

S/N 13/2020 – Failure to Verify Client’s Eligibility for Purchase of Flat and Inform Relevant Parties about Client’s Ineligibility

Facts of Case

In April 2017, the Respondent was engaged by X (the “**Buyer**”) to assist on her purchase of a Housing and Development Board (“**HDB**”) flat following a divorce. As the Buyer was intending to purchase a HDB resale flat, the Buyer would have to satisfy the eligibility criteria and HDB’s terms and conditions for the purchase, which required her to be divorced to buy a flat alone.

The Buyer did not produce any document to evidence her divorce and merely informed the Respondent that her lawyer had told her that she could purchase a new property. The Respondent did not take any further steps to ascertain or verify whether the Buyer was indeed divorced; he ought to have sighted or obtained a copy of the Certificate of Final Judgment (“**Final Judgment**”), which would confirm that the Buyer was divorced at law and eligible to purchase a HDB resale flat as a divorcee. Instead, the Respondent accepted the Buyer’s words at face value, notwithstanding that the Buyer’s eligibility was a fundamental aspect and a pre-requisite to her intended purchase. The Respondent also did not follow up with the Buyer subsequently in this regard.

The Buyer decided to purchase a HDB flat (the “**Property**”) at the price of \$ 768,000. In early May 2017, the Sellers issued an Option to Purchase (“**OTP**”) to the Buyer. Accordingly, the Respondent also submitted the Buyer’s Resale Checklist to HDB on the Buyer’s behalf. In completing and submitting the Buyer’s Resale Checklist, the following boxes were checked by the Respondent and the Buyer:

“Eligibility to Buy

Buyers have to ensure that they are eligible to buy a resale flat under one of HDB’s eligibility scheme. Buyers can use the eligibility check for purchase of new or resale HDB flat e-Service to do a quick assessment on their eligibility.”

Confirmation by Buyer

Yes, my salesperson has gone through all the items in the checklist with me...”

The Buyer exercised the OTP in late May 2017. However, the Buyer did not in fact fulfil the eligibility criteria to purchase a HDB resale flat, as she had not obtained the Final Judgment for a divorce; she had separated from her husband in January 2016 and would be able to file for divorce after January 2019, pursuant to a Deed of Separation.

Sometime in May 2017, the Buyer informed the Respondent that her resale application had been rejected by HDB. Upon further clarification, the Respondent discovered that

the Buyer was not divorced and ineligible to purchase the Property. The Respondent assisted the Buyer to submit an appeal to HDB, which was rejected in mid-June 2017. Despite knowing about the Buyer's ineligibility to purchase the Property in May 2017 (and prior to early July 2017), the Respondent did not inform the Sellers or the Sellers' salesperson ("**Salesperson Y**") about the rejection of the Buyer's resale application or her ineligibility to purchase the Property. The Respondent merely assumed that HDB would inform the Sellers and did not convey the same to them.

Meanwhile, the Sellers operated under the belief that there were no issues with the resale transaction for the Property and proceeded to look for a new property in June 2017; they subsequently exercised an OTP for a new property in late June 2017. However, in early July 2017, the Sellers received a letter from HDB indicating that the Buyer was ineligible to purchase the Property. The Sellers tried to appeal to the authorities for approval to proceed with the sale, but were unsuccessful.

In the circumstances, the Sellers and the Buyer were unable to proceed with the resale transaction for the Property. The Sellers forfeited the Buyer's deposit of \$ 5,000, and the Buyer had to pay a sum of \$ 1,500 to the bank as a penalty for cancelling the housing loan facility that she had obtained for the purchase. Further, the Sellers had to terminate the purchase of their next property and incurred an eventual net loss of \$ 4,050.

The Sellers would not have proceeded to purchase another property in June 2017 if they were aware of the issues surrounding the Buyer's eligibility to purchase the Property (and which had already surfaced in May 2017). The Sellers eventually sold the Property in early November 2019.

Charges

The Respondent faced the following charges:

Charge 1 (Proceeded)

For failing to perform his work with due diligence and care, by not taking steps to sight or obtain a copy of the Final Judgment from the Buyer, evidencing that she was divorced, to verify her eligibility for the purchase of the Property, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2

For failing to perform his work with due diligence and care, by not informing the Sellers or Salesperson Y that the Buyer was ineligible to purchase the Property, despite having knowledge of the same in May 2017, as a result of which the Sellers had proceeded to exercise an OTP for another HDB property in late June

2017, which had to be aborted when the sale and purchase of the Property was not approved by HDB due to the Buyer's ineligibility, in contravention of paragraph 5(1) of the Code.

Outcome

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

In sentencing, the Disciplinary Committee (“DC”) noted that the Respondent’s failings resulted in two abortive sales that led to a total loss of \$ 10,550 by both the Buyer and the Sellers. However, the DC felt that the Respondent was not solely responsible for the Buyer’s loss, and the Buyer had contributed to her loss by giving the impression that she was divorced and eligible to purchase the Property.

The DC noted that the Respondent and the Buyer’s husband were long-term friends, and the Buyer’s husband had also informed the Respondent that they were divorced. This was reinforced when the Buyer informed the Respondent that her lawyer had told her she could purchase a new property. While the Respondent’s conduct did not meet the required standard to protect the interest of the consumer/public and to prevent loss to the parties involved, the DC felt that it was not entirely unreasonable in view of what had transpired. The DC also observed that the Respondent had no antecedent.

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

Charge 1: A financial penalty of \$ 3,000 and a suspension of 3 months.

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