

## **S/N 2/2019 – Failure to Submit Offers, Conveying False Offers, Failure to Declare Conflict of Interest, Misrepresenting Valuation Price & Acting against Client’s Interests**

### **Facts of Case**

The Respondent was engaged by X (the “**Buyer**”) to help source for a suitable private property for purchase in the east or central region of Singapore, in the price range of about \$900,000.

The Respondent arranged a viewing of a condominium apartment (the “**Property**”) for the Buyer, through the seller’s salesperson (“**Salesperson Y**”). The Buyer had seen the Property advertised at \$1.04 million. After the viewing, the Respondent informed Salesperson Y that the Buyer was quite keen to purchase the Property and asked about the commission payable to the Respondent. Salesperson Y conveyed the seller’s offer to sell at \$1.02 million, with 1% commission (approximately \$10,000) payable to the Respondent. The Respondent told Salesperson Y that he wanted a commission of 2.5% to 3% of the sale price instead. The Respondent did not convey the seller’s offer of \$1.02 million to the Buyer.

On the other hand, the Buyer asked the Respondent about the valuation of the Property, to which the Respondent said he would check and get back to the Buyer. The next day, the Respondent told the Buyer that the valuation was \$1.18 million on average and suggested that the Buyer make an offer of \$1.06 million. In response, the Buyer pointed out that the asking price was only \$1.04 million, to which the Respondent then said he would try to bring the price down.

The Buyer subsequently checked with the bank, who informed him that the estimated value of the Property was around \$950,000 to \$1 million. The Buyer also checked the prices of private residential property transactions via the Urban Redevelopment Authority’s website and saw that a similarly sized unit in the same development was sold on November 2016 at \$980,000.

The Buyer asked the Respondent what a reasonable starting offer price for the Property would be; the Respondent suggested that the Buyer start as low as possible, and to make an offer of \$900,000. The Buyer told the Respondent to start negotiations on his behalf for the purchase of the Property.

Thereafter, the Respondent told the Buyer that he had conveyed an offer of \$950,000, which was rejected. The Buyer asked if there was a counter-offer from the seller and offered to meet the seller to negotiate. The Respondent told the Buyer that the seller had made a counter-offer of \$1.04 million, but expressed no intention to meet (when in fact no such counter-offer was made). The Buyer asked the Respondent if the sale price of \$1.04 million was negotiable; the Respondent said he would ask again.

The Respondent subsequently informed the Buyer that the seller was willing to sell at \$1.04 million, and there were also other interested buyers viewing the Property. The Buyer asked the Respondent to check the market rates for units of similar size to see if the sale price of \$1.04 million was reasonable.

On or around the same day, the Respondent conveyed to Salesperson Y an offer to purchase at \$1.04 million (when the Buyer had not instructed the Respondent to make such an offer), with 3% commission (approximately \$30,000) for himself and 1% commission to Salesperson Y. The seller rejected and offered to pay 2% commission to the Respondent instead (and 1% commission to Salesperson Y). The Respondent rejected the seller's proposal.

Salesperson Y then offered to have the Property sold at \$1.01 million, with the Respondent collecting commission from the Buyer instead. The Respondent did not convey this counter-offer to the Buyer.

Thereafter, the seller instructed Salesperson Y to stop marketing the Property for sale, as he was upset with the Respondent and his unethical behaviour. The Respondent also advised the Buyer not to proceed with the purchase due to the alleged high sale price, when in fact the actual reason was that his negotiation to obtain 3% commission had failed.

The Buyer subsequently contacted Salesperson Y directly to ask if the Property was still available for sale and offered \$1.04 million, which the seller accepted. The Buyer then found out from Salesperson Y that the Respondent had made a similar offer of \$1.04 million previously, but with the condition that the Respondent receive 3% commission. The Buyer also learnt that the Respondent had turned down the seller's proposal to pay him 2% commission instead.

The Respondent's wrongful conduct resulted in the Buyer suffering a loss of approximately \$20,000 to \$30,000, computed respectively as the difference between the eventual sale price of \$1.04 million and the seller's counter-offers that were not conveyed to the Buyer (i.e. at \$1.01 million and \$1.02 million).

## **Charges**

The Respondent faced the following 8 charges:

### **Charge 1**

For failing to render professional and conscientious service to his client (i.e. the Buyer), by misrepresenting to the Buyer that the valuation price of the Property was \$1.18 million (when it was not), 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**

For failing to render professional and conscientious service to his client (i.e. the Buyer), by acting against the Buyer's interests, by suggesting that the Buyer make an offer of \$1.06 million to purchase the Property (when the seller's asking price was \$1.04 million), in contravention of paragraph 6(1) read with paragraph 6(2)(e) of the Code.

