

S/N 6/2022 – Failing to Conduct Business and Work with Due Diligence, Despatch and Care Leading to Client Infringing the Housing and Development Act

Facts of Case

The Respondent was at all material times a registered salesperson.

Sometime before May 2019, the Landlord asked the Respondent to represent him in renting out his entire 5-room HDB Flat. At that time, the Flat was still within the Minimum Occupation Period (MOP) as the Landlord had only taken possession of the Flat around August 2018. Despite knowing that the Flat was still within the MOP, the Respondent agreed to assist the Landlord and asked another salesperson to help the Respondent to post a listing to advertise the rental of the whole Flat.

Sometime in July 2019, the Tenant saw the listing for rental of the Flat and enquired about it. The Respondent then conducted a viewing for the Tenant and his wife sometime in August 2019. During the viewing, the Tenant told the Respondent that his wife and children (collectively, the “Occupiers”) would be staying in the Flat and the Respondent assured him that they could use the entire Flat. After the viewing, the Tenant made an offer to rent the Flat and the Landlord agreed.

The Respondent then prepared a Room Rental Tenancy Agreement (the “Tenancy Agreement”) stating that the Landlord was to let out 2 bedrooms in the Flat to the Tenant. The Respondent had prepared an agreement for room rental as she knew that the Flat was still within MOP and that the Landlord had yet to obtain HDB’s consent to rent out the entire Flat. Before signing the Tenancy Agreement, the Tenant’s wife called the Respondent to express her concern with signing an agreement for room rental as they wanted to rent the entire Flat and not 2 bedrooms. The Respondent assured the Tenant’s wife that her family could use all the rooms in the Flat and told her that she could ignore the wording of the Tenancy Agreement as it was just a formality. However, to ensure that her family could use the entire Flat, the Tenant’s wife sent the Respondent 2 versions of the signed Tenancy Agreement. One version included the names and passport numbers of the Occupiers while the other did not.

After the Tenancy Agreement was finalised, the Respondent assisted the Tenant in stamping the Tenancy Agreement by submitting an online application form to the Inland Revenue Authority of Singapore (IRAS) to stamp the Tenancy Agreement. Although she knew that the whole Flat was rented out, she made a misleading declaration to IRAS in the application for stamping the Tenancy Agreement that the Flat was partially rented and declared that the information given in the application was true, complete and correct to the best of her knowledge.

The Tenant and the Occupiers (i.e. his family) moved into the Flat after their respective work and immigration passes were approved. The Landlord did not live with the Tenant and the

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Occupiers in the Flat. At no point before the signing of the Tenancy Agreement or before the Tenant and the Occupiers moved into the Flat did the Respondent inspect the original work passes and immigration passes of the Tenant and the Occupiers and verify the validity of their passes with the Ministry of Manpower and/or the Immigration & Checkpoints Authority, to ensure that they were not immigration offenders.

Sometime in September 2019, HDB sent an advisory letter to the Landlord reminding him that it was a breach of HDB's terms and conditions if he did not live in the Flat or let out the Flat without HDB's written approval.

Towards the end of September 2019, HDB officers conducted an inspection of the Flat and found the Tenant and the Occupiers living in it. During investigations, HDB established that the Landlord did not live in the Flat with the Tenant and that the Tenant had rented the whole Flat from the Landlord. The Landlord eventually informed the Tenant to vacate the Flat in October 2019 due to ongoing HDB investigations. The Tenant and his family were put to great inconvenience and expense as they had to search for a new rental property within a very short period of time and incurred costs to engage movers to move all their belongings to their new rental property. The Flat was compulsorily acquired by HDB eventually.

Charges

The Respondent faced the following three charges:

Charge 1 (Proceeded)

Failing to conduct her business and work with due diligence, despatch and care, by facilitating the rental of the Flat to the Tenant, when she knew or ought to have known that the Landlord had not obtained the prior written consent of HDB to rent out the Flat, leading to the Landlord infringing section 50(1) read with section 56(1)(h) of the Housing and Development Act (Cap 129, 2004 Rev Ed), in contravention of paragraph 5(1) read with paragraph 5(2)(a) of the Code of Ethics and Professional Client Care.

Charge 2

Committing a misleading act that may bring discredit or disrepute to the estate agency trade or industry by declaring to IRAS in the application for stamping of the Tenancy Agreement that the Flat was partially rented out when she knew that the whole Flat was rented out, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

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Charge 3

Failing to conduct her business and work with due diligence, despatch and care by failing to inspect the original work passes and immigration passes of the Tenant and the Occupiers, failing to cross check the particulars on these passes against the original passports of the Tenant and the Occupiers, and/or failing to verify the validity of these passes with the Ministry of Manpower and/or the Immigration & Checkpoints Authority, to ensure that the Tenant and the Occupiers were not immigration offenders before facilitating the Tenancy Agreement, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, with Charges 2 and 3 taken into consideration for sentencing.

Charge 1: A financial penalty of \$5,000 and a suspension of 4 months.

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