

S/N 2/2017 – Failing to Declare in Writing Potential Conflict of Interest, Failing to Render Professional and Conscientious Service to the Client and Failing to Act Ethically Towards Estate Agent by Not Accounting for Commission Received

Facts of Case

The Respondent and her husband, L were both registered salespersons with the licensed estate agent, ABC Property Network Pte Ltd (“**ABC Property Network**”) at the material time.

L was engaged by the vendor of a HDB property (the “**Property**”) to market it. L advertised the Property on the PropertyGuru website.

On 27 October 2012, the purchaser attended an open house viewing of the Property conducted by L and was keen to purchase it. L informed the purchaser that the vendor’s asking price was \$580,000. The purchaser expressed his interest to buy the Property at this price but informed L that he would have to be above 35 years old at the time the OTP was granted to be eligible for the purchase of the Property under the HDB Single Singapore Citizen Scheme, which he intended to rely on for the purchase (“the **Scheme**”).

As the purchaser would be eligible for the Scheme only on or after 4 January 2013, L then suggested that to show the purchaser’s sincerity to purchase the Property, he could offer to pay the vendor an upfront amount of \$20,000 (being \$15,000, and the option and the option exercise fees of \$5,000) out of the purchase price of \$580,000. In return for the purchaser agreeing to this arrangement, the vendor would then defer the grant of the OTP to on or after 4 January 2013 (the “**Supplementary Agreement**”).

Both the purchaser and the vendor were agreeable to L’s suggested Supplementary Agreement.

In the evening of 27 October 2012, L went to the Property to meet with the vendor and drafted an agreement to effect the Supplementary Agreement (the “**Agreement**”) which contained the following:

“With reference to clause 15.1 of the Option to Purchase, in the event that the HDB’s approval for the sale or purchase of the Property is not obtained, is refused or revoked before the completion date and it is not due to the vendor’s or purchaser’s default in complying with the HDB’s terms of resale or requirements, the vendor will immediately, without demand, refund to the purchaser Singapore Dollar Twenty Thousand (SGD \$20,000/-) without any interest or deduction.”

The Agreement was in contravention of Clause 2.1 of the HDB’s Terms and Conditions of Sale and Purchase of an HDB Resale Flat which prohibited the vendor and the purchaser from entering into any supplementary agreements that may cause the resale price of a HDB property as declared to be inflated or understated.

The Agreement was duly executed by the vendor and the purchaser and a cheque of \$20,000 was issued by the purchaser to the vendor pursuant to the Agreement.

After the purchaser had issued the cheque, L then told the purchaser that he had to pay the former a commission of 1% on the sale price. The purchaser agreed. L then prepared the exclusive estate agency agreement (the “**Purchaser’s EEAA**”) which the purchaser signed even though L did not then fill in the identity of the purchaser’s salesperson in the Purchaser’s EEAA. The purchaser was not given a copy of the Purchaser’s EEAA.

Thereafter, L’s wife, the Respondent, filled her personal details in the Purchaser’s EEAA as the purchaser’s salesperson and indicated her agreement to represent the purchaser. L then handed the purchaser’s cheque of \$20,000 to the vendor.

On 24 December 2012, L met the vendor to execute the exclusive estate agency agreement (the “**Vendor’s EEAA**”). On 28 December 2012, L visited the purchaser and asked him to issue a cheque of \$6,206 to the Respondent as her 1% commission (with GST) and another cheque of \$80 to pay the HDB registration fee. The purchaser issued the 2 cheques to “ABC Property Pte Ltd” as requested by L.

On or about 29 December 2012, L met the vendor to collect his commission of \$12,305 payable by the vendor. As the vendor did not have her cheque book, the vendor’s friend then issued a cheque of \$12,305 to “ABC Property Pte Ltd” on her behalf.

Unbeknownst to the vendor and purchaser, ABC Property Pte Ltd was incorporated in December 2012 with L as its sole director and sole shareholder and the Respondent as its company secretary.

On or around 2 January 2013, the OTP was prepared by L, which stated that the purchase price was \$560,000 (having factored in the \$20,000 that the purchaser had paid upfront to the vendor) instead of the true resale price of \$580,000. L did this in contravention of Clause 2.1 of the HDB’s Terms and Conditions of Sale and Purchase of an HDB Resale Flat which required the vendor and the purchaser to declare to HDB the true resale price of the Property.

The purchaser had signed the OTP and the purchaser’s Resale Checklist in or around late December 2012 or early January 2013. L prepared the purchaser’s Resale Checklist with the purchaser.

