

## **S/N 14/2019 – Failure to Conduct Work with Due Diligence and Care by Failing to Conduct the Due Diligence Checks Set Out in Section 57B(3) of the Immigration Act**

### **Facts of Case**

In or around August 2016, a real estate salesperson (“**RES**”) was contacted by the purported tenant of a HDB flat (the “**Tenant**”) to help the latter lease a HDB flat. Even though she did not meet the Tenant, record his full name and verify his identity with any of his identification documents, she agreed to act as the Tenant’s RES to help him find a HDB flat to lease as instructed.

Without carrying out the identification checks on the Tenant, the RES proceeded to carry out estate agency work on behalf of the Tenant and identified a HDB flat in the Woodlands area (the “**Woodlands flat**”) for the Tenant to rent. As such, she contacted the Respondent who had put up the advertisement for rental of the Woodlands flat. The Respondent represented the landlords cum owners of the Woodlands flat (the “**Owners**”) who are a husband and wife couple.

Eventually, a viewing of the Woodlands flat was arranged for the Tenant to view the Woodlands flat on or around 30 August 2016.

After viewing the Woodlands flat, the RES informed the Respondent that a group of 4 work permit holders (the “**Group**”) was interested in renting the Woodlands flat from the Owners. Following negotiations, it was eventually agreed that the Woodlands flat would be rented by the Group at a monthly rental of \$2,300 for one year from 1 September 2016.

On the night of 31 August 2016, the RES facilitated the signing of the tenancy agreement (the “**TA**”) by the Tenant and separately met up with the Respondent to arrange for and finalise the lease of the Woodlands flat. One of the Group was named as the tenant in the TA and the remaining 3 were named as occupants of the Woodlands flat under the TA. It later came to light that the named tenant was not the Tenant. The Tenant was never identified at the end of the day.

On the same night, the Tenant sent the RES photographs of the front and back of the work permits of 3 in the Group including that of the named tenant. The Respondent sent these photographs to the Owners.

On or around 1 September 2016, the RES sent to the Respondent photographs of a work permit application pertaining to the remaining one in the Group.

All these photographs are collectively referred to as the Images. The Respondent transmitted the Images to the Owners.

At all material times, both the RES and the Respondent understood that all members of the Group were work permit holders. Pursuant to section 57B(3) of the Immigration

Act (“**IA**”), the Respondent being the landlord’s RES was required to conduct the following due diligence checks: -

- a) inspect the original work permits of the Group;
- b) cross-check the particulars in the original work permits with the particulars in their passports; and
- c) verify the validity of the work permits with the Controller of Immigration or the Controller of Work Passes; or verify the employment status and particulars of the Group with their employers.

However, the Respondent did not, at any material time, conduct the above due diligence checks on the Group.

As a result of the failure to conduct the above due diligence checks, the Respondent was, at all material times, unaware that the Tenant was, in fact, not the named tenant in the TA.

Pursuant to the TA, the security deposit of \$2,300 and the first month’s rent of \$2,300 was transferred to husband-owner’s bank account on or around 3 September 2016.

On or around 3 September 2016, the wife-owner submitted the information in the Images to the Housing and Development Board (“**HDB**”) for registration.

On 5 September 2016, the Respondent informed the RES that the HDB had not approved the registration of the occupant whose photograph of his work permit application was transmitted to the Owners and the Owners were checking with Ministry of Manpower (“**MOM**”) in this regard. The Respondent also informed the RES that the MOM had requested that the Owners provide the passport and employer details of this occupant and the Owners had also requested for the passport details of the Group.

On 8 September 2016, the wife-owner and the Respondent met the RES at the Woodlands flat as the former two wanted to move some furniture from the Woodlands flat. The RES told them that the Group was unavailable and was working.

On 15 September 2016, the wife-owner was in the vicinity of the Woodlands flat and spotted approximately 6 unknown men and 3 unknown women entering and exiting the Woodlands flat. It appeared that these people had been staying at the Woodlands flat and so she contacted the Respondent about what she had observed. The Respondent checked with the RES who told the Respondent that the people who were not registered with HDB would move out of the Woodlands flat.

