

S/N 10/2020 – Failure to Act Ethically and in a Reasonable Manner towards Estate Agent

Facts of Case

The Respondent was at the material time a real estate salesperson with licenced estate agent X. The Respondent was also the sole director and majority shareholder of a company ABC Pte Ltd, which was not a licenced estate agent. ABC Pte Ltd operated an online portal which allowed residential property owners to personally list their properties for sale or lease. ABC Pte Ltd also offered a service in which potential residential property buyers could be referred by ABC Pte Ltd to a registered salesperson to represent the buyer in purchasing new property launches. In return, ABC Pte Ltd would offer them some money back.

In order to do give purchasers some money back, ABC Pte Ltd would enter into an agreement with the potential purchaser wherein ABC Pte Ltd undertook to refer the latter to a salesperson (Purchaser's Agreement). ABC Pte Ltd would also directly enter into an agreement with such salespersons (Referral Agreement) where the salespersons agreed to pay a referral fee (part of the commission received by the salesperson upon a successful purchase) to ABC Pte Ltd. Part of the referral fee would then be paid by ABC Pte Ltd to the purchaser.

One such purchaser, B, had come to know of ABC Pte Ltd and the Respondent when B previously listed his HDB flat on ABC Pte Ltd's online portal. After B had viewed the showflat of a newly-launched condominium development ("**Development Z**"), B contacted the Respondent as he recalled that ABC Pte Ltd was offering money back to purchasers of new property launches.

In March 2017, the Respondent contacted the developer of Development Z and introduced himself as being a representative of ABC Pte Ltd and a registered salesperson. The Respondent informed the developer's staff that he had a keen buyer and wanted to work directly with the developer to close the transaction. The Respondent learnt that the developer was paying a commission of 3% of the purchase price to estate agents/salespersons who successfully facilitated purchases of units in Development Z.

At around this time, B entered into the Purchaser's Agreement with ABC Pte Ltd wherein it was agreed that the Respondent (as a registered salesperson of estate agent X) would represent him in the transaction – \$26,650 was payable by ABC Pte Ltd to B if he purchased a particular unit in Development Z. The Respondent concurrently entered into a Referral Agreement with ABC Pte Ltd agreeing to make payment of 2.034% of the purchase price to ABC Pte Ltd in the event of a successful purchase.

From 23 March 2017 to 24 March 2017, B attended a viewing of Development Z's showflat and decided to purchase a particular unit in Development Z for the price of \$2,665,000. The Option to Purchase was issued by the developer and explained to B by the Respondent.

On 25 March 2017, the Respondent forwarded to the developer an "[ABC] finder's fee agreement" issued by ABC Pte Ltd for the sum of \$79,950. This was rejected by the developer as ABC Pte Ltd was not a licenced estate agent. The Respondent was then informed that the agreement was to be issued under a licenced estate agent. Subsequently, the Respondent then furnished to the developer a commission agreement bearing estate agent X's letterhead for the sum of \$79,950.

On 28 July 2017, the developer paid out the sum of \$79,950 to estate agent X as the Respondent's commission. Of this sum, the Respondent received the sum of \$67,247.67 from estate agent X being the net commission payable to him under his associate agreement with his estate agent.

The Respondent then paid the sum of \$53,922.66 to ABC Pte Ltd. After ABC Pte Ltd's payment of \$26,650 to B for his purchase of a unit at Development Z, ABC Pte Ltd profited \$27,272.66 from the transaction.

In spite of the Respondent's obligations under his associate agreement entered into with estate agent X, the Respondent had submitted the finder's fee agreement (bearing ABC Pte Ltd's letterhead) to the developer for the purpose of collecting his commission under the name of ABC Pte Ltd. This was done without the knowledge or consent of estate agent X. Had the finder's fee agreement been accepted by the developer, estate agent X would have been cut out from the entire transaction as the developer would have paid the Respondent's commission to ABC Pte Ltd.

Charges

The Respondent faced the following charge:

Charge

For failing to act ethically and in a reasonable manner towards his estate agent X by having submitted ABC Pte Ltd's finder's fee agreement to the developer of Development Z for the purpose of collecting commission under the name of and for ABC Pte Ltd, which is not a licenced estate agent, instead of his estate agent X, in contravention of paragraph 6(3) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge.

In sentencing, the Disciplinary Committee (“**DC**”) took note that the Respondent appeared to have not yet appreciated where he had gone wrong, and did not accept the Respondent’s submission that he had not acted dishonestly because he did not intend to cause wrongful gain to himself.

The DC also placed little weight on the Respondent’s submission that his cooperation with the authorities and service to the real estate agency industry were mitigating factors as his submissions were largely in relation to his involvement with ABC Pte Ltd and attempt to promote his endeavors with ABC Pte Ltd.

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

Charge: A financial penalty of \$4,000 and a suspension of 5 months.

Fixed costs of \$1,000 was also imposed on the Respondent.