

S/N 4/2019 – Failure to Work with Due Diligence and Care and to Take All Reasonable Precautions and Do All Reasonable Acts to Ensure that No Law is Infringed by Any Person in Conducting Estate Agency Work

Facts of Case

The Respondent was at all material times a registered salesperson.

The Respondent was engaged by the owner of a condominium unit (the “**Property**”), Mr. C (the “**Landlord**”), to lease out the Property. The Respondent then placed an advertisement online listing the Property.

Sometime in 2014, Mr. J (the “**Tenant**”), contacted the Respondent to arrange for a viewing. After the viewing, it was negotiated that the Tenant would lease the Property at a monthly rent of \$2,700.

Around late-2014, during the signing of the tenancy agreement (“**2014 Tenancy Agreement**”), the Respondent advised the Tenant to hand to the Respondent a sum of \$135, being the stamp duty fee payable for the 2014 Tenancy Agreement, so that the Respondent could make the stamp duty payment on the Tenant’s behalf. The Tenant paid the Respondent the said sum of \$135. However, the Respondent did not update nor give the Tenant any confirmation as to whether the stamp duty had been duly paid.

In fact, the Respondent had not lodged the stamp duty fee of \$135 payable by the Tenant to the Inland Revenue Authority of Singapore (“**IRAS**”) on the 2014 Tenancy Agreement. Consequently, the Respondent never furnished the Tenant with a copy of the Certificate of Stamp Duty for the 2014 Tenancy Agreement.

Around late-2015, the Tenant renewed the tenancy agreement for another year (“**2015 Tenancy Agreement**”) with a reduced monthly rent of \$2,600. The Respondent also collected the sum of \$130 for the lodgement of the stamp duty payable on the 2015 Tenancy Agreement.

Similarly, the Respondent did not lodge the stamp duty fee of \$130 payable by the Tenant to IRAS, and consequently, never furnished the Tenant with a copy of the Certificate of Stamp Duty for the 2015 Tenancy Agreement.

Around late-2016, the tenancy agreement was renewed for a third year (“**2016 Tenancy Agreement**”) with a further reduced monthly rent of \$2,400. This time, the Respondent collected the sum of \$236 from the Tenant for the lodgement of the stamp duty payable on the 2016 Tenancy Agreement. However, the Respondent had erroneously calculated the sum to be \$236, when it ought to have been \$121.

Similarly, the Respondent did not lodge the stamp duty fee payable by the Tenant to IRAS, and consequently, never furnished the Tenant with a copy of the Certificate of Stamp Duty for the 2016 Tenancy Agreement.

Around late-2017, the Tenant lodged a police report against the Respondent when he discovered that IRAS did not have the stamp duty records for the lease of the Property.

The police contacted the Respondent, and at the police investigation officer's suggestion, the Respondent made restitution of the sum of \$601 to the Tenant.

In mitigation, the Respondent argued that the Tenant was not its client and it was not the Respondent's responsibility to ensure that the stamp duty was paid.

The Disciplinary Committee ("DC") rejected this argument and noted that once the Respondent had voluntarily assumed the responsibility to stamp the various tenancy agreements on the behalf of the Tenant, the Respondent had a positive duty to discharge that responsibility. It was not then open to the Respondent to say in mitigation that the Tenant was not its client, or that the legal duty to stamp the agreements were that of the Tenants, or that it was the Tenant who had failed to ensure that the agreements were stamped.

Charges

The Respondent faced the following 4 charges:

Charge 1 (Proceeded)

For failing to conduct estate agency work with due diligence and care and to take all reasonable precautions and do all reasonable acts to ensure that no law is infringed by any person, in breach of Paragraph 5(1) read with Paragraph 5(2)(b) of the Code of Ethics and Professional Client Care (the "**Code**"), by omitting to lodge on behalf of the Tenant the stamp duty payable on the tenancy agreement for the one-year lease of the Property as required under Section 34(a) read with Article 4(a) of the Third Schedule of the Stamp Duties Act (Cap.312) ("**SDA**"), despite having collected a sum of \$135 from the Tenant for this purpose in late-2014.

Charge 2 (Proceeded)

For failing to conduct estate agency work with due diligence and care and to take all reasonable precautions and do all reasonable acts to ensure that no law is infringed by any person, in breach of Paragraph 5(1) read with Paragraph 5(2)(b) of the Code, by omitting to lodge on behalf of the Tenant the stamp duty payable on the tenancy agreement for the one-year lease of the Property as required under Section 34(a) read with Article 4(a) of the Third Schedule of the SDA, despite having collected a sum of \$130 from the Tenant for this purpose in late-2015.

Charge 3

For failing to conduct estate agency work with due diligence and care and to take all reasonable precautions and do all reasonable acts to ensure that no

law is infringed by any person, in breach of Paragraph 5(1) read with Paragraph 5(2)(b) of the Code, by omitting to lodge on behalf of the Tenant the stamp duty payable on the tenancy agreement for the one-year lease of the Property as required under Section 34(a) read with Article 4(a) of the Third Schedule of the SDA, despite having collected a sum of \$236 from the Tenant for this purpose in late-2016.

Charge 4

For failing to conduct estate agency work with due diligence and care, in breach of Paragraph 5(1) of the Code, by erroneously calculating and collecting from the Tenant the sum of \$236, when the stamp duty payable ought to have been \$121, and in doing so, collected a sum of \$115 in excess from the Tenant in late-2016.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1 and 2, with Charges 3 and 4 taken into consideration for sentencing. The DC imposed the following financial penalty and disciplinary order on the Respondent:

Charges 1 and 2: A financial penalty of \$1,500 and a suspension of 5 months for each charge, with the periods of suspension to run concurrently.

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