

S/N 7/2020 – Failure to Submit an Offer to her Clients as soon as possible after receiving the Offer and Failure to Advise her Client to seek the Advice of Appropriate Professionals

Facts of Case

This case arose from 2 complaints made against the Respondent to CEA. At all material times, the Respondent was a registered real estate salesperson (“**RES**”). The 1st complaint concerned the sale of a unit in a condominium development (the “**1st Property**”) while the 2nd complaint related to the lease of another unit in the same condominium development (the “**2nd Property**”).

The Respondent faced Charge 1 in relation to the 1st Property and Charge 2, 3 and 4 in relation to the 2nd Property.

Facts pertaining to Charge 1

Sometime in May 2017, the Sellers of the 1st Property engaged the Respondent to help them market and sell the 1st Property. The Sellers were a husband and wife couple, Mr and Mrs C [collectively referred to as the “**Cs**”].

Mrs C informed the Respondent that her expected selling price for the 1st Property was \$1.42 million. Mrs C also informed the Respondent that she would be the point of contact in relation to the sale of the 1st Property as Mr C has left this matter to her.

According to the Whatsapp messages between Mrs C and the Respondent dated 16 July 2017, Mrs C agreed to pay the Respondent commission of 1.5% of the selling price if the sale transaction was closed at \$1.42 million.

Sometime in mid-October 2017, Ms W (also a registered RES) contacted the Respondent in response to the Respondent’s advertisement in the PropertyGuru website marketing the 1st Property for sale. The price of the 1st Property advertised was \$1.47 million. Ms W asked the Respondent if the latter was willing to co-broke the commission with her if the 1st Property was successfully sold to Ms W’s clients and the Respondent agreed to co-broke with Ms W. A viewing of the 1st Property was then arranged for Ms W’s clients on 15 October 2017 at about 6 pm.

On 15 October 2017, Ms W brought her clients Mr and Mrs D (collectively referred to as the “**Ds**”) to view the 1st Property. The Respondent conducted the viewing of the 1st Property. After the viewing, the Ds told Ms W that they needed to consider and left the 1st Property. Ms W stayed behind, and the Respondent told her that if the Ds could offer \$1.42 million for the 1st Property, then she would give Ms W commission of 1% of the sale price of the 1st Property. Ms W then shared with the Respondent that she could sense that her clients the Ds were interested in the 1st Property and requested the Respondent to update her whenever the Respondent received an offer to purchase the 1st Property.

On 28 October 2017, the Respondent received a viewing request from a then potential buyer Mr L to view the 1st Property. The viewing was fixed for 29 October 2017 at 4 pm.

On 29 October 2017, the Respondent conducted the viewing for Mr L. After the viewing, Mr L informed the Respondent that he needed to discuss this potential purchase further with his parents and requested for a 2nd viewing of the 1st Property in the afternoon at 3 pm for his parents to assess if the 1st Property would be affected by the heat from the afternoon sun. This 2nd viewing was arranged for 1 November 2017 at 3 pm.

On 31 October 2017 at 3.44 pm, Ms W informed the Respondent (via Whatsapp messaging) that her clients the Ds wished to make an offer to purchase the 1st Property. Ms W asked the Respondent to call her when the latter was free.

Eventually, Ms W called the Respondent and told the latter that the Ds were offering \$1.415 million for the 1st Property but the Respondent told Ms W that the Cs would not want anything less than \$1.42 million. Ms W therefore told the Respondent that the Ds were likely to make the offer of \$1.42 million and she would hand over the cheque for the option money to the Respondent at the Respondent's residence. As such, Ms W asked the Respondent for the latter's residential address and the Respondent gave her residential address to Ms W.

On 1 November 2017 at about 8.35 am, Ms W sent a PDF file to the Respondent via Whatsapp messaging. The PDF file was a scanned photograph of the 1st page of an Offer to Purchase of the 1st Property dated 1 November 2017 executed by the Ds, which indicated the Ds' offer to purchase the 1st Property at \$1.42 million (the "**Ds' Offer**"). The bottom half of this 1st page of the Ds' Offer was covered by a cheque for the amount of \$14,200 (i.e. the 1% option money for the offer to purchase of the 1st Property) made payable to the Cs and issued by the Ds (the "**Cheque**").

On 1 November 2017 at 9.27 am, the Respondent forwarded the Ds' Offer which she received from Ms W to Mr L via Whatsapp messaging.

The Respondent did not forward the Ds' Offer that she had received on 1 November 2017 at 8.35 am to her clients the Cs as soon as possible after receiving it. The Respondent also indicated that it was her practice to give the original document containing the Ds' Offer and the actual cheque to her clients and not just a soft copy.

