

## **S/N 7/2021 – Excluding Estate Agent from Transaction**

**Note:** This case is related to S/N 6/2021 and S/N 8/2021 and involved the same transaction; the Respondents in S/N 6/2021 and S/N 8/2021 (i.e. Salespersons X and Y respectively) had also represented the sellers of the Property.

### **Facts of Case**

The Respondent is Salesperson X's husband.

Salesperson Y was engaged by the sellers of a landed property (the "**Property**") to sell the Property. Salesperson Y entered into a co-broking arrangement with Salesperson X for the sale of the Property, with commission to be shared equally between them in the event of a successful sale. Salesperson X was mainly responsible for the marketing of the Property, while Salesperson Y would help liaise between Salesperson X and the sellers.

In August 2018, Salesperson X posted a listing of the Property on the online property portal, PropertyGuru. A and B (the "**Buyers**") came across the listing and were interested to purchase the Property. The Buyers attended a viewing of the Property and met the Respondent and Salesperson X. The Respondent was quiet for most of the viewing; Salesperson X was the main salesperson who presented the Property to the Buyers.

At the viewing, the Buyers were given a flyer (the "**Flyer**") for the Property, which stated that the built-in area was estimated to be 4,000 square feet. The Buyers subsequently found another property near the Property which was sold for \$ 2.65 million — this other property had a larger land area, but a smaller built-in area than the 4,000 square feet that the Buyers understood the Property to have. On this basis, the Buyers were prepared to offer a sum higher than \$ 2.65 for the Property and eventually offered to purchase the Property at \$ 2.818 million, which was accepted by the sellers.

Thereafter, the Buyers met the Respondent and Salesperson X at the Property to sign the Offer to Purchase (the "**Offer**"). Before signing the Offer, the Buyers sought confirmation again that the built-in area of the Property was approximately 4,000 square feet, to which Salesperson X confirmed the same.

Salesperson X also told the Buyers that she could not be the salesperson to close the transaction as she was about to leave her estate agent ("**Estate Agent A**") to join another estate agent ("**Estate Agent B**"). Instead, the Respondent (who was from Estate Agent B) would close the transaction. The Respondent signed off on the Offer and acknowledged receipt of the option fee (\$ 28,180).

The sellers also signed an estate agency agreement with Estate Agent B for the sale of the Property. In being excluded from the transaction, Estate Agent A was deprived of its share of

the commission that would have been paid to Salesperson X, which would be between \$ 1,056.75 and \$ 1,409.

A subsequent on-site measurement of the Property showed that its built-in area was only approximately 2,800 square feet. The Buyers were very upset with the discrepancy as their offer of \$ 2.818 million was based on the Property having a built-in area of 4,000 square feet. In view of the significantly reduced built-in area, the Buyers sought to re-negotiate the sale price of the Property. Following subsequent developments, the sellers eventually forfeited the option fee of \$ 28,180, and later sold the Property to another purchaser in 2019 for \$ 2.728 million.

The Buyers subsequently commenced legal proceedings against the sellers, the Respondent and Salesperson X, which was eventually settled between the parties.

### **Charges**

The Respondent faced the following charge:

#### **Charge 1**

For failing to act honestly, fairly and/or in a reasonable manner towards Estate Agent A, by excluding Estate Agent A from the transaction involving the sale of the Property, which his wife, Salesperson X, had facilitated on behalf of Estate Agent A, in contravention of paragraph 6(3) of the Code.

### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1.

In sentencing, the Disciplinary Committee (“DC”) noted that the Respondent and Salesperson X did appear to have conspired to exclude Estate Agent A from the transaction, although they did not financially gain from the misconduct. Such misconduct warranted deterrence as it would cause harm to the business of estate agents and was difficult to detect.

The DC also considered the Respondent’s antecedent in previous disciplinary proceedings – the Respondent had, in 2017, pleaded guilty to facilitating a sublease of a HDB bedroom in contravention of HDB regulations, with another advertising-related charge taken into consideration in sentencing.

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

**Charge 1:** A financial penalty of \$ 2,000 and a suspension of 2 months.



**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.

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