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 6/2018 – Wrongly Advising Buyers on Use of CPF Monies for Payment of Stamp Duties and Deposit & Advertising Property at Sale Price Different from Instructions

Facts of Case

X and her husband (Y) (collectively, the "**Buyers**") were purchasers of a private condominium unit (the "**Property**") within a private property development (the "**Development**"). The Respondent's estate agent was the joint marketing agent for the Development; the Respondent represented the joint developers (the "**Developers**") in facilitating the sale of the Property to purchasers (which included the Buyers).

In mid-June 2016, the Respondent sent an advertisement (via Whatsapp messaging) about the Development to X. In the advertisement, the Respondent listed the selling price of the Property as S$ 2.25 million, when the actual selling price was S$ 2.259 million.

In response to the advertisement, X informed the Respondent that the Buyers were interested in the Property. Y prepared a cheque for the 1% booking fee (i.e. S$ 22,500) for the purchase of the Property. When informed about the actual selling price subsequently, Y then prepared another cheque for the 1% booking fee (i.e. S$ 22,590).

The Buyers viewed the Property with the Respondent. Thereafter, Y handed the cheque for the 1% booking fee (S$ 22,590) to the Respondent.

A 10% upfront payment (i.e. 1% deposit + further 9% payment) (the "**10% Deposit**") was required for the purchase of the Property. The Respondent wrongly advised the Buyers that half of the 10% Deposit (i.e. 5%) could be paid in cash, whilst the other 5% could be paid using cash or monies from their Central Provident Fund ("**CPF**") accounts. In fact, the entire 10% Deposit had to be paid in cash.

Further, the Buyers were liable to pay Buyer's Stamp Duty ("**BSD**") for the purchase of the Property. As Y co-owned an existing property with his mother (the "**Existing Property**"), the Buyers were also liable to pay Additional Buyer's Stamp Duty ("**ABSD**"). These stamp duties were payable within 2 weeks after exercising the Option to Purchase ("**OTP**"), and must be paid in cash. Even if the Buyers were eligible to apply for reimbursement of the stamp duties from their CPF accounts, such reimbursement would not occur in time for the Buyers to pay the stamp duties using their CPF monies.

However, the Respondent wrongly advised the Buyers that they could use monies from their CPF accounts to pay the stamp duties within 2 weeks after exercising the OTP. Relying on this wrong information, the Buyers collected the OTP from the Respondent on 20 June 2016.

The balance of the 10% Deposit (i.e. 9%) and the BSD (i.e. 3%), amounted to S$ 203,310 and S$ 62,370 respectively. The ABSD (i.e. 7%) amounted to S$ 158,130. All of these payments were payable in cash (i.e. S$ 423,810 in total).

In late July 2016, the Buyers were informed by their conveyancing solicitors that monies from their CPF accounts could not be used to pay the stamp duties directly. The Buyers had relied on the use of their CPF monies for payment of the stamp duties.

Consequently, Y was placed in the stressful situation of having to sell the Existing Property before exercising the OTP for the Property, in order to avoid paying ABSD in cash. Otherwise, the Buyers would have to abort the purchase of the Property and forfeit the 1% booking fee of S$ 22,590 (as they lacked the funds to make the required payments in cash).

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Y expedited the sale of the Existing Property and eventually sold it at S$ 1.46 million, which was S$ 40,000 below his asking price of S$ 1.5 million. In fact, Y and his mother had previously rejected an offer of S$ 1.48 million for the Existing Property sometime in May 2016.

For facilitating the sale of the Property to the Buyers, the Respondent received a commission of S$ 30,496.50 from the Developers.

Charges

The Respondent faced the following 3 charges:

Charge 1

For advertising a property at a price different from that instructed by the Developers, by advertising to X that the selling price of the Property was S$ 2.25 million, when it was in fact S$ 2.259 million, in contravention of paragraph 12(4)(e) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2

For failing to conduct his work with due diligence and care, by wrongly advising the Buyers that they could use monies from their CPF accounts to pay half of the 10% Deposit for the purchase of the Property, when in fact the entire 10% Deposit had to be paid in cash, in contravention of paragraph 5(1) of the Code.

Charge 3 (Proceeded)

For failing to conduct his work with due diligence and care, by wrongly advising the Buyers that they could use monies from their CPF accounts for the BSD and ABSD payments, when in fact they had to use cash for the payments, in contravention of paragraph 5(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 3, while Charges 1 and 2 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee ("**DC**") was of the view that exercising due care and diligence according to the Code requires, at the minimum, that a salesperson be clear and correct in the financial arrangements for the property transaction. Salespersons have a high obligation to satisfy, especially in relation to financial arrangements, as purchasers frequently place their trust in them and tend to rely heavily (or even entirely) on them to give proper and correct advice, including how and when CPF monies can be used to purchase property. The DC considered that the selling price of the Property was high, and the Respondent correspondingly secured more than S$ 30,000 in commission.

The DC noted that there was no actual loss, and the Buyers had paid the deposit for the Property before being wrongly advised about the use of CPF monies for the payment of stamp duties.

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Accordingly, the DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 3: A financial penalty of S$ 2,500 and a suspension of 3 months.

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