

S/N 15/2021 – Bypassing Co-Broke Salesperson and Misrepresenting as Buyers’ Salesperson

Facts of Case

Salesperson X was engaged by the sellers of a Housing and Development Board (“HDB”) flat (the “Flat”) to market the Flat for sale on an exclusive basis. The sellers signed an exclusive estate agency agreement with Salesperson X’s estate agent, for the period 1 March 2020 to 29 May 2020. The expected sale price was \$ 540,000, and the sellers agreed to pay 2% commission for a successful sale.

Around March 2020, the Respondent learnt that the Flat was available for sale through a listing that belonged to Salesperson X. The Respondent contacted Salesperson X and asked to co-broke the Flat with Salesperson X. The Respondent informed Salesperson X that he had suitable buyers with approved HDB loan eligibility. A viewing of the Flat was arranged; Salesperson X was not present at the viewing, but arranged for the tenant of the Flat to facilitate the viewing.

On or around 21 March 2020, the Respondent informed Salesperson X that he had another potential buyer who was keen to view the Flat. Salesperson X arranged another viewing of the Flat on 22 March 2020 for the Respondent and the potential buyers (the “Buyers”). Salesperson X was not present at the viewing. After the viewing, Salesperson X asked the Respondent if there was any offer from the Buyers, to which the Respondent replied that he would try to push for an offer.

On or around 6 April 2020, the Buyers made an offer to purchase the Flat at \$ 525,000. Instead of conveying this offer to Salesperson X, the Respondent visited the Flat and met the tenant instead. The Respondent informed the tenant that he had an interested purchaser and requested the tenant to convey the message to the sellers. The Respondent provided a phone number for the sellers to contact him, which was a different phone number from what he had used to contact Salesperson X. The Respondent did not inform Salesperson X about his visit to the Flat or his communications with the tenant.

The sellers contacted the Respondent, who informed them about the Buyers’ offer. However, the sellers felt the price was too low and did not accept the offer. Between 9 April 2020 and 11 April 2020, the Respondent continued to contact the sellers and communicated with them regarding the sale of the Flat, without Salesperson X’s knowledge or consent. The Respondent proposed for the sellers to pay him commission for the sale instead, and provided a commission structure for their consideration, which the sellers agreed to.

To induce a higher offer from the Buyers, the Respondent informed them that he would waive any payment of commission. On or around 12 April 2020, the Buyers increased their offer to \$ 530,000, which the Respondent conveyed to the sellers. To further induce an acceptance of this offer, the Respondent offered to take a lower commission of 1.5% (instead of 2%), and to absorb the Goods and Services Tax payable. The Respondent and the sellers agreed for the commission to be \$7,490, and the sellers also agreed to pay the Respondent an additional \$80 as processing fee for the submission of transaction documents to the HDB.

On or around 12 April 2020, the Respondent collected the option fee from the Buyers and met the sellers to hand them the same. The Respondent also explained the resale procedure to the sellers before they signed an estate agency agreement with his estate agent. The Buyers exercised the Option

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to Purchase (“**OTP**”) on 18 April 2020. The Respondent did not inform Salesperson X about the sale of the Flat that he had brokered directly with the sellers and the Buyers.

Unaware of the sale, Salesperson X contacted the sellers (after the Buyers’ exercise of the OTP) to inform them that he had a potential buyer who wanted to view the Flat. Salesperson X then found out from the sellers that the Flat had already been sold through the Respondent. Thereafter, Salesperson X intentionally sent the Respondent a WhatsApp message to follow-up on the Buyers’ viewing of the Flat and asked the Respondent if the Buyers had any offer. The Respondent did not respond to Salesperson X’s query.

On or around 27 April 2020, the Respondent helped both the Buyers and the sellers to submit their resale applications to HDB for the sale of the Flat. In the Buyers’ application, the Respondent represented himself as the Buyers’ salesperson, even though the Respondent represented the sellers in the resale transaction.

Charges

The Respondent faced the following 2 charges:

Charge 1 (Proceeded)

For bringing discredit or disrepute to the estate agency trade or industry, by bypassing Salesperson X, the initial salesperson for the sellers of the Flat, and closing the sale of the Flat directly with the sellers and representing the sellers in the sale instead, in breach of paragraph 7(1) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2

For failing to act fairly and in a reasonable manner towards the HDB, by misrepresenting himself as the salesperson acting for the Buyers in their application to HDB to purchase a resale HDB flat, when he was in fact acting for the sellers of the Flat, in breach of paragraph 6(3) read with 6(4)(c) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to 1 charge (i.e. Charge 1), while the remaining charge (i.e. Charge 2) was taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) noted that there were a number of aggravating factors. The Respondent had bypassed the initial salesperson for the sellers (i.e. Salesperson X), whom he knew was acting for the sellers, notwithstanding that the sellers had an exclusive estate agency agreement with Salesperson X’s estate agent. The Respondent is an experienced salesperson and dealt mainly in the sales of properties – he should have acted with due diligence by ascertaining (or attempting to ascertain), at the very least, if there was an exclusive estate agency agreement in place, even if he had any unhappiness with Salesperson X’s handling of the transaction for the sellers.

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The DC also noted that the potential loss caused by the Respondent to Salesperson X was \$ 10,800, being the commission that Salesperson X was entitled to under the exclusive estate agency agreement. The charge to be taken into consideration (i.e. Charge 2) also involved misrepresentation to a statutory body, which is serious in nature. The DC was of the view that there was a pattern of deception on the Respondent's part such that his misconduct was calculated and deliberate, and he had even sought to induce the sellers to complete the transaction with him (instead of Salesperson Y) by offering to take a lower commission. There was a need to send a strong message to salespersons to refrain from unethical and undercutting practices when undertaking transactions.

The Respondent had also disregarded and committed two offences under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 in facilitating the transaction for the sellers, which he had accepted composition offers for – these warranted an uplift of the sentence.

The DC also considered that the Respondent had no previous disciplinary record, had pleaded guilty at the earliest opportunity, and was cooperative in the investigation process.

Accordingly, the DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 1: A financial penalty of \$ 5,000 and a suspension of 6 months.

Fixed costs of \$ 2,000 was also imposed on the Respondent.