

S/N 18/2021 – Failure to Render Professional and Conscientious Service to Clients by Misrepresenting on Validity of Option to Purchase

Facts of Case

The Respondent was at all material times a registered salesperson.

In or around June 2018, the Respondent's clients were intending to sell their existing condominium property and purchase a landed property. They therefore engaged the Respondent to assist them in their intended sale and purchase transactions.

On or around 31 July 2018, the Respondent's clients chanced upon an advertisement for a landed property they were interested in (the "**Property**"), and the Respondent proceeded to make arrangements for his clients to view the Property.

Prior to viewing the Property, the Respondent's clients had already discussed the possibility of purchasing the Property at \$3 million with the seller requiring a 3-month rent-free extension of stay in the Property after completion.

The Respondent's clients viewed the Property on 2 September 2018. The Respondent, the seller and the seller's salesperson were also present at the viewing.

After the viewing, the Respondent's clients decided to purchase the Property. To this end, the Respondent prepared an Offer to Purchase and met one of his clients on 3 September 2018 to sign the Offer to Purchase.

The Offer to Purchase provided, among other things, that:

- (a) The Option period was 1 day; and
- (b) That the client's cheque for the sum of \$30,000 (being 1% of the purchase price of \$3 million) was enclosed as option monies.

On the Respondent's instructions, his client also issued a second cheque for the sum of \$120,000 (being the option exercise fee of 4% of the purchase price).

On the same day of 3 September 2018, the Respondent handed the Offer to Purchase and the client's first cheque for the sum of \$30,000 to the seller's salesperson. The Respondent also attempted to hand over his client's cheque for the option exercise monies but this was rejected by the seller's salesperson as it was not the market practice to do so at that juncture.

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.

On 4 September 2018, the Option to Purchase (“**OTP**”) was issued by the seller to the Respondent’s clients. After the Respondent collected the OTP from the seller’s salesperson, the Respondent met one of his clients at his client’s office to hand over the OTP. The Respondent’s client then placed the OTP into his office drawer.

The OTP provided, among other things, that it was valid for 14 days, i.e. expiring on 18 September 2018 at 4 p.m., and the option money of \$30,000 would be forfeited by the seller if the OTP was not exercised on or before its expiry.

At all material times on 4 September 2018, from the time the Respondent collected the OTP to handing it over to his client, the Respondent did not take any steps to either retain a copy of the OTP or note down the material terms of the OTP.

A dispute subsequently arose between the Respondent’s clients and the seller after a land demarcation issue surfaced in relation to the Property. On 17 September 2018, the Respondent’s client asked the Respondent whether the seller had responded to the buyers’ request for a reduction of the selling price arising from the land demarcation issue.

The Respondent’s client further asked the Respondent whether he was “*suppose(sic) to sign [a document] today?*”, to which the Respondent replied, “*Sign wad(sic)? Otp 21 days*”. When his client pointed out that the erroneous 1-day option period in the offer to purchase had been “amend[ed] to 14 days”, the Respondent did not send any further reply to his client.

On the same day (i.e. 17 September 2018), the seller’s salesperson also queried the Respondent on whether the Respondent’s clients were still intending to exercise the OTP or to terminate it amicably in light of the land demarcation issue. The Respondent did not provide any substantive reply.

The OTP accordingly expired on 18 September 2018 at 4 p.m. and the Respondent’s clients’ option money amounting to \$30,000 was forfeited by the seller.

On 21 September 2018, when the Respondent’s clients retrieved the OTP from the office drawer to exercise the OTP, they discovered that the OTP had already expired. The Respondent, upon being confronted by one of his clients, tried to explain himself by reiterating his “*recollection*” of the OTP being valid for 21 days because he did not hold on to a copy of the OTP previously.

The Respondent subsequently tried to request for the seller to grant an extension of time to his clients to exercise the OTP, but the seller was not agreeable.

The Respondent’s clients eventually suffered a loss of \$25,000 arising from the botched intended purchase of the Property, after the Respondent had made repayments totalling \$5,000 towards his clients’ initial loss of \$30,000.

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Charge

The Respondent faced the following charge:

Charge

For failing to render professional and conscientious service by misrepresenting a relevant fact to his clients in respect of their intended purchase of the Property, by misrepresenting to them that the OTP was valid for 21 days when it was in fact valid only for 14 days, in contravention of paragraph 6(1) read with 6(2)(b) 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 noted that this case did not involve technical matters beyond the knowledge of an ordinary consumer who would have to rely on their estate agents to exercise professional guidance and advice. The date of the OTP's expiry could have been verified by the Respondent's clients by, among other things, reading the OTP that was in their possession. The DC also considered the lack of dishonesty involved in the making of the misrepresentation, the Respondent's return of \$5,000 to the buyers, the Respondent had no previous disciplinary record, had pleaded guilty to the charge early and was cooperative during investigations.

Accordingly, the Disciplinary Committee imposed the following financial penalty on the Respondent (who was not a registered salesperson at the time of sentencing):

Charge: A financial penalty of \$2,500.

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