

## **S/N 15/2019 – Failure to Verify Client’s Eligibility for Additional Buyers Stamp Duty Refund, Negligent Misrepresentation to Client of Eligibility for Additional Buyers Stamp Duty Refund & Failure to Advise Clients to Seek Advice of Appropriate Professionals**

### **Facts of Case**

The Respondent was engaged by X and Y (the “**Buyers**”) sometime on or around May 2013. X informed the Respondent that the Buyers were Singapore Permanent Residents and owned an existing Housing and Development Board flat (“**HDB Flat**”). The Buyers intended to sell their HDB Flat and purchase a condominium unit.

The Respondent arranged for X to view a number of condominium units, including a show flat of the property which the Buyers eventually purchased (the “**Property**”). Upon X’s viewing the Property’s show flat a second time, the Buyers were keen to purchase the Property which was priced at \$811,330.

During this period, the Respondent informed the Buyers that they would have to pay Additional Buyers Stamp Duty (“**ABSD**”) on the purchase of their second property. The Respondent represented to the Buyers that they would be able to receive an ABSD refund if they sold their HDB Flat within 6 months of collecting the keys to the Property.

This representation was untrue as the Buyers were not at the material time eligible for any ABSD refund on their purchase of the Property. With the changes to ABSD introduced by the Inland Revenue Authority of Singapore (“**IRAS**”) on 12 January 2013, they did not fulfil the Inland Revenue Authority of Singapore’s eligibility criteria of, among others, being a married couple with at least one Singapore citizen.

The Buyers relied on the Respondent’s representation i.e. that they would subsequently obtain a refund of ABSD paid, and decided to purchase the Property. The Buyers paid a booking fee of \$40,566.50 for the issuance of an option to purchase the Property.

When the Buyers met their solicitors to sign the sale and purchase agreement for the Property, they continued to rely on the Respondent’s representation on ABSD refund and proceeded to pay, amongst others, the sum of \$81,133 being the ABSD on the purchase of the Property.

At all times when the Respondent was facilitating the Buyers’ purchase of the Property, the Respondent did not take reasonable steps to verify if the Buyers, being a married couple **not** involving at least one Singapore Citizen, would qualify for ABSD refund. The Respondent had therefore negligently misrepresented to the Buyers that they could obtain ABSD refund if they had sold the HDB Flat within 6 months of collecting the keys to the Property.

The Respondent, in spite of being unfamiliar with the changes to ABSD, did not advise the Buyers to seek advice from the appropriate professionals such as the Buyers' lawyers.

Sometime in July 2016, the Buyers updated the Respondent that they were in the process of selling the HDB Flat after having collected the keys to the Property. In spite of the Buyers updating the Respondent on several occasions on the progress of the sale of the HDB Flat, there was no substantive response from the Respondent on the issue of ABSD refund.

In end-November 2016, the Respondent finally informed the Buyers that they were not eligible for a refund of the ABSD previously paid on their purchase of the Property as neither of them were Singapore Citizens. The Respondent further claimed that she would be engaging a lawyer to assist the Buyers in appealing to IRAS for ABSD refund.

The Buyers confronted the Respondent again in December 2016 when they did not receive any update from the Respondent. On this occasion, the Respondent informed them that they will not be receiving a refund of the ABSD they paid on the purchase of the Property. The Respondent further alleged that a lawyer's assistant from the law firm representing the Buyers had given her wrong information regarding ABSD refunds.

The Respondent's wrongful conduct resulted in the Buyers suffering a loss of \$81,133 which was the ABSD quantum that could not be refunded to the Buyers.

## **Charges**

The Respondent faced the following 3 charges:

### **Charge 1**

For failing to take reasonable steps to verify whether a married couple not involving at least one Singapore Citizen spouse will qualify for ABSD refund and failing to inform the Buyers that they would not be able to apply for and obtain a refund of ABSD as neither of them were Singapore Citizens, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

### **Charge 2 (Proceeded)**

For failing to conduct her work with due diligence and care, by representing to the Buyers that they would be able to apply for and receive an ABSD refund when in fact they could not because neither of them were Singapore Citizens, in contravention of paragraph 5(1) of the Code.

### **Charge 3**

For failing to advise and encourage a party to a transaction i.e. her clients the Buyers to seek the advice of appropriate professionals where there was a material matter or issue beyond her expertise i.e. the eligibility criteria for ABSD refund, in contravention of paragraph 14 of the Code.

### **Outcome**

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

In sentencing, the Disciplinary Committee (“DC”) took note of the Respondent’s apparent lack of genuine remorse and disregard of the gravity of her misrepresentations by her delayed replies to the Buyers’ WhatsApp messages, as well as the financial loss of \$81,133 that had been caused to the Buyers.

The DC also noted that the Respondent did not act dishonestly and there was no ulterior motive behind the misrepresentations, her full cooperation with the authorities, and her lack of antecedents and an otherwise exemplary record as a salesperson.

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

**Charge 2:** A financial penalty of \$5,000 and a suspension of 16 weeks.

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