

S/N 22/2020 – Failing to Declare Conflict of Interest to Client in Writing, Doing an Act that May Bring Discredit or Disrepute to the Estate Agency Trade or Industry by Misleading Client and Failing to Give Copy of Document to Client Immediately or As Soon As Possible after Signing

Note: This case is related to S/N 21/2020 and involved the same transaction; the Respondent in S/N 21/2020 (i.e. Salesperson A) had referred the buyer of the Property (Mr J) to the Respondent.

Facts of Case

The Respondent was at all material times a registered salesperson.

On or around 6 July 2018, Mr J and his wife saw an advertisement for the sale of a residential property in the Tiong Bahru estate listed by Salesperson A.

Mr J's wife contacted Salesperson A to arrange for a viewing of the advertised property. Salesperson A informed her that his partner, the Respondent, would attend the viewing on his behalf.

On or around 7 July 2018, Mr J and his wife met the Respondent for the first time during the viewing of the unit. Salesperson A did not attend the viewing.

Subsequently, on 14 July 2018, the Respondent arranged viewings of several other properties in or around the Tiong Bahru estate for Mr J and his wife. During this viewing session, the Respondent introduced them to another salesperson, Salesperson T, as the Respondent's manager.

On 20 July 2018, the Respondent and Salesperson T met with Mr J and his wife for them to view more properties in the Tiong Bahru estate. One of the properties viewed by Mr J and his wife during the period between 14 July 2018 and 20 July 2018 was the unit that they eventually purchased (the "Property"). At that time, the sellers' asking price for the Property was \$1.05 million. After the viewings on 20 July 2018, Mr J and his wife proceeded to a coffeeshop with the Respondent and Salesperson T for a discussion.

During this discussion on 20 July 2018, Mr J and his wife indicated to the Respondent and Salesperson T that they liked the Property. Salesperson T urged Mr J to make an offer of \$950,000 and assured Mr J and his wife that he would negotiate with the sellers' salesperson on the split of commission, and would be willing to forego a commission if the sellers were willing to accept Mr J's offer of \$950,000.

The Respondent then took out a blank commission agreement and a blank Offer to Purchase form ("Offer") for Mr J to sign. The Respondent procured Mr J's signature on the Offer that contained a formal offer of \$950,000 to purchase the Property, which Mr J agreed to. Mr J also agreed to signing the commission agreement as he did not mind eventually paying a nominal sum to the Respondent and Salesperson T as a token of appreciation. However, there was no express agreement by Mr J for a specific sum to be indicated in the blank commission agreement at this juncture. The Respondent collected the signed commission agreement, Offer and a cheque for the option fee of \$9,500.

Throughout their meetings during the various viewings, the Respondent did not inform Mr J or his wife that Mr J would have to pay a commission to the Respondent on top of the purchase price.

Later that day on 20 July 2018, the Respondent and Salesperson T called the seller's salesperson, Salesperson C, to inform him that Mr J had made an offer of \$950,000 for the Property. Salesperson T proposed to agree on a co-broking split of commission, being 2% of the Property's purchase price, to be split evenly between the sellers' estate agent and Mr J's estate agent (i.e. 1% of the purchase price each). Salesperson C then convinced the seller of the Property to consent to an increase in commission payable, to 2% of the Property's purchase price.

Also on the same day, Salesperson C then met with the Respondent and Salesperson T to collect the option fee. During this meeting, Salesperson C was shown the signed Offer and a co-broking agreement which bore the letterhead of the Respondent's estate agent. The co-broking agreement stated that the gross commission to be collected from the sellers was \$20,330 (2% of the expected purchase price of \$950,000 with 7% GST), of which half (\$10,165) was to be paid to the Respondent's estate agent whilst the balance was to be paid to Salesperson C's estate agent. Of the \$10,165, the Respondent would be entitled to the sum of \$8,550 as her share of the commission.

The co-broking agreement was then signed by Salesperson C and the Respondent. Salesperson C indicated that he represented the "Vendor's Estate Agent", whereas the Respondent indicated that she represented the "Purchaser's Estate Agent".

On 2 August 2018, the sellers issued an option to purchase ("OTP") to Mr J at the offered purchase price of \$950,000.

On 15 August 2018, the Respondent met with Mr J before he exercised the OTP for the Property. During this meeting, the Respondent made her first request for payment of commission for the sum of \$9,500 and told Mr J that he could save on GST if he paid the commission to her directly. Mr J informed her that he would think about it.

Between 15 August 2018 and 28 September 2018, the Respondent continued to offer to collect a lower commission of \$9,500 (instead of \$10,165) from Mr J if he made payment to a personal bank account instead of the Respondent's estate agent, and if Mr J was willing to accept a personal receipt from the Respondent instead of an official receipt from her estate agent:

- (a) On 26 September 2018, the Respondent sent Mr J a WhatsApp message regarding payment of commission, and repeated to Mr J that he could save on GST by making payment directly to a bank account under Salesperson T's name.
- (b) On 28 September 2018, the Respondent sent Mr J another WhatsApp message requesting for payment of commission, this time to the Respondent's personal bank account. The Respondent also stated that there would be no company receipt from her estate agent, only a personal receipt from herself. The Respondent also offered to return the commission agreement to Mr J if payment of commission was made in the manner requested by the Respondent.

