

## **S/N 6/2014 – Failure to Declare Potential Conflict of Interest and to Convey Offer**

### **Facts of Case**

The Respondent was engaged by the owner to find a tenant for his property.

A potential tenant contacted the Respondent and expressed an interest to rent the property. The Respondent told the potential tenant that it could only rent  $\frac{3}{4}$  of the property as the landlord wanted to retain  $\frac{1}{4}$  of the property. The potential tenant indicated to the Respondent that it was only interested in renting the whole property. When the Respondent said that the whole property could be leased at a monthly rental of \$3,500 to \$3,800, the potential tenant said it had found another place with a lower rent.

The Respondent told the owner that a company (the “Company”) was interested to rent the property at a monthly rent of \$2,500 but did not disclose that his wife owned 50% of the issued shares, and was a director, of the Company. The Respondent also made no mention to his client about the potential tenant’s earlier expression of interest to rent the property.

Subsequently, the potential tenant changed its mind and offered to rent the property at a monthly rental of \$3,200. The Respondent told the potential tenant that the Company (and not his client) owned the property, which was not true.

The Respondent then arranged for the Company to rent the property from the owner at a monthly rent of \$2,500 over a term of 2 years; and for the Company to sublet the property to the potential tenant for \$3,300 a month. The Company therefore profited from this arrangement over the difference in the monthly rental under the two tenancy agreements.

### **Charges**

The Respondent faced the following 5 charges: -

#### **Charge 1 (Proceeded)**

Failing to declare to his client (the landlord) a potential conflict of interest which arose by reason that his wife was a director and held half the issued share capital of the tenant, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code of Ethics and Professional Client Care.

#### **Charge 2**

Failure to convey to this client the potential tenant’s initial expression of interest to rent the property, in contravention of paragraph 10 of the Code of Ethics and Professional Client Care.

#### **Charge 3 (Proceeded)**

Failure to submit to his client the potential tenant’s offer to rent the property at a monthly rent of \$3,200, in contravention of paragraph 10 of the Code of Ethics and Professional Client Care.

**Note:** This case was referred to a CEA Disciplinary Committee (DC) before the operationalisation of the Estate Agents (Amendment) Act 2020 on 30 July 2021. With the Act amendments, the maximum financial penalty for disciplinary breaches has been raised and a DC can impose a higher financial penalty on errant offenders.

**Charge 4**

Failing to protect his client's interest by arranging for the Company to rent the property at a lower rent instead of the potential tenant, in contravention of paragraph 6(1) read with 6(2)(a) of the Code of Ethics & Professional Client Care.

**Charge 5**

Misrepresenting to the potential tenant that it could only rent  $\frac{3}{4}$  of the property and that the property was owned by the Company, in contravention of paragraph 6(3) read with 6(4)(c) of the Code of Ethics & Professional Client Care.

**Outcome**

Pursuant to a plea bargain, CEA proceeded with Charges 1 and 3, which the Respondent pleaded guilty to, with the remaining 3 charges being taken into consideration for purposes of imposition of penalties.

The DC imposed the following penalties on the Respondent:

**Charge 1:** Suspension of 12 months and a financial penalty of \$7,500.

**Charge 3:** Suspension of 12 months and a financial penalty of \$9,000

The suspension orders were to run concurrently.

Fixed costs of \$1,000 were also imposed upon the Respondent.