

S/N 3/2017 – Failing to Declare in Writing Potential Conflict of Interest, Failing to Act Ethically Towards Estate Agent by Not Accounting for Commission Received and Failing to Perform Work According to HDB Regulations, Rules and Procedures

Facts of Case

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

The vendor of a HDB property (the “**Property**”) had engaged the Respondent to market the Property. The Respondent followed the vendor’s instructions to advertise the Property on the PropertyGuru website. The purchaser saw the Respondent’s property advertisement and called the Respondent to arrange for a viewing of the Property.

On 27 October 2012, the purchaser attended an open house viewing of the Property conducted by the Respondent and was keen to purchase it. The Respondent 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 the Respondent that he would have to be above 35 years old at the time the Option To Purchase (“**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, the Respondent 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 the Respondent’s suggested Supplementary Agreement.

In the evening of 27 October 2012, the Respondent 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, the Respondent then told the purchaser that he had to pay the former a commission of 1% on the sale price. The purchaser agreed. The Respondent then prepared the exclusive estate agency agreement (the "**Purchaser's EEAA**") which the purchaser signed even though the Respondent did not then fill in the identity of the purchaser's salesperson in the Purchaser's EEAA. The Respondent did not give the purchaser a copy of the Purchaser's EEAA.

Thereafter, the Respondent passed the Purchaser's EEAA to F whereupon she filled in her personal details in the Purchaser's EEAA as the purchaser's salesperson and indicated her agreement to represent the purchaser. The Respondent then handed the purchaser's cheque of \$20,000 to the vendor.

On 24 December 2012, the Respondent met the vendor to execute the exclusive estate agency agreement (the "**Vendor's EEAA**"). On 28 December 2012, the Respondent visited the purchaser and asked him to issue a cheque of \$6,206 to F 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 the Respondent.

On or about 29 December 2012, the Respondent 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 on her behalf to "ABC Property Pte Ltd" instead of the Respondent's estate agent, ABC Property Network.

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

On or around 2 January 2013, the OTP was prepared by the Respondent, 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. The Respondent did this in contravention of Clause 2.1 of the HDB's Terms and Conditions of Sale and Purchase of an HDB Resale Flat 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. The Respondent 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, F, for the first time at the appointment. The Respondent had introduced F as his colleague to the purchaser. The resale transaction was completed on 23 April 2013.

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 his client, the vendor of the Property, that F was acting for the purchaser of the Property. The Respondent had continued to act for the vendor 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 was paid to ABC Property Pte Ltd on 29 December 2012.

ABC Property Network's internal investigations revealed that the Respondent was ABC Property Pte Ltd's sole director and sole shareholder, while F was its company secretary. When confronted by ABC Property Network about the matter, the Respondent and F 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 DC found that the Respondent's misconduct was carried out with dishonesty.

The Respondent and F had reimbursed ABC Property Network the amounts that each of them had wrongfully collected as their commission, which totalled \$18,297, only on or around 13 December 2013. Of the amount of commission that Respondent paid back to ABC Property Network, the Respondent had received \$9,350. This was 80% of the commission he collected from the vendor, after deducting GST and \$1,000 for legal expenses incurred by ABC Property Network to recover the commission which the Respondent had not accounted for earlier.

In or around the period from 29 December 2012 to 13 December 2013, the Respondent had therefore failed to account to his estate agent, ABC Property Network, the commission that was collected from his client, the vendor of the Property, as required under his Salesperson Agreement dated 1 August 2012 with ABC Property Network.

The DC noted that the Respondent had admitted to the charges at an early opportunity and had no previous disciplinary record.

Charges

The Respondent faced the following 9 charges:

Charge 1

Failing to perform his 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 facilitating a supplementary agreement to the OTP, granted by the vendor to the purchaser of the Property on 4 January 2013, which provided that the purchaser would pay the vendor an upfront amount of \$20,000 towards the purchase price of \$580,000 so that the vendor would agree to defer the grant

of the OTP to the purchaser until on or after 4 January 2013; collecting a cheque for \$20,000 from the purchaser; and drafting an agreement which required the vendor to return the \$20,000 to the purchaser if HDB's approval for the sale of the Property was not obtained, was refused or was revoked before the Completion Date if each of these events was not due to the vendor or the purchaser's fault, in breach of clause 2.1 of the prevailing Terms and Conditions of Sale and Purchase of an HDB Resale Flat (which governed the sale and purchase of the Property under clause 9.3(d) of the OTP) which prohibited the vendor and purchaser from entering into any supplementary agreements that may cause the resale price as declared to be inflated or understated, and in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Ethics and Professional Client Care.

Charge 2 (proceeded)

Failing to perform his 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, in the course of estate agency work for the vendor, specifying in the prescribed HDB OTP that the sale price of the Property was \$560,000 when the actual agreed purchase price was \$580,000 in breach of clause 2.1 of the Terms and Conditions of Sale and Purchase of an HDB Resale Flat (which governed the sale and purchase of the Property under clause 9.3(d) of the OTP) which required the true resale price of the Property to be declared to HDB in the OTP, and in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Ethics and Professional Client Care.

Charge 3

Failing to perform his 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, in the course of estate agency work for the vendor, going through and completing the HDB Resale Checklist for Buyers with the purchaser of the Property, when he was not the purchaser's salesperson, in breach of paragraph 3(b) of the prescribed HDB Resale Checklist for Buyers who engage Salesperson which 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*", and in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code of Ethics and Professional Client Care.

Charge 4 (proceeded)

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

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

Charge 5 (proceeded)

Failing to act ethically towards his estate agent in the conduct of estate agency work on his client's behalf by asking his client, the vendor of the Property, to issue a cheque being his commission to ABC Property Pte Ltd, a company where he was the sole director and sole shareholder, instead of to his estate agent, ABC Property Network, in contravention of paragraph 6(3) of the Code of Ethics and Professional Client Care.

Charge 6

Failing to act ethically towards his estate agent in the conduct of estate agency work on his client's behalf by asking the purchaser of the Property to issue a cheque to ABC Property Pte Ltd as payment of commission to F when the Respondent was ABC Property Pte Ltd's director and sole shareholder, while F was its company secretary, instead of to her estate agent, ABC Property Network, in contravention of paragraph 6(3) of the Code of Ethics and Professional Client Care.

Charge 7

Failing to ensure that a copy of the Option to Purchase ("the OTP") in respect of the Property was given to the purchaser immediately or as soon as possible after he had signed it by having failed to give the purchaser of the Property a copy of the OTP immediately or as soon as possible after he had arranged for the purchaser to sign it, in contravention of paragraph 9(2)(b) of the Code of Ethics and Professional Client Care.

Charge 8 (proceeded)

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

Charge 9

Failing to perform his 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 having collected commission from his client, the vendor 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 6(a) of the Exclusive Estate Agency Agreement for the Purchase of Residential Property that he and the vendor had

signed on 24 December 2012 (which was in the prescribed Form 5 of the Third Schedule to the Estate Agents (Estate Agency Work) Regulations 2010, that explicitly stated that the commission was to be paid at the time of completion of the property transaction, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 2, 4, 5 and 8 while Charges 1, 3, 6, 7 and 9 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 4: A financial penalty of \$3,000.

Charge 5: A financial penalty of \$4,000.

Charge 8: A financial penalty of \$3,000.

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

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