

## **S/N 6/2024 – Failing to Verify Whether Clients’ Sale of Industrial Property Was Subject to Goods and Services Tax and Misrepresenting That It Was Not Payable**

**Note:** This case is related to S/N 7/2024 and involved the same sale transaction; the Respondent in S/N 7/2024 (i.e. Salesperson Y) had represented the Buyer of the Property.

### **Facts of Case**

The Respondent was engaged by the Sellers of an industrial property (the “**Property**”) to sell the Property. It was agreed that the Sellers would pay a commission in the sum of 1.5% of the sale price in the event of a successful sale.

In or around late February 2022, the Respondent enlisted the help of another salesperson to list the Property for sale on an online property portal. In the listing, there was no mention of any Goods and Services Tax (“**GST**”) payable.

In or around April 2022, the Buyer engaged Salesperson Y to help her purchase an industrial property for investment purposes; the Buyer intended to lease the property and collect rent from the lease. The Buyer informed Salesperson Y that her budget was around US\$ 1 million.

On or around 13 April 2022, Salesperson Y contacted the Respondent and arranged for the Buyer to view the Property. At the viewing on 13 April 2022, the Buyer told the Respondent that she did not wish to pay GST on the purchase. The Respondent represented to the Buyer and Salesperson Y that, amongst other things, the Property was sold with tenancy and the sale was not subject to GST.

Shortly after the viewing, Salesperson Y called the Respondent to convey the Buyer’s offer to purchase the Property at the price of S\$ 1.1 million. The Respondent rejected the offer and, in justifying why the offer was too low, mentioned again that the sale of the Property was not subject to GST.

On 14 April 2022, Salesperson Y conveyed a second offer from the Buyer to purchase the Property at the price of S\$ 1.2 million. After further negotiations, the parties eventually agreed on the sale price of S\$ 1.24 million for the Property on or around 18 April 2022.

In the meantime, Salesperson Y and the Respondent also discussed the terms of their co-brokerage and agreed that Salesperson Y would receive 0.5% of the purchase price as his commission for the transaction.

On or around 19 April 2022, the Sellers issued an Option to Purchase (“**OTP**”) to the Buyer, which the Buyer exercised on or around 22 April 2022.

At all material times, the Respondent did not take any steps or conduct any checks to verify if GST was payable on the sale of the Property.

The Respondent only found out that GST, at the rate of 3.5% of the sale price, was payable by the Buyer, after the Sellers’ lawyers contacted the Respondent. It was only on or around 27 April 2022 that the Respondent informed Salesperson Y that the sale of the Property was in fact subject to GST. The Buyer tried to reach an agreement with the Sellers to bear all or half of the GST payable, but there was no eventual agreement reached.

The sale and purchase of the Property was completed on 10 July 2022; the Buyer had to pay GST amounting to S\$ 43,400, being a sum that she did not expect to pay when she purchased the Property.

The Respondent received commission of S\$ 11,160 for facilitating the sale of the Property. Neither the Respondent nor Salesperson Y compensated the Buyer for the additional sum of S\$ 43,400 that she had to pay as GST for her purchase of the Property.

## **Charges**

The Respondent faced the following 2 charges:

### **Charge 1 (Proceeded)**

Failing to conduct estate agency work with due diligence and care, by not taking any steps to verify whether the sale of the Property was subject to GST before facilitating the sale to the Buyer, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the “**Code**”).

### **Charge 2**

Failing to act fairly and in a reasonable manner towards all other persons in her conduct of estate agency work on behalf of the Sellers, by misrepresenting to the Buyer and Salesperson Y that the sale of the Property was not subject to GST, when the sale was in fact subject to GST, in contravention of paragraph 6(3) read with paragraph 6(4)(c) of the Code.

## **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, with the remaining charge (i.e. Charge 2) taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) noted that:

- (a) Whether GST was payable on the sale of the Property was a fundamental aspect of a salesperson’s role in supporting a transaction, especially for industrial property transactions, and the Respondent had blatantly disregarded the professional standards expected of her;
- (b) The Respondent had a higher level of culpability than Salesperson Y as she had also made multiple misrepresentations to the Buyer and Salesperson Y without any regard as to whether they were correct, which formed the basis of Charge 2 that was taken into consideration;
- (c) The Respondent appeared to be familiar with industrial property transactions;
- (d) In addition to the unexpected additional sum of S\$ 43,400 that the Buyer had to pay, the entire price negotiation for the Property was not based on accurate facts, which directly harmed what the public should be able to expect from being represented by a salesperson in a property transaction, where price is arguably the most significant factor; and
- (e) The Respondent had no antecedents, had pleaded guilty and was cooperative with investigations.

**Note:** This case was referred to a CEA Disciplinary Committee (DC) after 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.

Accordingly, the DC imposed the following penalty and disciplinary order on the Respondent:

**Charge 1:** A financial penalty of \$9,000 and a suspension of 6 months.

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