

S/N 5/2019 – Knowingly Providing Services to Sellers of Property who were Party to an Ongoing Exclusive Estate Agency Agreement

Facts of Case

Salesperson X and her estate agent were engaged by the Sellers of a Housing and Development Board (“HDB”) flat (the “**Property**”) to market and sell the Property on an exclusive basis for a duration of 3 months (from 27 January 2016 to 26 April 2016). Accordingly, an Exclusive Estate Agency Agreement for the Sale of Residential Property (the “**Exclusive Agreement**”) was executed between the Sellers and Salesperson X’s estate agent.

Under the Exclusive Agreement, Salesperson X and her estate agent were entitled to a commission of 2% of the Property’s sale price (i.e. \$9,300).

In or around February 2016, the Respondent was introduced to the Sellers, who informed him that they had engaged Salesperson X and her estate agent on an exclusive basis and showed him the Exclusive Agreement. The Sellers told the Respondent that they wanted to have more salespersons to market the Property. The Respondent then advised the Sellers to email the estate agent to cancel the Exclusive Agreement. However, the Sellers did not eventually email the estate agent to do so. At no point of time did the Sellers inform or confirm with the Respondent that the Exclusive Agreement had been cancelled.

Notwithstanding that the Exclusive Agreement was still in force, the Respondent proceeded to provide estate agency services to the Sellers for the sale and marketing of the Property. The Respondent informed his team member (Salesperson Y) to market the Property and arranged for prospective buyers to view the Property. Salesperson Y proceeded to advertise the Property on the online property portal, PropertyGuru. The Respondent did not, at any point in time, obtain the consent of Salesperson X or her estate agent to provide his services to the Sellers.

The Respondent subsequently arranged a viewing of the Property with a set of prospective buyers through Salesperson Z (the prospective buyers’ salesperson) – Salesperson Z had responded to Salesperson Y’s advertisement. The Respondent’s viewing did not eventually take place as the prospective buyers viewed the Property with Salesperson X prior to the Respondent’s viewing instead.

After the viewing, the prospective buyers were keen to purchase the Property. Salesperson X informed Salesperson Z that the offer could be made through her. However, the Respondent also informed Salesperson Z that an offer could be made through him (i.e. the Respondent). The sale price was negotiated with both Salesperson X and the Respondent separately and agreed through both salespersons. The Respondent then asked Salesperson Z if he could delay the buyers’ offer by a week or so to close the transaction through him (i.e. the Respondent).

The Respondent claimed that he had submitted the HDB resale checklist on the Sellers' behalf but was still waiting for the cooling period of 7 days to pass. However, the Respondent never made such a submission as he was not the Sellers' exclusive salesperson.

Salesperson Z then called Salesperson X and was informed that she had already submitted the HDB resale checklist on the Sellers' behalf, and the relevant cooling period had passed. To avoid any confusion as to which salesperson was representing the seller, Salesperson Z requested for both Salesperson X and the Respondent to be present during the signing of the Option to Purchase ("**OTP**"), as both salespersons had claimed to be representing the Sellers.

As a result of the Respondent's involvement in negotiating the sale price, the Sellers asked Salesperson X if she would accept a lower commission if the transaction was closed through her, as the Respondent was prepared to accept a lower commission of 1% if the transaction was closed through him. Salesperson X eventually agreed to a lower commission of 1% (i.e. \$4,650) to ensure that the Sellers would close the transaction through her, and not the Respondent.

At the signing of the OTP, the Sellers decided to proceed with Salesperson X as their salesperson. The Respondent left the meeting and was no longer involved in selling the Property thereafter.

Charges

The Respondent faced the following charge:

Charge

For failing to perform his work in accordance with applicable laws, by providing his services to the Sellers in selling the Property when he knew that they were a party to the Exclusive Agreement for which the appointed salesperson was Salesperson X, in breach of paragraph 2.1.3 of the Practice Guidelines on Conduct between Salespersons (PG 02/2014), and in contravention of paragraph 4(1) read with paragraph 4(2)(a) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to the Charge.

In sentencing, the Disciplinary Committee ("**DC**") noted that if the Respondent had succeeded in persuading the Sellers to pay him instead of Salesperson X, the Respondent would have earned \$4,650 and caused a loss of twice that amount to

Salesperson X. As it turned out, the Respondent's interference caused Salesperson X to lose \$4,650.

While the DC was sympathetic that the Respondent was somewhat led on by the Sellers to act for them when they had not terminated the Exclusive Agreement, the Respondent himself had recognized that he ought to have double-checked that the Sellers had terminated or changed the Exclusive Agreement before acting for them. The DC also considered the Respondent's early admission to the Charge.

Accordingly, the DC imposed the following financial penalty and disciplinary order on the Respondent:

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

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