

S/N 15/2023 – Failing to Take Steps to Verify Whether Signatory was Duly Authorised and Failing to Properly Advise Client against Making Payments without Adequate Documentation

Facts of Case

On or around 26 February 2020, a food and beverage establishment known as C Pte Ltd rented a premises to operate its business (the “**Premises**”). Under the terms of the tenancy agreement, C Pte Ltd would pay a monthly rent of \$6,500. The lease would expire on 31 July 2021.

In or around October 2020, D, who was the individual taking care of C Pte Ltd’s daily affairs, approached Salesperson B (with whom D was acquainted), and told Salesperson B that C Pte Ltd’s business was not doing well and he wanted to let go of the business. At all material times, D was neither a shareholder nor director of C Pte Ltd, while Salesperson B was the majority shareholder of C Pte Ltd. Salesperson B was asked by D to find a new tenant to take over C’s business, including taking over the remaining lease period for the Premises under the tenancy agreement. Salesperson B agreed to assist D in his personal capacity to help C Pte Ltd find a new tenant to take over the remaining lease of the Premises.

In or around January 2021, N, who was a shareholder of M Pte Ltd (that eventually became the Respondent’s client), was searching for a shophouse to set up a café as part of M Pte Ltd’s expansion plans. An individual known as MI, who was working for N at that time, asked the Respondent if he could assist N. The Respondent then saw an advertisement posted by D on a local marketplace platform in relation to C Pte Ltd’s Premises and enquired with D about the listing. D informed the Respondent that he was looking for someone to take over C Pte Ltd’s business and the remaining lease period. The Respondent then informed MI and arranged for M Pte Ltd’s representatives to view the Premises.

On or around 26 January 2021, the Respondent brought N and MI to view the Premises. At this viewing, the Respondent introduced D as the person in charge of C Pte Ltd, i.e. the incumbent tenant. D informed N that M Pte Ltd could take over the fixtures for the sum of \$51,000 (“**Takeover Fee**”) plus the rent payable to the landlord (L Pte Ltd). The underlying tenancy agreement between C Pte Ltd and L Pte Ltd was not shown to N or M Pte Ltd.

In the course of the viewing, N called her husband UB (who was a director of M Pte Ltd) and informed him about D’s offer. D spoke to UB on the phone and informed him that the lease of the Premises would expire on January 2022. Through this same phone conversation, UB agreed to D’s offer to take over the Premises and, in particular, to make upfront payment of 10% of the Takeover Fee. Upon receiving payment, D issued a receipt for the sum of \$5,100 to M Pte Ltd.

Accordingly, the Respondent had, during this meeting, failed to properly advise M Pte Ltd against making payment of \$5,100 in the absence of adequate documentation setting out M Pte Ltd’s financial obligations in respect of the prospective transaction involving the Premises.

On or around 27 January 2021, Salesperson B called the Respondent and introduced himself as L Pte Ltd’s agent. The Respondent asked Salesperson B to provide him with a copy of the Premises’ Property Ownership Information Report, which Salesperson B did. D also sent to the Respondent, via WhatsApp, a copy of C Pte Ltd’s business profile information and a copy of C Pte Ltd’s tenancy agreement with L Pte Ltd.

Upon reviewing the tenancy agreement, the Respondent discovered that the remaining lease period would expire on 31 July 2021 and not January 2022 as previously conveyed by D to UB. The Respondent pointed this out to MI via WhatsApp.

The next day, on or around 28 January 2021, UB, N, MI and the Respondent met D and Salesperson B at the Premises. D then informed the parties that Salesperson B would be handling the paperwork for C Pte Ltd and liaising with L Pte Ltd in relation to the transaction. Salesperson B then handed UB a draft document, prepared by Salesperson B, which set out the terms of the transaction between M Pte Ltd and C Pte Ltd.

