

S/N 12/2021 – Doing an Act that may bring Discredit or Disrepute to the Estate Agency Trade or Industry by Misleading the Buyer’s Salesperson on the Commission Payable

Facts of Case

The Respondent was at all material times a registered salesperson.

The Respondent was engaged by the sellers to sell their Property and started advertising the Property for sale sometime in June 2018. On 24 April 2019, the buyer’s salesperson, V, contacted the Respondent to request to view the Property. A total of 2 viewings were held for the buyer and on 2 May 2019, the buyer made an offer to purchase the Property for \$3.75 million which the sellers accepted. The Respondent then entered into an estate agency agreement with the sellers where the sellers agreed to pay a commission of 2% of the sale price of the Property (i.e. \$75,000), excluding GST.

Subsequently, when the Respondent met V to exchange the option fee for the Option to Purchase, the Respondent falsely represented to V that the sellers would only be paying a commission of 0.8% of the sale price of the Property, including GST (i.e. a total sum of \$30,000) as the sale price of the Property was lower than the sellers’ expected selling price of \$4 million. The Respondent explained that as such, they would each receive a commission of 0.4% of the sale price of the Property, including GST (i.e. \$15,000 each); essentially indicating to V that they would each receive half of the expected commission.

In reliance on the Respondent’s representation, V entered into a co-brokerage agreement with the Respondent which provided that the total co-brokerage fee payable upon completion of the sale of the Property would be a total sum of \$15,000, inclusive of GST.

Sometime in June 2019, V received a message from the buyer congratulating him on the total commission of \$80,250 payable for the sale of the Property which was to be shared between him and the Respondent. This came as a surprise to V, and he messaged the Respondent to clarify why the total commission to be paid by the sellers was 2% when the Respondent had told him that the sellers were only willing to pay a commission of 0.8% for the sale of the Property.

The Respondent then falsely represented to V that although the sellers would be paying a commission of 2% for the sale of the Property, he had to return or reimburse 1.2% of the said commission back to the sellers as part of a purported kickback or rebate arrangement which was requested by the wife of one of the sellers. This claim of the purported kickback or rebate arrangement was false and concocted by the Respondent in his attempt to evade V and to explain away the first misrepresentation he had made to V.

V accepted the explanation made by the Respondent and did not pursue the matter further. He also conveyed the Respondent's explanation to the buyer. The sale of the Property was concluded sometime in end July 2019 and the Respondent and V were paid their commissions in August 2019.

However, sometime in November 2019, the buyer decided to call one of the sellers to verify whether the Respondent's claim of a kickback or rebate arrangement in relation to the commission as true. The buyer was told that there was no such arrangement and the sellers had in fact paid the agreed commission of 2% for the sale of the Property. The buyer then informed V about this, and V tried to confront the Respondent. However, the Respondent ignored V's messages. V then sent another co-brokerage agreement to the Respondent for the balance unpaid co-brokerage fee, requesting that the Respondent sign the additional agreement and arrange for payment of the balance co-brokerage fee. However, the Respondent did not respond to V's request and did not pay the balance co-brokerage fee.

Charges

The Respondent faced the following two charges:

Charge 1

For doing an act that may bring discredit or dispute to the estate agency trade or industry in the conduct of the sale of the Property by misleading V into accepting a lower co-broke commission of 0.4% of the sale price of the Property by falsely representing to V that the sellers would only be paying a commission of 0.8% of the selling price of the Property because the final sale price of the Property was lower than the sellers' expected sale price, when the sellers had in fact agreed to pay a commission of 2% of the sale price of the Property, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

Charge 2 (Proceeded)

For doing an act that may bring discredit or dispute to the estate agency trade or industry in the conduct of the sale of the Property by misleading V into believing that the eventual commission to be paid by the sellers for the sale of the Property which was to be shared equally between the Respondent and V was only 0.8% of the sale price of the Property by falsely representing to V that while the sellers would be paying a commission of 2% for the sale of the Property, the Respondent had to return or reimburse 1.2% of the said commission back to the sellers as part of a purported kickback or rebate arrangement, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

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.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2, with Charge 1 taken into consideration for sentencing.

In sentencing, the Disciplinary Committee (“DC”) considered that:

- (a) The Respondent’s deceptive conduct was deliberate, premeditated and took place over an extended period of time;
- (b) The Respondent had no qualms in making false and defamatory allegations against the seller’s wife in a bid to deprive V of his rightful share of the commission;
- (c) The Respondent had more than 8 years of experience at the time of the incident; and
- (d) The Respondent did not seem remorseful as he tried to blame V in mitigation and took no steps to compensate V for the balance co-brokerage fee (amounting to \$25,125).

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

Charge 2: A financial penalty of \$8,000 and a suspension of 6 months.

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