The HDB first appointment was fixed on 26 February 2013 for the sale and purchase of the Property. The purchaser met his salesperson, the Respondent, for the first time at the appointment. L had introduced the Respondent as L’s colleague to the purchaser. The resale transaction was completed on 23 April 2013.

In or around the period from 27 October 2012 to 25 February 2013, the Respondent failed to meet up with her client, the purchaser of the Property, to discuss and advise him on the sale and purchase of the Property.

In or around the period from 27 October 2012 to 23 April 2013, the Respondent had failed to declare in writing as soon as possible to her client, the purchaser of the Property, that L was acting for the vendor of the Property. The Respondent had continued to act for the purchaser up till the completion of the sale of the Property.

On 2 December 2013, ABC Property Network discovered that it had not received the commission that was due from the vendor. A staff from ABC Property Network called the vendor to ask about the outstanding commission. ABC Property Network was informed by the vendor that the commission had been paid to ABC Property Pte Ltd on 29 December 2012.

ABC Property Network's internal investigations revealed that L was ABC Property Pte Ltd's sole director and sole shareholder, while the Respondent was its company secretary. When confronted by ABC Property Network about the matter, the Respondent and L admitted that the 2 amounts of commission had been paid to their company, ABC Property Pte Ltd, after initially not being forthcoming about their misconduct.

The Respondent and L had reimbursed ABC Property Network the amounts that each of them had wrongfully collected as their commission, only on or around 13 December 2013. The commission collected from the purchaser amounted to \$5,992. Of the purchaser's commission that was paid back to ABC Property Network, the Respondent had received \$3,480 being 80% of the commission she collected from the purchaser, after deducting GST and \$1,000 for legal expenses incurred by ABC Property Network in recovering the commission.

The DC noted that the Respondent had no dishonest or malicious intent in her misconduct, no previously disciplinary record and had admitted to the charges at an early opportunity.

Charges

The Respondent faced the following 5 charges:

Charge 1

Failing to perform her work in accordance with applicable laws and relevant knowledge when undertaking estate agency work relating to a HDB flat without being fully conversant and complying with the applicable HDB rules, by failing to go through the HDB Resale Checklist for Buyers with her client, the purchaser, as paragraph 3(b) of the prescribed HDB Resale Checklist for Buyers who engage Salespersons stipulates that "*[o]nly the salesperson engaged by the buyers is to complete the Resale Checklist, witness the signing of the Option to Purchase / Resale Application Form and execute the Salesperson Statutory Declaration*", in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Practice and Professional Client Care.

Charge 2 (proceeded)

Continuing to act on behalf of her client, the purchaser of the Property, where to do so would place her interest in potential conflict with those of her client, without declaring in writing as soon as possible to her client, the interest which was in direct conflict or indirect conflict, by failing to declare in writing as soon as possible to her client that L, her husband, was acting for the vendor of the

Property, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code of Practice and Professional Client Care.

Charge 3

Failing to act ethically towards her estate agent in the conduct of estate agency work on her client's behalf by failing to account to her estate agent for the commission she collected from her client, the purchaser of the Property, in the sale transaction involving the Property, as required under the Respondent's Salesperson Agreement with her estate agent, and further failing to disclose the receipt of commission, in contravention of paragraph 6(3) of the Code of Practice and Professional Client Care.

Charge 4

Failing to perform her work in accordance with applicable laws and relevant knowledge when undertaking estate agency work relating to a HDB flat without being fully conversant and complying with the applicable policies of the Council, by collecting commission from her client, the purchaser of the Property before the time of completion of the sale and purchase of the Property, which was on 23 April 2013, contrary to clause 5(a) of the Exclusive Estate Agency Agreement for the Purchase of Residential Property that she and the purchaser had signed on 27 October 2012, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Practice and Professional Client Care.

Charge 5 (proceeded)

Failing to render professional and conscientious service to her client by failing to meet with her client, the purchaser of the Property, to discuss and advise him in respect of the sale and purchase of the Property, in contravention of paragraph 6(1) of the Code of Practice and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 2 and 5 while Charges 1, 3 and 4 were taken into consideration for sentencing purposes. The DC imposed the following financial penalties on the Respondent:

Charge 2: A financial penalty of \$3,000.

Charge 5: A financial penalty of \$2,000.

The DC had not made an order to suspend the Respondent as she was no longer a registered salesperson when the DC passed the sentence.

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