

S/N 12/2019 – Failure to Act with Honesty by Misrepresenting the Highest Price Offered by the Assignee to her Client the Assignor of a Lease; and Bringing Discredit to the Estate Agency Industry when she Misrepresented to her Client the Highest Price Offered to her Client to Profit from the Differences in the Offered Prices

Facts of Case

At all material times, the Respondent's client had leased a factory unit ("**Property**") from the Housing and Development Board ("**HDB**") at the monthly rent of \$4,089 sometime since 2003 ("**Lease**").

Sometime in 2015, the client engaged the Respondent to market the transfer his business operating at the Property including the assignment of the Lease. The agreement between the client and the Respondent was that the Respondent would be paid a 3% commission based on the takeover fees.

Subsequently, the client instructed the Respondent to market only the assignment of the Lease at the price of \$280,000. The client later lowered the asking price of the assignment fee to \$250,000 or \$230,000 if an upfront deposit was provided. The agreement between the client and the Respondent at this juncture was that the Respondent would be paid 3% of the assignment price as her commission if she successfully facilitated the assignment of the Lease.

On or around 25 September 2015, the client arranged for a viewing of the Property by the representatives of the assignee company ("**Assignee**") who are a husband and wife couple. The Respondent was not present at the viewing.

At around the time of the viewing, the representatives informed the Respondent that they would be willing to offer \$230,000 for the assignment of the Lease to their company. The client was not present when the \$230,000 offer was made by the representatives to the Respondent. The Respondent indicated that she would be able to secure the assignment of the Lease for the representatives if they were able to issue a cheque for the 10% deposit.

Following the viewing, the Respondent informed the client that the representatives were interested in making an offer, and suggested that the client lowered his asking price below \$230,000. The client told the Respondent that if they were keen, he would be willing to lower the price to \$228,000.

On 26 September 2015, the wife signed an offer for the assignment of the Lease ("**OTA**") in her capacity as Director of the Assignee as prepared by the Respondent. The OTA stated that the assignment fee was \$230,000. The Assignee issued a cheque deposit in the amount of \$23,000 (being 10% of the assignment fee) (the "**Cheque**"), and passed the Cheque to the Respondent.

On 28 September 2015, after speaking with the representatives, the Respondent informed the client that the highest price the Assignee had offered was \$228,000.

Separately, she told the client that the Assignee was willing to pay her a sum of \$2,000 for cleaning up the Property for the Assignee. The Respondent proposed that the \$2,000 be paid to her through the client such that the assignment fee would be stated as a total of \$230,000 in the OTA. The client agreed for the assignment fee to be set out as \$230,000 in the OTA following the Respondent's explanation. The Respondent then passed the OTA and the Cheque to the client. The client signed the OTA.

At the same meeting, the client signed a Commission Agreement to pay a sum of \$8,840 to the Respondent's estate agent ("**Commission Agreement**"). The sum of \$8,840 comprised a commission fee calculated at 3% of \$228,000 (i.e. \$6,840), plus the sum of \$2,000 for the purported cleaning services for the Assignee, as purportedly agreed between the Respondent and the Assignee.

Following the execution of the OTA, there were two inspections of the Property carried out by the HDB Officer on 2 October 2015 and 15 December 2015 respectively.

At the first HDB inspection on 2 October 2015, the HDB Officer informed the client, the Respondent, the representatives that there were 2 unauthorised items in the Property. The two unauthorised items were eventually removed by the client.

The client also addressed additional queries from HDB prior to the second HDB inspection on 15 December 2015.

Thereafter, HDB approved the assignment of the Lease to the Assignee.

Completion of the Assignment took place on 11 January 2016 ("**Completion**"). On the day of the Completion, the client discovered from the representatives that the Assignee did not agree to pay the Respondent a sum of \$2,000 to clean the Property or any sum at all. They confirmed that their assignment offer price was \$230,000 at all material times.

Following Completion, a civil dispute arose between the client and the Respondent and her estate agent. The client refused to pay the commission fee as he believed that he had been cheated by the Respondent. The dispute was eventually resolved before the Small Claims Tribunal.

Charges

The Respondent faced the following 2 charges:

Charge 1 (Proceeded)

Failing to act with honesty by misrepresenting to her client that the highest price offered by the Assignee for the assignment of the Lease of the Property was \$228,000 when in fact, the Assignee had offered \$230,000 for the assignment of the Lease to the Assignee, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care (the "**Code**").

Charge 2

Bringing discredit to the estate agency industry, in that despite receiving the offered price of \$230,000 from the Assignee for her client's assignment of the Lease of the Property, she suggested that her client lowered his asking price so that she could personally profit from the difference between \$230,000 and \$228,000, \$228,000 being the lower asking price that her client was willing to accept, which she did do so by misrepresenting to her client that the Assignee had agreed to pay her a sum of \$2,000 for cleaning the Property for them but would obtain the \$2,000 through her client, in contravention of paragraph 7(1) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1 and agreed for Charge 2 to be taken into consideration for the purposes of sentencing. The Disciplinary Committee ("DC") found the Respondent liable for disciplinary action to be taken against her for the disciplinary breach in Charge 1.

Having considered CEA's Sentencing Submissions and the Respondent's mitigation plea, the DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 1: A financial penalty of \$2,500 and a suspension of 4 months.

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