

S/N 5/2024 – Miscalculating Estimated Cash Proceeds, Forging Clients’ Signatures, Failing to Perform Prescribed Customer Due Diligence Measures, Informing Client to Request for Valuation with Fake Buyer, Failing to Comply with HDB Procedures and Failing to Provide Client with Copy of Signed Document

Facts of Case

In or around October 2021, the Respondent was engaged by the owners (the “**Sellers**”) of a Housing and Development Board (“**HDB**”) flat (the “**Property**”) to sell their Property. The Sellers, Mr X and Ms Y, were divorced.

When asked for an estimated valuation of the Property, the Respondent informed Ms Y that it should be around \$550,000 to \$570,000 based on past transactions, and Ms Y could get a *"fake buyer to request valuation from [HDB]"* if she wanted a more accurate valuation.

In or around December 2021, the Respondent was informed by Ms Y that Mr X was heavily in debt and unemployed. Ms Y also informed the Respondent that she was planning to use the cash proceeds from the sale of the Property to purchase a smaller HDB property. Both Ms Y and Mr X were expecting cash proceeds from the sale of the Property.

In or around mid-February 2022, Ms Y requested the Respondent to calculate the estimated cash proceeds if the Property was sold at \$630,000. The Respondent requested Ms Y to send a screenshot of her Central Provident Fund (“**CPF**”) mobile application, which showed that the amount used by the Sellers was \$397,088.21. The Respondent erroneously assumed that this amount included the accrued interest, legal fees and stamp fees, and represented the total amount refundable to CPF. The Respondent therefore informed Ms Y that Mr X need not download the CPF mobile application and provide his CPF details. At all material times, the Respondent did not ascertain the veracity of his assumption with official sources.

Consequently, on 20 February 2022, the Respondent erroneously informed Ms Y that the Sellers would receive cash proceeds in the amount of \$69,223 if the Property was sold at \$630,000.

In or around late February 2022, the Buyers of the Property made an offer of \$628,888. Ms Y registered an Intent to Sell (“**ITS**”) with HDB on 27 February 2022.

According to HDB’s rules and procedures applicable to the sale of HDB flats, an Option to Purchase (“**OTP**”) can only be granted after a 7-day cooling off period upon the registration of an ITS (“**7-Day Cooling Off Rule**”). Accordingly, an OTP for the Property could only be granted on or after 6 March 2022. Nevertheless, the Respondent obtained the Sellers’ signatures on an OTP on 28 February 2022. To give a false appearance of compliance with the 7-Day Cooling Off Rule, the Respondent post-dated the OTP to 6 March 2022.

On 28 February 2022, the Respondent also met Ms Y to obtain her signature on an Estate Agency Agreement (“**EAA**”). Ms Y also signed the EAA on behalf of Mr X, who was not present. However, the Respondent failed to obtain any documentary evidence to verify that Ms Y was authorised to act on behalf of Mr X to sign the EAA. The Respondent also failed to provide a copy of the signed EAA to Ms Y.

Further, at all material times when facilitating the sale of the Property, the Respondent never met Mr X in person. The Respondent did not possess Mr X's contact details and made no attempts to contact Mr X. The Respondent therefore did not verify Mr X's identity and merely asked Ms Y to provide Mr X's National Registration Identification Card (NRIC) number.

In or around late March 2022, after the OTP was exercised, the Respondent completed the Customer's Particulars Forms ("**CP Forms**") on behalf of the Sellers. Instead of obtaining the Sellers' signatures, the Respondent signed the CP Forms on their behalf without their consent or knowledge. Further, the Respondent failed to obtain the Sellers' written acknowledgement that the information in the CP Forms were accurate. As a result, Ms Y's CP Form erroneously indicated her occupation details.

On 7 June 2022, the Sellers were informed by their conveyancing solicitors that they would not receive any cash proceeds from the sale of the Property, and instead had to pay a sum of \$5,353.82 in cash, comprising \$3,109.50 payable to CPF and \$2,244.32 payable to the conveyancing solicitors as legal fees. It emerged that the amount of \$397,088.21 reflected on Ms Y's CPF mobile application did not include the accrued interest, legal fees and stamp fees which the Sellers had previously used to purchase the Property. The total amount that had to be refunded to CPF was in fact a higher sum of \$482,738.30.

As a result of the unexpected shortfall, Ms Y did not proceed to purchase a smaller HDB flat as initially planned.

As compensation for his miscalculation, the Respondent waived his commission of 1.5% payable for the sale of the Property, which amounted to \$9,433.32, and also paid the conveyancing fees in the amount of \$2,244.32. The balance of \$3,109.50 payable to CPF was paid by Ms Y.

