address, option expiry date and time, purchase price and buyer’s name were not filled, as the Flat had not been marketed for sale yet. After Y’s thumbprints were affixed on the documents, copies of all three documents were also not given to her at this meeting or thereafter.

C, on the Respondent’s behalf, proceeded to advertise the Flat for sale on various online portals. An interested buyer, Z, contacted C to arrange for a viewing of the Flat. After the viewing and negotiations, a sale price of \$360,000 was eventually agreed. Z then passed the Respondent a cheque for \$1,000 being the Option Fee and a cheque for \$199.25 to obtain a valuation report, which was subsequently provided to her by the Respondent. The Respondent also filled in the relevant details in the OTP, EAA and Exclusive EAA (which already bore Y’s thumbprints) and procured X’s signature on the same. On the EAA and Exclusive EAA, the Respondent’s commission was stipulated at 2% of the transacted price.

Thereafter, the Respondent met with Z who passed him a cheque of \$4,000 for the option exercise fee to exercise the option. The Respondent then proceeded to submit the resale application for the Flat to HDB. Z also paid a resale application fee of \$80 to HDB.

A few days later, X had a fall and was hospitalised. X and Y’s children visited X and found out about the impending sale. One of their children then informed the Respondent that the sale could not proceed as Y suffers from dementia and cannot duly authorise the sale. The Respondent notified Z of this development and advised her to cancel her cheque for the option exercise fee. Z paid a fee of \$30 to process

the cancellation of the cheque. Z was later refunded \$1,000 for her payment of the option fee by X and Y's children.

It also transpired that following the meeting at the nursing home with Y, the Respondent did not keep Y informed of matters relating to the transaction of the Flat, such as, *inter alia*, the offer made by Z, the negotiations on the sale price of the Flat, the eventual sale price of the Flat and the financial matters relating to the sale such as the amount of cash proceeds that X and Y would receive, and the termination of the sale.

Both X and Y were in their 80s. X was also hard of hearing and Y was illiterate, on top of being a sufferer of dementia. X and Y both fall within the definition of "vulnerable clients" under Paragraph 1.9.1 of the Professional Service Manual.

Charges

The Respondent faced the following 6 charges:

Charge 1 (Proceeded)

Failing to conduct his work with due diligence and care by failing to ascertain whether Y, who is a vulnerable client, was fully cognisant of the nature and consequence of the sale of the Flat she co-owned with X, which was transacted by way of an OTP, on which he had procured her thumbprint, despite knowing or having reason to know that Y was a vulnerable client, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care.

Charge 2

Failing to render professional and conscientious service to Y as he had only met Y once at a meeting at the nursing home to procure her thumbprint on the OTP, and had thereafter failed to inform her of matters relating to the proposed sale, in contravention of paragraph 6(1) of the Code of Ethics and Professional Client Care.

Charge 3 (Proceeded)

Procuring the thumbprints of Y on an OTP for the sale of the Flat, where essential and/or material terms such as option date, flat address, option expiry date and time, purchase price and buyer's name were left blank, in contravention of paragraph 9(2)(d) of the Code of Ethics and Professional Client Care.

Charge 4

Failing to give Y a copy of the OTP for the sale of the Flat, immediately or as soon as possible after he had procured her thumbprint on the said document, in contravention of paragraph 8(4) of the Code of Ethics and Professional Client Care.

Charge 5

Failing to give Y a copy of the EAA relating to the sale of the Flat, immediately or as soon as possible after he had procured her thumbprint on the said document, in contravention of paragraph 8(4) of the Code of Ethics and Professional Client Care.

Charge 6

Failing to give Y a copy of the Exclusive EAA relating to the sale of the Flat, immediately or as soon as possible after he had procured her thumbprint on the said document, in contravention of paragraph 8(4) of the Code of Ethics and Professional Client Care.

Outcome

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

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 7 months.

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

The suspensions were ordered to run concurrently.

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

The DC noted that the Respondent was not dishonest in his conduct, pleaded guilty timeously, and had also facilitated the subsequent termination of transaction and reimbursed the buyer.