

**Note:** This case was referred to a CEA Disciplinary Committee (DC) after 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 3/2023 – Forging Signature of Vendor’s Beneficial Owner on Customer’s Particulars Form, Failing to Perform Prescribed Customer Due Diligence Measures, Failing to Conduct Work with Due Diligence and Care and Failing to Remove All Advertisements Once Property was No Longer Available for Sale**

### **Facts of Case**

The Respondent was at all material times a registered salesperson.

In or around April 2021, the Respondent’s partner (with whom she worked together to broker properties), Salesperson M, informed the Respondent that he had a corporate vendor-client (the “Vendor”) which was looking to sell a property (the “Property”).

On or around 13 August 2021, the Vendor granted an option to purchase (“OTP”) to the buyer (the “Buyer”), at the option price of \$31,800. The Buyer exercised the option on or around 27 August 2021, with the purchase price of the Property being \$3.18 million.

On 31 August 2021, Salesperson M unfortunately passed away. On 1 September 2021, the Respondent proceeded to submit the sale transaction of the Property to her estate agent.

### **Forgery of the Beneficial Owner’s Signature**

Prior to his demise, Salesperson M had obtained signed documents concerning the sale of the Property and handed these over to the Respondent. The documents did not include a Customer’s Particulars Form (“CP Form”).

Following Salesperson M’s demise, the Respondent submitted the sale of the Property to her estate agent under her name. As the Respondent had not received the CP Form from Salesperson M previously, she proceeded to prepare the same on behalf of the Vendor’s beneficial owner (the “Beneficial Owner”). The Respondent then forged the Beneficial Owner’s signature on the CP Form and submitted the said CP Form, together with other documents relating to the sale transaction of the Property to her estate agent, in order to obtain commission for the sale of the Property.

### **Failing to Conduct Customer Due Diligence Measures**

Pursuant to the Estate Agents Act (Cap. 95A, 2011 Rev Ed) (the “EAA”) and the Estate Agents (Prevention of Money Laundering and Financing of Terrorism) Regulations 2021 (the “Regulations”), the Respondent was required to perform various prescribed customer due diligence measures (“CDD Measures”) when doing estate agency work for the Vendor. The CDD Measures were to be conducted in relation to the Vendor, which was a separate legal entity from its Beneficial Owner. To this end, the Respondent was required to complete the Salesperson’s Checklist on Customer Due Diligence of Sale and Purchase Transactions (“CDD Checklist”).

The Respondent completed the CDD Checklist on 1 September 2021, albeit erroneously, as the Respondent failed to perform various prescribed CDD Measures in respect of the Vendor as she believed that Salesperson M did the necessary checks despite the fact that he did not provide her with the checks that he might have done.

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*Failure to conduct checks to determine and document the risks of money laundering or financing of terrorism pursuant to Regulation 4(1)(b) of the Regulations*

The Respondent failed to conduct the required checks in respect of the Vendor, which was her client. Instead, she conducted the required checks in respect of the Beneficial Owner. The Respondent failed to determine and document the risks of the correct entity i.e. the Vendor, engaging in money laundering or financing of terrorism.

*Failure to obtain the Vendor's identifying information, document the information obtained, and obtain the Vendor's written acknowledgement that the information obtained was accurate pursuant to Regulation 4(2)(a) of the Regulations*

On 12 August 2021, Salesperson M sent the Respondent a "Register of Directors" indicating that the Beneficial Owner had been appointed a Director of the Vendor as of 28 October 2010. However, the Register of Directors only provided the director's full name, date of appointment, nationality, residential address, and occupation. The Register of Directors did not contain the place of incorporation, registration or formation of the Vendor, nor did it contain the business of the Vendor. The Respondent did not obtain sufficient identifying information in relation to the Vendor.

The Respondent also failed to obtain the Vendor's written acknowledgement that the identifying information obtained was accurate. On or around 1 September 2021, the Respondent filled in the CP Form and forged the Beneficial Owner's signature in the CP Form.

*Failure to verify the Vendor's identity using reliable and independent sources pursuant to Regulation 4(2)(b) of the Regulations*

The Respondent did not verify the Vendor's identity using reliable and independent sources and did not submit any evidence of the same to her estate agent.

*Failure to conduct other CDD Measures pursuant to Regulations 4(2)(d), 5(2)(a)-(d), (f) and 5(3) of the Regulations*

As the Vendor was an entity, the Respondent was required to identify and verify the Vendor's name, legal form, proof of existence, constitution and address of registered office. The Respondent was also required to understand the nature of the Vendor's business and its ownership and control structure.

As the Respondent did not do any of the above, and under a mistaken assumption that her client was the Beneficial Owner and not the Vendor, she erroneously indicated in the CDD Checklist that the Vendor was not a legal person or a legal arrangement, and did not conduct any checks relating to the above.

