Council for Estate Agencies

Note: This case was referred to a CEA Disciplinary Committee (DC) before the operationalisation of the Estate Agents (Amendment) Act 2020 on 30 July 2021. With the Act amendments, the maximum financial penalty for disciplinary breaches has been raised and a DC can impose a higher financial penalty on errant offenders.

S/N 7/2018 – Failure to Know and Advise Client on Approved Use of Property

Facts of Case

X was the director and shareholder of a company (the "**Tenant**"). In late May 2016, X engaged the Respondent to find a suitable rental property for the Tenant's use as a beauty training centre.

The Respondent came across an advertisement posted by Salesperson Y on the online property portal, CommercialGuru, for the lease/sale of a commercial property (the "**Property**"). The Property was listed as a "*Light Industrial (B1)"* unit. The Respondent contacted Salesperson Y and learnt that the Property was available at a monthly rental of S$ 3,000.

The Respondent arranged for X to view the Property; X informed both salespersons during the viewing that the Tenant intended to use the Property as a beauty training centre. Thereafter, X agreed to rent the Property at a monthly rental of S$ 2,700.

On 5 June 2016, X signed the Letter of Intent ("**LOI**") for a 2-year lease of the Property by the Tenant, commencing 1 August 2016. The LOI was prepared by the Respondent. In the field specifying the Property's usage, it was stated as "*training centre & office*".

Thereafter, Salesperson Y prepared a tenancy agreement for the lease, which was executed by the landlord of the Property (the "**Landlord**") and the Tenant. Accordingly, the Tenant paid the Landlord a total sum of S$ 8,100, comprising a 2-month rental deposit (S$ 5,400) and 1-month advance rent (S$ 2,700).

The Tenant proceeded to renovate the premises to make it suitable for the running of a beauty training centre, incurring renovation and miscellaneous expenses of at least S$ 3,883. The Tenant also paid stamp duty of S$ 263.50 in respect of the lease, as well as commission of S$ 2,140 to the Respondent.

X subsequently attended a Meet-the-People session to enquire about a course-funding grant, but was advised instead that approval from the authorities was required for the Property to be used as a beauty training centre. On 24 August 2016, X informed the Respondent that she was required to apply for a change of use for the Property. On the same day, the Respondent accompanied X to the offices of the Urban Redevelopment Authority ("**URA**"), where they were informed that the Property was not permitted or approved for use as a beauty training centre, as the Property was zoned as 'Business 1 (B1)' ("**B1**").

Following this discovery, the Respondent offered to advertise the Property for a takeover of the lease; the Tenant did not take up this offer. The Tenant worked with Salesperson Y to arrange for prospective tenants to view the Property for takeover, but no offers were received.

The Tenant did not pay the Landlord rent for the months of September 2016 and October 2016. In November 2016, the Landlord and the Tenant mutually agreed to terminate the lease of the Property. Consequently, the Landlord forfeited the 2-month rental deposit (i.e. S$ 5,400), but made no further demands against the Tenant. The Property was subsequently leased to another tenant.

At all material times, the Property was zoned as B1 in the Master Plan, a statutory land use plan under the Planning Act (Cap. 232) (the "**Planning Act**"). The use of such zones outside of its permissible uses would require the URA's approval. Pursuant to paragraph 1.7.3 of the Professional Service Manual, salespersons are required to acquire and verify the current basic information of a property, including its approved use. A salesperson could log onto the URA's

website to obtain the Master Plan and its Written Statement to check the zoning of a particular property and its permissible use, including whether any change of use was approved by the URA.

The use of the Property as a beauty training centre would not fall within the permissible use for B1 zones, nor was the Property approved by the URA for such use. There was also no relevant application for change of use submitted to the URA. The Respondent failed to advise the Tenant that the Property, zoned as B1, was not approved by the URA for use as a beauty training centre. The Respondent was unaware that a property zoned as B1 could not be used in the way the Tenant intended, nor did he make any effort to find out what type of business fell within the permissible uses for B1 zones, even though this could be ascertained by accessing the URA's website.

Charges

The Respondent faced the following 2 charges:

Charge 1

For failing to be fully conversant with the relevant laws that apply to property transactions, by not knowing that areas zoned as B1 could only be used for industrial and warehouse purposes and could not be used as a beauty training centre or other uses, unless written permission was granted by the URA under the Planning Act, in contravention of paragraph 4(1) read with paragraph 4(2)(b) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2 (Proceeded)

For failing to render professional and conscientious service to the Tenant, by failing to advise the Tenant that the Property, zoned as B1 for industrial and warehouse use pursuant to the Planning Act, was not approved by the URA for the Tenant's intended use as a beauty training centre, in contravention of paragraph 6(1) of the Code.

Outcome

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

The Disciplinary Committee ("**DC**") was of the view that there are fundamental duties required of a conscientious salesperson:

(i) To find out all relevant information about the fitness for purpose of a property the client is interested in; and

(ii) To inform the client before the leasing.

The Respondent had the duty to find out whether the Property could be used for the Tenant's purpose, and further had the duty to inform the Tenant that the Property could not be used for its intended business, unless the URA authorized the change in use. By engaging the Respondent to source for a property that could be used as a beauty training centre, X was entitled to assume that the Respondent would know whether a recommended property was suitable for the Tenant's purpose(s).

Council for Estate Agencies

Note: This case was referred to a CEA Disciplinary Committee (DC) before the operationalisation of the Estate Agents (Amendment) Act 2020 on 30 July 2021. With the Act amendments, the maximum financial penalty for disciplinary breaches has been raised and a DC can impose a higher financial penalty on errant offenders.

The DC opined that while information about the various categories of property use is available to the public, salespersons are not absolved from the responsibility of apprising themselves of such information, especially when engaged by clients specifically for business purposes.

In sentencing, the DC was of the view that the misfeasance was particularly serious, as the Property's intended use was made known to the Respondent at the very outset; it was gross negligence not to have taken note of it and acted on it. The DC also considered that the Respondent had been in the business for 11 years, although rarely involved in transactions involving industrial property. Precisely because he was unfamiliar, the DC held that the Respondent ought to have taken special care in attending to it.

The DC noted that there was no allegation of ill intent by the Respondent towards the Tenant, and the Respondent had been favourably commended in his years of being a salesperson. The DC also took into account that the Respondent had charged a lower commission (S$ 2,000 instead of S$ 2,700, before Goods and Services Tax), offered to find a replacement tenant for the lease (although not accepted by the Tenant), and the Tenant had recovered the bulk of its financial expenditure from insurance (S$ 13,000).

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

Charge 2: A financial penalty of S$ 2,000 and a suspension of 3 months.

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