Council for Estate Agencies

Note: This case was referred to a CEA Disciplinary Committee (DC) before 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 11/2019 – Failing to Act with Due Diligence and/or Care by Facilitating a Sub-Sublease of 2 Classrooms when the Sub-lessee had Sub-leased only 1 Classroom

Facts of Case

On 1 August 2014, the main tenant ("**Main Tenant**") of a Housing and Development Board ("**HDB**") commercial property (the "**Property**") entered into a tenancy agreement ("**TA A**") to sub-lease one classroom and a reception area in the Property to a company ("**Company A**"). The Property comprised four classrooms, one toilet, a reception area and an area outside the Property. The sub-lease was for a period from 1 August 2014 to 31 January 2017 at a monthly rent of $2,800, of which $1,800 was for the lease of furniture, fixtures and fittings. Company A operated a tuition centre on the Property.

In or around March and April 2015, the director ("**AB**") of Company A engaged the Respondent to facilitate a sub-sublease of the Property. The Respondent conducted a viewing of the Property for a sole-proprietor who ran a tuition business ("**Sole Proprietor X**"). On 21 July 2015, Company A and Sole Proprietor X entered into a tenancy agreement ("**TA B**") for the sub-sublease of two classrooms in the Property for a period from 1 January 2016 to 31 December 2016, at a monthly rent of $1,800. For facilitating TA B, the Respondent collected $1,800 in commission from Company A. The Respondent failed to verify, before drafting and facilitating TA B, whether:

a. Company A could sub-sublease two classrooms to Sole Proprietor X when the earlier had only sub-leased one classroom from the Main Tenant.
b. TA A permitted a sub-sublease; and
c. HDB permitted a sub-sublease of the Property.

TA A stated that Company A was not allowed to sub-sublease the Property without the written consent of the Main Tenant, and no such written consent was obtained. Further, HDB did not allow more than one-sublessee to occupy HDB commercial premises. This restriction was provided on HDB's website, which stated:

> "**Rental Shops**
> You can sublet up to 50% of the trading area or living quarters. From 16 October 2013, subletting has been limited to 1 subtenant."

Sometime in June 2016, the director of Company A, AB, decided to exit her business and engaged the Respondent to facilitate a takeover of the sub-lease of the Property. In July 2016, the director ("**BC"**) of a company ("**Company B**") came across the Respondent's advertisement for the takeover and contacted her.

On or around 19 July 2016, the Respondent conducted a viewing of the Property for BC and her husband, with AB present. At the viewing, AB explained that Company A had sub-subleased 2 classrooms to Sole Proprietor X and that the Main Tenant had allowed Company A to use the other 2 classrooms when they were empty. The

Respondent and AB told BC she could use the rental payments from Sole-proprietor X to defray their costs for the sub-lease.

After the viewing, the Respondent negotiated the takeover fee with BC, and the parties eventually agreed on a fee of $28,000.

On 31 July 2016, both AB and BC signed on an Offer to Assign and BC issued a cheque for 20% of the takeover fees to AB. AB then informed the Main Tenant that Company B would be taking over the sublease. The Main Tenant engaged another salesperson, Salesperson C, to assist him with the change in sub-lessee.

On 28 August 2016, the Respondent arranged for AB and BC to sign a takeover agreement for the sub-lease of the Property ("**Takeover Agreement**"). At this meeting, the Respondent represented to BC that Company B would receive the premises as it is, which BC understood to mean that Company B would take over the entire Property. The inventory list which accompanied the Takeover Agreement also included items and fixtures throughout the entire Property, and not just limited to the classroom and reception area sub-leased under TA A. After the signing of the Takeover Agreement, BC issued a cheque for the balance sum of the takeover fee, less certain sums which AB had agreed to pay for.

On the same day, the Respondent passed BC a letter of intent ("**LOI**") to sub-lease the Property from the Main Tenant. In the LOI, the Respondent had left the section on the approximate area to be sub-leased blank. This term was important and material as it was highly relevant to the takeover fee and rental for the sub-lease, as well as the intended use of the premises by Company B.