On 1 November 2017 at 1.09 pm, Ms W contacted the Respondent and attempted to set up an appointment with her so that Ms W could hand over to the Respondent the Ds' Offer and the Cheque. However, the Respondent informed Ms W that she was busy with personal matters and could not meet up with Ms W to receive the Ds' Offer and the Cheque. Ms W then suggested that her husband deliver the documents to wherever the Respondent was at the material time. The Respondent again told Ms W that she was busy and could not meet up with Ms W's husband as she needed to fetch her own husband from the airport.

On 1 November 2017 at about 3 pm, the Respondent conducted the 2nd viewing of the 1st Property for Mr L's parents. Mr L was not present at this 2nd viewing. After this viewing, Mr L's parents made an offer to purchase the 1st Property at \$1.4 million. The Respondent told them that her clients (i.e. the Cs) were expecting a minimum of \$1.42 million. Mr L's parents relented and made an offer of \$1.42 million for the 1st Property. Mr L's parents then handed over to the Respondent a cheque for \$14,200 (i.e. the 1% option money) made payable to the Cs i.e. the Respondent's clients.

On 1 November 2017 at about 4 pm, the Respondent informed Mrs C that a potential buyer was interested in the 1st Property and made an offer of \$1.42 million. According to Mrs C, the Respondent informed her that the option money cheque was collected from this potential buyer at his residence. As such, Mrs C was aware of this buyer and that this buyer was not represented by a RES. At this juncture, Mrs C was not aware of the Ds' Offer and the Cheque as the Respondent did not disclose to Mrs C that Ms W's clients the Ds had earlier made an offer to purchase the 1st Property at the same price and the Ds had also issued a cheque for the 1% option money amounting to \$14,200.00 to the Cs.

The Respondent procured the Cs to execute the Option to Purchase in favour of Mr L at about 7 pm on 1 November 2017 (the "OTP") and passed the OTP to Mr L on the same day.

The Respondent's clients (i.e. the Cs) were therefore aware only of Mr L's offer to purchase the 1st Property when the Respondent presented them with the OTP. Her clients were not aware of the earlier offer that had been made by the Ds even though Ms W had communicated the Ds' Offer and the Cheque to the Respondent on 1 November 2017 at 8.35 am.

At about 9.50 pm on 1 November 2017, Ms W finally managed to meet up with the Respondent and handed over to the Respondent the Ds' Offer and the Cheque. At this meeting, the Respondent did not inform Ms W that the Cs had earlier granted an OTP for the 1st Property to another buyer at around 7 pm on the same day.

On 2 November 2017 at about 8.51 am, Ms W received a call from the Respondent, who informed Ms W that the 1st Property has been sold. The Respondent lied to Ms W that she had conveyed the Ds' Offer by sending a text message to Mrs C on 1 November 2017 at about 10 pm plus, but there was no response from Mrs C. The Respondent also lied to Ms W that she had called Mrs C prior to calling Ms W and was informed by Mrs C that the 1st Property was sold the night before (i.e. on 1 November 2017). Ms W asked the Respondent about the identity of the salesperson who had sold the 1st Property. The Respondent replied that she did not know.

On 2 November 2017 at about 9 am, Ms W informed the Ds that she had handed over to the Respondent the Ds' Offer and the Cheque on 1 November 2017 at about 9.30 am. However, the Ds were late in making their offer and the 1st Property was sold on the night of 1 November 2017. Ms W returned to the Ds their Offer to Purchase letter and the Cheque sometime between 2 November 2017 and 6 November 2017.

On 6 November 2017 at about 8.41 am, Ms W told the Respondent that the Ds wanted to know the time at which the Ds' Offer was conveyed by the Respondent to Mrs C. Ms W requested for a screenshot of the message that was sent to Mrs C by the Respondent informing Mrs C of the Ds' Offer.

On 6 November 2017 at about 8 am, the Respondent called Mrs C and told her untruthfully that there was a persistent RES who did not believe that the 1st Property had been sold. The Respondent told Mrs C to send a message to the Respondent saying that the 1st Property had been sold by another real estate salesperson. Mrs C agreed and asked the Respondent to draft the message for her. The Respondent drafted the message for Mrs C which she sent across via text message to Mrs C at about 9.02 am on 6 November 2017. The message reads: "*Hi [the Respondent], as spoken I had gotten the chq on Wednesday evening. Will let you know if the buyer had exercised OTP. Have a good day*" (the "**6 Nov text message**").