## **Charge 3 (Proceeded)**

For failing to submit to his client (i.e. the Buyer) an offer to sell the Property at a minimum sale price of \$1.02 million, in contravention of paragraph 10 of the Code.

## **Charge 4**

For failing to render professional and conscientious service to his client (i.e. the Buyer), by misleading the Buyer that the seller had made a counter-offer to sell the Property at \$1.04 million (when no such counter-offer was made), in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code.

## **Charge 5**

For failing to render professional and conscientious service to his client (i.e. the Buyer), by not acting according to the Buyer's instructions, and not protecting and promoting the Buyer's interests unaffected by his own interests, by conveying a false offer of \$1.04 million for the Property to the seller, in contravention of paragraph 6(1) read with paragraph 6(2)(a) of the Code.

## **Charge 6 (Proceeded)**

For continuing to act on the Buyer's behalf, where to do so would place his interests in conflict or potential conflict with the Buyer's, and failing to declare in writing to the Buyer his interests, which arose by reason of his claiming of 3% of the sale price of the Property as commission, in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code.

## **Charge 7 (Proceeded)**

For failing to submit to his client (i.e. the Buyer) a counter-offer to sell the Property at \$1.01 million (and with his commission to be paid by the Buyer), in contravention of paragraph 10 of the Code.

## **Charge 8**

For failing to render professional and conscientious service to his client (i.e. the Buyer), by acting against the Buyer's interests, by advising him not to proceed with the purchase of the Property due to the alleged high sale price, when in fact the actual reason was that the Respondent's negotiation to obtain 3% commission had failed, in contravention of paragraph 6(1) read with paragraph 6(2)(e) of the Code.

## **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 3, 6 and 7, while Charges 1, 2, 4, 5 and 8 were taken into consideration for purposes of sentencing. In sentencing, the Disciplinary Committee ("DC") was of the view that the offences committed were serious; disrepute had been brought to the profession and the public's confidence in the profession had been affected. The fact that the seller had instructed his salesperson to stop marketing the property for sale as he was upset with the Respondent and his unethical behaviour spoke volumes. While there was nothing wrong with salespersons trying to obtain good commissions, this must be done while serving their clients' interests, by delivering value and by deriving commissions that are completely above-board and transparent to their clients.

The DC noted that the Respondent had sought to obtain 3% commission, which would have worked out to about \$31,000. The DC also considered the degree of egregiousness present, i.e. the number of dishonest conduct perpetrated by the Respondent over almost 2 weeks, calculated at ensuring that the Respondent would get a larger commission at the end of the transaction. The entire motive was to maximise the Respondent's commission. The DC observed that the sentence imposed would need to have a deterrent effect on the Respondent and prevent like-minded salespersons from similar conduct.

The DC also noted the Respondent's timely admission and plea of guilt, as well as considered his personal circumstances of being a sole breadwinner and his exemplary record as a salesperson.

Accordingly, the DC imposed the following financial penalties and disciplinary orders on the Respondent:

**Charges 3, 6 and 7:** A financial penalty of \$10,000 and a suspension of 14 months for each charge.

The suspension periods were ordered to run concurrently. The total sentence imposed was a financial penalty of \$30,000 and a suspension of 14 months.

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

## **Appeal**

The Respondent filed an appeal to the Appeals Board against the DC's decision on sentencing and sought lower sentences for the convicted charges.

The Appeals Board dismissed the appeal on the financial penalties imposed, but reduced the suspension period imposed, from 14 months to 12 months per charge.

In arriving at its decision, the Appeals Board was of the view that the Respondent's string of dishonest actions and misconduct exceeded the levels of egregiousness in precedent cases. There were a series of blatant dishonest acts against the Respondent's own client (i.e. the Buyer), which were all carried out over a period of several weeks purely for the purpose of increasing the Respondent's income, and without consideration of the disadvantages to the Buyer and the eventual loss suffered by the Buyer.

The Appeals Board considered the Respondent's plea of guilt, expression of remorse, client commendations and personal circumstances, but was of the view that the financial penalties imposed were not disproportionate or excessive. The Appeals Board noted that the DC could have revoked the Respondent's registration, but did not do so and imposed a suspension instead. The Appeals Board did not consider the suspension imposed by the DC to be manifestly excessive, but took the view that a suspension period of 12 months per charge (to run concurrently) would be sufficient.

Applying the 'totality' principle, the Appeals Board was of the view that the overall sentence of a \$30,000 financial penalty and 12 months suspension would be just and appropriate.