UB requested for the document to be redrafted when he realised that the rental sum stated within the draft document was incorrect. UB also noticed that the draft document stated the signatory of C Pte Ltd to be one R. When UB asked Salesperson B and D who R was, they informed UB that R was the director of C Pte Ltd and R had complete knowledge of the takeover of the Premises.

Although there was no letter of intent or written agreement setting out the terms of the prospective transaction signed, UB agreed to pay 50% of the Takeover Fee and handed D a cheque for the sum of \$20,400 issued in favour of C Pte Ltd. The Respondent again failed to properly advise M Pte Ltd against making this payment of \$20,400 as a further part payment of the Takeover Fee in the absence of adequate documentation setting out M Pte Ltd's financial obligations in respect of the prospective transaction relating to the Premises.

Later that day, the Respondent forwarded a copy of C Pte Ltd's tenancy agreement to N, but did not highlight anything in particular that M Pte Ltd should take note of. The Respondent also did not forward a copy of C Pte Ltd's business profile information to N.

On or around 29 January 2021, the Respondent met D and handed him a document titled "Letter of Mutual Agreement for Takeover", which had been signed by UB on behalf of M Pte Ltd. However, D was unhappy with the terms of the document and asked the Respondent to draft a new letter of intent. The Respondent then met Salesperson B (both of whom happened to be from the same estate agent) and they had a discussion on the document(s) required for the transaction. Salesperson B asserted that a novation agreement was not required given that the transaction was a private business agreement between C Pte Ltd and M Pte Ltd that did not involve L Pte Ltd. Salesperson B then told the Respondent that he would prepare the correct documents and proceeded to draft a fresh agreement on 'taking over of balance lease and new lease' between C Pte Ltd and M Pte Ltd. Notwithstanding that Salesperson B was merely assisting D in his personal capacity, he inserted his estate agent's logo on the newly-drafted agreement.

On or around 31 January 2021, N, MI and the Respondent again met D and Salesperson B at the Premises. On this occasion, N informed the Respondent that she was not a director of M Pte Ltd and her signature would not be valid if she signed a letter of intent between C Pte Ltd and M Pte Ltd. However, the Respondent and Salesperson B assured N that there would not be any issue, and N proceeded to sign a letter of intent.

Salesperson B also instructed N to make payment of the sum of \$6,955 to C Pte Ltd as advance rental for February 2021. Given that Salesperson B had at all material times acted in a manner as though he was duly authorised by C Pte Ltd and/or L Pte Ltd, N acted pursuant to Salesperson B's instructions and handed over to D a cheque for the sum of \$6,955 issued in favour of C Pte Ltd, in the Respondent's presence. At all material times, the Respondent failed to properly advise M Pte Ltd against making

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payment of this sum of \$6,955 in the absence of adequate documentation setting out M Pte Ltd's financial obligations in respect of the prospective transaction. Salesperson B then informed N that a security deposit of \$13,000 was to be paid upon the signing of a tenancy agreement between C Pte Ltd and M Pte Ltd.

On or around 5 February 2021, Salesperson B sent the document titled "Agreement on Taking Over of Balance Lease & New Lease (Non-Residential)" to the Respondent, who then forwarded it to N via WhatsApp. UB signed this agreement upon receiving it from N. UB then followed Salesperson B's instructions and prepared another cheque of \$13,000 issued in favour of L Pte Ltd.

N handed the signed agreement and \$13,000 cheque to the Respondent on 6 February 2021. On or around 7 February 2021, the Respondent met D at the Premises and handed him the \$13,000 cheque. D then signed the agreement in the Respondent's presence.

Thereafter, M Pte Ltd received the keys to the Premises from D and began preparations to operate in the Premises.

On or around 10 February 2021, UB asked the Respondent for a copy of the receipt from L Pte Ltd for the payment of the security deposit, and also a copy of the signed agreement between M Pte Ltd and C Pte Ltd. UB chased the Respondent for L Pte Ltd's receipt on or around 20 February 2021, but the Respondent informed UB that there was no update on this from Salesperson B.

