

## **S/N 16/2019 – Altering Estate Agent’s Document without Authorisation and Using Document to Disguise and Obtain Additional Commissions**

### **Facts of Case**

The Respondent was engaged by expatriate tenants to look for accommodation in Singapore. The tenants were employed by Company X, who in turn appointed Company Y, a relocation company, to assist with accommodation and relocation matters. The Respondent acted for 4 tenants in relation to lease transactions for 4 properties.

At all material times, the Respondent was aware that he must not collect commission from more than one party in the lease transactions.

### **Lease of Property A**

In or around November/December 2012, Tenant A engaged the Respondent to look for accommodation in Singapore for lease. The Respondent brought Tenant A and his wife to view Property A, which was listed by Salesperson A (who acted for the landlord). Tenant A agreed to lease Property A for \$ 5,000 a month, for a period of 24 months. According to the Respondent, Tenant A informed him that the Respondent could claim up to 3 months of housing agent fee from Company X.

The Respondent asked Salesperson A to co-broke and share his commission from the landlord. The Respondent did not inform Salesperson A that he might be receiving commission from Company X. Thinking that the Respondent would not be receiving any commission from his client, Salesperson A agreed to share his commission with the Respondent such that they would each receive \$ 2,500 commission (excluding GST) from the landlord. Accordingly, a Co-Broking Agreement was signed between Salesperson A and the Respondent.

To disguise and obtain commission from Company X, the Respondent altered his estate agent’s “Commission Agreement for Lease (Tenant)” (“**Commission Agreement**”) to a Property Management Agreement (“**PMA**”) without his estate agent’s authorisation, and described therein a sum of \$ 10,000 (excluding GST) to be payable by Tenant A to his estate agent as “property management fee” for services rendered in relation to the lease of Property A.

The Respondent obtained Tenant A’s signature on the PMA and submitted the PMA to his estate agent and Company Y. The Respondent subsequently received payment of \$ 10,700 (inclusive of 7% GST) from Company Y pursuant to the PMA. The Respondent forwarded the sum of \$ 10,700 to his estate agent as “property management fee” pursuant to the PMA.

## Lease of Properties B, C and D

Between December 2013/January 2014 and May 2014, the Respondent was also engaged by Tenants B, C and D to look for accommodation in Singapore for lease. The Respondent brought these tenants to view properties, and the tenants agreed to lease the properties as follows:

- (a) Property B: Tenant B agreed to lease the property at \$ 2,700 a month, for a period of 24 months. At the Respondent's request, Tenant B agreed to pay the Respondent a sum of \$ 5,400 as commission.
- (b) Property C: Tenant C agreed to lease Property C for \$ 10,000 a month, for a period of 24 months. According to the Respondent, Tenant C informed him that the Respondent could claim up to 3 months of housing agent fee from Company X.
- (c) Property D: Tenant D agreed to lease Property C for \$ 7,300 a month, for a period of 24 months. At the Respondent's request, Tenant C agreed to pay the Respondent a sum of \$ 21,900 as commission.

For each of these leases, the Respondent similarly asked the landlords' salespersons if they were agreeable to co-broke and did not inform them that he would be collecting commission from the tenants. The landlords' salespersons all agreed to share their commission with the Respondent such that they would each receive the following commission sums from the landlord:

- (a) Property B: \$ 1,350 commission (excluding GST)
- (b) Property C: \$ 5,000 commission (excluding GST)
- (c) Property D: \$ 3,411.21 commission (excluding GST)

Accordingly, Co-Broking Agreements were also signed between the Respondent and the landlords' salespersons.

To disguise and obtain commission, the Respondent similarly altered his estate agent's Commission Agreement to PMAs without his estate agent's authorisation and described therein the following sums to be payable by the tenants to the Respondent's estate agent as "property management fee" for services rendered in relation to the leases:

- (a) Property B: \$ 5,400 (excluding GST)
- (b) Property C: \$ 30,000 (excluding GST)
- (c) Property D: \$ 21,900

The Respondent then obtained the signatures of Tenants B, C and D on the PMAs and submitted the PMAs to Company Y for payment. The Respondent subsequently received payments of the above sums from Company Y pursuant to the PMAs.

Out of the above sums received, the Respondent did not declare to his estate agent his receipt of the following sums, which were in fact commission payments from Company X in relation to the lease of Properties B, C and D:

- (a) Property B: \$ 5,140
- (b) Property C: \$ 29,040
- (c) Property D: \$ 21,699

For the 3 lease transactions involving Properties B, C and D, the Respondent received a total sum of \$ 55,879 as “property management fees” from Company X through Company Y, in addition to co-broking fees of \$ 8,785.09 received from the co-broke salespersons acting for the landlords in the lease transactions (after the deduction of agency fees by the Respondent’s estate agent). In total, the Respondent received a sum of \$ 64,664.09.

After CEA commenced investigations, the Respondent transferred a total sum of \$ 17,663.05 to his estate agent (the “**Transfer**”), being:

- (a) Payment of co-broke commissions received for the lease transactions (after the deduction of agency fees by the Respondent’s estate agent): \$ 8,785.09 in total
- (b) Payment of the agency fee that the Respondent’s estate agent ought to have received from the additional commission payments received from Company Y, including GST: \$ 8,877.96 in total

The Respondent chose to return the co-broking fees and his estate agent’s share of the additional commission payments received. Notwithstanding the Transfer, the Respondent still received a total of \$ 47,001.04 from the additional commission payments (after the Transfer).

## **Charges**

The Respondent faced the following 7 charges:

### **Charges 1 to 3**

For failing to act honestly towards his estate agent in the conduct of estate agency work, by failing to declare to his estate agent the following sums of commission received in relation to the lease of Properties B, C and D, in contravention of paragraph 6(3) of the Code of Ethics and Professional Client Care (the “**Code**”):

- (a) Charge 1: \$ 5,140 — lease of Property B
- (b) Charge 2: \$ 29,040 — lease of Property C
- (c) Charge 3: \$ 21,699 — lease of Property D

### **Charges 4 to 7**

For bringing discredit or disrepute to the estate agency industry, by altering his estate agent's Commission Agreement to PMAs without his estate agent's authorisation and using the PMAs to disguise and obtain the following sums of commission as "property management fee" from Company Y in relation to the lease of Properties A, B, C and D, in contravention of paragraph 7(1) of the Code:

- (a) Charge 4: \$ 10,700 – lease of Property A
- (b) Charge 5 (Proceeded): \$ 5,140 – lease of Property B
- (c) Charge 6 (Proceeded): \$ 29,040 – lease of Property C
- (d) Charge 7 (Proceeded): \$ 21,699 – lease of Property D

### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to 3 charges (i.e. Charges 5 to 7), while the remaining 4 charges (i.e. Charges 1 to 4) were taken into consideration for purposes of sentencing.

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

**Charge 5:** A financial penalty of \$ 6,000 and a suspension of 6 months.

**Charge 6:** A financial penalty of \$ 11,000 and a suspension of 10 months

**Charge 7:** A financial penalty of \$ 10,000 and a suspension of 9 months

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$ 27,000 and a suspension of 10 months.

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