

19 January 2017

CEA's Disciplinary Committee imposes financial penalty and licensing condition on property agency

The Council for Estate Agencies' (CEA) Disciplinary Committee sentenced Square Yards Singapore Pte Ltd to a financial penalty of S\$7,500 for one charge of failing to provide a written advisory message to an investor to draw his attention to the risks involved in purchasing foreign properties.

2. The Disciplinary Committee also imposed a condition to Square Yards' licence that it is not to market or transact in any foreign property for six months with effect from 1 March 2017.

3. The investor had purchased a property in North Dakota, United States (US) at US\$74,950 through Square Yards. He made partial payment of US\$33,982.50 to the US developer in 2014 and was not able to recover the sum after the developer was charged for alleged fraudulent activities.

CEA's charge against Square Yards

4. Square Yards was charged for breaching paragraph 16 of the [Practice Guidelines](#) for Estate Agents and Salespersons Marketing Foreign Properties (PGMFP) issued on 14 March 2014, read with paragraph 4(1) and 4(2)(a) of the Code of Ethics and Professional Client Care (CEPCC), under the First Schedule of the Estate Agents (Estate Agency Work) Regulations 2010 of the Estate Agents Act (Cap. 95A) (Act).

5. The relevant part of paragraph 16 of the PGMFP states that estate agents¹ appointed by the developer “shall provide a written advisory message to the consumers that they must conduct due diligence, drawing their attention that risks are involved for foreign property consumers and that the transaction is subject to foreign laws, and to any changes in policies and rules in the country where the property is located”.

6. The relevant part of paragraphs 4(1) and 4(2)(a) of the CEPCC states that “estate agents and salespersons must perform their work in accordance with applicable laws and must not perform estate agency work unless they have the relevant knowledge to perform the work that they are engaged to perform, which means, among other things, that estate agents and salespersons must be fully conversant and comply with the Act, including the CEPCC and in the case of estate agents, the Code of Practice for Estate Agents (COPEA), and the policies, practice circulars and guidelines of the CEA”.

About the case

7. In early August 2014, Square Yards and US developer North Dakota Developments LLC conducted a seminar in Singapore to promote and sell the Transhudson Hotel, Parshall Project, located in North Dakota, US. The US developer also introduced its other project - the Great American Lodge, Montana Project, located in North Dakota, US to prospective investors at the seminar.

8. After the seminar, an investor bought a unit at the Transhudson Project through Square Yards at a purchase price of US\$74,950. He paid a total of US\$33,982.50 to North Dakota Developments LLC in mid-September 2014. The sum comprised the booking fee, closing fee, and balance of the first stage payment. Square Yards subsequently received about US\$3,900 as commission for this transaction.

¹ Under the Estate Agents Act (Cap. 95A), “estate agents” refer to estate agency businesses (sole-proprietors, partnerships, and companies) or individuals who do estate agency work. Estate agency businesses are commonly known as property agencies. “Salespersons” refer to individuals who perform estate agency work. They are commonly known as property agents.

9. Throughout the transaction process, Wai Yin Peng Shermaine, Key Executive Officer of Square Yards, and her property agents did not provide the investor with a written advisory stating that he must conduct due diligence. They did not highlight to the investor the risks that are involved for foreign property consumers and that the transaction is subject to foreign laws, and to any change in policies and rules in the US.

10. Investigations revealed that Square Yards had facilitated the sale of two other units - one investor had purchased a unit at the Transhudson Project, and another investor at the Montana Project. The three investors paid a total of US\$112,279.50 to North Dakota Developments LLC.

11. Around 5 May 2015, the US Securities and Exchange Commission charged North Dakota Developments LLC for allegedly fraudulently raising over US\$62 million from investors worldwide through the sale of interests in the development of housing projects based in the US, including the Transhudson and Montana Projects.

12. The three investors have not recovered the amounts that they have paid to North Dakota Developments LLC, or any part thereof.

13. In sentencing Square Yards, the Committee took into consideration the other two charges relating to the investors mentioned in paragraph 10. The case details are in the **Annex**.

CEA's regulatory framework

14. The duties, business activities, and conduct of property agencies and agents in Singapore are governed by the Act and its Regulations, which include the Code of Practice for Estate Agents and the CEPCC. When marketing foreign properties in Singapore, property agencies and agents are required to comply with the Act and its Regulations including guidelines such as the [PGMFP](#).