On or around 22 February 2021, UB informed the Respondent that he required a letter of consent from the landlord in order for M Pte Ltd to apply for a food shop licence from the Singapore Food Agency. The Respondent informed UB that Salesperson B had yet to provide them with it.

On or around 2 March 2021, D sent the Respondent a copy of L Pte Ltd's invoice to C Pte Ltd for payment of the March 2021 rental for the Premises. After the Respondent forwarded Salesperson B the invoice, Salesperson B informed the Respondent that D had requested for M Pte Ltd to make payment of this amount directly to L Pte Ltd. UB made payment of the sum of \$6,955 to L Pte Ltd via GIRO.

On or around 20 March 2021, Salesperson J (who was the exclusive salesperson for the Premises appointed by L Pte Ltd) was informed that there were renovation works going on at the Premises and that it would be taken over by M Pte Ltd. Salesperson J clarified with L Pte Ltd that it was not informed of a new tenant taking over the Premises nor any renovation works that were being carried out by C Pte Ltd.

On or around 22 March 2021, Salesperson J explained to UB that he was the exclusive salesperson for L Pte Ltd and C Pte Ltd had been defaulting on their rental payments to L Pte Ltd. In addition, L Pte Ltd was not aware of M Pte Ltd's takeover of the Premises and had not authorised C Pte Ltd to transfer the lease to M Pte Ltd.

On or around 23 March 2021, UB contacted R to find out what was going on. R informed UB that he did not know that D intended to find a new tenant to take over C Pte Ltd's remaining lease period and/or that D intended to sign documents on his behalf in relation to the said takeover.

Between 26 January 2021 and 31 January 2021, the Respondent failed to properly advise M Pte Ltd against making various payments to D that amounted to an aggregate sum of \$32,455 in the absence of adequate documentation setting out M Pte Ltd's financial obligations in respect of the prospective transaction relating to the Property.

On or around June 2021, M Pte Ltd had to vacate the Premises. M Pte Ltd was not able to commence business operations at the Premises at all.

At all material times between 26 January 2021 and March 2021, the Respondent did not at any time request to sight or take any other steps at all to procure any documents evidencing C Pte Ltd's authorisation for D to negotiate and enter into the transaction with M Pte Ltd on C Pte Ltd's behalf.

Charges

The Respondent faced the following 3 charges:

Charge 1 (Proceeded)

For failing to conduct his work with due diligence and care when he failed to take any reasonable steps to verify whether D was authorised by C Pte Ltd to negotiate and enter into the intended takeover on its behalf, when D was in fact not authorised by C Pte Ltd, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2

For failing to conduct his work with due diligence and care when he failed to take any reasonable steps to verify whether C Pte Ltd had obtained consent from L Pte Ltd to enter into the transaction with M Pte Ltd to take over the Premises, when C Pte Ltd did not in fact obtain consent from L Pte Ltd to do so, in contravention of paragraph 5(1) of the Code.

Charge 3 (Proceeded)

For failing to render professional and conscientious service to his client (M Pte Ltd) when he failed to ensure that the material terms of his client's agreement with C Pte Ltd on the intended takeover were reduced into writing and, in connection with this, failed to properly advise M Pte Ltd against making payments amounting to the aggregate sum of \$32,455 to D in the absence of adequate documentation setting out M Pte Ltd's financial obligations in respect of the prospective transaction relating to the Premises, in contravention of paragraph 6(1) of the Code.

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Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1 and 3, with the remaining charge (i.e. Charge 2) taken into consideration in sentencing.

The DC imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$6,000 and a suspension of 5 months

Charge 3: A financial penalty of \$7,000 and a suspension of 6 months

The suspension periods were ordered to run consecutively. The total sentence imposed was a financial penalty of \$13,000 and a suspension of 11 months.

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