

S/N 6/2021 – Misrepresenting Built-In Area of Property, Excluding Estate Agent from Transaction and Failing to be Correctly and Clearly Identified in Advertisements

Note: This case is related to S/N 7/2021 and S/N 8/2021 and involved the same transaction; the Respondents in S/N 7/2021 and S/N 8/2021 (i.e. Salespersons X and Y respectively) had also represented the sellers of the Property.

Facts of Case

Events relating to the Buyers

Salesperson Y was engaged by the sellers of a landed property (the “**Property**”) to sell the Property. Salesperson Y entered into a co-broking arrangement with the Respondent for the sale of the Property, with commission to be shared equally between them in the event of a successful sale. The Respondent was mainly responsible for the marketing of the Property, while Salesperson Y would help liaise between the Respondent and the sellers.

In August 2018, the Respondent posted a listing of the Property on the online property portal, PropertyGuru. A and B (the “**Buyers**”) came across the Respondent’s listing and were interested to purchase the Property; they did not engage a salesperson to represent them.

The Buyers attended a viewing of the Property and met the Respondent and the Respondent’s husband (Salesperson X). The Respondent was the main salesperson who presented the Property to the Buyers during the viewing; Salesperson X was quiet for most of the viewing.

At the viewing, the Buyers were given a flyer (the “**Flyer**”) for the Property, which stated that the built-in area was estimated to be 4,000 square feet. The Flyer listed the Respondent’s name and handphone number, but did not state the name, contact number or licence number of the Respondent’s licensed estate agent, or the Respondent’s salesperson registration number.

During the viewing, the Buyers sought confirmation that the built-in area of the Property was approximately 4,000 square feet and requested for detailed drawings of the Property that would show the same. The Respondent told the Buyers that such documents would only be released by the sellers if they exercised an Option to Purchase (“**OTP**”).

The Buyers subsequently found another property near the Property which was sold for \$ 2.65 million – this other property had a larger land area, but its built-in area was smaller than the 4,000 square feet that the Buyers understood the Property to have. On this basis, the Buyers were prepared to offer a sum higher than \$ 2.65 for the Property and eventually offered to purchase the Property at \$ 2.8 million.

The Respondent told the Buyers that there was another offer of \$ 2.83 million, but the sellers were allegedly not keen to accept the offer as the other party wanted a longer period to exercise the option to purchase and wanted to pay a lower option fee. Following the Respondent's efforts at persuading the Buyers to increase their offer, the Buyers made another offer to purchase the Property at \$ 2.818 million, which was accepted by the sellers.

Thereafter, the Buyers met the Respondent and Salesperson X at the Property to sign the Offer to Purchase (the "**Offer**"). Before signing the Offer, the Buyers sought confirmation again from the Respondent that the built-in area of the Property was approximately 4,000 square feet, to which the Respondent confirmed the same and said that she would be liable for any misrepresentation otherwise.

The Respondent also told the Buyers that she could not be the salesperson to close the transaction as she was about to leave her estate agent ("**Estate Agent A**") to join another estate agent ("**Estate Agent B**"). Instead, Salesperson X (who was from Estate Agent B) would close the transaction. Salesperson X signed off on the Offer and acknowledged receipt of the option fee (\$ 28,180).

The sellers also signed an estate agency agreement with Estate Agent B for the sale of the Property. In being excluded from the transaction, Estate Agent A was deprived of its share of the commission that would have been paid to the Respondent, which would be between \$ 1,056.75 and \$ 1,409.

Thereafter, the Buyers' lawyers requested for documents relating to extensions in the Property. The Respondent forwarded certain documents to the Buyers, which included a letter that indicated that the Gross Floor Area ("**GFA**") of the Property was approximately 2,873 square feet. The GFA of a property is similar to and/or approximate to the built-in area of a property.

Upon receiving the documents, the Buyers questioned the Respondent on why the GFA was not the 4,000 square feet that the Respondent had previously represented. The Respondent claimed, amongst others, that the price of the Property was based on the land area rather than the built-in area, and the built-in area of 4,000 square feet had been given to her by the contractor who renovated and maintained the Property over the years ("**C**"). C is also the husband of Salesperson Y.

A subsequent on-site measurement of the Property showed that its built-in area was only approximately 2,800 square feet. A subsequent surveyor's drawing also stated that the Property's built-in area was approximately 2,964 square feet.