15. Property agencies and agents who breach any of the above provisions are liable to face disciplinary action by a Disciplinary Committee. The Committee comprises members who are nominated from a [disciplinary panel](#) that includes practising solicitors and other professionals from the real estate industry.

Advice to consumers

16. Buying a foreign property is a big investment. Given the complexities and risks involved, consumers should find out and understand pertinent information such as the foreign country's rules and restrictions on property purchases and ownership, whether the property has obtained approvals from the authorities, taxes payable, pricing and terms and conditions of the purchase, the foreign property market condition, currency exchange risks, etc.

17. Consumers should exercise due diligence before entering into any agreement to buy foreign properties. They should not rely solely on the advice from representatives of the foreign developer. For more tips, consumers can refer to the CEA's [guide](#) on buying foreign properties.

About the Council for Estate Agencies

The Council for Estate Agencies (CEA) is a statutory board established in 2010 under the Estate Agents Act (Cap. 95A) to regulate and promote the development of a professional and trusted real estate agency industry. The key responsibilities of the CEA are to license property agencies and register property agents, promote the integrity and competence of property agencies and property agents, and equip consumers with the necessary knowledge to make informed decisions in property transactions. For more information, please visit: www.cea.gov.sg.

DETAILS OF THE CHARGES AGAINST SQUARE YARDS

1. Around 8 July 2014, Square Yards entered into an agreement with US developer North Dakota Developments LLC, a Delaware limited liability corporation doing property development in the United States (US), to market and sell its Transhudson Hotel, Parshall Project, located in North Dakota, US.
2. Square Yards also had to provide a high degree of prominence to North Dakota Developments LLC's projects, and handle and forward completed sales paperwork as necessary. In return, Square Yards would be entitled to a commission of up to 15 per cent of the purchase price of each property unit sold.
3. Around the first week of August 2014, Square Yards and North Dakota Developments LLC conducted a seminar at the InterContinental Singapore to market and sell the Transhudson Project. Other than promoting the Transhudson Project, the US developer's sales representative also introduced its other project - the Great American Lodge, Montana Project, which was located in North Dakota as well.
4. After the seminar, at least three investors each bought a property unit from the US developer through Square Yards:
 - a. The first investor purchased a unit at the Transhudson Project at US\$74,950 and paid US\$33,982.50 to North Dakota Developments LLC.
 - b. The second investor bought a unit at the Transhudson Project at US\$74,950, and paid US\$31,032 to the US developer.
 - c. The third investor bought a unit at the Montana Project at US\$59,950, and paid US\$47,265 to the US developer.

5. CEA's charges against Square Yards were in respect of these three transactions. In the booking forms that the first and second investors signed to purchase the units, it was stated that Wai Yin Peng Shermaine, Key Executive Officer of Square Yards, and Square Yards were the "salesperson" and "estate agent" respectively. The booking form that the third investor signed was similar, except that besides Wai, there was additional reference to another Square Yards property agent as the "salesperson".

6. Square Yards could have received commission amounting to about US\$14,160 from North Dakota Developments LLC for the three units it sold.

7. Around 5 May 2015, the US Securities and Exchange Commission charged North Dakota Developments LLC for allegedly fraudulently raising over US\$62 million from investors worldwide through the sale of interests in the development of housing projects based in the US, including the Transhudson and Montana Projects.

8. To date, the three investors have not recovered the amounts that they have paid to the US developer, or any part thereof.

9. At all material times, Square Yards was required to comply with the Practice Guidelines for Estate Agents and Salespersons Marketing Foreign Properties (PGMFP). According to the PGMFP, estate agents appointed by the developer shall provide a written advisory message to consumers that they must conduct due diligence, drawing their attention that risks are involved for foreign property consumers, and that the transaction is subject to foreign laws, and to any change in policies and rules in the country where the property is located.

10. However, throughout the transaction, Square Yards' Key Executive Officer and its agents did not provide the investors with a written advisory message, stating that they must conduct due diligence, drawing their attention that risks are involved for foreign property consumers, and that the transaction is subject to foreign laws and to any changes in policies and rules in the US.

11. One of the investors indicated that if he was given a written advisory message, he would have conducted more in-depth background checks into North Dakota Developments LLC before committing to his purchase.

12. CEA's Disciplinary Committee sentenced Square Yards to a financial penalty of S\$7,500 for one charge of failing to provide a written advisory message to an investor. The Committee also attached a condition to Square Yards' licence that it is not to market or transact in any foreign property for a period of six months, with effect from 1 March 2017. In sentencing Square Yards, the Committee took into consideration the other two charges.