

## **S/N 17/2020 – Inaccurately or Wrongly Represented to the Buyer and His Salesperson That the Amount of Rent That the Seller Had Collected or Was Collecting at the Material Time**

### **Facts of Case**

Sometime in or around February 2018, T engaged the Respondent to market a private property (the “**Property**”) which was jointly owned by T and her husband (the “**Sellers**”) for sale.

T instructed the Respondent to sell the Property subject to the existing tenancy. The Respondent did not verify the amount of monthly rent T was receiving for the Property.

Subsequently the Respondent conducted a viewing of the Property for a potential buyer (the “**Buyer**”) who was accompanied by his salesperson, S.

During the said viewing, the Respondent informed the Buyer and S that the Property would be sold subject to the existing tenancy. The Buyer and S asked the Respondent for the amount of the monthly rental. Without checking with the Sellers, the Respondent informed them that the monthly rent was \$3,000 (the “**Representation**”). When asked by S for a copy of the tenancy agreement (“**TA**”) for the Property, the Respondent indicated that the TA would be obtained from the Sellers who were overseas at the time.

As the Buyer intended to buy the Property for investment purposes, and was of the view that the monthly rent of \$3,000 would be enough to cover the monthly payment for the purchase of the Property and maintenance of the Property.

After the viewing, the Buyer decided to purchase the Property for \$1.25 million. He then issued a cheque to the Sellers for \$12,500 as the proposed option money (“**Option Money**”) being 1% of the original purchase price for the Property (“**1<sup>st</sup> Cheque**”). This was issued to show his interest to purchase the Property and was meant to be the option fee should the Sellers issue an option to purchase to the Buyer. The Option Money was intended to be consideration for an option to purchase to be issued by the Sellers.

Sometime in the afternoon on the same day, S informed the Respondent that the Buyer would like to make an offer of \$1.25 million for the purchase of the Property, and a copy of the 1<sup>st</sup> Cheque was sent to the Respondent who noted the wrong spelling of T’s name. At this time, T messaged the Respondent that the monthly rental amount for the Property was \$2,400. According to the Respondent, he told S that the monthly rental was \$2,400 but S asked the Respondent to send her the TA.

As the Buyer had mis-spelled the Sellers’ names in the 1<sup>st</sup> Cheque, he then issued another cheque to T for \$12,500 (“**2<sup>nd</sup> Cheque**”).

The Sellers were agreeable to sell the Property at the price of \$1.25 million.

In the evening of the same day, the Respondent forwarded the TA to S after receiving a copy of the TA from T via email. Upon seeing the TA for the first time, S realized that the monthly tenancy amount was \$2,400 and not \$3,000 and that the Respondent's Representation was wrong.

The Respondent prepared the Option to Purchase ("**1<sup>st</sup> OTP**") for the Property at the purchase price of \$1.25 million with 0.75% commission and pre-signed the 1<sup>st</sup> OTP as witness. He then sent the 1<sup>st</sup> OTP (without having asked the Sellers to sign it) to S. On the same night the Respondent sent the 1<sup>st</sup> OTP, S collected the 2<sup>nd</sup> Cheque from the Buyer and passed it to the Respondent.

The Respondent informed T that the Buyer had agreed to purchase the Property at \$1.25 million and had given a 1% cheque of \$12,500. As T was out of the country and had another offer on hand, T repeatedly asked the Respondent to ask the Buyer to transfer the Option Money via electronic FAST banking transfer to her bank account as it was more immediate or to insert a sentence in the 1<sup>st</sup> OTP that the Buyer undertakes not to cancel the cheque issued as a safeguard. The Respondent assured T that he had consulted his lawyer that with the signed 1<sup>st</sup> OTP it was sufficient to safeguard the seller's legal interest. Hence, there was no need to put in the additional "undertaking clause".

The next day, S sent the 1<sup>st</sup> OTP, with the Buyer's signature, to the Respondent. The Respondent then sent T a WhatsApp image of the 1<sup>st</sup> OTP.

Sometime on the same day, the Respondent, S and the Buyer met up to discuss the matter. The Buyer and S told the Respondent that the Buyer would only proceed with the purchase if T agrees to reduce the selling price by \$5,000 and to raise the commission from 0.75% to 1%.

When T wanted to collect the 2<sup>nd</sup> Cheque, the Respondent told her that the Buyer would only proceed with the sale if she raised the commission from 0.75% to 1% of the price and compensate the Buyer for the difference in monthly tenancy amount multiplied by the remaining months of the tenancy which was about \$5,000. The increase in commission was to enable S to collect the co-broke commission of 0.5% of the price from the Respondent.

As the Respondent did not arrange for the Sellers to sign the 1<sup>st</sup> OTP before it was sent to the Buyer, the Sellers were not in a position to forfeit the Option Money on account of the Buyer's decision not to exercise it. If the 1<sup>st</sup> OTP had been signed before it was provided to the Buyer, the Sellers could have forfeited the Option Money.

As T wanted to sell her Property, she executed an OTP in favour of the Buyer ("**2<sup>nd</sup> OTP**") for the Property at the purchase price of \$1.245 million with 1% commission.

### **Charge**

The Respondent faced the following 2 charges:

**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 1 (Proceeded)**

For wrongly representing the monthly rent amount to be \$3,000 (when it was actually \$2,400) to a buyer of the property and his salesperson while acting for the sellers in the sale of their property with tenancy under paragraph 5(1) of the Code of Ethics and Professional Client Care (CEPCC).

### **Charge 2**

For issuing the OTP for the Property without procuring the signatures of the sellers while acting for the sellers in the sale of their property under paragraph 5(1) of the Code of Ethics and Professional Client Care (CEPCC).

### **Outcome**

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, while Charge 2 was taken into consideration for purposes of sentencing.

The Disciplinary Committee (“**DC**”) considered that both charges occurred on the same date (i.e. within a short time period), that the \$5,000 loss caused to T was due to the Respondent and that the Respondent’s failed to compensate for the loss attributable to his lack of due diligence. The DC also considered that the Respondent eventually corrected his wrong representation of the monthly rental when he finally got the actual TA.

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