

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 13/2023 – Fraudulently Creating and Submitting a Fictitious Option to Purchase to Deceive Estate Agent on Qualification for Recognition Awards

Facts of Case

Sometime in November 2019, the Respondent and her colleague were appointed to market the sale of a terrace house (the “**Property**”) by the Seller.

Sometime in early May 2021, the Respondent conducted a viewing for some potential buyers, one of whom was introduced to the Respondent through Salesperson Y (the “**Buyer**”). After the viewing, Salesperson Y informed the Respondent that the Buyer wished to purchase the Property. After some negotiations, the Buyer offered to purchase the Property at \$3.13 million, which was accepted by the Seller. The Respondent then prepared an Option to Purchase (“**OTP**”), which was undated.

Thereafter, the parties engaged in some negotiations regarding the extension of the OTP exercise date. While the parties were still in discussion, the Respondent submitted a sale transaction of the Property to her estate agent. Amongst the documents submitted to her estate agent was a fictitious OTP, which the Respondent had created by making a copy of the OTP and editing it. In the fictitious OTP, the Respondent indicated some dates in April 2021 as the OTP issue and exercise dates, filled in a fictitious witness name and NRIC, and also signed off as the Buyer exercising the OTP.

The Respondent had created the fictitious OTP and submitted it to her estate agent as she wanted to submit the transaction as a sale closed to deceive her estate agent that she had earned more in sales commission to qualify for recognition awards. The recipients of such recognition awards were published regularly on her estate agent’s Facebook page, which would help to promote the recipient salesperson’s image with potential clients. Due to the Respondent’s submission of the fictitious OTP, her estate agent was misled into awarding her with a recognition award.

Within a few days after the Respondent submitted the fictitious OTP to her estate agent, the Buyer and the Seller came to an agreement on an extension of the OTP exercise date, and a new OTP was issued to the Buyer. However, due to some hiccups in the exercise of the new OTP, the purchase was eventually aborted.

Notwithstanding, sometime in mid-December 2021, the Seller abruptly received an invoice from the Respondent’s estate agent for payment of \$50,236.50 as commission for the sale of the Property. The Seller disputed the commission invoice as the Property was not sold by the Respondent, and it was then revealed that the Respondent had created the fictitious OTP. After the Respondent’s estate agent discovered that the sale transaction submitted for the Property was false, it cancelled the commission invoice and decided to strip the Respondent of all recognition awards that she qualified for and had been granted in 2021.

Charge

The Respondent faced the following charge:

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Charge (Proceeded)

Doing a fraudulent and deceitful act which may bring discredit or disrepute to the estate agency industry, by fraudulently creating and submitting a fictitious OTP for the sale of the Property to her estate agent when there was no such OTP granted by the Seller or exercised by the Buyer, in order to deceive her estate agent that she qualified for recognition awards and resulting in her estate agent awarding her with a recognition award, in contravention of paragraph 7(1) read with paragraph 7(2)(a) 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 did not hesitate to create the fictitious OTP for the mere sake of obtaining a recognition award, in blatant disregard of her fundamental professional duty as a salesperson to act ethically and honestly. Her actions were premeditated and deceptive;
- (b) There was direct harm caused by the Respondent’s actions to her client, as he\ would have experienced inconvenience and distress on receipt of the invoice asking for payment of commission. The Respondent’s breach would have also harmed the reputation and integrity of the real estate agency industry, and the credibility of her estate agent who had to investigate the matter, admit the mistake and rescind the invoice.
- (c) The Respondent had 8 years of professional experience at the time of misconduct; and
- (d) The Respondent’s misconduct was not motivated by financial gain and she did not receive or retain any financial gain from her breach. She had personal circumstances that impacted her mental state and judgment at the material time she committed the breach, which was given some mitigating weight. She also had no prior antecedents, cooperated with investigations and admitted her guilt at the earliest opportunity.

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.

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