

S/N 7/2019 – Failure to act Ethically, Honestly, Fairly and in a Reasonable Manner by Misleading a Prospective Buyer about the Last Offer Price and the Availability of the Seller for a Viewing of the Property

Facts of Case

The Respondent was at all material times a registered salesperson.

Mr. L (the “**Seller**”), the previous owner of a Housing and Development Board flat (the “**Property**”), engaged the Respondent to market and sell the Property. It was agreed that the Respondent would advertise the Property online and the asking price of the Property would be \$450,000.

Within a week, one Mr. V viewed the Property and indicated that he was interested in purchasing the Property. Mr. V made an offer of \$430,000. The offer was accepted by the Seller and parties signed an Option to Purchase (“**OTP**”). However, the OTP was eventually not exercised by Mr. V, and the Respondent was instructed to continue to market the Property.

Subsequently, one Mr. J (the “**Buyer**”) contacted the Respondent by way of a telephone call to enquire about the Property. A first viewing of the Property was arranged. Shortly after the call, the Buyer was contacted by the Respondent’s colleague, Mr. R, who informed the Buyer that he would be the one making arrangements for the first viewing.

On the day of the first viewing, the Buyer met Mr. R at the Property. Mr. R informed the Buyer that the Respondent was not available to attend the viewing. Mr. R also told the Buyer that he could act for the Buyer in the purchase, to which the Buyer responded that he was a direct purchaser and did not intend to engage any salesperson.

After the viewing, the Buyer asked Mr. R about the last offer price for the Property. As Mr. R was unaware, he contacted the Respondent to find out. After speaking to the Respondent, Mr. R conveyed to the Buyer that the last offer price was \$438,000, when it was in fact Mr. V’s offer of \$430,000. In reliance on this information, the Buyer informed Mr. R that he would make an offer of \$440,000 on the premise that the last offer price was \$438,000.

The Buyer then spoke to the Respondent directly on the phone, and the Respondent confirmed that the last offer price was \$438,000. During the call, the Buyer also informed the Respondent of his intention to make an offer of \$440,000 and suggested to hand over the option fee of \$1,000 in cash to the Seller if the Seller accepted the offer price. However, the Respondent suggested that the Buyer attend a second viewing 2 days later. The Buyer reluctantly agreed to the second viewing.

As the Respondent had misled the Buyer that the last offer price was \$438,000, the Buyer had to offer a higher price at \$440,000. The Buyer stated that if he had been

told that the last offer price was \$430,000, he would have offered either a similar price of \$430,000 or a slightly higher price.

The Respondent did not convey any of the details of her communications with the Buyer to the Seller. On the contrary, when asked by the Seller on the evening of the first viewing day as to whether there was any offer in the Property from the viewings conducted that day, the Respondent only informed the Seller that there was one party brought by Mr. R who “*may have interest*”. Similarly, when asked by the Seller 2 days later if anyone who viewed the Property on the first viewing day had made an offer, the Respondent only indicated that there was one buyer who was “*maybe interested*”. The Respondent did not convey the Buyer’s offer of \$440,000 to the Seller.

On the day of the second viewing, the Respondent sent a text message to the Buyer informing him that “*tonight the seller not free*”. This was despite the fact that the Respondent knew that the representation was untrue, since the Respondent had not informed the Seller about the Second Viewing, let alone enquired about the Seller’s availability for the same.

Notwithstanding the Respondent’s text message, the Buyer visited the Property for the second viewing. Upon arriving at the Property, the Buyer then realised that, contrary to the Respondent’s representation that the Seller was not available, the Seller was in fact at home. It was then discovered by the Buyer that the Seller had not been informed of the second viewing by the Respondent, and that the Seller was also not aware of the fact that the Buyer had made an offer of \$440,000 after the first viewing.

The Seller eventually sold the Property to the Buyer for \$438,000, and the Respondent received a commission of \$8,600 for the sale. The commission was based on the earlier OTP signed between Mr. V and the Seller at the offer price of \$430,000, which the Respondent submitted to their Real Estate Agency as being the relevant OTP for the transaction, notwithstanding the fact that this OTP was not the correct OTP in relation to the transaction.

Furthermore, despite knowing that an OTP for the Property had been exercised by the Buyer, the Respondent posted a new listing online, advertising the sale of the Property. The Respondent continued to re-list the Property 17 times between the time of the exercise of the OTP by the Buyer, and the completion of the sale. The Respondent also re-activated the listing on one instance after completion of the sale.

In determining the appropriate sentence, the Disciplinary Committee (“**DC**”) took into account the Respondent’s mitigation plea, in particular the Respondent’s admission to the Charges without reservation at the earliest opportunity and remorse over the wrongful conduct.

Charges

The Respondent faced the following 6 charges:

Charge 1 (Proceeded)

For failing to act in a reasonable manner, to wit, by misleading a prospective buyer that the last offer price for the Property was \$438,000 when in fact the last offer price was an offer of \$430,000, in breach of Paragraph 6(3) read with Paragraph 6(4)(c) of the Code of Ethics and Professional Client Care (the “Code”).

Charge 2

For failing to submit an offer to her client as soon as possible after receiving it, by failing to inform her client of a prospective buyer’s offer of \$440,000 for the Property when it was made known to the Respondent, in breach of Paragraph 10 of the Code.

Charge 3

For failing to render professional service to her client, to wit, by withholding relevant information from her client about the viewing of the Property by a prospective buyer, in breach of Paragraph 6(1) read with Paragraph 6(2)(d) of the Code.

Charge 4 (Proceeded)

For failing to act ethically, honestly, fairly and in a reasonable manner, to wit, by misleading a prospective buyer of the Property that the seller was unavailable for a viewing of the Property, when the seller was in fact available but not made aware of the Respondent’s arrangement for the prospective buyer to view the Property, in breach of Paragraph 6(3) read with Paragraph 6(4)(c) of the Code.

Charge 5

For failing to act in a reasonable manner, to wit, by knowingly submitting an incorrect OTP to her Estate Agent in relation to the sale transaction of the Property, in breach of Paragraph 6(3) read with Paragraph 6(4)(c) of the Code.

Charge 6

For failing to conduct her work in compliance with all laws and in particular paragraph 3.8 of the Practice Guidelines of Ethical Advertising (PG 2/2011), to wit, by posting a new listing online, advertising the sale of the Property, even though the Property was no longer available for sale as the OTP had already been issued and exercised, in breach of Paragraph 5(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1 and 4, with Charges 2, 3, 5 and 6 taken into consideration for sentencing. The DC imposed the following financial penalty and disciplinary order on the Respondent:

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

Charge 4: A financial penalty of \$3,000 and a suspension of 4 months.

The suspensions were ordered to run concurrently.

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