

**Note:** This case was referred to a CEA Disciplinary Committee (DC) after 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.

## **S/N 11/2023 – Doing an Act which May Bring Disrepute to the Estate Agency Industry by Dishonestly Creating and Entering into Co-Brokerage Agreement Without Representing any Party in the Transaction**

**Note:** This case is related to S/N 12/2023 and involved the same lease transaction; the Respondent in S/N 12/2023 (i.e. Salesperson A) is the Respondent's husband and manager.

### **Facts of Case**

Sometime around October 2020, Salesperson A was engaged by a Tenant to search for a residential property for lease. Salesperson A was the Respondent's husband and manager. The Respondent saw an advertisement for the lease of a private property (the "**Property**") and informed Salesperson A about it. The advertisement was posted by Salesperson X who was representing the Landlord.

Salesperson A contacted Salesperson X to arrange for the viewing of the Property with the Tenant. The viewing was conducted and after some negotiations, the Tenant agreed to lease the Property at a monthly rent of \$3,500 for a period of 2 years. Salesperson A also assisted the Tenant in negotiating for certain requests and to coordinate the logistics of handing over the Property.

At all material times, the Respondent did not meet with or speak to the Tenant, the landlord or Salesperson X. Save for assisting to prepare a Letter of Intent at Salesperson A's instructions, the Respondent was not involved in the viewing of the Property, the negotiations regarding the details of the lease or the handover of the Property.

On or around the handover of the Property, at Salesperson A's request and instructions, the Respondent dishonestly prepared a co-brokerage agreement for the collection of a co-brokerage fee of \$1,872.50, being a share of the commission to be paid by the Landlord to Salesperson X for the lease transaction. In accordance with Salesperson A's instructions, the Respondent inserted details such as her name, CEA registration number and contact number into the co-brokerage agreement. The Respondent also signed the co-brokerage agreement and gave a copy to Salesperson A so that he could procure Salesperson X's signature and acceptance of the co-brokerage agreement.

The Respondent had prepared the co-brokerage agreement even though she did not represent any of the parties in the lease transaction and was therefore not entitled to the co-brokerage fee. The Respondent knew that by signing on the co-brokerage agreement, she would receive the share of the co-brokerage fee from the commission Salesperson X received from the Landlord, instead of Salesperson A.

Salesperson A handed Salesperson X the co-brokerage agreement for her endorsement. Salesperson X signed the co-brokerage agreement and returned it to Salesperson A without noticing that it was the Respondent's name that was stated in the co-brokerage agreement instead of Salesperson A's name.

Thereafter, the Respondent dishonestly submitted the signed co-brokerage agreement to her estate agent for processing to receive the co-brokerage fee from Salesperson X's estate agent, even though she knew she was not entitled to the co-brokerage fee as she did not represent any of the parties in the lease transaction.

**Note:** This case was referred to a CEA Disciplinary Committee (DC) after 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.

In accordance with the co-brokerage agreement, Salesperson X's estate agent paid the co-brokerage fee of \$1,872.50 to the Respondent's estate agent. The Respondent eventually received \$1,575.00 as her share of the co-brokerage fee.

### **Charges**

The Respondent faced the following charge:

#### **Charge (Proceeded)**

For doing an act which may bring disrepute to the estate agency industry, by dishonestly creating and entering into a co-brokerage agreement to collect a co-brokerage fee from Salesperson X for the purported co-broking with Salesperson X, when she did not represent any of the parties in the lease transaction and was therefore not entitled to the co-brokerage fee, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge.

In sentencing, the Disciplinary Committee ("**DC**") considered that:

- (a) The Respondent's conduct to obtain a wrongful financial gain caused direct financial harm to Salesperson X who suffered a loss of her share of the commission;
- (b) The Respondent had blindly headed Salesperson A's instructions with no regard for her professional duty to act ethically, honestly, fairly and in a reasonable manner towards a fellow salesperson;
- (c) The Respondent was an experienced salesperson with more than 10 years of experience and held a leadership position within her estate agent, and her misconduct would reflect more poorly on the industry and result in more damage to its reputation and integrity; and
- (d) There was a lack of contrition by the Respondent as she had retained the commission earned without any compensation or restitution to Salesperson X.

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

**Charge:** A financial penalty of \$5,000 and a suspension of 3 months.

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