

S/N 7/2022 – Failure to Act According to Client’s Instructions and Protect Client’s Interests

Facts of Case

The Respondent was engaged by the owners of an apartment (the “**Property**”) to source for tenants. The Property was owned by X, who appointed his wife, Y, to handle matters relating to the lease of the Property.

On 1 June 2017, the Respondent brought a foreigner (the “**Tenant**”) to view the Property. The Tenant agreed to lease the Property for a period of 2 years, at the monthly rent of \$ 2,700. The Respondent prepared a Letter of Intent (“**LOI**”) and a Tenancy Agreement (“**TA**”) for the lease, which were signed on the same day. Pursuant to the LOI, the Tenant paid a sum of \$ 2,700 as the good faith deposit for the lease.

On 1 June 2017, X also executed an estate agency agreement with the Respondent’s estate agent, agreeing to pay commission of \$ 2,889 (the “**Commission**”) for the lease of the Property to the Tenant.

Pursuant to the terms of the TA, a security deposit for the lease, in the sum of \$ 5,400 (the “**Security Deposit**”), was to be paid by the Tenant to X upon the TA’s execution. The Respondent informed Y that the Tenant required additional time to pay the Security Deposit; the deadline for payment was extended to 2 June 2017.

Separately, the Respondent requested that the Tenant pay the Security Deposit to her in cash by 3 June 2017. The Tenant proposed to make payment directly to X by way of bank transfer. However, the Respondent instructed the Tenant to pay the Security Deposit to her instead, and she would then pay the Security Deposit to X. The Respondent told the Tenant that she would receive her commission more quickly this way, and she was concerned that X would not honour the payment of commission. Hence, the Respondent preferred to deduct her commission directly from the Security Deposit. The Tenant requested for a meeting with X to discuss the lease, but the Respondent was reluctant to arrange for a meeting.

On 3 June 2017, Y asked the Respondent when X could expect to receive the Security Deposit. The Respondent said that she would check with the Tenant and update them, but did not do so. In the evening of 3 June 2017, Y asked the Respondent again when they could expect to receive the Security Deposit. The Respondent claimed she had told the Tenant to transfer the Security Deposit to them and would check why it had not been done. The Respondent suggested that X could void the TA if the Tenant still failed to pay the Security Deposit.

The Respondent subsequently told Y that the Tenant would inform her once the Security Deposit was transferred. Y told the Respondent to inform the Tenant that the lease transaction would be voided if X did not receive the Security Deposit in their bank account by 6 p.m. the next day (i.e. 4 June 2017). The Respondent said she would speak to the Tenant to find out the reason for the delay.

Separately, on 3 June 2017, the Respondent asked the Tenant about payment of the Security Deposit, to which the Tenant reiterated her request to view the Property again to see if there were any other items that she wanted. The Respondent tried to persuade the Tenant to pay the Security Deposit first, but the Tenant was unwilling to do so and suggested paying on the day of the intended handover of the

Property (i.e. 9 June 2017). The Respondent told the Tenant that she could not do so and asked the Tenant to inform her once she had transferred the Security Deposit.

On the morning of 4 June 2017, X expressed his disappointment and unhappiness with the situation and reiterated the deadline of 6 p.m. for receipt of the Security Deposit. Y also followed up with a formal email notice to inform the Respondent that the Tenant had to pay the Security Deposit by the prescribed deadline, failing which the TA would be voided and the good faith deposit forfeited. The Respondent claimed that the Tenant was unwell and tried to obtain an extension of time until 6 June 2017, 9 p.m. instead, but X and Y were unwilling to grant any further extension. The Respondent offered to hand the Security Deposit to them in cash, but Y declined and asked for the Security Deposit to be paid directly into X's bank account.

Concurrently, the Respondent forwarded a screenshot of her Whatsapp conversations with X and Y, as well as Y's email on 4 June 2017, to the Tenant. The Tenant told the Respondent that she had the Security Deposit in cash, and the Respondent proceeded to collect the Security Deposit from the Tenant. Notwithstanding X's and Y's instructions for the full sum of the Security Deposit (\$ 5,400) to be paid into X's bank account, the Respondent proceeded to deduct and retain the Commission (\$ 2,889) from the Security Deposit, before depositing the remaining sum (\$ 2,511) into X's bank account. Thereafter, the Respondent informed X and Y at around 2 p.m. that the remaining sum of \$ 2,511 had been deposited into X's bank account, and that the deducted sum was for her "*service rendered*". The Respondent acknowledged that full commission had been received for the lease.

X queried the Respondent about the deduction, to which she claimed that such deduction had been agreed on 1 June 2017, and she had to submit the Commission to her estate agent. X pointed out that this was not proper procedure and reiterated that if the full sum of the Security Deposit was not banked into his bank account by 6.00 p.m., the TA would be voided. However, the Respondent chose to retain the Commission, thereby causing the non-compliance of her client's instructions on payment of the Security Deposit for the lease. At all material times, there was no agreement between the Respondent and X for the deduction of the Commission from the Security Deposit for the lease.

On 5 June 2017, Y informed the Tenant that X would not be proceeding with the lease of the Property to her, as X did not receive payment of the Security Deposit in full. X later returned the remaining sum of \$ 2,511 to the Tenant and forfeited the good faith deposit that the Tenant had previously paid. Following subsequent proceedings initiated by the Tenant under the Small Claims Tribunal, X returned a sum of approximately \$ 5,589 to the Tenant, comprising the good faith deposit and the Commission.

Charges

The Respondent faced the following charge:

Charge 1

For failing to act according to her client's instructions, and failing to protect and promote her client's interests, unaffected by her own interests and her estate agent's interests, by deducting and retaining the sum of \$ 2,889 from the security deposit of \$ 5,400 payable to X for the lease of the Property, which she had collected from the Tenant, before paying the remainder of the

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.

Security Deposit (\$ 2,511) to X, despite X's instructions that the full sum of the Security Deposit (\$ 5,400) was to be paid into his bank account by 4 June 2017, 6.00 p.m., and despite knowing that X would not be proceeding with the lease of the Property to the Tenant if he did not receive the full amount of the Security Deposit by the prescribed deadline, in breach of paragraph 6(1) read with 6(2)(a) of the Code of Ethics and Professional Client Care (the "**Code**").

Outcome

Following a trial, the Respondent was found guilty and convicted of the charge.

The Disciplinary Committee ("**DC**") found that there was no agreement between X and the Respondent for the direct deduction of the Commission, and there was no basis for the Respondent to believe there was an implied authorisation by X for such direct deduction. The deduction was motivated by the Respondent's desire to secure the Commission, as she feared that X and Y would not pay the Commission. The Commission was of such paramount importance to the Respondent that she was willing to jeopardise the entire lease transaction by directly deducting the Commission and refusing to transfer the same to X's bank account, despite knowing that the lease transaction would not proceed if the full sum of the Security Deposit was not received by X.

Accordingly, the DC found that the Respondent had prioritised her own interest in the Commission over her client's interests, and failed to protect and promote X's interests, which led to the failure of the lease transaction.

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

Charge 1: A financial penalty of \$ 5,000 and a suspension of 5 months.

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