

S/N 11/2015 – Misrepresentation on the Cooling Off Period Following Issuance of the OTP

Facts of Case

Sometime in May or June 2012, the Seller of a HDB flat (“**Property**”) engaged the services of the Respondent to look for and secure a potential buyer of the Property. On or around 24 June 2012, the Seller also signed the resale checklist after the Respondent explained to her the procedure for the resale of HDB flats.

Sometime in August 2012, two potential purchasers (“**Purchasers**”) encountered the Respondent’s advertisement and sought their salesperson to arrange an initial viewing of the Property. Subsequently, the Purchasers, through their salesperson, arranged with the Respondent for a second viewing on or around 4 September 2012.

At the second viewing, the Purchasers made an initial offer to purchase the Property at \$635,000 through their Salesperson to the Respondent. The Respondent and the Seller then discussed and rejected the offer. The Purchasers then counter-offered with \$640,000. Once again, the Respondent discussed with the Seller, and urged the Seller to accept the offer. The Respondent then informed the Seller that she could just sign and issue the Option to Purchase (“**OTP**”) then, and she would still have a cooling-off period of 7 days from the issuance of the OTP to reject the offer. This representation was untrue. The Seller was then reluctant to grant the OTP as the offer of \$640,000 was unacceptable to her (the Seller had expected to secure at least \$660,000). The Respondent was however persistent in informing the Seller of the existence of the 7 days cooling-off period which the Respondent claimed would allow the Seller to subsequently withdraw from the transaction after she had signed and issued the OTP. The Seller eventually relented and an OTP dated 4 September 2012 was duly granted to the Purchasers.

On 5 September 2012, the Seller subsequently sought to renege on the grant of the OTP but the Purchasers did not accept. On or around 18 September 2012 the Purchasers exercised the OTP and passed a copy to the Seller. As the Seller did not proceed with the sale of the Property, the Purchasers subsequently commenced legal proceedings against the Seller for specific performance of the OTP.

As a result of the Respondent’s failure to render professional service to her client the Seller, the Seller was compelled into selling her Property for a price that was at least \$20,000 below her intended asking price. The Seller was also put to legal cost and expense when the Purchasers commenced the action for specific performance against her and she had to convey her legal title to the Property to the Purchasers as a result of the proceedings.

Charges

The Respondent faced the following two charges:

Charge 1

For failing to render professional and conscientious service to her client by misrepresenting to her client that she had a cooling-off period of 7 days to withdraw from the sale of her Property after the issuance of an OTP to the Purchasers when there was no such cooling-off period, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care ("**Code**").

Charge 2

For failing to be fully conversant and complying with the applicable HDB procedures in misrepresenting to her client that she had a cooling-off period of 7 days to withdraw from the sale of her Property after the issuance of an OTP to the Purchasers when the applicable HDB procedures do not provide for any such cooling-off period to withdraw from the sale of the Property after the issuance of the OTP to the Purchasers and instead provide that the OTP shall not be issued until the 7-day cooling-off period is observed after the completion of the Seller's resale checklist, in contravention of paragraph 4(1) read with paragraph 4(2)(e) of the Code.

Outcome

Following a trial, the Disciplinary Committee found that the Respondent was guilty of both Charges 1 and 2, and imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$4,000 and a suspension of 6 months.

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

The suspensions were ordered to run concurrently. Fixed costs of \$1,000 was imposed on the Respondent.