Mrs C copied the contents of the message and sent it to the Respondent by Whatsapp messaging at about 9.02 am on 6 November 2017. The Respondent then sent a screenshot of the message to Ms W at about 9.02 am. This was done by the Respondent to give Ms W the false impression that Mrs C had informed the Respondent that the 1st Property had been sold by another RES.

Ms W noticed that the message sent by Mrs C to the Respondent was dated 6 November 2017 and not on the night of 1 November 2017. The Respondent had asked Mrs C to send the Whatsapp message to her so that she could then send it on to Ms W to get Ms W off her back as she never conveyed the Ds' Offer to Mrs C since receiving the same.

On 7 November 2017, Ms W informed the Ds that she had met up with the seller Mrs C, who confirmed that she was not aware of, and did not receive the Ds' Offer. As a result of the Respondent's actions, the Ds lost out on the opportunity to purchase the 1st Property for investment purposes. Subsequently, the Ds were unable to find any unit at the condominium development which suited their budget of \$1.5 million, as all other units there were selling at more than \$1.5 million.

It was only in June 2019 that the Ds managed to find a suitable unit at another condominium development in a district near to the 1st Property. However, the location of the property was less ideal as it was not near any MRT station (the 1st Property was near a MRT station). Due to the changes in the legislation in relation to Buyer's Stamp Duty (BSD) which was effective from 6 July 2018, the Ds had to pay higher Additional Buyer's Stamp Duty (ABSD) of 12% (instead of 7%). The Ds also had to fork out more cash as under the revised Loan-to-Value limits which apply to Options to Purchase granted on or after 6 July 2018, the Ds could only loan up to 75% (instead of 80%) of the purchase price.

The Respondent claimed that sometime in October 2017, there was a verbal agreement with Mrs C during a telephone conversation that Mrs C would pay the Respondent commission of 2% of the transacted price of the 1st Property if there was a co-broke agent involved; and 1.5% of the transacted price of the 1st Property if a

direct buyer was involved. However, this agreement was not in writing. According to Mrs C, the commission agreement with the Respondent was to pay the Respondent her commission of 1.5% of the transacted price if the 1st Property could be sold for \$1.42 million and this was set out in a Whatsapp message between Ms C and the Respondent dated 16 July 2017 time-stamped 6.07 pm. Mrs C informed that she did not agree to pay the Respondent commission amounting to 2% of the transacted price if there was a salesperson representing the eventual buyer(s). As such, if Mrs C were to sell the 1st Property to the Ds, the Respondent would earn commission of only 0.5% of the transacted price as opposed to 1.5% of the transacted price if the 1st Property was sold to Mr L.

On the other hand, the Respondent claimed that she did not convey the Ds' Offer to Mrs C because she knew that Mrs C would rather pay commission of 1.5% of the transacted price of the 1st Property and not commission of 2% of the transacted price of the 1st Property. According to the Respondent, if Ms W's clients had bought the 1st Property, Mrs C would pay commission of 2% of the transacted price and the Respondent would have to pay commission of 1% of the transacted price to Ms W in accordance with the co-broke agreement she had with Ms W. But the fact remains that according to Mrs C, she never agreed to pay the Respondent commission of 2% of the transacted price of the 1st Property.

Facts pertaining to Charges 2, 3 and 4

Sometime in January 2017, Mr M engaged the Respondent to represent him in relation to the rental of the 2nd Property by him, his wife (Mrs M), and 3 other persons, namely L, T and Y.

The landlord of the 2nd Property (the "**Landlady**") was represented by a RES, Ms E.

For the 1st viewing of the 2nd Property on or around 16 January 2017, M and his wife were not able to attend and therefore this viewing was attended by L, T and Y who met up with the Respondent and Ms E for the viewing. After the viewing, after discussion among themselves, L offered the monthly rent of \$3,000 for the lease of the 2nd Property from the Landlady. The Landlady eventually accepted this offer and L gave Ms E the deposit for the lease.

M later asked the Respondent to arrange another viewing of the 2nd Property for him and his wife. The 2nd viewing of the 2nd Property was then scheduled for 22 January 2017.

At the 2nd viewing of the 2nd Property on 22 January 2017, M, his wife and L attended this 2nd viewing which was conducted by the Respondent. Ms E was busy and could not attend this 2nd viewing. During this viewing, M informed the Respondent that he and his wife were in the midst of buying their own Housing and Development Board (HDB) flat and if successful, they would have to move out of the 2nd Property prior to the expiration of the lease on 8 March 2019 but they would help the Landlady look for assignees to take over the remaining part of the lease from them. As such, on this day, the Respondent was informed by M in the presence of his wife and L that M and his

wife would move out of the 2nd Property before the expiration of the lease and exit the lease early.

