

## **S/N 19/2020 – Failure to Conduct Her Business and Work in Compliance with All Laws Including Statutory and Regulatory Requirements, Practice Circulars and Guidelines**

### **Facts of Case**

The Respondent was at all material times a registered salesperson of a licensed estate agent (“**EA**”).

The Respondent’s client Company D was at all material times the owner and seller of an industrial unit (the “**Property**”) and at all material times, Mr and Mrs S were the directors of Company D. Company D was at all material times represented by the lawyers TLC in the sale of the Property.

At all material times, Company E was the purchaser of the Property and Mr J was the Managing Director of Company E. Company E was represented by lawyers CLC in the purchase of the Property.

Sometime in April 2018, the Respondent visited the building where the Property was located (the “**Building**”) to look for potential clients.

The Respondent visited the Property and was attended to by Company D’s then accounts manager, one Ms Y, who informed the Respondent that Company D had six (6) units in the Building for sale (the “**Units**”), including the Property, and the Units were under an open listing so any salesperson could market for Company D.

After the Respondent obtained Ms Y’s approval to market the Units on behalf of Company D, Ms Y provided the Respondent with the unit numbers, sizes and maintenance fees of the Units and informed the Respondent that the asking price for the Units was at S\$420 per square foot. It was also agreed that the Respondent would obtain a commission of 2% of the selling price from Company D if she could successfully sell the Unit(s) at S\$420 per square foot.

On 25 April 2018, the Respondent conducted a title search on the Property and confirmed that Company D owned the Property. This was the only due diligence check that the Respondent did in respect of the Units owned by Company D.

Thereafter, the Respondent started to source for buyers of the Units. The Respondent was informed by a staff of Company E that Mr J might be keen to purchase another unit in the Building.

Accordingly, on 26 April 2018, the Respondent approached Mr J personally by visiting him at Company E’s office to enquire if Mr J was interested in purchasing any of the Units owned by Company D.

On 26 April 2018, Mr J decided to purchase the Property as Company E’s unit is on the same floor as the Property. The Respondent informed Mr J that Company D would only sell the Property at S\$420 per square foot and thus Mr J offered the same which amounts to S\$1,392,300 (the “**Selling Price**”) to purchase the Property from Company D.

On the same day, the Respondent met Mr S at the Property to inform him of Mr J’s offer. Mr S accepted the offer.

Accordingly, on the same day, Mr J issued a cheque for S\$13,923 to Company D, being the 1% option fee for the Property.

On 27 April 2018, the Respondent brought the Option to Purchase ("**OTP**") for the Property to the Property. The Respondent handed the OTP to Ms Y who brought the OTP to Mr S for his review and signature. Mr S signed the OTP with Ms Y as the witness. The Respondent then handed Mr J's cheque for S\$13,923 to Ms Y. On the same day, Mr S also signed the Commission Agreement under which the Respondent was entitled to a commission of 2% of the Selling Price.

On the same day, the Respondent passed the OTP to Mr J for him to exercise the OTP by 18 May 2018 at CLC's office.

On 21 May 2018, Company D received a letter from TLC informing Company D that Company E had exercised the OTP on 18 May 2018 (the "**Sale Date**") through its solicitors, CLC and paid the exercise fee of S\$55,692 via cheque. TLC further informed Company D that "*completion is scheduled on 10 August 2018*".

In the same letter, TLC notified Company D that the sale transaction was subject to payment of Seller's Stamp Duty ("**SSD**") of 5% of the selling price which amounted to S\$69,615.00 as the Property was sold within 3 years from the date of its purchase of the Property on 29 May 2015.

Mr and Mrs S were shocked to learn that Company D had to pay SSD amounting to S\$69,615.00. This was the first time that Mr and Mrs S were alerted to Company D's liability for SSD if Company D sold the Property before 29 May 2018, which was less than three (3) years after Company D purchased the Property on 29 May 2015.

Prior to this, the Respondent never informed Mr and Mrs S and/or Company D's representatives that as the 3-year holding period for the Property had not expired, Company D had an obligation to pay SSD for the sale of the Property.

As the OTP was exercised on 18 May 2018, Company D had 14 days to pay the SSD pursuant to Section 46 of the Stamp Duties Act 1929, which was by 1 Jun 2018 (the "**SSD Payment Deadline**").

Accordingly, on 21 May 2018, Mrs S called the Respondent immediately to clarify the matter. Mrs S told the Respondent that the Respondent did not inform them previously that Company D had to pay SSD for its sale of the Property. The Respondent admitted to Mrs Soh that she had overlooked the query on whether Company D had to pay SSD and that she did not know that Company D had purchased the Property on 29 May 2015 which is less than three (3) years of the Sale Date on 18 May 2018.

On 22 May 2018, the Respondent also sent a Whatsapp message to Mrs S admitting her mistake.

Mr J did not agree to amend the exercise date of the OTP to 1 Jun 2018.