When Mr J informed his wife about the Respondent's requests for payment, Mr J's wife was upset as they had not expected to pay the Respondent a fee equal to 1% of the Property's purchase price. Mr J queried the Respondent, highlighting that in transactions involving private properties, a buyer's salesperson would typically share a co-broking commission with the seller's salesperson to be paid by the seller. The Respondent did not respond to Mr J's query.

When Mr J's wife questioned the Respondent on why Mr J was being asked to pay her a commission, the Respondent informed Mr J's wife that Mr J had already signed a commission agreement. The Respondent then sent Mr J's wife a copy of the signed commission agreement which now stated that Mr J was to pay a commission fee of \$10,165, and which was now signed by Salesperson A as a witness. Both Mr J and his wife were shocked to see these additions to the commission agreement.

On 1 October 2018, the Respondent and Salesperson T met with Mr J and his wife to negotiate the commission payable at the Respondent's request. When Mr J and his wife questioned why the Respondent had asked Mr J to pay a commission amounting to 1% of the Property's purchase price, the Respondent and Salesperson T informed them that the sellers were not paying them a commission. Hence, the Respondent was looking to Mr J for payment of her commission fee. The Respondent and Salesperson T represented that if Mr J did not make payment, they would have carried out work for the transaction for free as they had forfeited any co-broking commission from the sellers' estate agent.

Mr J and his wife made clear to the Respondent and Salesperson T that they were unhappy about the situation and would not have proceeded with the transaction had they known that they would have to pay \$10,165 as commission. The meeting ended as parties could not agree on the amount of commission, if any, to be paid by Mr J.

Between 4 and 8 October 2018, Mr J offered to pay the Respondent and Salesperson T a token sum of \$1,500 to bring the matter to a close, but the Respondent did not reply.

On 9 October 2018, Mr J received an invoice from the Respondent's estate agent requesting for payment of \$10,165 for "services rendered in connection with purchase of the Property". Mr J did not make any payment of this invoice.

On 17 October 2018, Salesperson C's estate agent received a tax invoice from the Respondent's estate agent for the Respondent's commission amounting to \$10,165. The tax invoice listed the Respondent as the salesperson, the Property, and "BUYER: MR J".

On 22 October 2018, Salesperson C's estate agent made the payment to the Respondent's estate agent. On 25 October 2018, the Respondent received \$8,550 as her share of the commission from her estate agent.

The Respondent had conducted estate agency work for Mr J as Mr J's salesperson when she introduced Mr J to the sellers of the Property (represented by Salesperson C), and was engaged in negotiations for the purchase of the Property on behalf of Mr J, including negotiations regarding the purchase price of the Property.

A conflict or potential conflict of interest arose when the Respondent entered into the co-broking agreement with Salesperson C, for the Respondent to receive financial remuneration from the sellers' estate agent, knowing that such financial remuneration was to be paid from the commission received from the sellers of the Property, whilst the Respondent was actively involved in the negotiation of the purchase price of the Property on Mr J's behalf.

However, the Respondent did not at any time declare the co-broking agreement in writing to Mr J that a conflict of interest had arisen by virtue of her entitlement to a half share of Salesperson C's commission in the event of a successful transaction, and instead continued to act on behalf of Mr J.

Charges

The Respondent faced the following charges:

Charge 1 (Proceeded)

For continuing to act on behalf of her client, Mr J, in respect of his purchase of the Property where to do so would place her interests in conflict or potential conflict with those of Mr J, and failing to declare in writing to Mr J her interest in having agreed for her estate agent to receive a co-broking commission of \$10,165 from the sellers' estate agent, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code of Ethics and Professional Client Care (the "Code").

Charge 2

Doing an act that may bring discredit or disrepute to the estate agency trade or industry when she misled her client, Mr J, that she would not be receiving any co-broke commission from the sellers' estate agents in respect of Mr J's purchase of the Property, when in fact this was untrue, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code.

Charge 3

Failing to ensure that a copy of the commission agreement signed by her client, Mr J, on 20 July 2018, was given to Mr J immediately or as soon as possible after its signing, in contravention of paragraph 8(4) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, while the remaining 2 charges (i.e. Charges 2 and 3) were taken into consideration for purposes of sentencing.

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

Charge 2: A financial penalty of \$5,000 and a suspension of 14 months.

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

In sentencing, the DC observed that the Respondent and Salesperson A had taken various steps in an attempt to mislead Mr J to potentially part with a sum of \$10,165 in commission that he had never agreed to pay. The DC also noted that the Respondent had attempted to shift blame in the matter to Salesperson A.

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.

The DC also took into consideration mitigating factors such as the Respondent's plea of guilt and lack of antecedents.