

S/N 2/2018 – Failure to Conduct Required Due Diligence Checks Before Facilitating Lease of Property to Foreign Tenant

Note: This case is related to S/N 1/2018 and involved the same transaction; the Respondent in S/N 1/2018 (i.e. Salesperson X) had acted for the landlords of the Property.

Facts of Case

The Respondent was engaged by Y to source for a unit for his cousin (C) who was coming to Singapore to study. The Respondent approached Salesperson X to arrange for a viewing of a private apartment unit (the "**Property**"). Salesperson X was engaged by the landlords to source for tenants for the Property.

The Respondent attended a viewing of the Property with Y and Salesperson X. C did not attend the viewing; Y told the Respondent that C would only arrive in Singapore the next month. Thereafter, Y informed the Respondent that C was interested to rent the Property for a period of 12 months, at a monthly rent of S\$ 3,000. For purposes of drafting the Letter of Intent ("**LOI**"), Y gave the Respondent a photocopy of a student's pass belonging to Z (the "**Student's Pass**"), to serve as C's student pass. Accordingly, the Respondent understood Z to be C, the prospective tenant of the Property, as well as his client.

After receiving a photocopy of the Student's Pass, the Respondent claimed he proceeded to verify the validity of the Student's Pass with the Immigration & Checkpoints Authority of Singapore ("**ICA**") via the ICA website, but did not print the Acknowledgement Slip after performing the verification. The Respondent also gave a photocopy of the Student's Pass to Salesperson X.

The Respondent prepared the LOI and provided it to Y, who informed the Respondent that he (i.e. Y) would send the LOI to C by email to obtain his signature. The relevant space for the following material information in the LOI was left unfilled:

- (a) The date of the LOI;
- (b) The address of the landlord in the "*Address*" portion of the LOI;
- (c) The name, identification number, and address of the landlord in the "*Signature*" portion of the LOI;
- (d) The identification number and address of the tenant in the "*Signature*" portion of the LOI.

(the "**Material Information**")

Y returned the LOI to the Respondent after it was allegedly signed by C (i.e. purportedly Z), with the Material Information still unfilled on the LOI. The Respondent provided this LOI to Salesperson X to obtain the landlord's signature. The landlord signed the LOI even though the relevant space for the Material Information was still unfilled.

Similarly, the Respondent forwarded the Tenancy Agreement (prepared by Salesperson X) to Y, who returned the Tenancy Agreement after it was allegedly signed by C (i.e. purportedly Z).

The Respondent met Y and Salesperson X to do the handover for the Property and to go through the Inventory List (the "**Inventory List**"). The Inventory List was given to Y for him to obtain C's signature. Similarly, Y returned the Inventory List to the Respondent after it was allegedly signed by C (i.e. purportedly Z).

At all material times, the Respondent did not meet C in person and did not have any contact with C directly.

Notwithstanding that the Respondent was aware that C (i.e. purportedly Z) was a foreigner, the Respondent did not at any time conduct the following due diligence checks on C before facilitating the lease of the Property to C:

- (a) Check the original Student's Pass of C (i.e. the original Student's Pass of Z);
- (b) Cross-check the particulars on the Student's Pass of Z against the particulars on the original Passport of C (i.e. the original Passport of Z);
- (c) Check the photograph in the Student's Pass and Passport of C against C in person;
- (d) Keep photocopies of the passport of C; and
- (e) Print the Acknowledgement Slip after verifying the validity of the Student's Pass of Z with the ICA via their website.

(the "**Due Diligence Checks**")

The Due Diligence Checks were part of the required checks to be carried out by the Respondent pursuant to paragraph 1.6.3 of the Professional Service Manual ("**PSM**").

The prospective tenant moved into the Property accordingly. Subsequently, during a raid conducted by the ICA, an illegal immigrant was found to be living on the Property. According to the illegal immigrant, she had rented the Property from another foreigner.

Investigations subsequently revealed that Z was indeed a foreigner studying in Singapore, but Z had no knowledge of the Property or the lease, nor did he sign any documents relating to the lease. Z was not aware that his identity and a copy of his Student's Pass had been used by Y to facilitate the lease transaction for the Property.

As a result of the above, the landlords of the Property had to look for new tenants and suffered a loss of rental income of approximately 1.5 months S\$ 4,500). They also incurred expenses (S\$ 1,500) to restore the Property to a tenantable state. After offsetting the deposit held by the landlords, the net loss was about S\$ 3,000 in total.

The Respondent had also submitted a Submission Declaration Form (the "**Form**") for the lease transaction to his estate agent. The Respondent stated in the Form that he did not have a Prescribed Agency Agreement ("**PAA**") with C (i.e. purportedly Z) because C refused to sign one, which was false. Accordingly, the Respondent had provided false information in the Form submitted to his estate agent and failed to act reasonably towards his estate agent.

Charges

The Respondent faced the following 3 charges:

Charge 1 (Proceeded)

For failing to perform his work in accordance with applicable laws by failing to comply with the requirements under paragraph 1.6.3 of the PSM, by failing to conduct the Due Diligence Checks required before facilitating the lease of the Property to the prospective foreign tenant purporting to be Z, in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Ethics and Professional Client Care (the “Code”).

Charge 2

For procuring the signing of an agreement in which the relevant space for material information was left unfilled, by procuring the purported prospective tenant’s signature on the LOI, in which the relevant space for the Material Information was left unfilled, in contravention of paragraph 9(2)(d) of the Code.

Charge 3

For failing to act in a reasonable manner towards his estate agent in the conduct of estate agency work on behalf of his client, by providing false information in the Form by stating that he did not possess a signed PAA with C (i.e. purportedly Z) because C (i.e. purportedly Z) refused to sign the PAA, 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, while Charges 2 and 3 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“DC”) was of the view that the case involved a serious matter as it also concerned a breach of immigration laws and impacted public security. The Due Diligence Checks required under the PSM generally mirror that required under the Immigration Act (Cap. 133). A strong signal should be sent to salespersons that it is crucial for the Due Diligence Checks to be performed before facilitating a lease to a foreign tenant. The DC considered that the Respondent had an additional charge (i.e. Charge 3) that involved dishonesty and ought to receive a different sentence from that meted to Salesperson X (i.e. the Respondent in S/N 1/2018).

The DC also noted that the Respondent had no previous disciplinary record.

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

Charge 1: A financial penalty of S\$ 3,000 and a suspension of 7 months.

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