

**S/N 8/2017 – Failure to Act Ethically by Inducing Associate to Pose as Buyer in Sham Option to Purchase to Apply for Valuation Report from the HDB and Bringing Discredit or Disrepute to the Estate Agency Trade or Industry by Procuring Clients’ Signatures on Sham Option to Purchase**

**Facts of Case**

The Respondent was at all material times a registered salesperson.

The Respondent and his associate, Mr F (wherein the Respondent was Mr F’s manager), came to an agreement that in the marketing of flats in a particular cluster where many of the flats were close to fulfilling the Minimum Occupation Period (“**MOP**”), the commission from any successful transaction would be shared 70/30 (in favour of the Respondent).

The co-owner of a Housing and Development Board (“**HDB**”) flat (the “**Property**”), Mr A, contacted the Respondent after seeing one of the Respondent’s advertisement flyers, and engaged the Respondent to help sell the Property owned by Mr A and his wife. The Respondent then visited the Property with Mr F to take photographs of the Property.

Subsequently, the Respondent accompanied his client Mr A to the HDB branch office to check the MOP for the Property, and were informed that the Property had yet to fulfil the MOP and this was further confirmed by way of letter from the HDB to Mr A. The Respondent continued to advertise the Property for sale on PropertyGuru.com.sg.

The Respondent and Mr F then visited Mr A and his wife at the Property. The Respondent explained that as there were no recent resale transactions in the same cluster, he was not certain about the valuation of the Property. When Mr A said that he was prepared to pay for a Valuation Report, the Respondent then suggested to Mr A that he could ask a friend to pose as a prospective buyer of the Property and enter into an Option to Purchase (“**OTP**”) for the Property in order to apply for a Valuation Report from the HDB.

On Mr A’s reply that he did not have such a friend, the Respondent then suggested that Mr F pose as the buyer in the OTP instead. Mr A agreed to this suggestion and Mr F, despite some initial hesitation, eventually acquiesced to the Respondent’s suggestion.

On the same day, the Respondent then drew up a sham OTP in respect of the Property, stating the Purchase Price at “\$999,999” and the Option Fee at “\$50”. The Respondent then filled in Mr A and his wife’s names as the Sellers, and Mr F’s name as the Buyer. At the Respondent’s prompting, Mr A and his wife then signed the sham OTP after the Respondent had filled it up, even though Mr A and his wife and Mr F had no intention to enter into any legal transaction.

The Respondent then used Mr F’s SingPass account to apply for a Valuation Report from the HDB, and uploaded copies of pages 1 and 8 of the sham OTP (with Mr F stated as the prospective buyer) to support the application. The Respondent used Mr

A's credit card to pay for the valuation and administrative fees chargeable (amounting to \$199.25).

After receiving the valuation request submitted by the Respondent, the HDB appointed and sent down a panel valuer to inspect the Property. However, suspicion was aroused when HDB noticed that the purchase price in the OTP was exceptionally high, when the Option Fee was very low, and on further checks, the HDB discovered (amongst other things) that the MOP for the Property had not been fulfilled at the date stated in the OTP and when the valuation request was submitted. The HDB then aborted the valuation request and forfeited the valuation and administrative fees paid.

The Respondent reimbursed Mr A for the forfeited valuation and administrative fees.

The Respondent was primarily responsible for having instigated the scheme by failing to act ethically and failure to refuse his client's request when he knew it could not be met without impropriety.

The DC noted that the Respondent did not profit from the transaction and showed remorse.

### **Charges**

The Respondent faced the following three charges:

#### **Charge 1**

Failing to act ethically towards other persons by engaging in the unethical conduct of attempting to induce his client, Mr A, to have a friend pose as the buyer in a sham OTP (in respect of the Property) in order to apply for a Valuation Report for the Property from the HDB, in contravention of paragraph 6(3) read with paragraph 6(4) of the Code of Ethics and Professional Client Care.

#### **Charge 2 (Proceeded)**

Failing to act ethically towards other persons by inducing his associate, Mr F, to engage in the unethical conduct of posing as the buyer in a sham OTP (in respect of the Property) in order to apply for a Valuation Report for the Property from the HDB, in contravention of paragraph 6(3) read with paragraph 6(4) of the Code of Ethics and Professional Client Care.

#### **Charge 3**

Doing an act which may bring discredit or disrepute to the estate agency trade or industry by procuring the signature of his client, Mr A, and his client's wife, as the sellers on a sham OTP (in respect of the Property) which was submitted to the HDB to apply for a Valuation Report, in contravention of paragraph 7(1) of the Code of Ethics and Professional Client Care.

## **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2, with Charges 1 and 3 taken into consideration for sentencing. The DC imposed the following financial penalty and disciplinary order on the Respondent:

**Charge 2:** A financial penalty of \$1,800 and suspension of 3 weeks.

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