When questioned by BC, the Respondent said that since Company A was allowed to use the entire Property, the approximate area would be as per the Property's address. BC then signed the LOI and issued a cheque for the sum of $3,100, being the good faith deposit ("**Good Faith Deposit**") for Company B's sub-lease of the Property from the Main Tenant.

Sometime in September 2016, Company A paid a sum of $5,600 to the Respondent as commission for facilitating the Takeover Agreement.

On 5 September 2016, the Respondent forwarded the LOI signed by the Main Tenant, to BC. BC realised that the approximate area on the LOI was still left blank.

On or around 6 September 2016, BC's husband, who was helping BC with the takeover, raised the prospect of increasing Sub-Proprietor X's monthly rental, with the Respondent. The Respondent replied that as HDB had not approved the takeover yet, any increment should be negotiated thereafter. At this juncture, BC's husband decided to check with HDB on the subletting of commercial premises. He found out that HDB did not permit sub-leasing of the whole premises and sub-subleases were not allowed.

On or around 12 September 2016, BC's husband questioned the Respondent about what he had found out from HDB. The Respondent replied through WhatsApp that an

internal agreement between Company A and Sole-Proprietor X was sufficient as the arrangement between them was for the rental of classrooms, which did not require HDB's approval.

In or around late September or early October 2016, BC informed the Respondent that they had concerns and wished to withdraw from the Takeover Agreement.

On 15 March 2017, AB and BC entered into an agreement to nullify the takeover agreement. Under the agreement, BC received partial compensation but would still have lost a sum of $10,400 as a result of the transaction. The Good Faith Deposit of $3,100 was also forfeited.

Charges

The Respondent faced the following charges:

Charge 1

For procuring the signature of BC on the LOI addressed to the Main Tenant for the sub-lease of the Property to be granted to Company B, when an essential and/or material term or information, being the approximate area to be sub-leased was left blank in the LOI, in breach of paragraph 9(2)(d) of the Code of Ethics and Professional Client Care (the "**Code**")..

Charge 2

For failing to act in a reasonable manner towards other persons, by misrepresenting to BC and her husband, that the sub-sublease of two classrooms in the Property to Sole-Proprietor X, did not require the approval of HDB, in breach of paragraph 6(3) read with paragraph 6(4)(c) of the Code.

Charge 3

For failing to conduct her work with due diligence and/or care, by facilitating the tenancy agreement for the sub-sublease of two classrooms between Company A and Sole-Proprietor X, even though only one classroom was sub-leased to Company A by the Main Tenant of the Property, in breach of paragraph 5(1) of the Code.

Charge 4

For failing to conduct her work with diligence and/or care, by failing to verify whether the sub-lease between the Main Tenant and Company A permitted the latter to grant a further sub-sublease and to obtain the written consent of the Main Tenant to do so, in breach of paragraph 1.7.2 of the Professional Service Manual Practice Guidelines dated 1 January 2014 read with paragraph 5(1) of the Code.

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Charge 5

For undertaking estate agency work in respect of HDB flats without being fully conversant and without complying with the applicable procedures that apply to transactions involving such flats, by facilitating a sub-sublease of the Property to Sole-Proprietor X which was not compliant with HDB's requirement that there shall not be more than one sub-lessee occupying HDB commercial premises, in breach of paragraph 4(1) read with 4(2)(e) of the Code.

Outcome

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

Accordingly, the Disciplinary Committee ("**DC**") imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of $2,000 and a suspension of 5 months.

Charge 3: A financial penalty of $3,000 and a suspension of 5 months.

The suspension periods for both charges were ordered by the DC to run concurrently.

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

The Respondent filed an appeal against the sentences imposed by the DC to the Appeals Board under the Ministry for National Development (MND). The orders imposed by the DC were upheld by the Appeals Board.