

S/N 3/2016 – Failure to Declare Potential Conflict of Interest to Client Regarding Co-broke Commission

Facts of Case

The purchaser of an industrial property (“**the Property**”) had appointed the Respondent to assist in her purchase of the Property.

Sometime in December 2011, the Respondent met the purchaser and misled her that the Government had changed its rule regarding the commissions of salespersons in the estate agency trade, and that both the vendor and purchaser were required to pay commission to their respective salespersons.

In or around early January 2012, the Respondent brought the purchaser to view the Property, which was marketed by the vendor’s salesperson. After the viewing, the purchaser decided to purchase the Property, and instructed the Respondent to negotiate the selling price with the vendor. After some negotiation, the vendor accepted the purchaser’s offer to purchase the property at \$580,000.

The vendor’s salesperson then informed the Respondent that out of the 1.5% commission of the transacted price he was to receive from the vendor, the vendor’s salesperson would give the Respondent \$3,000 as a co-brokerage (“**co-broke**”) commission. The Respondent accepted the vendor’s salesperson’s offer.

On or around 9 January 2012, the Respondent conveyed to the purchaser that the vendor had accepted her offer of \$580,000. Thereafter, the Respondent prepared an Offer to Purchase, and asked the purchaser to prepare a cheque of \$5,800 for the option fee payable for the Option to Purchase (“**OTP**”).

The Respondent then discussed his commission with the purchaser. He requested a commission of 1% of the transacted price but the purchaser offered 0.5%. The Respondent counter-proposed with 0.7%. Eventually, the Respondent and the purchaser agreed on a lump sum commission of \$3,500. During the discussion, the Respondent made a misrepresentation to the purchaser which he knew to be untrue. He told the purchaser that the commission of 1% of the transacted price which he had asked for was hugely discounted, considering that the vendor’s salesperson would collect a commission of 3% of the transacted price from the vendor. This was a misrepresentation as the respondent knew that the vendor’s salesperson would receive from the vendor a commission of only 1.5% (and not 3%) of the transacted price.

The Respondent had not disclosed at any time to the purchaser that he would receive a co-broke commission of \$3,000 from the vendor’s salesperson.

On or around 11 January 2012, the vendor's salesperson prepared the OTP. After the vendor had signed on the OTP, the vendor's salesperson handed the OTP to the Respondent. On or around the same day, the vendor's salesperson and the Respondent then signed a Co-Brokerage Agreement ("**the Agreement**") to document their prior oral agreement that the vendor's salesperson was to pay a co-broke commission of \$3,000 to the Respondent.

The purchaser exercised the OTP on 25 January 2012.

On 9 February 2012, the purchaser issued a cheque of \$3,478 to the Respondent as his commission, after deducting \$22 for miscellaneous expenses. A few days after the completion of the sale on 21 March 2012, the vendor's salesperson paid the Respondent his share of the commission of \$3,000 as agreed under the Agreement.

Charges

The Respondent faced the following 3 charges:

Charge 1

Failing to declare in writing (or at all) to his client that he had entered into a co-broke agreement with the vendor's salesperson to receive a co-broke commission of \$3,000 for the sale and purchase of the Property, an interest which was in direct or indirect conflict with that of his client's, where to do so would place his interest in potential conflict with those of his client's, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code of Ethics and Professional Client Care ("**Code**").

Charge 2

Failing to render professional service to his client and misleading his client, the purchaser of the Property that under a "new government rule" a commission had to be paid to the buyer's salesperson when such a rule did not exist, and in so doing he had wrongfully collected a commission from his client, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code.

Charge 3

Failing to render professional service to his client and misleading his client, the purchaser of the Property that the vendor's salesperson would collect a commission of 3% of the transacted price from the vendor, when in fact he would only be receiving 1.5%, less \$3,000, of the transacted price as he was co-broking the sale with the Respondent and the vendor's salesperson had agreed to pay the Respondent \$3,000 as co-broke commission, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code.

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.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1 while Charges 2 and 3 were taken into consideration for sentencing purposes. The DC imposed the following financial penalty and disciplinary order on the Respondent:

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

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