

S/N 2/2016 – Bringing Disrepute to the Industry by Misrepresenting to Landlord Interest in Potential Tenant, and Collecting and Retaining Rental Money He Was Not Entitled To

Facts of Case

The Respondent represented the potential tenant in the lease of a commercial property (“**the Property**”).

Around early July 2011, the landlord of the Property had approached the Respondent to introduce a new tenant for the Property.

On 12 July 2011, the Respondent informed the landlord that he had a client that was interested in leasing the Property, but the name of the tenant was unknown as his client was still deciding on a name (being an entity that had yet to be incorporated) (“**entity X**”).

On 20 July 2011, the Respondent passed to the landlord a letter of intent (“**LOI**”) from his client intending to rent the Property at a monthly rent of \$7,800 for a two-year lease commencing 1 September 2011. The next day, the landlord wrote to acknowledge the Respondent’s client’s interest to lease the property with a few amended terms for the LOI. On 27 July 2011, such letter was returned signed by a Mr Y on behalf of entity X along with a cheque (being the security deposit).

On 3 August 2011, the Respondent assisted the landlord in recovering from the previous tenant the keys to the Property in anticipation that his client was renting the Property. However, the intended entity X was never incorporated.

From July 2011 to November 2011, the landlord reminded the Respondent to provide the details of his client, so that a lease may be prepared. On 4 November 2011, the Respondent informed the landlord that the intended entity was not incorporated, but instead another entity (“**entity Z**”) had been incorporated.

The landlord then sent an unsigned tenancy agreement to the Respondent, asking him to obtain the signature of entity Z on the tenancy agreement, as well as 3 months’ rent for the period between September 2011 and November 2011. There was no response from the Respondent or entity Z.

On 22 November 2011, the landlord sent a final reminder to entity Z and the Respondent notifying its intent to forfeit the security deposit and to market the Property to other parties if the tenancy agreement was not signed and the owed rent was not paid by 29 November 2011. Once more, there was no response from the Respondent or entity Z.

Unbeknownst to the landlord, the Respondent had partitioned the Property into 3 parts and sublet the subparts to 3 subtenants:

- (a) Tenant U for 1 year starting 8 October 2011 at a monthly rent of \$1,200, eventually collecting 1 months' security deposit and rent before being discovered by the landlord
- (b) Tenant V for 2 years starting 13 November 2011 at a monthly rent of \$2,000, eventually collecting 2 months' security deposit and rent before being discovered by the landlord
- (c) Tenant W for 1 year starting 1 January 2012 at a monthly rent of \$1,350, eventually collecting 1 months' security deposit and rent before being discovered by the landlord

On 13 June 2012, an employee of the landlord brought a prospective tenant to view the Property and discovered that the Property was occupied when it should have been vacant. Upon conducting a business profile check, they discovered that the Respondent had an interest in entity Z.

CEA investigations revealed that the Respondent had collected the sums stated above in respect of Tenants U, V and W and kept the money for himself. None of the money was passed to the landlord.

Charges

The Respondent faced the following 5 charges:

Charge 1

For bringing discredit or disrepute to the estate agency industry by misrepresenting to the landlord, in writing or at all, his interest in the potential tenant, for the lease of the Property, by referring to the potential tenant (entity X) as his "client", when in fact he was the intended partner of the potential tenant, in contravention of paragraph 7(1) of the Code of Ethics and Professional Client Care.

Charge 2

For failing to procure the signature of the potential tenant for the tenancy agreement in respect of the rental of the Property, in contravention of paragraph 9(2)(a) of the Code of Ethics and Professional Client Care.

Charges 3, 4, & 5

For bringing discredit or disrepute to the estate agency industry by collecting and retaining the security deposit and rent from three purported subtenants:

- (a) Tenant U: 1 months' security deposit and rent (Charge 3);
- (b) Tenant V: 2 months' security deposit and rent (Charge 4); and
- (c) Tenant W: 1 months' security deposit and rent (Charge 5),

when he was not entitled to do so (as no lease was formed between the potential landlord and tenant), in contravention of paragraph 7(1) of the Code of Ethics and Professional Client Care.

Outcome

Following a trial, the Disciplinary Committee found that the Respondent was guilty of all 5 charges, and imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$3,500 and a suspension of 6 months.

Charge 2: A financial penalty of \$4,000 and a suspension of 3 months.

Charges 3, 4 & 5: A financial penalty of \$6,000 and a suspension of 1 month for each of the 3 charges.

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