

Note: This case was referred to a CEA Disciplinary Committee (DC) after 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 12/2023 – Doing an Act which May Bring Disrepute to the Estate Agency Industry by Dishonestly Arranging for Wife to Enter into Co-Brokerage Agreement Despite Knowing that Wife Did Not Represent any Party in the Transaction

Note: This case is related to S/N 11/2023 and involved the same lease transaction; the Respondent in S/N 11/2023 (i.e. Salesperson B) is the Respondent's wife and downline.

Facts of Case

Sometime around October 2020, the Respondent was engaged by a Tenant to search for a residential property for lease. Salesperson B was the Respondent's wife and downline associate. Salesperson B saw an advertisement for the lease of a private property (the "**Property**") and informed the Respondent about it. The advertisement was posted by Salesperson X, who represented the Landlord.

The Respondent contacted Salesperson X to arrange for the viewing of the Property with the Tenant. The viewing was conducted and after some negotiations, the Tenant agreed to lease the Property at a monthly rent of \$3,500 for a period of 2 years. The Respondent also assisted the Tenant in negotiating for certain requests and to coordinate the logistics of handing over the Property.

At all material times, Salesperson B did not meet with or speak to the Tenant, the Landlord or Salesperson X. Save for assisting to prepare a Letter of Intent at the Respondent's instructions, Salesperson B was not involved in the viewing of the Property, the negotiations regarding the details of the lease or the handover of the Property.

On or around the handover of the Property, the Respondent instructed Salesperson B to prepare a co-brokerage agreement in Salesperson B's name for the collection of a co-brokerage fee of \$1,872.50, being a share of the commission to be paid by the Landlord to Salesperson X for the lease transaction. The Respondent knew that if Salesperson X accepted the co-brokerage agreement, Salesperson B would receive the co-brokerage fee even though she did not represent any party in the transaction and was not entitled to a co-brokerage fee. The Respondent had intended, through this arrangement, for both Salesperson B and him to earn a commission, and he planned on collecting a commission separately from the Tenant.

The Respondent handed Salesperson X the co-brokerage agreement for her endorsement. Salesperson X signed the co-brokerage agreement and returned it to the Respondent without noticing that it was Salesperson B's name that was stated in the co-brokerage agreement instead of the Respondent's name. Salesperson B dishonestly submitted the signed co-brokerage agreement to her estate agent for processing to receive the co-brokerage fee from Salesperson X's estate agent.

Sometime in mid-November 2020, Salesperson X realised that the co-broke salesperson stated in the co-brokerage agreement was not the Respondent but Salesperson B, whom she had never spoken to or met before. Salesperson X contacted the Respondent to seek clarification and the Respondent falsely claimed that he had already explained to Salesperson X that Salesperson B would be receiving the co-brokerage fee. Salesperson X requested that the Respondent provide her with written confirmation from his estate agent that the Tenant would not be paying him a commission, to which the Respondent agreed to do so, but never eventually provided to Salesperson X despite reminders.

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In accordance with the co-brokerage agreement, Salesperson X's estate agent paid the co-brokerage fee of \$1,872.50 to Salesperson B's estate agent. Salesperson B eventually received \$1,575 as her share of the co-brokerage fee.

As Salesperson B's manager, the Respondent received an overriding fee of \$52.50, and also received \$3,150 as his share of the commission paid by the Tenant to his estate agent.

Charges

The Respondent faced the following charge:

Charge (Proceeded)

For doing an act which may bring disrepute to the estate agency industry, by dishonestly arranging for Salesperson B to enter into a co-brokerage agreement to collect a co-brokerage fee from Salesperson X's estate agent for Salesperson B's purported co-broking with Salesperson X, despite knowing that Salesperson B did not represent any of the parties in the lease transaction and was therefore not entitled to the co-brokerage fee, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge.

In sentencing, the Disciplinary Committee ("DC") considered that:

- (a) The Respondent's conduct was deliberate and done in bad faith to obtain wrongful financial gain for Salesperson B and himself, at the expense of direct financial harm to Salesperson X who suffered a loss of her share of the commission;
- (b) The Respondent had wrongfully directed the wrongful actions and exploited Salesperson X's trust. The Respondent had put together a scheme for pure personal gain, which was a blatant and serious breach of professional duties that cannot be condoned and must be deterred to protect the reputation of the industry and safeguard public interest;
- (c) The Respondent was a senior and experienced salesperson with more than 10 years of experience and holding a leadership role within his estate agent, and his misconduct would cause serious damage to the integrity and standing of the estate agency industry; and
- (d) There was a lack of contrition by the Respondent as there was no restitution or compensation offered to Salesperson X despite the total financial gain of \$4,777.50 by his household from the transaction.

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

Charge: A financial penalty of \$7,000 and a suspension of 6 months.



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