On or around 30 September 2016, the RES informed the Respondent that the “tenants” had vacated the Woodlands flat. There was no prior warning and or agreement to terminate the one-year lease of the Woodlands flat prematurely.

On or around 2 October 2016, the wife-owner met the Respondent and the RES at the Woodlands flat to facilitate the Owners’ repossession of the Woodlands flat. It was discovered that the main door lock had been changed without the Owners’

authorization and the wife-owner also claimed that the parquet flooring had been scratched and the microwave oven was damaged. The RES arranged for a cleaner to clean the Woodlands flat and informed the wife-owner that the security deposit that had been paid could be used to offset the cost of repairs.

The Owners only managed to lease out the Woodlands flat again to a different tenant on 20 February 2017 for a one-year lease from 1 April 2017, at the monthly rent of \$1,800.

It was subsequently discovered that none of the individuals, whose work permits and or work permit application had been used and transmitted as part of the Images, had, in fact, rented, occupied and or had any dealings pertaining to the Woodlands flat.

The inherently suspicious circumstances described above was compounded by the fact that the tenant and occupants had abruptly and suddenly vacated the Woodlands flat without doing any proper handover in relation to the Woodlands flat and or the inventory and without even collecting and or seeking the return of their security deposit from the landlords.

The Disciplinary Committee (“**DC**”) concluded that the 6 aggravating facts of this case are as follows: -

- a) there were approximately 9 individuals (i.e. 6 unknown men and 3 unknown women) who appeared to have been residing in the Woodlands flat in September 2016;
- b) none of the individuals whose work permits and work permit applications were used to rent the Woodlands flat had any dealings pertaining to the Woodlands flat;
- c) the Respondent’s omission to carry out the required due diligence checks under section 57B(3) of the IA had permitted the misuse of copies of work permits and a work permit application belonging to the named tenant and occupants in the TA;
- d) there was fraud and potential criminal conduct involved in this case;
- e) the sudden departure of the individuals staying in the Woodlands flat coupled with the fraudulent use of work permits and the number of individuals seen entering the Woodlands flat gave rise to a strong inference that the Woodlands flat might have been used to either harbour illegal immigration offenders or was connected to illegal activities; and
- f) the Respondent’s failure to conduct the necessary due diligence checks had caused the Owners loss through the premature termination of the tenancy and having to find replacement tenants.

The DC further noted that the Respondent had failed to carry out the due diligence checks under section 57B(3) of the IA without any reasonable explanation for the omission.

On the other hand, the DC noted from the Respondent’s mitigation plea that he had communicated his intention to plead guilty early on 20 November 2018 and thereafter

maintained his plea of guilt throughout the proceedings. He had also admitted that he had failed to carry out the required due diligence checks in the IA on the tenant and the occupants before recommending them to the Owners or to facilitate the lease of the Woodlands flat to the tenant and the occupants by the Owners.

The DC held that in the context of disciplinary proceedings for professionals such as advocates and solicitors, medical doctors and salespersons, and in determining the appropriate penalty to be meted out on the Respondent, the predominant sentencing consideration ought to be the protection of the public.

### **Charge**

The Respondent faced the following charge:

#### **Charge (Proceeded)**

For failing to conduct his work with due diligence, despatch and care when he, who had represented the Landlord, facilitated the Tenant's rental of the Landlord's Woodlands flat by 4 foreigners (including the named tenant in the TA) whom he understood to be work permit holders, without first carrying out the due diligence checks provided in section 57B(3) of the IA on the 4 work permit holders *viz.* inspection of the original work permits, cross-checking their work permits and passport details and verification checks with the Controller of Immigration or the Controller of Work Passes or their employers to ensure that the 4 work permit holders *i.e.* the tenant and the 3 occupants were not immigration offenders prohibited under the IA, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care.

### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge. The DC found the Respondent liable for disciplinary action to be taken against him for the disciplinary breach in the Charge.

Having considered CEA's Sentencing Submissions and the Respondent's mitigation plea, the DC imposed the following financial penalty and disciplinary order on the Respondent:

**Charge:** A financial penalty of \$2,500 and a suspension of 4 months.

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