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 10/2015 – Misleading Clients that a Minimum Commission was Required under Singapore Law and Misleading Client that Additional Term in the Estate Agency Agreement was a Rule set by Authorities

Facts of Case

In April 2013, the Respondent was engaged by the sellers of a condominium unit ("**Property**") and it was verbally agreed that the Respondent would be paid a commission of 1% of the sale price in the event of a successful sale based on the expected selling price of about $4.2 million to $4.4 million.

The Respondent subsequently received an offer of $3.8 million from potential buyers and represented to his seller clients that the buyers' salesperson insisted on a 1% commission. When one of the seller clients asked if the 1% commission requested by the buyers' salesperson was negotiable, the Respondent replied that it was but also orally represented to them that Singapore law required a minimum of 2% to 4% of the sale price to be paid as commission by sellers of a property (to be shared between the Respondent and the buyers' salesperson).

The Respondent also prepared an Estate Agency Agreement ("**EAA**") for his seller clients to sign. The EAA contained an additional term which stated: "*Should the Seller forfeit any option money or deposit paid by the Buyer, then one-half (1/2) of the forfeited amount shall be payable to the Estate Agent, provided such amount does not exceed the agreed commission as stated in clause 4*" ("**Additional Term**"). When asked to explain the Additional Term, the Respondent orally represented to his seller clients that it was a rule set by the authorities and that they were required to sign and accept the Additional Term.

Hence, on 29 June 2013, the seller clients signed the EAA, received the buyers' cheque of $38,000 as the option fee via the Respondent, and granted the Option to Purchase ("**OTP**") to the buyers.

On 1 July 2013, the seller clients' lawyer highlighted that the stake-holding section of the OTP was unfilled. In addition, on the same day, the Respondent had called one of his seller clients and advised him that it was legal to backdate the OTP to 28 June 2013 so that the buyers could avoid being subjected to new rules issued by the Monetary Authority of Singapore ("**MAS**") concerning the buyers' application for private housing loans, which took effect on 29 June 2013, even though the OTP had already been signed.

Charge

The Respondent faced the following 4 charges:

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Charge 1 (Proceeded)

For misleading his clients by stating that Singapore law requires that the commission to be paid to the salespersons involved in the sale and purchase of the property upon the successful completion of a sale of property was to be a minimum of 2% to 4% of the sale or purchase price, when such a requirement does not exist under Singapore law, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care.

Charge 2 (Proceeded)

For misleading his clients by stating that the Additional Term in the EAA was a rule set by the Singapore authorities and that his clients were therefore required to agree to and accept this Additional Term, when no such legal or regulatory requirement exists, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care.

Charge 3

For misleading one of his clients by advising that it was legal to backdate the OTP in order to facilitate the buyers in avoiding being subject to new rules issued by the MAS although his clients had already signed and granted the OTP, when this was not correct, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care

Charge 4

For procuring his clients' signatures on the OTP in which one of the essential terms of the OTP, namely the relevant stake-holding term of the OTP, was unfilled, in contravention of paragraph 9(1) read with paragraph 9(2)(d) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1 and 2 while Charges 3 and 4 were taken into consideration for sentencing purposes. The Disciplinary Committee imposed the following financial penalties and disciplinary orders against the Respondent:

Charge 1: A financial penalty of $2,000 and a suspension of 3 months.

Charge 2: A financial penalty of $1,500 and a suspension of 3 months.

The suspension orders were ordered to run concurrently and fixed costs of $1,000 was imposed on the Respondent.