

S/N 3/2022 – Misleading and/or Deceiving the Buyer’s Salesperson into Believing that the Seller was Paying the Respondent a Commission of 1% Instead of 2% of the Sale Price of the Property

Facts of Case

In or around May 2018, the owner (the “**Seller**”) of a condominium unit (the “**Property**”) engaged the Respondent to market the Property for sale and entered into an exclusive Estate Agency Agreement (the “**Estate Agency Agreement**”) with the Respondent’s Estate Agent (“**EA**”). The Seller’s sister had recommended the Respondent’s services to the Seller. The Respondent also previously marketed other properties that the Seller had owned, prior to the transaction involving the Property. The Estate Agency Agreement provided that the Seller would pay a commission of \$35,600 (based on an expected sale price of \$1,780,000) or 2% of the transacted price of the Property.

On 11 November 2018, a salesperson (“**Salesperson A**”) who represented a prospective buyer (the “**Buyer**”) contacted the Respondent to arrange for a viewing of the Property. Salesperson A also asked the Respondent if the commission paid by Seller would be shared between Salesperson A and the Respondent on an equal basis if the Buyer purchased the Property. The Respondent confirmed that they would split the commission equally but informed Salesperson A that the Seller would only be paying 1% of the sale price as commission, which was untrue.

On 18 November 2018, the Seller accepted the Buyer’s offer to purchase the Property for \$1,780,000. The Respondent and Salesperson A signed a co-brokerage agreement that provided for Salesperson A to receive a co-brokerage fee of \$8,900 (less GST) “which is equivalent to 50% of the commission payable by the [Seller] to the [Respondent]”. In fact, Salesperson A, on an equal commission split, should have been entitled to a co-broke commission amounting to 1% of the sale price of Property (i.e \$17,800), since the Seller had agreed to pay the Respondent a commission of 2% of the sale price of the Property.

On 19 November 2018, Salesperson A collected the Option to Purchase (“**OTP**”) for the Property from the Respondent and noticed that the OTP stated that the Respondent will receive 2% of the sale price as commission from the Seller. Salesperson A sought clarification from the Respondent, who claimed that the commission payable indicated was part of his EA’s pre-printed OTP which he was not allowed to amend.

On 21 February 2019, the sale of the Property was completed. A copy of the completion account was forwarded to Salesperson A who noticed that the Respondent’s EA was paid a commission of 2% of the sale price of the Property (i.e \$35,600) and not 1% as the Respondent had claimed. Salesperson A approached her EA’s compliance officer who brought the discrepancy to the attention of the Respondent’s EA.

Note: This case was referred to a CEA Disciplinary Committee (DC) after 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.

On 25 February 2019, the Respondent met with two compliance officers from his EA. During the meeting, the Respondent claimed that he had to pay half of the Seller's commission (i.e 1% out of 2% the sale price) to a third party who had referred the Seller to him (the "**Referral Fee**"),

which was why he told Salesperson A that he would pay her a co-broke commission equivalent to 0.5% of the sale price of the Property.

On 1 March 2019, the Respondent met with Salesperson A and her manager. He told them a similar story that he had told his EA's compliance officers, about having to pay the Referral Fee to a "friend's colleague". He also claimed that he would convince his "friend's colleague" to lower the Referral Fee.

On 12 April 2019, Salesperson A filed a complaint against the Respondent with CEA after failing to resolve the matter with the Respondent. During investigations conducted by a CEA Investigation Officer ("**CEA IO**"), the Respondent maintained his story that he was referred to the Seller by a certain individual, to whom he had to pay the Referral Fee. Investigations by the CEA IO revealed that the Respondent never had to pay a Referral Fee to any individual. The individual who he had claimed to owe the Referral Fee to did not exist and was fabricated by the Respondent to corroborate the claims about the Referral Fee that he had made to Salesperson A, her manager and his EA's compliance officers. For giving false information to the CEA IO, the Respondent was charged under the Penal Code and sentenced to a fine of \$5,000.

At the time of sentencing before the Disciplinary Committee, the Respondent had not reimbursed Salesperson A the balance of her share of co-broke commission amounting to \$8,900 (or 0.5% of the sale price of the Property at \$1,780,000).

Charges

The Respondent faced the following charges:

Charge 1

Bringing discredit or disrepute to the real estate agency industry by misleading and/or deceiving Salesperson A into believing that the Respondent was receiving a commission of 1% of the sale price of the Property when the Respondent was in fact receiving a commission of 2% of the sale price of the Property, in breach of paragraph 7(1) read with 7(2)(a) of the Code of Ethics and Professional Client Care.

Charge 2

Bringing discredit or disrepute to the real estate agency industry by misleading and/or deceiving the compliance officers from the Respondent's EA that the Respondent had to pay a referral fee of 1% of the sale price of the Property to a third party when there was in fact no such third party, in breach of paragraph 7(1) read with 7(2)(a) of the Code of Ethics and Professional Client Care.

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Charge 3

Bringing discredit or disrepute to the real estate agency industry by misleading and/or deceiving Salesperson A and her manager that the Respondent had to pay a referral fee of 1% of the sale price of the Property to a “friend’s colleague” when there was in fact no such person, in breach of paragraph 7(1) read with 7(2)(a) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1, and Charges 2 and 3 were taken into consideration for sentencing.

Accordingly, the Disciplinary Committee imposed the following financial penalty on the Respondent (who was not a registered salesperson at the time of sentencing):

Charge 1: A financial penalty of \$16,000.

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