After this 2nd viewing, the Respondent asked Ms E to prepare the tenancy agreement. According to the Respondent, Ms E told the Respondent that the Landlady wanted her (Ms E) to put M as the tenant in the tenancy agreement because he was the only Singaporean among the 5 prospective occupants under the tenancy agreement.

This tenancy agreement dated 15 February 2017 was between the Landlady and M as the tenant and provided for the lease of the 2nd Property by M for 2 years from 9 March 2017 till 8 March 2019 at the monthly rent of \$3,000 (the “**Tenancy Agreement**”).

Subsequently, Ms E sent the draft tenancy agreement that she had prepared to the Respondent. Despite knowing that M would exit the lease early and arrange for the assignees to take over the remaining part of his lease of the 2nd Property, the Respondent did not propose any changes to the terms of the draft Tenancy Agreement to reflect M’s intention to exit the lease prior to its expiration and to assign the remaining part of the lease to 2 assignees (“**M’s Request**”). Neither did she advise M to seek the advice of solicitors regarding M’s Request.

On or about 15 February 2017, the Landlady and M and the other 4 prospective occupants (i.e. Mrs M, L, T and Y), together with their respective RESs, Ms E and the Respondent, met for the signing of the Tenancy Agreement (the “**15 February 2017 Meeting**”).

At the 15 February 2017 Meeting, M again raised his Request i.e. his request to exit the lease before its expiration and assign the remaining part of his lease to 2 assignees. It appeared that at this meeting, the Landlady orally mentioned that she had no objections to M’s Request. At this meeting, the Respondent failed to advise M to engage professionals such as solicitors to have the Tenancy Agreement amended such that the following terms could be formally provided for in writing in the Tenancy Agreement: -

- (a) M’s Request; and
- (b) the Landlady’s oral agreement to M’s Request.

as both matters set out in sub-paragraphs (a) and (b) above were matters beyond the Respondent’s knowledge or expertise.

The Tenancy Agreement was for the 2-year period from 5 March 2017 to 8 March 2019. Clause 2(a)(v) of the Tenancy Agreement was amended as follows i.e. the amendments being the striking through portion of the clause before M and the Landlady signed the Tenancy Agreement:

“Only the following persons are permitted to occupy the said premises...~~and/or such other [persons]/[employee of the Tenant] as may be approved in writing by the Landlord from time to time, which approval shall not be unreasonably withheld~~”.

M and the Landlady also countersigned against the above amendments. The Respondent failed to advise M that this amendment was inconsistent with the 2nd part of his Request i.e. that 2 assignees could take over the remaining part of his lease of the 2nd Property and that he should not have signed the Tenancy Agreement and countersigned against the above amendments. M and the Landlady therefore signed the Tenancy Agreement with only the amendment indicated in the above paragraph.

On or about 28 December 2017, M informed the Respondent that he had purchased the HDB flat and intended to move out of the 2nd Property in February or March 2018 (i.e. exiting the lease before its expiration). The Respondent told M to let her know when he had found the 2 assignees to take over the remaining part of his lease of the 2nd Property so that she could prepare a draft letter to the Landlady.

On or about 13 March 2018, M provided the Respondent with particulars of the 2 assignees – H and N (the “**Assignees**”). On or about 14 March 2018, M informed the Respondent that the Assignees would take over the lease from 9 April 2018.

On or about 15 March 2018, the Respondent informed Ms E of M’s intention to move out of the 2nd Property and forwarded to her the details of the Assignees. The Respondent subsequently informed Ms E that M was moving out of the 2nd Property on 7 April 2018.

On or about 27 March 2018, Ms E informed the Respondent that the Landlady did not agree to the assignment of the lease to the Assignees and the Landlady had alleged that M and the 4 occupants had breached the terms of the Tenancy Agreement.

Despite being aware that the Landlady did not consent to the assignment of the lease from on or around 27 March 2018 onwards, the Respondent did not inform M that there was no approval from the Landlady for the Assignees to move into the 2nd Property.

The Assignees moved into the 2nd Property on 9 April 2018. The Landlady was unaware of this and had not consented to this move. On the same day i.e. 9 April 2018, Ms E discovered that the Assignees have already moved into the 2nd Property. Ms E hoped that she could arrange for the Assignees to move out of the 2nd Property before the Landlady found out about them having moved into the 2nd Property as she was aware that the Landlady did not allow the assignment of the lease.

