

S/N 20/2020 – Failure to Submit an Offer to Client as Soon as Possible after Receiving the Said Offer

Facts of Case

At all material times, the Respondent was a registered salesperson with a licensed estate agent (“EA”).

On or about 16 March 2018, the Respondent’s client Ms S lodged a complaint against the Respondent for failing to conduct himself in a professional manner and in accordance with the Code of Ethics and Professional Client Care (the “CEPCC”) in relation to the sale of her private residential property (the “Property”).

At all material times, Ms S was the registered owner of the Property.

In or around October 2016, Ms S signed an estate agency agreement for the sale of residential property dated 1 October 2016 with the Respondent appointing the latter to help her market and sell the Property. At around the same time, Ms S also appointed another salesperson A to help her market and sell the Property. But Ms S did not sign an estate agency agreement with A.

Ms S had decided to engage both the Respondent and A to help her sell the Property because she wanted to focus on her health. Additionally, she enlisted her friend, J to help her liaise with the 2 salespersons.

Through J, Ms S instructed the Respondent to inform her of any offers that he received on her behalf so that she could consider them. Any such offer was to be conveyed to J, who would then inform Ms S of the same.

Sometime in October 2017, D a registered salesperson of the prospective buyers, Mr and Mrs W (the Ws) came across property listings of the Property that were listed by A and the Respondent separately. To arrange for a viewing of the Property for the Ws, D tried to contact A first but could not get in touch with A. So, D contacted the Respondent instead.

On or about 21 October 2017, at around 1 pm, the Respondent conducted the viewing of the Property for D and the Ws.

At about 3.14 pm on 21 October 2017, the Respondent informed J via a text message that he had received an offer of S\$1,270,000 for the Property from D but the Respondent had rejected it. The rejection of this offer was made without Ms S’s instructions to do so.

At around 3.40 pm, the Respondent then requested for a counter-offer from J, via text message, to the said offer of S\$1,270,000 from the Ws. Ms S, through J, provided the Respondent with the figure S\$1,320,000 as the counter-offer but the Respondent did not convey this counter-offer to D.

Later in the mid-afternoon of 21 October 2017, D called the Respondent to inform the latter of the Ws’ keen interest in the Property and made an offer of S\$1,290,000 on behalf of the Ws. D requested the Respondent to also convey this S\$1,290,000 offer to Ms S.

D subsequently informed the Respondent that he would get the Ws to issue a cheque for the proposed 1% option fee based on the S\$1,290,000 offer to demonstrate that the Ws were genuinely interested in buying the Property. The Respondent and D then arranged to meet on 22 October 2017 for D to pass the said cheque to the Respondent. All this while, the Respondent did not convey to D Ms S's counter-offer of S\$1,320,000 for the Property.

On 22 October 2017, the Respondent met up with D who handed over to the Respondent the Ws' cheque for S\$12,900. At this meeting, the Respondent also did not convey to D Ms S's counter-offer of S\$1,320,000 for the Property.

Later that day, at around 5.14 pm, the Respondent informed J that:

- a. he had collected a cheque in relation to an offer of S\$1,290,000; and
- b. he had a colleague who was trying to procure a higher offer from his client for Ms S.

The Respondent's colleague F was also a registered salesperson of the same EA as him. F's client was C, another prospective buyer of the Property. C became the eventual buyer of the Property.

At around 5.45 pm, F and C viewed the Property from the outside of the Property. Notwithstanding this viewing from the outside of the Property, C was keen to buy the Property. On C's instructions, F asked the Respondent about Ms S's acceptable closing price for the sale of the Property.

The Respondent informed F that C should put in an offer of S\$1,320,000 for the Property. F therefore conveyed Ms S's position to C and C agreed to offer S\$1,320,000 for the Property and the offer was conveyed by F to the Respondent.

Later that evening, the Respondent informed D that Ms S had rejected the Ws' offer of S\$1,290,000 for the Property and separately informed J that C had made an offer of S\$1,320,000 for the Property.

After being told that the Ws' offer of S\$1,290,000 had been rejected, D called the Respondent to inform him of the Ws' revised offer of S\$1,300,000 for the Property and the Ws' keen interest in the Property. D asked the Respondent to convey this revised offer to Ms S. However, the Respondent did not, at all material times, convey this revised offer to J for J to convey the same to Ms S.