Charges

The Respondent faced the following 8 charges:

Charge 1

For acting in a manner that may bring discredit or disrepute to the estate agency trade or industry, by acting dishonestly, by informing Ms Y that she could get a fake buyer to request for a valuation of the Property from HDB, 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 (Proceeded)

For failing to conduct his business and work with due diligence and care, by miscalculating the estimated cash proceeds if the Property was sold at \$630,000, by erroneously assuming that the sum of \$397,088.21 included the accrued interest, legal fees and stamp fees and was the total sum that had to be refunded to CPF, and consequently erroneously informing Ms Y that the Sellers would receive cash proceeds in the amount of \$69,223, when in fact the amount that had to be refunded to CPF was \$482,738.30 when the Flat was sold at \$628,888, resulting in the Sellers receiving no cash proceeds but instead having to pay an amount of \$5,353.82 in cash, in contravention of paragraph 5(1) of the Code.

Charge 3

For failing to comply with the applicable laws, regulations rules and procedures that apply to transactions involving HDB flats, by granting the OTP to the Buyers within the 7-day cooling off period upon registration of the ITS on 27 February 2022 and giving the false appearance of compliance with the 7-Day Cooling Off Rule by post-dating the OTP to 6 March 2022, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Charge 4

For failing to give Ms Y a copy of the EAA immediately or as soon as possible after Ms Y had signed it, in contravention of paragraph 8(4) of the Code.

Charge 5 (Proceeded)

For acting in a manner that may bring discredit or disrepute to the estate agency trade or industry, by acting fraudulently or dishonestly, by forging Ms Y's signature on her CP Form, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code.

Charge 6

For acting in a manner that may bring discredit or disrepute to the estate agency trade or industry, by acting fraudulently or dishonestly, by forging Mr X's signature on his CP Form, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code.

Charge 7 (Proceeded)

For failing to perform the prescribed customer due diligence measures, by failing to obtain Ms Y's written acknowledgement that the information on her CP Form was accurate, and failing to obtain appropriate documentary evidence to verify that Ms Y was authorised to act on behalf of Mr X when Ms Y signed the EAA on his behalf, as required under Regulations 4(2)(a) and 4(2)(c)(i) of the Estate Agents (Prevention of Money Laundering and Financing of Terrorism) Regulations 2021 ("**PMLFT Regulations 2021**") respectively, in contravention of Section 44B(2)(a) of the Estate Agents Act 2010 (the "**Act**").

Charge 8

For failing to perform the prescribed customer due diligence measures, by failing to obtain Mr X's written acknowledgement that the information on his CP Form was accurate, and failing to verify Mr X's identity using reliable and independent sources, as required under Regulations 4(2)(a) and 4(2)(b) of the PMLFT Regulations 2021 respectively, in contravention of section 44B(2)(a) of the Act.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to 3 charges (i.e. Charges 2, 5 and 7), while the remaining 5 charges (i.e. Charges 1, 3, 4, 6 and 8) were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) noted the following:

- (a) The Respondent’s miscalculation about the estimated cash proceeds was a basic and elementary mistake that ought not to have been made, and his failure was all the more egregious given that he knew that the Sellers were expecting cash proceeds from the sale of the Property; Mr X was heavily in debt and unemployed, while Ms Y was planning to use the cash proceeds to purchase a smaller HDB flat. With this particular knowledge, the Respondent should have taken even more care to ensure that his advice was accurate and reliable;
- (b) The Respondent’s acts of forgery were fraudulent, dishonest and wrong in any circumstance. The gravity of such misconduct must not be overlooked or misjudged, and cannot be excused on grounds of convenience or expediency; a clear and unambiguous message must be sent to the Respondent and the industry at large;
- (c) In relation to Charge 7, the Respondent’s failings were crucial and basic steps that had to be taken in performing property transactions. Such failings undermine the legislative objective of safeguarding property transactions against money laundering and the financing of terrorism. A clear message must therefore be sent to the Respondent and the industry at large that these steps are not to be trifled with and must be taken seriously; estate agents and salespersons ignore them at their own peril;
- (d) The Respondent had 5 other charges to be taken into consideration in sentencing, with Charges 1 and 6 similarly involving dishonesty. Charge 8 also revealed a similar pattern of failing to perform prescribed customer due diligence measures; and
- (e) The Respondent had waived his commission, paid the conveyancing fees on behalf of the Sellers and pleaded guilty at the earliest opportunity, which were mitigating factors.

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

Charge 2: A financial penalty of \$6,000 and a suspension of 4 months.

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

Charge 7: A financial penalty of \$4,000 and a suspension of 4 months.

The suspension periods for Charges 2 and 5 were ordered to run consecutively, with the suspension period for Charge 7 ordered to run concurrently. The total sentence imposed was a financial penalty of \$15,000 and a suspension of 9 months.

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