

S/N 8/2019 – Failure to Conduct Required Due Diligence Checks Before Facilitating Lease of Property to Foreigner

Facts of Case

The Respondent was engaged by the landlord of a condominium apartment (the “**Property**”) located in the Geylang area of Singapore to source for tenants for the Property.

On or around 7 January 2016, X arrived in Singapore from China and was issued a social visit pass that allowed her to enter and remain temporarily within Singapore for a period of 30 days, until 6 February 2016. However, X continued to remain unlawfully in Singapore after the expiry of the 30-day period and stayed at various locations within the Geylang area.

Sometime in May 2016, X found out that the Property was available for rent and contacted the Respondent. X viewed the Property alone and informed the Respondent that she would be residing at the Property, but would arrange for another individual, Y, to sign the tenancy agreement on her behalf. The Respondent did not object to this arrangement.

Despite knowing that both X and Y were foreigners holding work permits and having been informed by X that she would be residing at the Property, the Respondent proceeded to engage in estate agency work for the Property without conducting his work with due diligence and care, in that he did not conduct any of the due diligence checks provided in Section 57B(3) of the Immigration Act (Cap. 133) (“**Immigration Act**”), i.e.:

- (a) to inspect X’s original work permit;
- (b) to cross-check and ascertain that the particulars on X’s and Y’s passports materially corresponded with the particulars set out in their work permits; and
- (c) to perform verification checks with the Controller of Immigration or the Controller of Work Passes on the validity of the work permits, or verify with X’s and Y’s employers that X and Y were employed by them and that their particulars corresponded with the employers’ records,

so as to ensure that X and Y were not immigration offenders, as prohibited under the Immigration Act.

(the “**1st Due Diligence Checks**”)

As a result of the Respondent's failure to conduct the 1st Due Diligence Checks, the Respondent was, at all material times, unaware that X had unlawfully remained in Singapore after the expiry of her 30-day social visit pass.

X arranged for Y to sign the tenancy agreement and proceeded to reside at the Property between 25 May 2016 and 24 May 2017, at a monthly rent of \$2,600.

Sometime in or around May 2017, X contacted the Respondent to arrange for a renewal of the lease. X informed the Respondent that she would still be residing at the Property, but would arrange for another individual to sign the tenancy agreement on her behalf. The Respondent did not object to this arrangement.

Despite being aware that X had been residing at and would continue to reside at the Property, the Respondent still failed to conduct any of the due diligence checks provided in Section 57B(3) of the Immigration Act, namely:

- (a) to inspect X's original work permit;
- (b) to cross-check and ascertain that the particulars on X's passport materially corresponded with the particulars set out in her work permit; and
- (c) to perform verification checks with the Controller of Immigration or the Controller of Work Passes on the validity of X's work permit, or to verify with X's employer that X was employed by them and that her particulars corresponded with the employer's records,

so as to ensure that X was not an immigration offender as prohibited under the Immigration Act.

(the "2nd Due Diligence Checks")

As a result of the Respondent's failure to conduct the 2nd Due Diligence Checks, the Respondent continued to be unaware that X had unlawfully remained in Singapore after the expiry of her 30-day social visit pass.

X arranged for her boyfriend, Z, to sign an undated tenancy agreement for the lease of the Property from 25 May 2017 to 24 May 2018. X continued to reside at the Property at a monthly rent of \$2,600, until she was arrested on or around 23 November 2017 by the Immigration and Checkpoints Authority ("ICA") for unlawfully remaining in Singapore for a period exceeding 90 days, in breach of Section 15(1) of the Immigration Act. X was repatriated upon her release from prison on or around 3 January 2018.

The landlord was not aware that an immigrant offender (i.e. X) had been staying in the Property, as it left the Respondent to handle all matters relating to the lease of the

Property. As a result of the premature termination of the lease, the landlord suffered a loss of rental income of approximately \$15,600; the Property was untenanted for the duration of the remaining renewal lease. The quotation to restore the Property to a tenatable state was in the sum of \$2,830. After offsetting the security deposit of \$2,600 held by the landlord, the net loss suffered by the landlord was in the region of \$15,830.

Charges

The Respondent faced the following 2 charges:

Charge 1

For failing to perform his work with due diligence and care, by facilitating the rental transaction of the Property to two foreigners (i.e. Y as the intended tenant and X as the occupant), without first carrying out the 1st Due Diligence Checks on X and Y as provided in Section 57B(3) of the Immigration Act, to ensure that X and Y were not immigration offenders as prohibited under the Immigration Act, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2 (Proceeded)

For failing to perform his work with due diligence and care, by facilitating the rental transaction of the Property to a foreigner (i.e. X) as the occupant of the Property, without first carrying out the 2nd Due Diligence Checks on X as provided in Section 57B(3) of the Immigration Act, to ensure that X was not an immigration offender as prohibited under the Immigration Act, in contravention of paragraph 5(1) of the Code.

Outcome

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

In sentencing, the Disciplinary Committee (“**DC**”) noted that the Respondent had never asked or sighted X’s identification papers (original or photocopied), or conducted any verification with ICA. The Respondent had persistently failed to conduct any verification checks despite the numerous red flags that should have alerted him to be concerned about the lease transactions – he had totally ignored X’s unusual arrangements for other individuals to sign the tenancy agreement on her behalf when he facilitated both the lease and lease renewal. The Respondent’s misconduct was not a one-off omission but took place twice, over two lease transactions, and involved different parties (i.e. X and Y).

The DC also noted that the detection of immigration offenders is difficult and due diligence compliance with identification checks by salespersons were essential to ensure that relevant laws were not infringed. The Respondent's omission had permitted and facilitated a breach of Singapore's immigration laws; X had unlawfully remained in Singapore for a period of 21 months after the expiry of her social visit pass, and investigations also revealed that X had carried on vice-related activities whilst overstaying in Singapore.

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

Charge 2: A financial penalty of \$3,500 and a suspension of 6 months.

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