

## **S/N 3/2020 – Failure to Render Professional and Conscientious Service to Client by Withholding Relevant Facts or Information by Amending a Clause in a Prescribed Form**

### **Facts of Case**

The Respondent was at all material times a registered salesperson with the licensed estate agent, Estate Agent E.

The Respondent represented her client (“**Landlords**”) in relation to a rental transaction of a condominium unit (the “**Unit**”). Sometime in or around October 2017, the Respondent informed the Landlords that a prospective tenant (“**G**”) was interested in renting the Unit for a period of one year at a monthly rental of \$2,000.

The Respondent then met with G and the Landlords and provided them with two copies of the tenancy agreement for the Unit for their execution of the same. The tenancy was for a year and for a monthly rental of \$2,000 as previously agreed.

After the execution of the tenancy agreement, the Respondent provided them with two copies of the Estate Agency Agreement for the Lease of residential Property by a Landlord prescribed by CEA under the Estate Agents Act 2010, i.e. Form 3 (the “**Prescribed Form**”).

Unbeknownst to the Landlords, the Prescribed Form had been amended by the Respondent beforehand. Amongst other amendments made by the Respondent, the most material amendment was to clause 4(d) of the Prescribed Form where the Respondent had removed the option for the Landlords to negotiate and/or decide on the following: -

- (i) Whether further commission shall be payable to Estate Agent E upon renewal of the lease in the future;
- (ii) The duration in respect of which such further commission would be payable; and
- (iii) The calculation or quantum of such further commission, if any.

With the above amendment to clause 4(d), the Landlords were led to believe that CEA had prescribed that further commission shall be payable upon every renewal of the lease and that the calculation or quantum of such commission payable is prescribed by CEA (which is untrue).

G decided to renew the lease a year later and it was only around this time that the Landlords realised that clause 4(d) of the Prescribed Form was amended by the Respondent as they obtained a copy of the Prescribed Form from CEA’s website and noticed that there was a difference between the version of the Prescribed Form downloaded from CEA’s website and the Prescribed Form provided by the Respondent.

As the Landlords were under the impression that they were legally bound to renew G's tenancy in accordance with the terms in the amended Prescribed Form, they still relied on the Respondent for the renewal of the lease but tried to negotiate with the Respondent to amend the executed Prescribed Form. The Respondent, however, stated that the clauses of the amended Prescribed Form were standard and fixed by the CEA which was untrue.

After G's tenancy was renewed, the Landlords received an invoice from Estate Agent E for commission fee that was due and owing for the renewal of the tenancy. Feeling aggrieved about the amendments made to the Prescribed Form which were made without their knowledge and consent, a complaint was lodged with CEA by the Landlords.

By way of mediation, the Landlords settled the matter with the Respondent and Estate Agent E by paying a reduced and partial commission fee.

### **Charge**

The Respondent faced 1 charge under paragraph 6(1) read with paragraph 6(2)(d) of the Code of Ethics and Professional Client Care for failing to render professional and conscientious service to her client by withholding relevant facts or information from her client by amending clause 4(d) of the Prescribed Form without informing the Landlords that they had an option to negotiate the matters set out in clause 4(d) on whether commission would be payable on renewal of the lease and without obtaining the Landlords' decision to the same before requesting the Landlords to sign the Prescribed Form.

### **Outcome**

The Disciplinary Committee imposed a financial penalty of \$2,000, a suspension period of 3 months and also imposed fixed costs of \$1,000 on the Respondent.

In imposing the above sentence, the Disciplinary Committee considered it relevant that such a wrongdoing by the Respondent was hard to detect, that the Respondent failed to rectify the amendment to the Prescribed Form when confronted by the Landlords and that the Respondent's conduct undermined CEA's role as a regulator as the amended Prescribed Form still contained the preamble that the form was as prescribed by CEA under the Estate Agents Act 2010 and the Respondent had tried to pass the amended Prescribed Form off as one that was prescribed by CEA.