

S/N 16/2023 – Failing to include Condition in Purchaser Particular’s Form, Failing to Perform Customer Due Diligence Measures, Offering Cash Benefit and Failing to Convey Information to Client

Facts of Case

In or around June 2020, the Respondent was contacted by X about purchasing a property for investment purposes. X informed the Respondent of the following:

- (a) The intended purchaser (the “**Buyer**”) was 22 years old;
- (b) X intended to invest \$450,000 to purchase the property; and
- (c) The property would be under the Buyer’s name as X already owned a property.

In or around late July 2020, while viewing prospective properties, X and the Buyer expressed interest in a private development (the “**Property**”). X expressed concern that the Buyer might have difficulty obtaining a bank loan to finance the purchase as she had only started working recently.

In response, the Respondent informed X that she could reserve the Property by completing the Purchaser Particular’s Form (“**PP Form**”) and paying a booking fee of 5% of the purchase price (“**Booking Fee**”). To address their concerns about obtaining a bank loan, the Respondent assured X that she would include conditions in the PP Form, including one that provided for the full refund of the Booking Fee without any penalty or deduction if the Buyer was unable to secure a bank loan (the “**Condition**”).

The Respondent also offered X a cash benefit of \$7,500 should the Buyer proceed with the purchase.

Relying on the Respondent’s assurance that she would put up the Condition to the developer, X and the Buyer informed the Respondent of their intention to proceed with the property purchase. Accordingly, the Respondent sent the PP Form to X for the Buyer’s endorsement and informed X that the Condition had been put up to the developer. Based on this assurance, the Buyer signed the PP Form on 30 July 2020 and X issued a cheque for the Booking Fee on 31 July 2020.

The Respondent’s representation was in fact false as she did not put up the Condition to the developer. In fact, the PP Form contained a term contrary to the Condition, stipulating that the developer would forfeit 25% of the Booking Fee if the purchaser did not proceed with the Option to Purchase (“**OTP**”).

On 31 July 2020, the Respondent was informed by the developer’s representative, P, that the Buyer could reserve the Property for one week in exchange for a cheque for the Booking Fee. P advised that the Buyer should use the one-week period to obtain in-principle approval for a bank loan before signing the OTP. Crucially, P cautioned that once the Buyer signed the Product Development Information (“**PDI**”) documents issued, the developer would not be able to make a full refund of the Booking Fee. However, the Respondent did not convey this information to X or the Buyer. Instead, the Respondent proceeded

to arrange for the Buyer to sign the PDI documents on 31 July 2020. The developer thereafter issued the OTP and processed the cheque payment for the Booking Fee.

On or around August 2020, the Respondent submitted the Customer Due Diligence (“**CDD**”) checklist to her estate agent. In the CDD checklist, the Respondent indicated that she did not suspect that the Buyer was not the beneficial owner of the property transaction, which was false, as she had reasonable grounds to suspect that the Buyer was possibly not the beneficial owner of the Property given her knowledge about the transaction.

The Buyer was eventually unable to obtain a suitable loan facility to finance the purchase of the Property. On or around April 2021, X informed the Respondent that the Buyer would not be proceeding with the purchase and asked the Respondent to arrange for the refund of the Booking Fee. The Respondent wrote to the developer to request for a refund, but the developer was not agreeable to a full refund and only refunded 75% of the Booking Fee. Accordingly, the Buyer suffered a financial loss of \$13,475.

On the other hand, the Respondent received \$9,067.29 in commission from the transaction.

Charges

The Respondent faced the following 4 charges:

Charge 1 (Proceeded)

Failing to conduct her business and work with due diligence and care by failing to include the Condition in the PP Form, in contravention of paragraph 5(1) of the Code of Ethics and Professional Client Care (the “**Code**”).

Charge 2

Bringing disrepute to the estate agency trade or industry by offering a cash benefit of \$7,500 to X to induce the engagement of her services, in contravention of paragraph 7(1) of the Code.

Charge 3

Failing to render professional and conscientious service to the Buyer by failing to convey information received from P on 31 July 2020 that the developer would not provide a full refund of the Booking Fee once the Buyer had signed the PDI documents, in contravention of paragraph 6(1) read with paragraph 6(2)(d) of the Code.

Charge 4 (Proceeded)

Failing to conduct her business and work with due diligence and care by failing to indicate that the Buyer was possibly not the beneficial owner of the Property in the CDD checklist even though she had reasonable grounds to suspect so, in contravention of paragraph 5(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to 2 charges (i.e. Charges 1 and 4), 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 penalties and disciplinary orders on the Respondent:

Charge 1: A financial penalty of \$9,000 and a suspension of 6 months; and

Charge 4: A financial penalty of \$4,000 and a suspension of 4 months.

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$13,000 and a suspension of 6 months.

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