Council for Estate Agencies

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.

S/N 10/2016 – Misleading Buyer on the Area of the Property

Facts of Case

At the material time, the Respondent was a salesperson and one of two directors of a private limited company (the "**Seller Company**") which sold a unit in a commercial building (the "**Unit**") to a buyer company (the "**Buyer**"). The Complainant was one of the two directors and shareholders of the Buyer. The other director and shareholder of the Buyer is the Complainant's daughter.

The Complainant had been acquaintances with the Respondent for a number of years and knew the Respondent to be a salesperson. As such, the Buyer sought the Respondent's recommendations in terms of potential properties to buy.

The Respondent recommended the Complainant to view the units in the commercial building where the Unit was located and arranged to show the Complainant the units there in or around February 2012.

On the viewing day (in or around February 2012), the Respondent brought the Complainant to the Unit which was at that time owned by the Seller Company. The Seller Company had bought the Unit from the developer. The Respondent did not tell the Complainant that he was a director of the Seller Company.

When the Seller Company bought the Unit from the developer, the Respondent was a director and shareholder of the Seller Company. He purchased the Unit on behalf of the Seller Company as he was the representative of the Seller Company and had signed off as the purchaser's representative in the sale and purchase agreement dated 18 July 2011 ("**SPA1**"). It was indicated in Annex A and the floor plan of SPA1 that the floor area of the Unit was estimated to be 94 square metres which is equivalent to approximately 1,012 square feet. On or about 1 December 2011, before the Complainant viewed the Unit, the Respondent transferred all of his shares in the Seller Company to one of the minority shareholders of the Seller Company but he remained as a director. He was involved in the transaction only as a director of the Seller Company.

On the day of viewing of the Unit, the Respondent showed the Complainant his calculation of the Buyer's expected expenditure on the Buyer's prospective purchase of the Unit as follows: -

> *"[the Unit number], 1,055 sqft, $780 psf*
> *$822,900*
> *$57,603 GST*
> *$19,287 Stamp Duty"*
> (the "**Calculation**")

The Respondent also informed the Complainant that the Seller Company would accept a price of no less than $780 per square feet ("**psf**").

After the viewing the Complainant contacted the Respondent to offer to purchase the Unit at $760 psf to which the Respondent replied that the Complainant should make out a cheque for 1% of the corresponding purchase price (on the offer price based on $760 psf) as the option fee for the Buyer's purchase of the Unit so that the Respondent could pass this cheque to the Seller Company. The offer price of the Unit was therefore calculated to be $801,800 which was derived by multiplying $760 psf by 1,055 sqft. The Complainant had used "*1,055 sqft*" as the area of the Unit as indicated in the Calculation.

Eventually, the Complainant on behalf of the Buyer bought the Unit at $801,800 by way of a sub-sale by the Seller Company. A Sale and Purchase Agreement between the developer and the Buyer was entered into on 29 May 2012 ("**SPA2**").

When the sale of the Unit was duly completed and the Complainant collected the keys to the Unit from the developer sometime in or around early March 2013, he noticed from the finalised floor plan of the Unit that was issued by the developer on completion that the area of the Unit was indicated as 91.74 square metres ("**sqm**"). He did the necessary conversion and realised that 91.74 sqm was equivalent to 1,012 sqft and not 1,055 sqft. This meant that the Complainant had paid $32,680 (i.e. 43 sqft multiplied by $760 psf) more than what the price should have been for the Unit, based on his offer of $760 psf.

The Complainant contacted the Respondent and sought for an explanation from the Respondent. The both of them also tried to reach a settlement for their dispute but no settlement could be reached. Eventually, the Complainant lodged a complaint with the Council for Estate Agencies (the "**CEA**") in relation to the Respondent's conduct in this incident.

Charge

The Respondent faced the following charge:

Charge

Bringing disrepute to the estate agency trade or industry by misleading the Buyer of the Unit that the area of the Unit was 1,055 square feet when in fact the Unit's area was only 1,012 square feet, causing the Complainant acting on behalf of the Buyer to purchase the Unit at the price of $801,800 which was calculated on the basis of the Buyer's offer to purchase at $760 psf multiplied by 1,055 square feet, when the purchase price should have been $769,120 (i.e. the offered $760 psf multiplied by 1,012 square feet), in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

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Outcome

Following a trial, the Disciplinary Committee found the Respondent guilty of the Charge, and imposed a financial penalty of $2,000 and a suspension order of 5 months on the Respondent.

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