

S/N 5/2018 – Misrepresenting to Client on Monthly Rent, Preventing Communications between Client and Landlord, Misleading Salesperson on Commission & Failure to Declare Conflict of Interest

Facts of Case

The Respondent was engaged by X, a foreigner, to source for accommodation in Singapore. The Respondent had previously assisted X to rent an apartment in Singapore, but X was unable to extend the lease. The Respondent was tasked to find alternative accommodation for a 4-month period.

The Respondent saw a semi-detached house (the “**Property**”) marketed by Salesperson Y at the monthly rent of S\$ 5,000. The Respondent and Salesperson Y were from the same estate agent. The Respondent contacted Salesperson Y and was told the monthly rent would be S\$ 5,000. The Respondent offered S\$ 4,500 instead, and also arranged for a viewing of the Property.

The Respondent recommended the Property to X. Notwithstanding her discussions with Salesperson Y on the monthly rent, the Respondent told X the monthly rent would be S\$ 5,000. X was agreeable and viewed the Property. X asked the Respondent if the landlord would be willing to waive a security deposit in exchange for upfront payment of rent for the entire lease. The Respondent told X that the landlord was not agreeable, and that the Respondent was only able to secure the monthly rent of S\$ 5,000 as she was willing to be X’s local guarantor.

Salesperson Y informed the Respondent that the landlord was agreeable to a monthly rent of S\$ 4,500, and also required a one-month security deposit. The Respondent and Salesperson Y proceeded to discuss sharing the commission that Salesperson Y would receive from the landlord. After some further discussion on the terms of the lease, the Respondent confirmed that X would rent the Property.

Salesperson Y prepared the tenancy agreement and emailed the Respondent a PDF copy, with the monthly rent stated as \$4,500 (the “**Original TA**”). The Respondent requested a word copy of the tenancy agreement, but Salesperson Y did not provide this.

Thereafter, the Respondent handed X a tenancy agreement for the Property, which stated that the monthly rent was S\$ 5,000 (the “**False TA**”). The False TA was not prepared by Salesperson Y and did not reflect the agreement reached on the monthly rental. Unaware of this, X proceeded to sign the False TA, which did not contain the landlord’s signature.

The Respondent returned Salesperson Y a hardcopy of the Original TA, which was purportedly signed by X, but whose signature was in fact forged by the Respondent. Salesperson Y proceeded to obtain the landlord’s signature on the Original TA and sent the Respondent a copy of the completed Original TA.

X subsequently moved into the Property. X asked the Respondent if he could meet the landlord to express his gratitude for the short term lease. The Respondent informed X that the landlord would not be able to meet him as they were busy. Likewise, the Respondent told the landlord’s son that X was very busy and had appointed her to deal with all matters relating to the Property, and that X’s instructions were for the landlord not to send anything directly to him, but to communicate via the Respondent instead.

Thereafter, the Respondent sent X an invoice relating to the lease of the Property. The invoice was based on a monthly rent of \$5,000, and also included the Respondent’s commission.

The next day, however, X also received an invoice from the landlord for one month's rent (the "**Landlord Invoice**"). The Landlord Invoice stated that the monthly rent was S\$ 4,500.

Faced with this discrepancy, X contacted the Respondent and demanded an explanation. The Respondent claimed she had negotiated with the landlord and managed to reduce the monthly rent from S\$ 5,000 to S\$ 4,500 due to the condition of the Property. The Respondent subsequently handed the Original TA (which was signed by the landlord) to X. X kept the Original TA but did not sign it.

The Respondent also sent Salesperson Y an image of the Landlord Invoice and informed Salesperson Y that X had requested for such reminders not to be sent to him.

The Respondent subsequently emailed X a revised invoice (the "**Revised Invoice**"). The Revised Invoice was based on the monthly rent of S\$ 4,500, and also included the Respondent's commission (S\$ 2,407.50). X paid the Revised Invoice. Thereafter, X made all monthly rental payments directly to the landlord.

