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 9/2016 – Failing to Supervise Salesperson to Ensure that She Conducted her Estate Agency Work in a Professional and Reasonable Manner

Facts of Case

The Respondent was at all material times a licensed estate agent (the "**Respondent**").

At all material times, one of its salespersons ("**W**") was a registered salesperson of the Respondent.

The properties in a foreign land (the "**Foreign Land**") was to be developed by 2 foreign developers – Foreign Developer A and Foreign Developer B - and were launched for sale in 2 phases split into 3 developments – Phase 1 was known as Development A, Stage 2A of Phase 2 was known as Development B and Stage 2B of Phase 2 was known as Development C. Phase 1 was developed by Foreign Developer A while Phase 2 was developed by Foreign Developer B.

Company X, which was incorporated in Singapore, was the sole shareholder of Foreign Developer B and acquired all the shares in Foreign Developer A. Director C is a director of Company X.

In or around 2010, Company X approached the Key Executive Officer ("**KEO**") of the Respondent, D and informed KEO D that he would like the Respondent to market the properties in Development A in Singapore. The Respondent therefore entered into an agreement with Foreign Developer A in or around January 2011 to market Development A in Singapore.

On 23 May 2011, the Respondent entered into a written agreement with Foreign Developer B to market in Singapore the properties in Development B in Singapore. The Respondent had actually begun marketing Development B before 23 May 2011, including holding seminars on 14 May 2011 and 15 May 2011 for the launch of Development B.

From April 2011 onwards, the Respondent through its salespersons including W was involved in the marketing presentations of the units in Development B for sale to prospective buyers.

Once the buyer had decided to buy a unit in Development B, s/he would sign a "First Right of Refusal" ("**FRR**") agreement with Foreign Developer B. The FRR agreement was similar to an option agreement. Under the FRR agreement, the buyer needs to pay the FRR price of $65,000 in the foreign currency. The buyer would fill up the FRR agreement and pay a booking fee of $5,000 in the foreign currency first to Company X and the remaining $60,000 in the foreign currency would be due to be paid to Company X within 10 days of the execution of the FRR agreement.

Within the FRR period as defined in the FRR agreement, the buyer could then choose to: -

- Purchase the unit in Development B from Foreign Developer B by exercising the FRR. On exercising the FRR, the buyer would execute a Sale Agreement for the chosen unit and pay to Foreign Developer B a deposit which is 10% of the difference between the Property Purchase Price and the FRR price; or
- Not exercise the FRR and the FRR agreement would come to an end between the buyer and the Foreign Developer B. Foreign Developer B would then refund to the buyer the FRR price plus an additional sum based on a percentage of the Property Purchase Price.

On or around 22 May 2011, W met a group of potential buyers, H and his relatives, and explained to them the terms of the FRR agreement.

At this meeting with W, W verbally represented to H that the FRR price would be kept safe in a trust account for the construction of Development B and the Foreign Developer B would not be able to use the monies for other purposes (the "**Representation**"). Relying on the Representation, H and his relatives decided to buy a unit in Development B and H signed the FRR agreement with Foreign Developer B and made payment of S$10,000 by credit card.

On or around 2 June 2011, H paid S$50,303.43 into the trust account held by the lawyers of the Foreign Developer B (the "**Trust Account**") via a bank draft. On or around 3 June 2011, H went to the offices of the Respondent to pay a further S$5,000 using his credit card. The total FRR price he paid into the Trust Account for the unit in Development B was $65,000 in the foreign currency.

Although W made the Representation to H, the total FRR price was transferred to Foreign Developer B on 22 June 2011 without any construction having started on Development B.

Before W made the Representation to H, representatives of the Respondent, including W and KEO D, had corresponded via emails with Director C of Company X in relation to the Trust Account and there were red flags in these emails such that if the Respondent and/or W had exercised due diligence in relation to their checks on the Trust Account, W would not have made the Representation to H and the Respondent would have supervised W such that W would not make the Representation to a potential buyer like H.

On or around 5 February 2013, Foreign Developer B went into liquidation.

H and his relatives could not recover the total FRR price that they had paid for the unit in Development B.

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Charge

The Respondent faced the following charge:

Charge

Failing to supervise its salesperson to ensure that she understood the nature of the Trust Account (a bank account for the receipt of the total FRR price in respect of the sale of units in Development B) i.e. that Foreign Developer B could withdraw monies without restriction from the Trust Account, before the salesperson verbally represented to investors of Development B that their monies paid into the Trust Account would be kept safe in the Trust Account and Foreign Developer B would not be able to use the monies for other purposes, in contravention of paragraph 4(2)(b) of the Code of Practice for Estate Agents.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge. The Disciplinary Committee imposed a financial penalty of $10,000 on the Respondent in respect of the Charge.

The Disciplinary Committed had found, *inter alia,* that the Respondent was clearly careless or negligent in not clarifying the true nature of the Trust Account before marketing the properties in Development B.

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