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 1/2019 – Failing to Advise Landlord that the Property was not Approved under the Planning Act for the Intended Use of the Tenant

Facts of Case

In or around December 2015, the Respondent was engaged by a company (the **"Landlord"**), which was the landlord of a property (the **"Property"**), to market the Property for rent. The Property was zoned as 'Business 1 (B1)' for industrial and warehouse use pursuant to the Planning Act.

On or around 23 December 2015, the Respondent placed an advertisement on the online portal 'www.commercialguru.com.sg' for the rental of the Property at $3,000 per month. In the advertisement, the property type was stated as "Light Industrial (B1)".

On or around 16 February 2016, the Respondent was contacted by Salesperson X who enquired about the Property on behalf of his client (the **"Tenant"**). Salesperson X told the Respondent that the Tenant was looking to rent a unit to operate a dance studio and arranged for a viewing of the Property. The Respondent then informed the director of the Landlord of the viewing and the Tenant's intended use of the Property.

On or around 18 February 2016, the Respondent, Salesperson X and the Tenant attended a viewing of the Property.

On or around 20 February 2016, Salesperson X informed the Respondent of the Tenant's offer of a monthly rental of $2,500 and a 2 months' fitting-out period that would be rental free.

Following negotiations, the Respondent informed Salesperson X on or around 21 February 2016, that the Landlord had accepted the Tenant's offer. The Tenant then signed a letter of intent (**"LOI"**) in respect of a two-year lease of the Property commencing on 1 May 2016 at a monthly rental of $2,500. In the field specifying the usage of the Property in the LOI, the Tenant filled in "Fitness/dance studio + selling of gardening supplies".

On or around 29 February 2016, the Tenant and Landlord entered into a tenancy agreement (**"TA"**). The TA, which was prepared by the Respondent, indicated that the Property would be used as "fitness/dance studio + selling of gardening supplies". The Tenant then paid the Landlord a total sum of $7,500, which comprised a two-month rental deposit of $5,000 and one-month advance rent of $2,500. The Tenant also paid stamp duty of $224 for the lease of the Property.

On or around 9 March 2016, the Landlord paid the Respondent a commission of $2,500 (inclusive of GST) for facilitating the lease transaction of the Property. Out of this sum, $1,250 was paid to Salesperson X as his share of the commission, by way of co-broking with the Respondent.

After the premises were handed over to the Tenant, the Tenant and her business partner incurred renovation and furnishing expenses amounting to about $14,394. The

renovation works were meant to make the premises more suitable to run a fitness/dance studio.

On 7 June 2016, CISCO officers sent by the Urban Redevelopment Authority (**"URA"**) inspected the Property pursuant to a complaint received by URA.

On 11 July 2016, URA issued an enforcement notice (the **"Notice"**) to the Landlord and Tenant, stating that there was a breach of planning control at the Property as the use of the Property was materially changed to that of non-industrial use, without the requisite planning permission being obtained. The Notice also required parties to cease the unauthorised use of the Property and to remove all related paraphernalia.

The Tenant incurred costs of $374 to seek legal advice regarding the Notice and an appeal against the Notice. The appeal was rejected, and the Tenant was required to move out of the Property by 21 December 2016.

On or about 30 December 2016, the Tenant vacated the Property and handed over the keys to the Respondent. From the commencement of the lease on 1 May 2016 till 30 December 2016, the Tenant had paid the Landlord a total sum of $20,000 in monthly rental. The Tenant and Landlord agreed that the rental deposit of $5,000 would be forfeited, and the Tenant would also reimburse the Landlord the Respondent's pro-rated commission amounting to $1,666. The Tenant further incurred costs of $1,850 to reinstate the Property to its original condition as well as a fee of $1,694.88 for the early termination of an internet service subscription for the Property.

While the Respondent knew that the Property was zoned as 'Business 1 (B1)", she was not aware that this meant that the Property could only be used for industrial and warehouse purposes. As a result, she failed to advise the Landlord that the Property could not be used for the Tenant's intended purpose, i.e. as a fitness/dance studio and for the selling of gardening supplies.

Charges

The Respondent faced the following charges:

Charge 1

For failing to be fully conversant with relevant laws that apply to property transactions, as the Respondent did not know that areas zoned as 'Business 1 (B1)' could only be used for industrial and warehouse purposes, and could not be used as a fitness/dance studio and for the selling of gardening supplies or other uses, unless written permission was granted by the Chief Executive Officer of URA, in breach of paragraph 4(1) read with paragraph 4(2)(b) of the Code of Ethics and Professional Client Care.

Charge 2 (Proceeded)

For failing to render professional and conscientious service to the Landlord, by failing to advise the Landlord that the Property, which was zoned as 'Business

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1 (B1)' for industrial and warehouse use pursuant to the Planning Act, was not approved for the intended use of the Tenant as a fitness/dance studio and for the selling of gardening supplies, in breach of paragraph 6(1) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2.

Accordingly, the Disciplinary Committee imposed the following financial penalty and disciplinary order on the Respondent:

Charge 2: A financial penalty of $2,000 and a suspension of 4 months.

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