Throughout the day of 23 October 2017, D attempted to speak with the Respondent in order to get an update on the Ws' offer of S\$1,300,000 by calling and texting the Respondent. But the Respondent ignored the calls and the text messages from D. On the other hand, the Respondent continued corresponding with F on the Property.

At around 7 pm on 23 October 2017, the Respondent met Ms S and J and he persuaded Ms S to sign the Option to Purchase ("**OTP**") for the sale of the Property to C for the sum of S\$1,320,000. During this meeting, the Respondent did not convey the Ws' revised offer of S\$1,300,000 to Ms S, or disclose that he did not convey Ms S's counter-offer of S\$1,320,000 to the Ws through D and described the Ws as "*not genuine and not sincere*" when Ms S queried him if the Ws made any counter-offers.

Thereafter, Ms S executed the OTP in favour of C as the buyer of the Property. The Respondent left after Ms S signed the OTP.

At around 9.30 pm on 23 October 2017, Ms S updated A that the Respondent had conveyed an offer of S\$1,320,000 to her and that she had met the Respondent around 7 pm to sign the OTP in favour of the buyer who had made the said offer.

At 9.43 pm on 23 October 2017, the Respondent misrepresented to D that Ms S had said that she preferred another offer to the Ws' revised offer of S\$1,300,000 for Ms S's Property, when the Respondent knew that Ms S did not inform him so because he did not, at any time, convey the Ws' revised offer to Ms S for her consideration.

On the Ws' instructions, D called A to enquire about the status of the transaction and to convey the Ws' keen interest in the Property. A therefore informed D that Ms S had already met with the Respondent to sign and issue the OTP in favour of another buyer and it was the Respondent who was responsible for bringing the competing offer of \$1,320,000 to Ms S and Ms S had earlier informed the Respondent of her counter-offer of S\$1,320,000 for the Property.

D told A that he was unaware of Ms S's counter-offer of S\$1,320,000 at all material times. Shortly after D's call to him, A contacted Ms S to update her on his call with D.

At around 10.22 pm on 23 October 2017, D informed the Respondent that the Ws were offering S\$1,330,000 for the Property.

At around 10.41 pm, A informed Ms S that D had called him to convey the Ws' latest offer of S\$1,330,000 for the Property.

As the OTP had already been signed and issued to C, Ms S decided to sell the Property to C at S\$1,320,000.

At all material times, there was no co-broke commission agreement entered into between the Respondent and D.

Charges

The Respondent faced the following 3 charges:

Charge 1

Failing to act fairly towards other persons in or around the period between 22 October 2017 and 23 October 2017 when the Respondent failed to disclose to the registered salesperson D of the prospective buyers, Mr and Mrs W (the Ws), his client (Ms S)'s counter-offer to sell the Property at S\$1,320,000 when he received the Ws' earlier offer of about S\$1,270,000 for the Property on or about 21 October 2017, in breach of paragraph 6(3) of the CEPCC.

Charge 2

Failing to submit an offer to the Respondent's client, Ms S, as soon as possible after receiving the said offer in or around the period between 22 October 2017 and 23 October 2017, when the Respondent failed to submit an offer of S\$1,300,000 to his client Ms S as soon as possible after receiving the said offer from D, the registered salesperson of the prospective buyers, the Ws,

who had made the said offer of S\$1,300,000 for Ms S's Property, in breach of paragraph 10 of the CEPCC.

Charge 3

Failing to act reasonably towards other persons on 23 October 2017 at or around 9.43 pm, by misrepresenting to D, the registered salesperson of the prospective buyers, the Ws, a relevant fact when the Respondent misrepresented to D that his client, Ms S, had said that she preferred another offer to the Ws' offer of S\$1,300,000 (the "**2nd Offer**") for Ms S's Property, when the Respondent knew that Ms S did not inform him so because he did not, at any time, convey the Ws' 2nd Offer to Ms S for her consideration, in breach of paragraph 6(3) read with paragraph 6(4)(c) of the CEPCC.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 2 while Charge 1 and Charge 3 were taken into consideration for the purpose of imposing a penalty on the Respondent for Charge 2.

The Disciplinary Committee ("**DC**") found the Respondent liable for the disciplinary breach in Charge 2 and therefore disciplinary action was taken against him.

After hearing parties, the DC imposed the following penalty on the Respondent: -

Charge 2: A financial penalty of \$5,000 and a suspension of 10 months.

The suspension order took effect on 1 January 2021.

Fixed costs of \$2,000 was imposed on the Respondent.