Council for Estate Agencies

Note: This case was referred to a CEA Disciplinary Committee (DC) before 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 12/2016 – Misrepresenting a Relevant Fact to a Third Party (i.e. non-client) and Thereby Failing to Act Reasonably Towards this Third Party

Facts of Case

The Respondent was at all material times a registered salesperson of a licensed estate agent (the “**REA**”).

The properties in a foreign land (the “**Foreign Land**”) was to be developed by 2 foreign developers – Foreign Developer A and Foreign Developer B - and were launched for sale in 2 phases split into 3 developments – Phase 1 was known as Development A, Stage 2A of Phase 2 was known as Development B and Stage 2B of Phase 2 was known as Development C. Phase 1 was developed by Foreign Developer A while Phase 2 was developed by Foreign Developer B.

Company X, which was incorporated in Singapore, was the sole shareholder of Foreign Developer B and acquired all the shares in Foreign Developer A. Director C is a director of Company X.

In or around 2010, Company X approached the Key Executive Officer (“**KEO**”) of the REA, D and informed KEO D that he would like the REA to market the foreign properties in Development A in Singapore. The REA therefore entered into an agreement with Foreign Developer A in or around January 2011 to market Development A in Singapore.

On 23 May 2011, the REA entered into a written agreement with Foreign Developer B to market in Singapore the foreign properties in Development B. The REA had actually begun marketing Development B before 23 May 2011, including holding seminars on 14 May 2011 and 15 May 2011 for the launch of Development B.

From April 2011 onwards, the REA through its salespersons including the Respondent was involved in the marketing presentations of the units in Development B for sale to prospective buyers.

Once the buyer had decided to buy a unit in Development B, s/he would sign a “First Right of Refusal” (“**FRR**”) agreement with Foreign Developer B. The FRR agreement was similar to an option agreement. Under the FRR agreement, the buyer needs to pay the FRR price of $65,000 in the foreign currency. The buyer would fill up the FRR agreement and pay a booking fee of $5,000 in the foreign currency first to Company X and the remaining $60,000 in the foreign currency would be due to be paid to Company X within 10 days of the execution of the FRR agreement.

Within the FRR period as defined in the FRR agreement, the buyer could then choose to: -

- Purchase the unit in Development B from Foreign Developer B by exercising the FRR. On exercising the FRR, the buyer would execute a Sale Agreement for the chosen unit and pay to Foreign Developer B a deposit which is 10% of the difference between the Property Purchase Price and the FRR price; or
- Not exercise the FRR and the FRR agreement would come to an end between the buyer and the Foreign Developer B. Foreign Developer B would then refund to the buyer the FRR price plus an additional sum based on a percentage of the Property Purchase Price.

On or around 22 May 2011, the Respondent met a group of potential buyers, H and his relatives, and explained to them the terms of the FRR agreement.

At this meeting with the Respondent, the Respondent verbally represented to H that the FRR price would be kept safe in a trust account for the construction of Development B and the Foreign Developer B would not be able to use the monies for other purposes (the "**Representation**"). Relying on the Representation, H and his relatives decided to buy a unit in Development B and H signed the FRR agreement with Foreign Developer B and made payment of S$5,087.50 by credit card.

On or around 2 June 2011, H paid S$50,303.43 into the trust account held by the lawyers of the Foreign Developer B (the "**Trust Account**") via a bank draft. On or around 3 June 2011, H went to the offices of the REA to pay a further S$5,000 using his credit card. The total FRR price he paid into the Trust Account for the unit in Development B was $65,000 in the foreign currency.

Although the Respondent made the Representation to H, the total FRR price was transferred to Foreign Developer B on 22 June 2011 without any construction having started on Development B.

Before the Respondent made the Representation to H, representatives of the REA, including the Respondent and KEO D, had corresponded via emails with Director C of Company X in relation to the Trust Account and there were red flags in these emails such that if the REA and/or the Respondent had exercised due diligence in relation to their checks on the Trust Account, the Respondent would not have made the Representation to H and the REA would have supervised the Respondent such that the Respondent would not make the Representation to a potential buyer like H.

On or around 5 February 2013, Foreign Developer B went into liquidation.

H and his relatives could not recover the total FRR price that they had paid for the unit in Development B.

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Charge

The Respondent faced the following charge:

> **Charge**
>
> Failing to act reasonably towards that person, by misrepresenting to the buyer that the FRR price that the buyer paid in relation to his purchase of a unit in Development B would be kept safe in the Trust Account (i.e. the trust account of Foreign Developer B's lawyers) for the construction of Development B and Foreign Developer B would not be able to use the monies in the Trust Account for other purposes, in contravention of paragraph 6(3) read with paragraph 6(4)(c) of the Code of Ethics and Professional Client Care.

Outcome

Following a trial, the Respondent was found guilty and convicted of the Charge. The Disciplinary Committee imposed a financial penalty of $6,000 on the Respondent.

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