Between 22 May 2018 and 28 May 2018, Mr and Mrs S tried to contact the Respondent to request the Respondent to meet with representatives of the Inland Revenue Authority of Singapore ("**IRAS**") together with them as the SSD Payment Deadline was approaching. However, the Respondent did not respond.

On 28 May 2018, Mr and Mrs S went down to IRAS personally to meet with an IRAS representative. Since it was a calculation error by the Respondent, the IRAS representative recommended that Mr J's solicitors, CLC abort the OTP online and seek a refund of the Buyer's Stamp Duty ("**BSD**") from IRAS.

On 28 May 2018, Mrs S and Ms Y sent various emails to Company D's solicitors, TLC informing them of Company D's decision to "*cancel the sales of [the Property]*" and to "*proceed to send a letter to buyer's lawyers [CLC] to abort the OTP*".

On 30 May 2018, TLC issued a letter to CLC to request them to abort the OTP.

Since the SSD Payment Deadline was approaching, Mr and Mrs S decided to speak to Mr J personally to resolve the matter. Mr and Mrs S also contacted the legal counsel of the Respondent's EA Mr R to inform him of the matter and to request that he meet Mr J together with them.

On 31 May 2018, Mr and Mrs S and Mr R met up with Mr J at Company E's office. Mr J suggested that Company D proceed to pay the SSD first and then appeal for refund on the basis that it was the Respondent's oversight.

On 1 June 2018, Company D paid the SSD to IRAS and allowed the sale of the Property to proceed.

On 22 June 2018, Mr and Mrs S, Mr R and Mr J met up again at Company E's office. At the meeting, parties agreed to abort the whole transaction so that both the SSD and BSD would be refunded by IRAS to Company D and Company E respectively. It was further agreed that Company D would return Company E the option fee of S\$13,923 and option exercise fee of S\$55,692 and bear the losses incurred by Company E for the cancellation of the transaction. In addition, as Company E had already accepted the Letter of Offer for a bank loan, Company D was to pay the bank loan cancellation penalty fee of about S\$20,700 and Company E's legal fees of about S\$3,300.

On 16 July 2018, Company D paid all monies owing to Company E i.e. Company D returned the option fee of S\$13,923, the option exercise fee of S\$55,692 and BSD of S\$36,369 to Company E, and also paid Company E the sum of S\$24,000 being (i) Company E's bank loan cancellation penalty fee of S\$20,700 and (ii) Company E's legal fees of S\$3,300. Company E subsequently returned S\$36,319 to Company D, which is the amount that IRAS refunded to Company E on 31 July 2018 (IRAS had deducted the BSD refund fee of S\$50 from the BSD sum of S\$36,369 pursuant to Rule 2(a) of the Stamp Duties (Aborted Sale and Purchase Agreement) (Remission) Rules 2005 in its refund of S\$36,319 to Company E).

At all material times, the Respondent was unresponsive to Mr and Mrs S.

By virtue of the above, the Respondent's misconduct had therefore caused her client, Company D to suffer a loss of S\$24,100 being (i) the IRAS SSD and BSD refund fees of S\$50 each amounting to S\$100, (ii) Company E's bank loan cancellation penalty fee of S\$20,700, and (iii) Company E's legal fees of S\$3,300.

On the facts, the Respondent has contravened paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**CEPCC**"), by reason that she had failed to conduct her business and work in compliance with all laws including statutory and regulatory requirements, practice circulars and guidelines in the period between 25 April 2018 and 18 May 2018 as she had failed to inform Company

D that it was liable to pay SSD for its sale of the Property to Company E as Company D had purchased the Property on 29 May 2015 and therefore it had not occupied the Property for more than three (3) years when the OTP of the Property was issued to Company E on 27 April 2018 and which Company E had exercised on 18 May 2018 and thus Company D had to pay SSD of S\$69,615.00 for the sale of the Property to Company E.

### **Charge**

The Respondent faced the following charge:

#### **Charge**

Failure to inform her client Company D that it was liable to pay Seller's Stamp Duty for the sale of its industrial unit (the "**Property**") to the purchaser Company E as Company D had purchased the Property on 29 May 2015 and therefore it has not occupied the Property for more than three (3) years when the Option to Purchase of the Property was issued to Company E on 27 April 2018 and which Company E exercised on 18 May 2018, and consequently, Company E was liable to pay Seller's Stamp Duty which is 5% of the selling price or market value of the Property, whichever is higher, and the Respondent has breached paragraph 2.3.2(b) of the Professional Service Manual (issued on 1 January 2014) ("**PSM**") a practice guideline issued by the CEA which is a breach of paragraph 5(1) of the CEPCC.

### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge.

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

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

**Charge:** a suspension of 5 months.

The suspension order took effect on 1 September 2020.

Owing to the Respondent's personal circumstances, the DC did not impose a financial penalty on her or made a cost order against her.