

S/N 14/2021 – Withholding Lease Payments from Clients, Directing Payments to Personal Bank Account, Misrepresenting on Payments and Failing to Submit Transaction and Commission to Estate Agent

Facts of Case

The Respondent was engaged by the owners of a private property to rent out the property.

In mid-August 2018, A and B (collectively, the “**Tenants**”) contacted the Respondent for a viewing of the Property. The Tenants agreed to rent the Property at the monthly rent of \$2,400 for 2 years. The monthly rent was payable on or before the 30th day of each month.

The Respondent subsequently requested the Tenants to pay a sum of \$ 4,800 (representing the balance of the security deposit and advance rent) to the Respondent’s own personal bank account (the “**Account**”). In making this request, the Respondent misrepresented to the Tenants that the Account was the owners’ bank account, and that there would be a delay in the owners’ receipt of funds for transfers made to another bank account (to which the Tenants had previously transferred half of the security deposit into), which was completely fictitious. The Respondent also instructed the Tenants to make all future rent payments to the Account.

The unsuspecting Tenants proceeded to transfer the sum of \$ 4,800 to the Account in end-Aug 2018, as instructed by the Respondent. However, the Respondent did not proceed to transfer the monies to the owners and instead wrongfully used it for his own purposes (i.e. to pay off his financial indebtedness).

From early September 2018 to early October 2018, the owners queried the Respondent on multiple occasions as to when the Tenants would be making payment of the further \$ 4,800 for the lease. The Respondent repeatedly informed the owners that the Tenants had yet to make payment and claimed he was following up on it. When the owners threatened to abort the lease, the Respondent claimed this was a teething issue and he would handle the matter. The Respondent eventually transferred the monies to the owners in mid-October 2018, after a delay of 45 days.

From December 2018 to February 2019, the Tenants dutifully paid the monthly rent via transfers to the Account, as instructed by the Respondent. On each occasion, the Respondent wrongfully withheld the monies from the owners and used it for his own purposes first. The Respondent would eventually transfer the rent to the owners after significant delay (that ranged from 15 to 22 days). The owners would chase the Respondent for payment of the monthly rent, and the Respondent would mislead the owners on each occasion as to why the rent payment was delayed.

In mid-February 2019, the Respondent instructed the Tenants to make future rental payments directly to the owners’ rightful bank account. By that time, the Tenants were already in direct communications with the owners and had discovered the Respondent’s wrongdoings. When the Tenants queried the reason for the change in bank account, the Respondent claimed that the owners had sorted out their bank issues.

The owners paid a commission of \$ 2,400 to the Respondent for facilitating the lease transaction. However, the Respondent did not report the lease transaction to his estate agent, nor did he disclose

the commission received, as he intended to wrongfully retain the whole of the commission for his own personal use.

Charges

The Respondent faced the following 5 charges:

Charge 1 (Proceeded)

For bringing discredit or disrepute to the estate agency industry, by falsely representing to the Tenants that the Account was the owners' bank account and instructing the Tenants to make security deposit and rental payments (being a total sum of \$ 14,400) into the Account, when the Account was in fact the Respondent's own bank account, in breach of paragraph 7(1) read with 7(2)(a) of the Code of Ethics and Professional Client Care (the "Code").

Charge 2 (Proceeded)

For bringing discredit or disrepute to the estate agency industry, by fraudulently withholding and misusing payments made by the Tenants for the security deposit and the rent of the property (being a total sum of \$ 12,000), and failing to account for the same to the owners in a timely manner, in breach of paragraph 7(1) read with 7(2)(a) of the Code.

Charges 3 and 4

For failing to act with honesty, fidelity and integrity, in breach of paragraph 6(1) read with 6(2)(b) of the Code, by:

Charge 3

- (a) Falsely informing the owners, from September to October 2018, that the Tenants had yet to pay the security deposit and advance rental; and
- (b) Falsely informing the owners that the Tenants only paid the security deposit and advance rental in mid-October 2018, when they had paid the same in late August 2018 into the Account.

Charge 4

- (a) Falsely informing the owners that the Tenants had yet to pay the rent for December 2018, and further falsely informing the owners that the Tenants only paid the rent in mid-December 2018, when they had paid the same in late November 2018 into the Account;
- (b) Falsely informing the owners that the Tenants had yet to pay the rent for January 2019, and further falsely informing the owners that the Tenants only paid the rent in mid-January 2019, when they had paid the same in late December 2018 into the Account; and

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.

- (c) Falsely informing the owners that the Tenants had yet to pay the rent for February 2019, and further falsely informing the owners that the Tenants only paid the rent in mid-February 2019, when they had paid the same in late January 2019 into the Account.

Charge 5

For failing to act fairly towards his estate agent, by failing to submit the rental transaction and commission collected from the owners to his estate agent, in breach of paragraph 6(3) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to 2 charges (i.e. Charges 1 and 2), while the remaining 4 charges (i.e. Charges 3 to 6) were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“DC”) noted that there were a number of aggravating factors – the case involved a fraudulent scheme by the Respondent pertaining to his misappropriation of clients’ monies, and the misconduct was also prolonged, as there was a total delay of 98 days (over a 5-month period) by the Respondent in transferring the payments collected from the Tenants to the owners, with multiple deceptive statements made by the Respondent to the owners in the process. There was also a lack of remorse by the Respondent, as he did not offer to return or waive the commission paid to him by the owners, nor did he pay any part of the commission due to his estate agent. There was a need to send a strong message to salespersons to conduct themselves with the integrity and professionalism required of them in the industry.

The DC also considered that the Respondent had no previous disciplinary record, had pleaded guilty at the earliest opportunity, and was cooperative.

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

Charge 1 and 2: A financial penalty of \$ 14,200 per charge.

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