The Buyers were very upset with the discrepancy as their offer of \$ 2.818 million was based on the Property having a built-in area of 4,000 square feet. In view of the significantly reduced built-in area, the Buyers sought to re-negotiate the sale price of the Property. Following subsequent developments, the sellers eventually forfeited the option fee of \$ 28,180, and later

sold the Property to another purchaser in 2019 for \$ 2.728 million. The Buyers did not manage to purchase the Property and had to cancel their bank loan, incurring a penalty fee of \$ 22,125. The Buyers subsequently commenced legal proceedings against the sellers, the Respondent and Salesperson X, which was eventually settled between the parties.

Events relating to Buyer D and Salesperson Z

Further, there was another prospective buyer (“D”) for the Property. Salesperson Z was D’s salesperson and learnt of the Property through the Respondent’s listing on PropertyGuru.

In mid-August 2018, Salesperson Z contacted the Respondent and arranged for a viewing of the Property. Salesperson Z attended the viewing with D and D’s wife – they were met by the Respondent and Salesperson X. D and Salesperson Z were similarly given a copy of the Flyer. After a second viewing of the Property, D made an offer of \$ 2.83 million for the Property and signed an offer to purchase. D also issued a cheque for 0.5% of the offer price as option fee (\$ 14,150).

In late August 2018, the Respondent informed Salesperson Z that D’s offer had been rejected by the sellers, claiming that the sellers were looking to sell the Property at \$ 2.9 million. D was upset with the Respondent for wasting his time, as the Respondent’s listing on PropertyGuru had indicated that the asking price of \$ 2.9 million was negotiable.

In fact, D’s offer was never communicated to the sellers and they were not even aware of D’s offer.

Charges

The Respondent faced the following charges:

Charge 1

For causing or allowing to be made an advertisement that contained a statement, representation, claim and/or information that was inaccurate, false and/or misleading, by causing and/or allowing the making of the Flyer that stated that the estimated built-in area of the Property was 4,000 square feet, when this was not the case, in contravention of paragraph 12(4)(a) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2 (Proceeded)

For failing to act fairly and/or in a reasonable manner towards potential purchasers of the Property, by mispresenting to the Buyers that the built-in area of the Property was approximately 4,000 square feet, when this was not the case, in contravention of paragraph 6(3) read with paragraph 6(4)(c) of the Code.

Charge 3 (Proceeded)

For failing to act honestly, fairly and/or in a reasonable manner towards Estate Agent A, by excluding Estate Agent A from the transaction involving the sale of the Property, which she had facilitated on behalf of Estate Agent A, in contravention of paragraph 6(3) of the Code.

Charge 4

For failing to ensure that she was correctly and clearly identified in an advertisement or promotional material, by failing to state the name and contact number of her licensed estate agent in the Flyer for the sale of the Property, in contravention of paragraph 12(1)(a) read with paragraph 12(2)(a) of the Code.

Charge 5

For failing to ensure that she was correctly and clearly identified in an advertisement or promotional material, by failing to state the licence number of her licensed estate agent and her salesperson registration number in the Flyer for the sale of the Property, in contravention of paragraph 12(1)(a) read with paragraph 12(2)(b) of the Code.

Charge 6

For failing to act fairly and/or in a reasonable manner towards a prospective purchaser (D) and his salesperson (Salesperson Z), by misrepresenting to them that D's offer of \$ 2.83 million to purchase the Property had been rejected by the sellers as they wanted a higher sale price, when this was not the case, in contravention of paragraph 6(3) read with paragraph 6(4)(c) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 2 and 3, while Charges 1, 4, 5 and 6 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“DC”) noted in relation to Charge 2 that the Respondent had made careless representations beyond her knowledge on the built-in area of the Property and relied on information from another person. The Respondent’s carelessness was a serious breach of her duties as a salesperson, given the importance of the representation to the Buyers and their repeated queries on the same. The DC also noted that the Respondent had appeared to take advantage of the Buyers being unrepresented in the transaction, and there was significant harm caused to the Buyers, who suffered a financial loss of \$ 13,795 even after settlement and compensation.

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.

As for Charge 3, the DC noted that the Respondent and Salesperson X did appear to have conspired to exclude Estate Agent A from the transaction, although they did not financially gain from the misconduct. Such misconduct warranted deterrence as it would cause harm to the business of estate agents and was difficult to detect.

The DC also considered that the Respondent had other charges taken into consideration for purposes of sentencing, and which involved other careless and even unethical conduct on her part, especially in relation to Charge 6.

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

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

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

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$ 5,000 and a suspension of 4 months.

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