

S/N 16/2020 – Failing to Co-broke with the Buyer’s Salesperson for the Sale of a Property Belonging to the Respondent’s Client

Facts of Case

In or around March 2018, the owner (“**Seller**”) of a property (the “**Property**”) engaged the Respondent to facilitate the sale of the Property. The Respondent and the Seller entered into an Exclusive Estate Agency Agreement prescribed in Form 5 of the Third Schedule of Estate Agents (Estate Agency Work) Regulations (“**Exclusive Agreement**”).

Under the prescribed terms of the Exclusive Agreement:

- a) The Exclusive Agreement takes effect on 16 March 2018 and expires 3 calendar months after the said date (“**Prescribed Validity Period**”).
- b) The Seller remains liable to pay commission to the Respondent’s Estate Agent where the Property is sold after the Prescribed Validity Period but within 3 calendar months from the expiry date (“**Prescribed Post-Expiry Period**”).

In addition to the above, the Seller permitted the Respondent to co-broke with other salespersons to secure buyers for the Property in the Exclusive Agreement.

The Exclusive Agreement also allows contracting parties to specify additional terms but provides that “additional terms cannot conflict with, vary or otherwise limit the prescribed terms of the Agreement”. Paragraph 4.3 of the Practice Guidelines on Use of Prescribed Estate Agency Agreement Forms 1-8 similarly states that any additional terms to the prescribed estate agency agreement must not conflict with, vary or otherwise limit the prescribed terms.

The Respondent appended a document with additional terms (“**Additional Agreement**”) to the Exclusive Agreement. The Additional Agreement stated the following:

- a) The Exclusive Agreement was valid for a period of 4 months (“**Extended Validity Period**”). This conflicts with the Prescribed Validity Period of 3 months.
- b) The Seller remains liable to pay commission to the Respondent’s Estate Agent where the Property is sold within 6 months of the expiry of the Extended Validity Period (“**Extended Post-Expiry Period**”). This conflicts with the Prescribed Post-Expiry Period.

On 4 April 2018, a salesperson (“**Salesperson A**”) contacted the Respondent to arrange for her clients (the “**Buyers**”) to view the Property. On 5 April 2018, the Respondent informed Salesperson A that viewings for the Property will be “KIV” and that no viewings could be arranged for the next two weeks. The Seller did not instruct the Respondent not to conduct viewings for the said period and the Respondent did not obtain the Seller’s permission to do so.

On 6 April 2018, the Respondent conducted a viewing for another prospective buyer who was not represented by a salesperson. This prospective buyer had put in a tentative offer for the Property on 5 April 2018 subject to her architect’s advice but

withdrew her offer after she viewed the Property with her architect on 6 April 2018. On 7 April 2018, the Respondent conducted 3 more viewings for other prospective buyers who were also not represented by a salesperson. The viewings arranged on 6 April 2018 and 7 April 2018 contradicted the Respondent's representation to Salesperson A on 5 April 2018 that no viewings of the Property would be available for the next two weeks.

On 9 April 2018, the Buyers contacted the Respondent directly through the PropertyGuru portal. The Buyers informed the Respondent that their salesperson, Salesperson A, had previously contacted the Respondent to arrange for a viewing of the Property. The Respondent told the Buyers that they could view the Property if they came without Salesperson A.

Later that day, the Buyers visited the Property without Salesperson A. At the viewing, the Respondent told the Buyers not to inform Salesperson A about the viewing and said that she did not wish to deal with other salespersons in relation to the Property.

After the viewing, the Buyers informed Salesperson A that they had viewed the Property. Salesperson A followed up with a text message to the Respondent in the same evening, informing the Respondent that she represented the Buyers and expressing her interest to work with the Respondent to close the deal. The Respondent replied Salesperson A that since the Buyers were "direct buyers", she did not need to liaise with Salesperson A. The Respondent also told Salesperson A not to call her again or she would file a complaint with CEA or Salesperson A's estate agent.

On 10 April 2018, the Buyers' offer of \$2.85 million was accepted by the Seller. On the same day, the Buyers informed Salesperson A that they were proceeding with the purchase of the Property. Given the Respondent's hostility and refusal to co-broke, Salesperson A decided to cease interacting with the Respondent so as not to jeopardise the Buyers' purchase of the Property. Following the completion of the transaction, the Respondent received \$57,000 in commission, being 2% of the sale price of the Property. Had the Respondent co-broke and split the commission with Salesperson A equally, Salesperson A would have earned \$28,500, or 50% of \$57,000 in co-broke commission.

On 18 June 2018, a CEA inspector ("**CEA Inspector**") sent an email to the Respondent to attend an interview to assist with investigations into Salesperson A's complaint against the Respondent. After receiving the email, the Respondent requested to meet the Seller urgently and asked the Seller to sign a revised Exclusive Agreement ("**Revised Agreement**"). Upon noticing that the Revised Agreement reflected that the Respondent was not allowed to co-broke with another salesperson to secure buyers for the Property, the Seller reminded the Respondent that she had permitted the Respondent to co-broke. The Respondent explained that she had made the amendment as she closed the transaction without co-broking with another salesperson. Investigations revealed that the Respondent had intended to provide the Revised Agreement to the CEA Inspector to give the false impression that she was engaged by the Seller on a no co-broke basis, in order to refute Salesperson A's

complaint. The Seller eventually signed the Revised Agreement as she did not wish to have any disputes with the Respondent.

Charges

The Respondent faced the following charges:

Charge 1 (Proceeded)

Failing and/or refusing to co-broke with Salesperson A who represented the Buyers of the Property in a co-operative manner, in breach of paragraph 3.1.2 of CEA's Practice Guidelines on Conduct between Salespersons and Paragraph 4(1) read with 4(2)(a) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2

For failing to comply with paragraph 4.3 of the Practice Guidelines on Use of Prescribed Estate Agency Agreement Forms 1-8 and paragraph 1.8.2(c) of the Professional Service Manual, and breaching paragraph 4(1) read with 4(2)(a) of the Code, by:

- a) Including a term in the Additional Agreement for an Extended Validity Period of 4 months, which went beyond the Prescribed Validity Period of 3 months.
- b) Including a term in the Additional Agreement for an Extended Post-Expiry Period of 6 months, which went beyond the Prescribed Post-Expiry Period of 3 months.

Charge 3

For doing an act that may bring discredit or disrepute to the estate agency trade or industry by varying or seeking to vary the Exclusive Agreement entered into with the Seller in an attempt to make it seem as if the Respondent was engaged on a no co-broke basis for the sale of the Property, after the Respondent was informed by the CEA Inspector to assist in investigations into a complaint filed by Salesperson A, in breach of paragraph 7(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, and Charges 2 and 3 were taken into consideration for sentencing.

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

Charge 1: A financial penalty of \$12,000 and suspension of 6 months.

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