

S/N 9/2021 – Failing to Advise Client on Stamp Duty and Additional Buyer’s Stamp Duty Payable for the Purchase of a Property

Facts of Case

The Respondent was at all material times a registered salesperson.

On 25 March 2020, the Respondent contacted the Buyer to inform the Buyer that there was a unit for purchase in the development which the Buyer had previously expressed interest in buying during a viewing. The Buyer informed the Respondent that the asking price for the unit was too high and she was unable to afford it after factoring in the stamp duty and conveyancing fees involved for the purchase. Thus, the Buyer did not proceed to buy the unit.

The next day, the Respondent called the Buyer again to ask if she was interested in buying a different unit (the “Property”) which was located in the same development. After some discussion, the Buyer made an offer of \$1.38 million for the Property and prepared a cheque of \$13,800 (the “Cheque”), as the 1% option fee in exchange for the Option to Purchase (OTP). Later that day, the Respondent met the Buyer and collected the Cheque from her. During their meeting, the Buyer expressed concerns that if she was unable to sell her current property within a stipulated period of time in order to receive a remission on the Additional Buyer’s Stamp Duty (ABSD), she would have to rent out the Property. The Respondent said that in such an event, she could assist the Buyer in looking for tenants. The Respondent also filled in the details of the Cheque on the Offer to Purchase, and the Buyer signed the Offer to Purchase.

At that time, the Buyer held the following beliefs in relation to the ABSD:

- (a) As she was the owner of an existing property, she would be liable to pay ABSD at 15% of the purchase price if she were to purchase a second property; and
- (b) If she sold off her existing property within six (6) months from the purchase of the second property, she would be able to claim back from IRAS, 12% of the stamp duty paid for the second property.

After the Respondent collected the Cheque from the Buyer, she met up with the sellers’ salesperson and handed over the Cheque. At no time before the Buyer handed over the Cheque to the Respondent did the Respondent advise the Buyer nor do any financial calculations for the Buyer on the amounts of stamp duty or the ABSD payable for the purchase of the Property.

On 27 March 2020, the sellers’ salesperson informed the Respondent that the sellers had accepted the Offer to Purchase the Property at \$1.38 million and the Respondent informed the Buyer of the same. The Respondent then met up with the Buyer to pass her the OTP and to

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obtain the Buyer's signatures on the OTP, the Salespersons Checklist on Customer Due Diligence and Customers' Particulars Form.

On 28 March 2020, the Buyer enquired with the Respondent what date she should indicate on the Sale and Purchase Agreement for her to obtain the ABSD remission if she sold her existing property. The Respondent told the Buyer that she would have to pay the ABSD first and obtain a reimbursement after selling her existing property. However, on 30 March 2020, the Buyer contacted her banker to enquire about a home loan and found out from her banker that she was not eligible for ABSD remission as she was not married. The Buyer immediately informed the Respondent of this, and it was only at this juncture that the Respondent realised that the Buyer was single.

Subsequently, the Buyer requested that the sellers extend the deadline to exercise the OTP until her existing property was sold but the sellers were not agreeable. The Respondent then advised the Buyer to exercise prudence in deciding whether to exercise the OTP in light of the potential liability to pay the ABSD should she exercise the OTP. Eventually, on 17 April 2020, which was the last day to exercise the OTP, the Buyer informed the Respondent that she would not be exercising the OTP and the sellers forfeited the option money of \$13,800 which the Buyer paid.

To obtain the ABSD remission for the purchase of a second property, Rule 4(1)(i) of the Stamp Duties (Spouses) (Remission of ABSD) Rules 2013 requires, inter alia, that the property be purchased by a married couple.

Had the Respondent properly advised the Buyer on the stamp duty and the ABSD payable and her eligibility for an ABSD remission, she would have had to enquire on the Buyer's marital status to determine her eligibility for ABSD remission. The Respondent would have then found out that the Buyer was not married, correct her mistaken belief that she was eligible for the ABSD remission and advised her accordingly. However, the Respondent had kept silent on matters relating to stamp duties, which eventually led to the Buyer's decision to forfeit the option fee of \$13,800.

Charges

The Respondent faced the following two charges:

Charge 1 (Proceeded)

For failing to conduct her business and work with due diligence, despatch and care whilst acting for the Buyer of the Property by failing to advise the Buyer on the stamp duty and additional buyer stamp duty payable and its applicable rules for the purchase of the Property before the Buyer paid the option fee of \$13,800 to the sellers of the Property in exchange for the Option to Purchase, resulting in the Buyer subsequently

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forfeiting the option fee and sustaining a loss of \$13,800 when she realised that she was not eligible for the ABSD remission, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care.

Charge 2

Failing to be conversant with the relevant laws, regulations and rules that apply to property transactions by erroneously informing the Buyer that she was eligible for an ABSD remission for the purchase of the Property when she was not eligible as she was buying the Property in her sole name, in contravention of paragraph 4(1) read with paragraph 4(2)(b) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, with Charge 2 taken into consideration for sentencing.

Charge 1: A financial penalty of \$3,500 and a suspension of 3 months.

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