*Failure to identify beneficial owner(s) of the Vendor pursuant to Regulation 5(4)(a)(i) of the Regulations*

The Respondent failed to do any verification on the identity of the Vendor's beneficial owner. Instead, the Respondent relied solely on the fact that the tenancy agreement for the Property had reflected the Beneficial Owner's name, to assume that he was the beneficial owner of the Vendor.

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As the Respondent had made no further efforts to verify the beneficial owner of the Vendor, and under a mistaken assumption that her client was the Beneficial Owner and not the Vendor, she indicated in the CDD Checklist that she did not suspect that the client was not the beneficial owner of the Property and erroneously indicated the verification of the identity of the beneficial owner as “not applicable”.

### **Failing to Conduct Work with Due Diligence and Care**

From 28 August 2020, the Vendor leased the Property to a tenant for two years, up to 27 August 2022. The Buyer therefore purchased the Property with tenancy. On 12 August 2021, the Respondent, after obtaining a copy of the tenancy agreement from Salesperson M, forwarded the same to the Buyer’s representative who was liaising with the Respondent on behalf of the Buyer.

Further, on 12 August 2021, Salesperson M had forwarded to the Respondent a completed copy of the Vendor’s Consent Resolution for the Leasing of the Property (“Consent Resolution”) which bore the Beneficial Owner’s signature.

The Respondent therefore would have had sight of or ought to have had sight of the Beneficial Owner’s signature on the tenancy agreement and the Consent Resolution by 12 August 2021.

On 1 September 2021, the Respondent submitted a completed estate agency agreement to her estate agent, which was supposedly signed by the Beneficial Owner. However, the Beneficial Owner’s signatures on the tenancy agreement and Consent Resolution were significantly different from his apparent signature on the estate agency agreement. The Beneficial Owner subsequently confirmed that he did not sign the estate agency agreement.

Had the Respondent conducted her work with due diligence and care and had checked through the estate agency agreement to confirm that the document was in order, she ought to have realised that the Beneficial Owner’s signature in the estate agency agreement differed sufficiently from that in the tenancy agreement and Consent Resolution to have raised suspicions that the signature on the estate agency agreement was forged.

The Respondent failed to check that the estate agency agreement was in order when the apparent signature of the Beneficial Owner was vastly different from his signature on the tenancy agreement and Consent Resolution, the documents to which she had or ought to have had sight of, resulting in a forged estate agency agreement being submitted to her estate agent.

### **Failing to Remove Advertisements**

The Respondent first posted an advertisement of the Property online on or around 28 April 2021. After the initial posting of the advertisement, the Respondent allowed the advertisement to be repeatedly reposted online at various junctures.

However, even after the Buyer’s exercise of the OTP on 27 August 2021, the Respondent allowed the reposting of the advertisement online to continue.

On 8 September 2021, Salesperson P saw the Respondent’s advertisement and contacted the Respondent, indicating her interest in the Property. On 16 September 2021, Salesperson P again reached out to the Respondent enquiring if the Property was still available for sale. The Respondent responded to Salesperson P that the Property had been “optioned”.

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However, the Respondent continued to allow the advertisement to be reposted online until 30 October 2021, and failed to remove all advertisements in relation to the Property once it was no longer available for sale.

## **Charges**

The Respondent faced the following 4 charges:

### **Charge 1 (Proceeded)**

Doing a fraudulent, dishonest and deceitful act that may bring discredit or disrepute to the estate agency industry by forging the signature of the Vendor's Beneficial Owner on the CP Form and submitting the forged CP Form to her estate agent, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care (the "Code").

### **Charge 2**

Failing to conduct her work with due diligence and care by failing to check that the estate agency agreement was in order when the apparent signature of the Beneficial Owner was vastly different from his signature on the tenancy agreement and the Consent Resolution, documents to which she had or ought to have had sight of, resulting in a forged estate agency agreement being submitted to her estate agent, in contravention of paragraph 5(1) of the Code.

### **Charge 3**

Failing to remove all advertisements in relation to the Property despite the OTP of the Property having been exercised by the Buyer and the Property thereby no longer being available for sale, in contravention of paragraph 12(4)(h) of the Code.

### **Charge 4 (Proceeded)**

Failing to perform the prescribed CDD Measures when doing estate agency work for the Vendor, by failing to obtain, document and verify the accuracy of the Vendor's identifying information and to determine and document the risks of the Vendor engaging in money laundering or the financing of terrorism or both, as required under Regulations 4(1)(b), 4(2)(a),(b),(d),(e), 5(2)(a)-(d),(f), 5(3) and 5(4)(a)(i) of the Regulations, in contravention of Section 44B(2)(a) of the EAA.

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## **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1 and Charge 4, with the remaining 2 charges (i.e. Charge 2 and Charge 3) taken into consideration for sentencing.

The DC imposed the following financial penalties and disciplinary orders on the Respondent:

**Charge 1:** A financial penalty of \$5,000 and a suspension of 5 months

**Charge 4:** A financial penalty of \$4,000 and a suspension of 4 months

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$9,000 and a suspension of 5 months.

Fixed costs of \$2,000 was also imposed on the Respondent.