

S/N 7/2015 – Failing to Declare Potential Conflict of Interest to Client Regarding Co-broke Commission and Misrepresenting that Payment was for Other Salesperson

Facts of Case

The Respondent represented the buyer in the purchase of a private condominium (“**the Property**”). In April 2011, the buyer had engaged the Respondent to find her a property to purchase.

On 16 May 2011, the Respondent contacted the seller’s salesperson for the purchase of the Property after seeing an advertisement for the Property. The Respondent asked the seller’s salesperson if he was willing to share the commission for the transaction, and the seller’s salesperson agreed. A viewing was conducted on 17 May 2011, and the buyer subsequently made an offer to purchase the Property at \$1.25 million.

On 18 May 2011, the Respondent had requested \$3,000 from the buyer ostensibly for the purpose of passing it to the seller’s salesperson so that he would expedite the purchase, which the buyer agreed to do so and passed the cheque for such amount to the Respondent. The seller’s salesperson was not aware of such a request and did not receive the \$3,000. The Respondent and the buyer had also entered into an Estate Agency Agreement dated 18 May 2011 which provided, amongst other things, that the buyer was to pay the Respondent’s estate agent a commission of \$3,000.

On 19 May 2011, an Offer to Purchase and cheque in the sum of \$12,500 issued by the buyer was passed to the seller’s salesperson by the Respondent. On 21 May 2011, the seller’s salesperson and the Respondent met up, and the Respondent was informed that the seller was willing to sell the Property to the buyer. The seller’s salesperson and the Respondent then signed a co-broke commission agreement, wherein the Respondent would receive a co-broke commission of 0.5% of the sale price (being \$6,250). The seller’s salesperson also passed the Respondent the Option to Purchase (“**OTP**”).

The Respondent passed the OTP to the buyer to sign. The Respondent did not inform the buyer, in writing or otherwise, that she was collecting co-broke commission from the seller’s salesperson. The Respondent then informed the buyer that the seller’s salesperson had told her that she can keep the \$3,000 that was purportedly meant for the seller’s salesperson. This was not the case as the seller’s salesperson was unaware of any such payment that was allegedly meant for him from the buyer. The Respondent subsequently issued a receipt on 31 May 2011 which stated that the sum of \$3,000 was in payment of commission for the Property.

Charges

The Respondent faced the following 2 charges:

Charge 1

For failing to disclose to her client, the purchaser, who had agreed to pay her \$3,000 commission, of a potential conflict of interest in that she was also collecting co-broke commission of 0.5% of the sale price of the Property from the seller's salesperson, and further failing to withdraw from acting for her client in view of the fact that she had not obtained her client's informed consent to the receipt of the said co-broke commission, in contravention of paragraph 13(1) read with paragraphs 13(2)(a) and 13(2)(c) of the Code of Ethics and Professional Client Care.

Charge 2

For failing to render professional service to her client by (i) misrepresenting to her client that the \$3,000 was to be paid to the seller's salesperson to expedite the purchase of the property and (ii) further misrepresenting to her client that the seller's salesperson had allowed her to keep the \$3,000, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care.

Outcome

Following a trial, the Disciplinary Committee found that the Respondent was guilty of both Charges 1 and 2, and imposed the following financial penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$3,000 and a suspension of 3 months.

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

The suspensions were ordered to run concurrently. Fixed costs of \$1,000 was imposed on the Respondent.