

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 9/2023 – Failing to Act Ethically, Honestly, Fairly and in a Reasonable Manner towards Another Person by Issuing and Signing Off on a Cheque without Authorisation

Facts of Case

The Respondent's estate agent was appointed by the developer of an uncompleted development to market the development (the "**Development**"). The Respondent was a member of the project team formed by her estate agent to market the Development and a 'tagger'. Her job scope included introducing and marketing the Development to potential buyers when they viewed the Development's show flat.

Sometime in early July 2021, the Respondent received a request for viewing from Salesperson A and a viewing was fixed for a potential buyer (the "**Buyer**"). After the viewing, the Buyer expressed interest in purchasing a unit within the Development (the "**Unit**") but said that he needed more time to make the final decision on the purchase.

Sometime in mid-July 2021, the Respondent and Salesperson A arranged for a second viewing for the Buyer. During the second viewing at the show flat, the Respondent found out that the Buyer wanted to make payment for the purchase of the Unit in cash. She informed her team leader (Salesperson B) about this, who told her that the Developer would only accept cashier orders, cheques or telegraphic transfers for payment of the booking fee. The Respondent and Salesperson A advised the Buyer to make a bank transfer of the booking fee to the Developer.

The Buyer decided to leave the show flat. While the Respondent was also leaving the show flat, she received an update from Salesperson B that there was another potential buyer at the show flat who was ready to buy the Unit. The Respondent saw the Buyer sitting in his car and informed Salesperson A about the potential buyer. Salesperson A allowed the Respondent to update the Buyer about the potential buyer since the Buyer was still at the show flat.

The Buyer eventually decided to purchase the Unit, but informed the Respondent that he had no cheque to issue payment for the booking fee. The Respondent called Salesperson B and explained the situation. Salesperson B told the Respondent that she could issue an Option to Purchase ("**OTP**") to the Buyer first, with receipt of a cheque that was issued for payment of the booking fee, and the Buyer could do a bank transfer of the booking fee thereafter. Salesperson B also told the Respondent that whatever cheque that was given as payment for the booking fee could then be destroyed after the Buyer had transferred the booking fee to the Developer.

The Respondent then prepared an OTP for the Buyer to purchase the Unit. The purchase price was \$1,733,100 and the booking fee of 5% which the Buyer had to pay upon issuance of the OTP was \$86,655. The Respondent told the Buyer that there would be a cheque for the booking fee issued on his behalf pending his bank transfer of the booking fee to the Developer. The Buyer then left the show flat.

Thereafter, the Respondent signed and issued a cheque for the sum of \$86,655. The cheque belonged to another salesperson (Salesperson X), and the Respondent was in possession of the blank cheque due to her previous dealings with Salesperson X. She issued and signed off on the cheque to use it as a holding cheque for the Buyer to secure the Unit pending his bank transfer of the booking fee, as the Developer needed some proof of payment of the booking fee following the OTP's issuance. However,

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the Respondent did not obtain Salesperson X's consent and/or authorisation at all material times before issuing and signing off on the cheque for the sum of \$86,655.

Eventually, the Buyer decided to abort the purchase of the Unit. Fortuitously, the Developer agreed not to forfeit the booking fee. The cheque was not encashed and Salesperson X had also requested the bank to cancel the cheque after the Respondent informed him that she had used his cheque and told him to quickly cancel it. Had the purchase not been aborted, the Respondent stood to earn a commission of about 0.5% of the sale price of the Unit, which would amount to about \$8,665.50.

Charge

The Respondent faced the following charge:

Charge (Proceeded)

Failing to act ethically, honestly, fairly and in a reasonable manner towards another person, by issuing and signing off on Salesperson X's cheque which was in her possession, for the sum of \$86,655 to be payable to the Developer as booking fee for the Buyer's intended purchase of the Unit, without Salesperson X's authorisation and/or consent, in contravention of paragraph 6(3) 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 egregious and involved dishonesty. The Respondent could have required the Buyer to make payment through the proper channels or used her own cheques. Instead, she consciously chose to use a cheque for which she had no consent or authorisation to use.
- (b) The Respondent's conduct, if adopted widely, would erode the trust and confidence between salespersons, as well as diminish public trust when dealing with members of the industry. This was particularly acute when it involved a senior member of the industry such as the Respondent, who had approximately 15 years of experience.
- (c) The Respondent exposed another salesperson to a financial risk of \$86,655 as the Buyer eventually aborted the purchase. It was only fortuitous that the Developer did not insist on encashing the cheque and forfeiting the booking fee.
- (d) The Respondent faced a single charge and elected to plead guilty.

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

Charge: A financial penalty of \$4,000 and a suspension of 4 months.



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