Ms E arranged for a meeting at the 2nd Property on 3 May 2018 (the “**3 May 2018 Meeting**”) for parties to sign a novation agreement prepared by her. The attendees of this meeting were the Respondent, L and the Landlady. The Landlady believed that the meeting was to ensure that no subletting had taken place and that the agreement was to record that the 3 remaining occupants (i.e. L, T and Y) would continue with the lease at the same rent. Before the arrival of the Landlady at the 2nd Property for this meeting, the Respondent explained to L that the novation agreement was to formalize the assignment of M’s lease to the Assignees.

At the 3 May 2018 Meeting, the Landlady discovered that the Assignees had already moved into the 2nd Property. The Landlady was livid and demanded that the Assignees and the remaining 3 occupants (i.e L, T and Y) vacate the 2nd Property immediately.

The Landlady forfeited the 2 months' security deposit amounting to \$6,000 paid by M and the 4 occupants on the basis that they had breached the terms of the Tenancy Agreement. On 8 June 2018, the 2nd Property was officially handed over to the Landlady.

Charges

The Respondent faced the following 4 charges:

Charge 1 (Proceeded)

Failing to submit to her seller-clients, the Cs, an offer to purchase from the potential buyers the Ds, to purchase the sellers' property at \$1.42 million as soon as possible after receiving the offer from the potential buyers' real estate salesperson, in breach of paragraph 10 of the Code of Ethics and Professional Client Care ("CEPCC").

Charge 2 (Proceeded)

Failing to advise her client, the tenant, M, to seek the advice of appropriate professionals including solicitors, to have the Tenancy Agreement for the tenant's lease of the 2nd Property be amended to formally provide for the tenant's request to exit the lease before the expiration of the lease on 8 March 2019 and for the assignment of the remaining part of his lease to 2 assignees which the Landlady agreed to, before the tenant signed off on the Tenancy Agreement, when these were matters beyond her knowledge or expertise, in breach of paragraph 14 of the CEPCC.

Charge 3

Failing to render professional and conscientious service to her client, the tenant, M, when she failed to advise the tenant not to agree to, and not to counter-sign against the amendment to Clause 2(a)(v) of the Tenancy Agreement before the tenant and the Landlady signed the Tenancy Agreement because the amendment to the said Clause 2(a)(v) was contrary to the tenant's request to exit the lease before its expiration on 8 March 2019 and for the assignment of the remaining part of his lease to 2 assignees, in breach of paragraph 6(1) of the CEPCC.

Charge 4

Failing to render professional and conscientious service to her client, the tenant, M, when she failed to inform her tenant-client on or around 27 March 2018 that the Landlady did not approve the assignment of the remaining part of the tenant's lease of the Property to 2 assignees (the Landlady's disapproval) when she was informed of the Landlady's disapproval by the Landlady's RES on 27 March 2018, despite being aware of the tenant's intention for 2 assignees to take over the remaining part of his lease when he exited from the lease early on or around 9 April 2018 before the expiration of the lease on 8 March 2019, in breach of paragraph 6(1) of the CEPCC.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1 and Charge 2 while Charges 3 and 4 were taken into consideration for the purpose of imposing the penalty for Charge 1 and Charge 2 on the Respondent.

The Disciplinary Committee ("DC") found the Respondent liable for the disciplinary breaches in Charge 1 and Charge 2 and therefore disciplinary action was taken against her.

The DC was of the following view in relation to this case against the Respondent:

- In relation to Charge 1, the obligation in paragraph 10 of the CEPCC is meant to compel the relaying of relevant information pertaining to the property by RESs to their clients, so as to ensure greater transparency and parity of information between them. This requirement ensures that clients receive the same information as their RESs and deters RESs from filtering relevant information based on their personal preferences. The requirement that time is of the essence (in the phrase "*as soon as possible*") further highlights the urgency conveyed by paragraph 10 CEPCC to ensure that the client is kept apprised of all relevant information that estate agents or RESs may receive to make an informed choice in respect of their properties.
- In relation to Charge 2, the Respondent's conduct impacted both the tenant and occupiers and her conduct was a consistent dereliction of her professional obligations to her client.

After hearing parties, the DC imposed the following financial penalty and disciplinary order on the Respondent: -

Charge 1: A financial penalty of \$10,000 and a suspension of 10 months; and

Charge 2: A financial penalty of \$2,500 and a suspension of 4 months.

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.

The suspension orders for both charges ran concurrently. Fixed costs of \$1,000 was also imposed on the Respondent.