

S/N 6/2016 – Failure to Declare Potential Conflict of Interest to Client

Facts of Case

The Respondent was a licensed estate agent at all material times.

In September 2010, the Collective Sales Committee (the “**Committee**”) of a condominium development in Singapore (the “**Development**”) appointed the Respondent as its marketing agent for the collective sale of the Development. The Committee comprised 8 subsidiary proprietors, appointed to act jointly on behalf of all the subsidiary proprietors for the collective sale. The Respondent had a sales investment team to take charge of the collective sale project.

In October 2010, on the Respondent’s advice, the subsidiary proprietors approved the minimum sale price (also known as the reserve price) of \$490 million for the Development. The Committee also proposed a Collective Sales Agreement (the “**Agreement**”), which a number of subsidiary proprietors proceeded to sign. By March 2011, the Committee received consent of 58.5% of the total share value of the Development. To encourage more subsidiary proprietors to sign the Agreement, the Committee raised the minimum sale price thrice, eventually to \$580 million in July 2011.

By October 2011, the Committee received the required consent of 80% of the total share value of the Development and proceeded to launch the public tender for collective sale. In September 2012, the Committee awarded the tender to a purchaser for a bid of \$590 million and applied to the Strata Titles Board in October 2012 for a collective sale order. In the same month, however, the minority subsidiary proprietors filed objections to the collective sale. The Strata Titles Board issued a stop order for the collective sale in January 2013, and the Committee brought the matter to the High Court.

In April 2013, during the High Court suit, it was found that the Respondent had offered incentive payments to 4 subsidiary proprietors to sign the Agreement:

- a. Subsidiary Proprietor A was offered an additional 10% of the final purchase price for her shop unit in the Development (amounting to an additional \$277,721), in exchange for her undertaking to sign the Agreement in respect of her 10 residential units in the Development;
- b. Subsidiary Proprietor B was offered an additional \$185,000 for 2 units in the Development that belonged to him and his wife, and their son;

- c. Subsidiary Proprietor C was offered the reimbursement of his wife's business class return air ticket from Europe to Singapore, so that she can sign the Agreement; and
- d. Subsidiary Proprietor D was offered an additional \$85,886 for a unit in the Development belonging to him and his wife.

In September 2013, the High Court held, amongst others, that the Respondent had breached its duty as an advisor to the Committee by offering the incentive payments. Such incentive payments brought about a conflict of interest on the Respondent's part, which led to the Respondent placing its own interest (to collect commission) and the interests of the 4 subsidiary proprietors over the interests of the minority subsidiary proprietors. The Court expressed genuine doubt if the 80% consent threshold would have been reached if not for the incentive payments offered. The Respondent also breached its duty of transparency by not disclosing the incentive payments to the Committee or the subsidiary proprietors. Accordingly, the Court dismissed the application for collective sale by the majority subsidiary proprietors.

CEA's investigations revealed that the lead salesperson in the Respondent's sales investment team had approval from the Respondent's management to offer the incentive payments. The intention was to pay the incentives through the substantial commission that the Respondent would receive from the collective sale, amounting to a sum of between \$2,800,000 to \$5,438,200.

Charges

The Respondent faced the following 4 charges:

Charges 1, 2, 3 and 4

For continuing to act on behalf of its client (the Committee on behalf of the subsidiary proprietors of the Development) where to do so would place its interests in potential conflict with those of its client, without declaring in writing to its client an interest which is in direct or indirect conflict with that of its client, by allowing and approving incentive payments in respect of the following four subsidiary proprietors of the Development:

- (a) Subsidiary Proprietor A, where it would pay Subsidiary Proprietor A an additional 10% on top of the final purchase price for a successful collective sale for her shop unit located in the Development in return for an undertaking "*to ensure that all joint owners or owners-in-common*" of all her 10 units in the Development sign the Agreement (Charge 1);

- (b) Subsidiary Proprietor B, where it would pay Subsidiary Proprietor B an additional estimated sum of \$185,000 on top of the final purchase price received for a successful collective sale for 2 units located in the Development in return for an undertaking “to ensure that all joint owners or owners-in-common” of the 2 units sign the Agreement (Charge 2);
- (c) Subsidiary Proprietor C, where it would reimburse the travel expenses of Subsidiary Proprietor C’s wife, for 1 direct business class return air ticket from Europe to Singapore, in return for Subsidiary Proprietor C signing the Agreement (Charge 3); and
- (d) Subsidiary Proprietor D, where it would pay Subsidiary Proprietor D an additional estimated sum of \$85,886 on top of the final purchase price received for a successful collective sale for a townhouse unit located in the Development, in return for an undertaking “to ensure that all joint owners or owners-in-common” of the townhouse unit sign the Agreement (Charge 4),

in order to obtain a substantial commission upon a successful collective sale, without declaring in writing to its client such interest, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1 and 2, while Charges 3 and 4 were taken into consideration for purposes of sentencing.

The DC imposed the following sentences on the Respondent:

Charge 1: A financial penalty of \$37,000.

Charge 2: A financial penalty of \$37,000.

The DC also imposed a condition on the Respondent’s licence not to undertake any collective sale work for a period of 1 year.

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