

## **S/N 4/2015 – Misleading the Other Parties Regarding Commission and Failing to Convey Offers to Clients**

### **Facts of Case**

The Respondent was engaged by her seller clients to sell their private condominium unit (“**Unit**”).

Sometime in or around 3 December 2012, the buyer viewed the Unit. He became interested to buy the Unit and after some consideration, decided to make offers to buy the Unit.

In the afternoon of 10 December 2012, the buyer instructed his salesperson to convey an offer in the region of \$1.18 million for the Unit. The buyer’s salesperson contacted the Respondent to convey the said offer to her. The Respondent rejected the offer immediately without conveying the said offer to her seller clients.

In the evening of 10 December 2012 before 7 pm, the buyer’s salesperson conveyed another offer of \$1.2 million from the buyer to the Respondent after the buyer and his salesperson had a discussion on the rejection of the \$1.18 million offer. The Respondent again rejected this \$1.2 million offer immediately without conveying the said offer to her seller clients.

At all material times, the seller clients expected the Respondent to convey all offers from prospective buyers to them.

Later in the evening of 10 December 2012, the buyer, his salesperson and the Respondent met at the void deck of the block where the Unit was located. The buyer and his salesperson sought to persuade the Respondent to convey the buyer’s \$1.2 million offer to the sellers. During this discussion, the Respondent represented to the buyer and his salesperson that the sellers would reduce her commission if the offer was below \$1.22 million and with her reduced commission, she could not pay co-broke commission to the buyer’s salesperson and the buyer would then have to pay his own salesperson’s commission (“**Representation**”). The Representation from the Respondent was later proven to be untrue. At all material times, her seller clients never instructed her that her commission would be reduced if the offer to purchase the Unit was below \$1.22 million.

As the buyer did not raise his offer above \$1.2 million but remained keen to buy the Unit, he relied on the Representation and agreed to pay his own salesperson’s commission. With this understanding and having collected a \$12,000 cheque (amounting to 1% of the buyer’s offer price for the Unit) from the buyer drawn in favour of her seller clients as well as the Offer to Purchase at \$1.2 million from the buyer and his salesperson, the Respondent conveyed the buyer’s offer of \$1.2 million for the Unit to her seller clients. The sellers eventually sold the Unit to the buyer for \$1.2 million.

The buyer later discovered that the Respondent’s commission of \$25,680 (amounting to 2% of the transacted price of the Unit) was not reduced at all even though the purchase price of the Unit was at \$1.2 million. By then, the buyer had already paid his own salesperson commission of \$6,420 (inclusive of GST).

**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.

## **Charges**

The Respondent faced the following four charges:

### **Charge 1**

For doing an act that may bring discredit or disrepute to the estate agency industry by misleading the buyer and his salesperson that if the Unit was sold below \$1.22 million, her seller clients would reduce her commission (which was false) and consequently, she could not pay the buyer's salesperson co-broke commission and therefore the buyer would have to pay his own salesperson's commission and the buyer was misled into paying commission to his own salesperson, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code of Ethics and Professional Client Care.

### **Charge 2**

For failing to convey the buyer's offer of \$1.18 million to her seller clients as soon as possible after receiving it, in contravention of paragraph 10 of the Code of Ethics and Professional Client Care.

### **Charge 3**

For failing to convey the buyer's offer of \$1.2 million to her seller clients as soon as possible after receiving it, in contravention of paragraph 10 of the Code of Ethics and Professional Client Care.

### **Charge 4**

For failing to act in a fair and reasonable manner towards the buyer when she refused to entertain the buyer's request to change the completion date on the Option to Purchase of the Unit, in contravention of paragraph 6(3) of the Code of Ethics and Professional Client Care.

## **Outcome**

Following a trial of the matter, the Respondent was convicted of Charges 1, 2 and 3 and acquitted of Charge 4.

The DC imposed the following sentences on the Respondent:

**Charge 1:** A financial penalty of \$5,000 and a suspension of 4 months

**Charge 2:** A financial penalty of \$1,000 and a suspension of 5 weeks

**Charge 3:** A financial penalty of \$1,000 and a suspension of 6 weeks

The suspensions were ordered to run concurrently.

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