

S/N 17/2014 – Bringing Disrepute to the Industry by Bypassing Landlord’s Salesperson

Facts of Case

On 10 January 2012, the Respondent received a call from his friend X, a salesperson from the same estate agent as him, regarding the lease of a landed property (“**the Property**”).

The Respondent was told by X that the landlord’s salesperson was making it difficult to close the rental transaction of the Property. X informed the Respondent that he had viewed the Property with the tenant and the landlord’s salesperson on 9 January 2012 (“**the 1st viewing**”), and that the tenant had made an initial offer to rent the Property at \$8,000 per month (“**the initial offer**”). The Respondent also learned from X that the tenant was prepared to offer \$8,500 if the landlord would pay for the repairs to some of the defects in the Property. X then sought the Respondent’s help to close the deal by directly contacting the landlord to make the offer, and said that the landlord’s salesperson was engaged on a non-exclusive basis, so there was nothing wrong with the Respondent directly contacting the landlord. X then gave the Respondent the landlord’s contact information.

X told the Respondent to keep him updated of the negotiations. The tenant was informed by X that the Respondent would assist him in closing the lease of the Property.

On 10 January 2012, the Respondent called the landlord and told her that he had a client who was 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 same tenant that X brought to the 1st viewing just the day before.

The Respondent, the tenant and X, met up for the 2nd viewing at the Property, and the Respondent was formally introduced to the tenant as the salesperson who would assist him with the leasing of the Property. X 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 the Respondent also collected a cheque for \$8,500, being one month’s deposit.

The Respondent 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 the Respondent 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. The Respondent did not answer her. 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 of the Property with the Respondent. The landlord's salesperson advised her to close the transaction as it met her interests.

On 11 January 2012, the landlord met up with the Respondent to discuss the terms of the LOI. She again questioned him regarding his client's identity, to which the Respondent denied that his client and the tenant were the same person. The landlord then informed her salesperson that the Respondent 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 X and him.

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

On 12 January 2012, the landlord, the Respondent and the tenant met up to discuss the terms of the tenancy. At the meeting, the tenant made reference to X several times. This confirmed the landlord's suspicion that the Respondent's client was actually the person who had viewed the Property on 9 January 2012 with her salesperson and X. The landlord also realised that X and the Respondent had worked together to bypass her salesperson.

On 13 January 2012, X sent the tenant a draft tenancy agreement, and on 11 February 2012, the Respondent and X presented the finalised tenancy agreement to the tenant and collected a cheque from him comprising one month's deposit and advanced rent. X 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, the Respondent did ask about his commission, and on 27 January 2012, the Respondent clarified with the landlord that he was representing her. The Respondent's estate agent subsequently sought payment of the commission from the landlord.

The landlord's salesperson was aggrieved that the Respondent and X 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 X's estate agent.

When a director of the Respondent and X's estate agent interviewed them, both the Respondent and X 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 X confess to their estate agent that they had lied to him and that X had sought the Respondent's assistance to bypass the landlord's salesperson and liaise directly with the landlord.

Charges

The Respondent faced the following 3 charges:

Charge 1

For bypassing the landlord's salesperson despite knowing that the tenant had previously viewed and made an offer through X and the landlord's salesperson, in contravention of paragraph 7(1) of the Code of Ethics and Professional Client Care.

Charge 2

For misleading the landlord that his client was not the same person who had previously viewed the Property and made an offer through X and her salesperson in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

Charge 3

For misleading a director of his estate agent who was looking into the matter, that he had come to know of the tenant independently of X and that the work that he and X did for the tenant 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 Charges 1, 2 and 3 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 3 months.

Charge 3: 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.