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 8/2016 – Failure to Take Into Account Client's Monies Used from CPF Special Account in the Purchase of Flat

Facts of Case

The Respondent was engaged by the owners (the "**Owners**") of a Housing and Development Board (**"HDB"**) flat (the **"Flat"**) to sell the Flat and purchase a smaller replacement HDB flat.

At all material times, the Respondent was aware that:

a) one of the Owners had used monies in his Central Provident Fund (**"CPF"**) Special Account (**"SA"**) to service the HDB mortgage loan for the Flat;

b) despite being allowed to use his CPF SA, the Owners still had difficulty servicing the HDB mortgage loan for the Flat; and

c) the Owners were in financial difficulties and apart from the sale proceeds from the Flat, they did not have the financial ability to make any cash payment towards the subsequent purchase of a replacement flat.

The Respondent then retrieved the Owners' CPF Statements relating to the Flat from the CPF website. The CPF Statements indicated the sum of CPF SA monies which were used in the purchase of the Flat. The CPF SA monies had to be returned to the CPF SA with the accrued interest from the gross sale proceeds of the Flat.

Subsequently, the Owners received an offer of $600,000 for the purchase of the Flat. The Respondent carried out financial calculations on the net sale proceeds that the Owners would receive in cash from the sale of the Flat (after deduction of the outstanding HDB mortgage loan and refund of CPF monies) based on the offer price of $600,000. The Respondent then erroneously advised the Owners that the cash sale proceeds that they would receive (the **"Cash Sale Proceeds"**) would be sufficient to make the necessary cash payments to purchase a replacement flat. As a result, the Owners issued an Option to Purchase to the buyers.

In her financial calculations, the Respondent omitted to account for the CPF SA monies that were used in the purchase of the Flat. Had the Respondent accounted for the CPF SA monies, the calculations would show that the Owners would receive no cash proceeds from the sale of the Flat.

At or around the same time, the Respondent found and recommended a replacement flat to the Owners which was marketed at a selling price of $380,000 (the "**Replacement Flat"**). The Respondent also told the Owners that the Replacement Flat was the only flat she had found that was suitable for their financial circumstances as the Cash Sale Proceeds would be able to cover the cash payments necessary for the purchase of the Replacement Flat (including the legal and stamp duty payments, administrative charges and fees) after factoring in a loan of $5,000 from the Respondent.

As a result, the Owners decided to purchase the Replacement Flat and exercised the Option to Purchase granted by the sellers of the Replacement Flat.

The Respondent subsequently found out that he would not receive any cash sale proceeds from the sale of the Flat and that a cash payment of $19,210.30 was required for the purchase of the Replacement Flat.

As a result, the Owners had to borrow the sum of $19,210.30 from their relatives. Due to their financial circumstances, the Owners were not able to repay the sum even after 4 and a half years. The Owners were also unable to pay for the Respondent's commission totaling a sum of $10,486 (including GST), amounting to 1% commission in respect of the sale of the Flat and 1% commission in respect of the purchase of the Replacement Flat. The Owners only managed to make payment of $1,200 to the Respondent's estate agent, and the balance sum of $9,286 was eventually paid for by the Respondent.

Charge

The Respondent faced the following charge:

> **Charge**
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> For failing to conduct her work with due diligence and care in that whilst advising her clients on the sale of the Flat and in the purchase of a Replacement Flat, she failed to account for the monies used by her client from his CPF SA in the purchase of the Flat, which he was required to return to the CPF Board together with the accrued interest, resulting in a shortfall of net sale proceeds of the Flat to pay for the cash component of the purchase price of the Replacement Flat, 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 Disciplinary Committee imposed the following financial penalty and disciplinary order on the Respondent:

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

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