

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 1/2023 – Failing to Co-Broke with another RES in a timely manner, Failing to act in a Reasonable Manner towards another RES and Causing an Advertisement Containing False Information to be made

Facts of Case

The Respondent was at all material times a registered salesperson.

Sometime in September 2020, the Respondent started marketing a property for sale (the “Property”). On 12 February 2021, another salesperson (RES A) contacted the Respondent via WhatsApp to enquire about the Property on behalf of her buyer-client. RES A asked the Respondent if a viewing could be arranged the next day and if he would agree to co-broking. The Respondent did not respond directly to RES A’s request for co-broking but said that he would contact the seller the next day about the viewing.

Shortly after the Respondent’s Whatsapp conversation with RES A, the Respondent received a call from a female caller (Ms B) – Ms B was the same buyer that RES A had in mind when she messaged the Respondent earlier.

Ms B told the Respondent that she was interested in a property that the Respondent had advertised on a property listing portal, to which the Respondent informed Ms B that the property she was enquiring about was actually the Property. When Ms B asked the Respondent why the location in the advertisement differed from the actual location of the Property, the Respondent claimed that the online portal had indicated the wrong MRT station. Ms B then informed the Respondent that she had already approached RES A to assist her to arrange for a viewing of the Property. The Respondent told Ms B that he would sort it out with RES A.

Following her phone conversation with the Respondent, Ms B messaged RES A the same night to update her about the phone conversation with the Respondent. RES A then messaged the Respondent immediately to inform him that it was her client who had just spoken to him about the Property. The Respondent did not reply to RES A’s message.

The next day, on 13 February 2021, Ms B messaged the Respondent stating that she had viewed the exterior of the Property and would like to view the interior. The Respondent then messaged the seller to request for a viewing. About an hour later, RES A messaged the Respondent again, asking for an update on the viewing. The Respondent then told RES A that Ms B had called him last night about the Property, and that he was waiting for a response from the seller about the viewing. RES A said she would wait for the Respondent’s update. However, when the viewing time was finally fixed with the seller, the Respondent only informed Ms B about the viewing and not RES A.

Ms B viewed the Property with the Respondent. After the viewing, Ms B informed the Respondent that she might make an offer for the Property. Ms B also informed the Respondent to let RES A know that she had seen the Property with the Respondent, to which the Respondent replied again that he would sort it out with RES A.

On 14 February 2021, RES A messaged the Respondent to ask if there were any updates on the viewing of the Property but the Respondent did not reply her. On 15 February 2021, the Respondent met Ms B again for a second viewing of the Property without informing RES A.

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After the second viewing, Ms B told the Respondent that she would like to make an offer to purchase the Property for \$4,900,000. In the evening of the same day, RES A called and messaged the Respondent to ask for updates on the viewing, but there was still no response from the Respondent.

Given the Respondent's lack of response, RES A messaged Ms B the same evening to inform her that the Respondent had not responded to her messages, and asked if she could approach another salesperson on Ms B's behalf. Surprised by RES A's message, Ms B called the Respondent to ask why he did not inform RES A about the viewing in accordance with her earlier request. Ms B also told the Respondent in the same phone call that RES A deserved something if the purchase went through, to which Respondent again Ms B that he would sort things out with RES A.

Between 16 February 2021 and 18 February 2021, the Respondent conveyed Ms B's offer to the seller and started negotiating and making arrangements to facilitate the sale of the Property between Ms B and the seller. Ms B's offer for the Property was eventually accepted by the seller. When Ms B paid the 1% option fee, she reiterated to the Respondent that RES A deserved something for the deal. The Respondent acknowledged and said he would sort it out with RES A. Ms B then updated RES A that she had purchased the Property at \$4,900,000.

Subsequently, on 20 February 2021, RES A called the Respondent and told the Respondent that Ms B had informed her that the Respondent would share the commission for the sale of the Property with her, and that she would like to start working on the necessary documentation. However, the Respondent said that he considered Ms B to be a "direct buyer" and there was no co-brokering involved. RES A questioned the Respondent's position and expressed her dissatisfaction, but the Respondent maintained his position. The Respondent told RES A that he would discuss with his Key Executive Officer (KEO) to work out some kind of remuneration to RES A on a "goodwill" basis and let her know of the outcome after the discussion. However, he did not discuss the matter with his KEO and there was no resolution to the matter.

For the sale of the Property, the Respondent received approximately \$12,250.00 as his share of the commission paid by the seller for the sale of the Property, while RES A did not receive anything.

Charges

The Respondent faced the following 3 charges:

Charge 1 (Proceeded)

Failing to act fairly and in a reasonable manner towards RES A by failing and/or refusing to co-broke with RES A on the sale of the Property despite RES A's request to enter into a co-brokering arrangement for the same, by dealing with and finalizing the sale of the property directly with the buyer of the Property, when he knew that RES A was assisting Ms B with the purchase of the Property, in contravention of paragraph 6(3) of the Code of Ethics and Professional Client Care (the "Code").

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Charge 2 (Proceeded)

Failing to act fairly and in a reasonable manner towards RES A by not discussing with the KEO of his estate agent to work out some remuneration for RES A for her role in the sale of the Property despite representing to RES A that he would do so, in contravention of paragraph 6(3) of the Code.

Charge 3 (Proceeded)

Causing an advertisement to be made which contained information which is false and/or inaccurate by stating an inaccurate postal code in an advertisement which was posted by him on an online property portal for the sale of the Property, when he knew that the postal code stated was not true and/or inaccurate, in contravention of paragraph 12(4)(a) of the Code.

Outcome

The Respondent claimed trial to Charges 1 and 2 but admitted to Charge 3. Following a trial, the Respondent was found guilty of Charges 1 and 2.

In relation to Charge 1, the Disciplinary Committee (“DC”) was of the view that this charge was the most serious and there was an element of deceit that further enhanced the Respondent’s culpability. The Respondent’s misconduct had caused harm to RES A as she had lost the chance to earn co-broke commission.

In relation to Charge 2, the DC noted that the Respondent’s misconduct had caused financial loss to RES A and enabled the Respondent to benefit from the full share of commission.

In relation to Charge 3, the DC noted that the Respondent’s misconduct would mislead members of the public and give the Respondent an unfair advantage in securing a wider pool of buyers. The Respondent had also removed two of his listings after he was interviewed by CEA, which was likely done to conceal and delete evidence of his misconduct, which would enhance his culpability.

In sentencing, the DC also noted that the Respondent was an experienced salesperson of 10 years’ standing and should not have acted with deception and in a scheming manner. There was also no restitution made to RES A for her financial loss suffered. The DC also considered the Respondent’s conduct at trial to show a lack of remorse, as he had sought to put the blame on RES A wherever possible. The DC also took into account the multiple charges involved to avoid a cumulative sentence that would be too crushing.

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Accordingly, the DC imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$10,000 and a suspension of 7 months;

Charge 2: A financial penalty of \$3,000 and a suspension of 4 months; and

Charge 3: A financial penalty of \$1,000 and a suspension of 1 month.

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$14,000 and a suspension of 7 months.

Fixed costs of \$11,000 was also imposed on the Respondent.