

S/N 10/2019 – Failure to be Fully Conversant with the Relevant Laws that Apply to Property Transactions & Failure to Render Professional and Conscientious Service to Client

Facts of Case

The Respondent first met X in 2012 during a marketing roadshow for HDB resale flats. After being told by X that X and his wife Y intended to sell their original HDB flat and purchase a larger resale flat, the Respondent arranged a meeting with X and Y.

On 11 May 2012, when the Respondent met X and Y, he was engaged by X and Y to assist them in selling their original HDB flat. When X and Y informed the Respondent that they wished to both purchase a larger resale flat and own a private condominium unit, the Respondent advised them that their intentions could be effected by Y purchasing the larger resale flat in her sole name (with X listed as an occupier) and X thereafter purchasing the private condominium unit.

X and Y were agreeable with the Respondent's advice and instructed the Respondent to facilitate their transactions pursuant to this advice. In this regard, X and Y entered into an Estate Agency Agreement dated 11 May 2012 for the Respondent to represent them in selling the original HDB flat. The Option to Purchase for the original HDB flat issued by X and Y was exercised by their buyer in July 2012. The sale of the original HDB flat was completed in or around November 2012, for which the Respondent received commission of \$10,807 (2% of the sale price plus GST).

In or around the same period in July 2012, the Respondent then facilitated Y's purchase of a larger resale flat in Tampines ("**Tampines Flat**"). In Y's Request to Process Sale & Purchase of Tampines Flat, submitted to HDB by the Respondent on Y's behalf, it was indicated that Y would be the sole buyer of the Tampines Flat and X and the couple's 2 children were the occupiers of the Tampines Flat.

Materially, HDB's terms and conditions governing the sale of resale flats required buyers to comply with the requirement that they, their spouses and other essential family members cannot invest in private residential property during the 5-year minimum occupation period.

Y's purchase of the Tampines Flat was completed in December 2012. The Respondent received a commission of \$5,756.60 (1% of the purchase price plus GST) for facilitating the transaction.

Following the purchase of the Tampines Flat, the Respondent started sourcing for private condominium units to introduce to X and Y. In early January 2013, the Respondent then arranged for X and Y to choose their preferred unit in a new condominium project known as A.

The Respondent thus assisted X in his purchase of a unit in condominium A sometime in or around March 2013. This unit was purchased by X in his sole name. The Respondent received a co-broke commission of \$8,319.74 (being 0.6% of the purchase price plus GST) from facilitating this transaction.

Sometime in August 2016, HDB discovered that X had acquired an interest in the condominium project. By way of letter, HDB informed Y that X could only acquire such private property after the 5-year minimum occupation period of the Resale Flat was fulfilled.

X and Y sought assistance from their Member of Parliament to appeal for them to retain both the Tampines Flat and the condominium unit but were unsuccessful.

When X confronted the Respondent in October 2016, the Respondent admitted that he was at the material time unaware that during the minimum occupation period of a flat, the spouse of the flat's owner was subjected to similar restrictions on the acquisition of private properties as set out in Section 56(1)(b) of the Housing and Development Act.

By December 2016, HDB had indicated to X and Y that Y could retain the Tampines Flat subject to the disposal of the condominium unit and payment of a financial penalty of \$66,000 in lieu of compulsory acquisition of the Tampines Flat.

In the course of several rounds of correspondences between December 2016 and June 2017, X and Y had tried to sell the condominium unit but were unsuccessful. As a result, Y's Tampines Flat was compulsorily acquired by HDB in November 2017 for the sum of S\$473,100 which was \$64,900 less than the original purchase price of the Tampines Flat.

X and Y were fortunately able to obtain a sum from the Respondent's estate agent to compensate them for their loss incurred as a result of the Respondent's misconduct.

Charges

The Respondent faced the following 2 charges:

Charge 1

For failing to be fully conversant with the relevant laws that apply to property transactions when performing estate agency work, when the Respondent, in representing his client, was not aware that Section 56(1)(b) of the Housing and Development Act empowered HDB to compulsorily acquire a HDB flat if his client purchased a condominium unit during the 5-year minimum occupation period of the HDB flat owed by the client's wife (and of which the client was an

authorised occupier), in contravention of paragraph 4(1) read with 4(2)(b) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2 (Proceeded)

For failing to render professional and conscientious service to his client, when the Respondent failed to advise his client that the latter’s purchase of a condominium unit during the 5-year minimum occupation period of his wife’s HDB resale flat, and while the client was an authorised occupier of the flat, would empower HDB to compulsorily acquire the flat pursuant to Section 56(1)(b) of the Housing and Development Act, in contravention of paragraph 6(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2, while Charge 1 was taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) noted that the Respondent had failed to discharge the fundamental obligation of being able to advise the client correctly (based on the knowledge of rules and regulations relevant to the transaction) even though the clients were upfront and informed the Respondent of their intentions at the outset. There was also no dishonesty or fraud involved in the Respondent’s misconduct.

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

Charge 2: A financial penalty of \$3,000 and a suspension of 5 months.

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