

S/N 15/2020 – Failure to Conduct Estate Agency Work with Due Diligence and Care and to Take All Reasonable Precautions and Do All Reasonable Acts to Ensure That No Law Is Infringed by Any Person

Facts of the Case

At all material times, the Respondent was engaged by the Landlord's sister, T, to lease the Landlord's Property. The Landlord was the sole owner of the Property and she authorised T to approach the Respondent on her behalf to market the Property to rent out the Property.

In that regard, the Respondent placed a listing advertisement on the online property portal for the rental of the Property (the "**listing advertisement**").

It was agreed that the Respondent would collect commission from the Tenant for the rental transaction.

In or around November 2015, one L arranged with the Respondent to view the Property after seeing the listing advertisement. L was assisting the Tenant, who is the wife of L's business partner, to find a rental property in Singapore. The Tenant viewed the Property with her son and L. The viewing was conducted by the Respondent. Subsequently, it was agreed that the Tenant would rent the Property at a monthly rent of S\$2,750 for one year.

On or around 4 November 2015, the Tenant and the Respondent signed a Letter of Intent for the lease of the Property for 12 months starting from 20 December 2015 at a monthly rent of S\$2,750. The Respondent collected from the Tenant the rental deposit of S\$2,750 by way of cheque made payable to T.

On or around 18 November 2015, the Tenant signed the tenancy agreement in relation to the Tenant's lease of the Property from the Landlord for 12 months starting 20 December 2015 at the monthly rent of S\$2,750 (the "**2015 TA**"), in the presence of L and the Respondent. As the Tenant did not have a cheque book, L issued a cheque to the Respondent on behalf of the Tenant for a sum comprising S\$1,471.25, being the Respondent's commission, and S\$132, for the lodgement of the stamp duty fee payable on the 2015 TA. No official receipts were issued by the Respondent for the abovementioned monies paid. The Respondent did not update or give the Tenant any confirmation as to whether the stamp duty fee had been duly paid.

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.

As it turned out, the Respondent did not lodge the stamp duty fee of S\$132 payable by the Tenant to the Inland Revenue Authority of Singapore (“**IRAS**”) on the 2015 TA.

The Respondent later facilitated the renewal of the lease of the Property by the Tenant for the lease period from 20 December 2016 to 19 December 2017 at the monthly rent of S\$2,700 (the “**2016 TA**”).

On or around 24 October 2016, the Respondent collected from the Tenant the sum of S\$1,444, which comprised the Respondent’s commission and S\$129 for the lodgement of the stamp duty fee payable on the 2016 TA to the IRAS. This time round, the Respondent issued official receipts to the Tenant for the abovementioned monies paid.

However, the Respondent did not lodge the stamp duty fee of S\$129 payable by the Tenant to IRAS on the 2016 TA.

For her conduct of estate agency work in respect of the Property, the Respondent received a commission totalling S\$2,915.25, particulars of which are set out below.

Tenancy Agreement (TA) closed by the Respondent	Commission paid to the Respondent (S\$)
2015 TA	1,471.25
2016 TA	1,444.00
<u>Total:</u>	<u>2,915.25</u>

Sometime near the expiry of the 2016 TA, L informed the Respondent that the Tenant did not intend to renew the lease of the Property. On or around 17 December 2017, the Tenant handed the Property over to the Respondent in the presence of L.

Subsequently, issues arose regarding the refund of the rental deposit to the Tenant due to purported damage to the Property. When the Tenant pursued her claim for the return of her rental deposit with the Small Claims Tribunals (“**SCT**”), she was informed that the 2015 TA was not stamped with IRAS, despite her having paid the stamp duty fees on the 2015 TA to the Respondent to be lodged with IRAS.

As a consequence of the Respondent's failure and/or neglect to lodge the stamp duties with IRAS for both the 2015 TA and the 2016 TA, the Tenant's claim was rejected by the SCT as both tenancy agreements could not be adduced as evidence before the SCT and she could not pursue her claim against the Landlord and/or T for the refund of the rental deposit. The Tenant was therefore aggrieved by this turn of events.

Subsequently, the Tenant and the Landlord agreed that the Landlord would refund part of the deposit to the Tenant, and T eventually returned to the Tenant the rental deposit after deducting the cost of replacing a damaged door in the Property.

On or around 1 February 2018, the Tenant lodged a police report against the Respondent for failing to make payment for the stamp duty fees pertaining to the 2015 TA and the 2016 TA despite having collected the monies for the same. L also approached a Member of Parliament to alert the Housing and Development Board ("**HDB**") of this matter.

On the advice of the police investigation officer, the Respondent lodged the stamp duty fees of S\$132.00 and S\$129.00 payable on the 2015 TA and the 2016 TA respectively with the IRAS on or around 10 May 2018.

The Tenant was also required to pay a late penalty fee of S\$25 each for the 2015 TA and the 2016 TA, totalling S\$50 for the late payment of the stamp duty fees. The Respondent paid the late penalty fee of S\$50 when she lodged the stamp duty fees with IRAS on or around 10 May 2018.

On or around 21 June 2018, the police completed their investigations in relation to the Tenant's police report against the Respondent, and administered a stern warning to the Respondent in lieu of prosecution for Criminal Breach of Trust under Section 406 of the Penal Code (Cap. 224).

Subsequently, by a letter dated 4 October 2018, the Landlord was informed by the HDB that she had breached Section 56(1)(h) of the Housing and Development Act by renting out the Property without obtaining the prior written consent of the HDB. Accordingly, the HDB imposed on the Landlord a financial penalty of S\$26,000.

Charges

The Respondent faced the following 2 charges:

Charge 1 (Proceeded)

Omitting to lodge stamp duty fee payable on the 2015 TA on behalf of the Tenant, despite collecting the stamp duty from the Tenant for the Respondent to do the necessary lodgement and payment of the stamp duty, in breach of paragraph 5(1) read with paragraph 5(2)(b) of the Code of Ethics and Professional Client Care (“**CEPCC**”).

Charge 2

Omitting to lodge stamp duty fee payable on the 2016 TA on behalf of the Tenant, despite collecting the stamp duty from the Tenant for the Respondent to do the necessary lodgement and payment of the stamp duty, in breach of paragraph 5(1) read with paragraph 5(2)(b) of the CEPCC.

Outcome

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

The Disciplinary Committee (“**DC**”) found the Respondent liable for the disciplinary breach in Charge 1 and therefore disciplinary action was taken against her.

After hearing parties, the DC imposed the following penalty on the Respondent:

Charge 1: A financial penalty of \$1,500 and a suspension of 4 months.

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