

S/N 16/2014 – Bringing Disrepute to the Industry by Bypassing Landlord’s Salesperson

Facts of Case

The Respondent represented the tenant in the lease of a landed property (“**the Property**”). Sometime in December 2011, the tenant had engaged the Respondent to find him a property to rent.

On 9 January 2012, the Respondent contacted the landlord’s salesperson to arrange a viewing of the Property on the same day (“**the 1st viewing**”). It was also agreed as part of the co-broking arrangement between the landlord’s salesperson and the Respondent that they would each take half of the commission from the landlord.

The 1st viewing was conducted by the landlord’s salesperson and attended by the Respondent, the tenant and two of the tenant’s friends. During the 1st viewing, the Respondent informed the landlord’s salesperson that the tenant was a Singaporean in the process of completing the sale of his house in Upper Thomson Road and was looking for a place to rent. The landlord’s salesperson communicated to the tenant that the landlord was expecting a rent of \$8,500 per month. The tenant was interested in the Property, but was concerned about some of the defects, and did not make an offer right after the 1st viewing.

Later, after the 1st viewing, but on the same day, the tenant instructed the Respondent to offer to rent the Property at \$8,000 per month with a condition that defects in the Property would be remedied by the landlord (“**the initial offer**”), and that he wanted another viewing of the Property. This was communicated by the Respondent to the landlord’s salesperson, who passed the information on to the landlord. The landlord instructed her salesperson to counter-offer a higher rent of \$8,500 to \$8,800. The landlord’s salesperson communicated this to the tenant. The tenant informed the Respondent that he would consider the counter-offer.

The Respondent contacted the landlord’s salesperson saying that the counter-offer was too high. The landlord’s salesperson told the Respondent to try and close the deal at \$8,800. The Respondent responded by saying that he was in a difficult position but would attempt to salvage the deal.

Subsequently, the tenant contacted the Respondent instructing him to make an offer for a monthly rent of \$8,500 on the condition that the landlord would pay \$1,500 to remedy the defects (“**the subsequent offer**”).

The Respondent did not convey the subsequent offer to the landlord or her salesperson. Instead the Respondent contacted his colleague from the same estate agent, Y, and told him that the landlord’s salesperson was making it difficult to close the rental transaction of the Property, and sought Y’s help to assist in closing the deal by contacting the landlord directly to relay the subsequent offer. The Respondent said

that the landlord's salesperson was engaged on a non-exclusive basis, and that there was nothing wrong with Y contacting the landlord directly, and gave Y the landlord's contact information. Y knew that the tenant had already viewed the Property once and of the tenant's initial offer which was made through the Respondent and the landlord's salesperson.

The Respondent told Y to keep him updated of the negotiations. The Respondent also told the tenant that Y would assist him in closing the lease of the Property.

On 10 January 2012, Y called the landlord and told her that he had a client interested in leasing the Property, and arranged for a viewing on the same day ("**the 2nd viewing**"). He did not tell her that it was the tenant that the Respondent had brought to the 1st viewing just the day before.

The Respondent, the tenant and Y, met up for the 2nd viewing at the Property, and Y was formally introduced to the tenant as the salesperson who would assist him with the lease of the Property. Y and the Respondent prepared the Letter of Intent ("**LOI**") which was signed by the tenant and included a clause for the landlord to pay \$1,500 to repair the defects in the Property, and Y also collected a cheque for \$8,500, being one month's deposit.

Y presented the LOI and cheque to the landlord, and informed the landlord that his client had recently sold his Upper Thomson Road property and was thus looking for a place to rent. This aroused suspicion in the landlord, who asked Y if his potential tenant was the same as the one who had viewed the Property on 9 January 2016 and had made an offer through the landlord's salesperson. Y did not reply to her query. The landlord said that she would have to consult her husband before deciding to lease the Property to the tenant.

The landlord then called her salesperson to inform him that she was going to finalise the lease with Y. The landlord's salesperson advised her to close the transaction as it met her interests.

On 11 January 2012, the landlord met up with Y to discuss the terms of the LOI. She again questioned Y regarding his client's identity, to which Y denied that his client and the tenant were the same person. The landlord then informed her salesperson that Y had brought a client who was probably the same person as the tenant who had viewed and made an offer to rent the Property through the Respondent and him.

Thereafter, the landlord's salesperson informed the Respondent that the tenant had gone for a viewing with another salesperson and that he suspected that they were being undercut. The Respondent did not respond to the landlord's salesperson.

On 12 January 2012, the landlord, Y and the tenant met up to discuss the terms of the tenancy. At the meeting, the tenant made reference to the Respondent several times. This confirmed the landlord's suspicion that Y's tenant was actually the person who

had viewed the Property on 9 January 2012 with her salesperson. The landlord also realised that Y and the Respondent had viewed the Property on 9 January 2012 with her salesperson.

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.

On 13 January 2012, the Respondent sent the tenant a draft tenancy agreement. On 11 February 2012, the Respondent and Y presented the finalised tenancy agreement to the tenant and collected a cheque from him comprising one month's deposit and advanced rent. The Respondent then brought the signed tenancy agreement and cheque to the landlord, who proceeded to sign the tenancy agreement on 12 February 2012 and accepted the cheque.

On 11 January 2012, Y did ask about his commission, and on 27 January 2012, Y clarified with the landlord that he was representing her. Y's estate agent subsequently sought payment of the commission from the landlord.

The landlord's salesperson was aggrieved that the Respondent and Y had bypassed him and that he was unable to collect commission for the work done by him in introducing the tenant to the landlord, and therefore filed a complaint with the Respondent and Y's estate agent.

When a director of the Respondent and Y's estate agent interviewed them, both the Respondent and Y claimed that they had found the tenant independently of one another, and the work they performed for the tenant was unrelated and independent of each other as they came to know the tenant separately. Their estate agent relied on their misleading statements and rejected the complaint of the landlord's salesperson on 18 January 2012. Their estate agent also relied on the same misleading statements to reply to the CEA when queried about their undercutting of the landlord's salesperson.

It was only on 10 May 2012, after CEA investigations had begun did the Respondent and Y confess to their estate agent that they had lied to him and that the Respondent had sought Y's assistance to bypass the landlord's salesperson and liaise directly with the landlord.

Charges

The Respondent faced the following 2 charges:

Charge 1

For procuring Y to contact the landlord directly in order to conclude the lease of the Property without having to deal with the landlord's salesperson, even though he had previously entered into a co-broking agreement with the landlord's salesperson, where his client, the tenant, had viewed and made an offer to lease the Property through him and the landlord's salesperson, in contravention of paragraph 7(1) of the Code of Ethics and Professional Client Care.

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Charge 2

For misleading a director of his estate agent when interviewed on whether he had procured the assistance of Y to conclude the lease of the Property on behalf of the tenant, without dealing with the landlord's salesperson, through whom he had arranged a viewing and made an offer to lease the Property, that he and Y each had come to know of the tenant independently and that his work and Y's effort in trying to assist the tenant to lease the Property was unrelated, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

Outcome

The Respondent pleaded guilty to both Charges 1 and 2 and the Disciplinary Committee imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$2,000 and a suspension of 4 months.

Charge 2: A financial penalty of \$1,000 and a suspension of 2 months.

The suspension orders were ordered to run concurrently. Fixed costs of \$1,000 was imposed on the Respondent.