Notwithstanding that the Respondent had already collected commission of S\$ 2,407.50 from X, the Respondent still raised the issue of co-broke commission with Salesperson Y and provided her personal bank account details for Salesperson Y to transfer the sum of S\$ 750. Salesperson Y asked the Respondent to forward a co-broke agreement for record purposes. The Respondent claimed she had already submitted the transaction to their estate agent (which was false) and asked Salesperson Y to transfer the commission to her directly. Salesperson Y did not eventually pay any co-broke commission to the Respondent.

When the lease ended, X met the landlord's son and Salesperson Y and discovered the following:

- (1) the monthly rent of S\$ 4,500 was agreed between Salesperson Y and the Respondent at an early point in time;
- (2) the tenancy agreement that Salesperson Y had prepared for the lease was the Original TA and not the False TA (which the Respondent had handed to X and which X had signed);
- (3) the Respondent had informed Salesperson Y that X had not paid her commission, when X had in fact paid her commission of S\$ 2,407.50;
- (4) notwithstanding the commission received from X, the Respondent had attempted to receive co-broke commission from Salesperson Y;
- (5) the Respondent had fabricated the landlord's requirement of a local guarantor; and
- (6) the Respondent had falsely told the landlord that X's instructions were for the landlord not to send anything directly to him.

The Respondent eventually returned X the sum of commission received from him.

The Respondent faced the following 6 charges:

Charge 1 (Proceeded)

For failing to render professional service to her client and to act with honesty and integrity, by misleading her client, X, that the amount of monthly rent payable for the lease of the Property was S\$ 5,000 when it was in fact S\$ 4,500, in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code of Ethics and Professional Client Care (the “Code”).

Charge 2 (Proceeded)

For failing to render professional service to her client and to act with honesty and integrity, by misleading her client, X, into thinking that she had negotiated and reduced the monthly rent payable for the lease of the Property from S\$ 5,000 to S\$ 4,500 due to the condition of the Property (allegedly by reason that there were many defects), in contravention of paragraph 6(1) read with paragraph 6(2)(b) of the Code.

Charge 3 (Proceeded)

For doing a deceitful act that may bring discredit or disrepute to the estate agency industry, by forging X’s signature on the first page of the Original TA, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code.

Charge 4

For doing a misleading act that may bring discredit or disrepute to the estate agency industry, by misleading both X and the landlord of the Property that neither party was able and/or willing to communicate and/or meet with the other party directly in relation to the lease of the Property, in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code.

Charge 5

For doing a misleading act that may bring discredit or disrepute to the estate agency industry, by attempting to collect a co-broke commission from Salesperson Y by misleading Salesperson Y into thinking that she would not receive and/or had not received commission from X (despite having already received commission from X); and also lying to Salesperson Y that she had submitted the lease transaction to their estate agent (when she did not do so), in contravention of paragraph 7(1) read with paragraph 7(2)(a) of the Code.

Charge 6

For accepting an appointment and continuing to act on behalf of X in respect of the lease transaction for the Property, where to do so would place her interests in conflict or potential conflict with X’s, and without declaring in writing to X her interests that may be in direct or indirect conflict with that of his, which arose by reason that the Respondent was from the same estate agent as the landlord’s salesperson (i.e. Salesperson Y), in contravention of paragraph 13(1) read with paragraph 13(2)(a) of the Code.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charges 1, 2 and 3, while Charges 4, 5 and 6 were taken into consideration for purposes of sentencing.

In sentencing, the Disciplinary Committee (“**DC**”) took the view that serious charges were involved, as the case also concerned forgery of a legal document (i.e. the Original TA). The DC noted that it was clear from the facts and evidence that the Respondent had intentionally set out to perpetrate an elaborate scheme to deceive the parties involved in the lease transaction (i.e. her own client X, Salesperson Y and the landlord), through her fraud and dishonesty at practically every stage of the transaction. The objective was to obtain financial gain for herself, but in a wrongful manner. If not for the Respondent being found out, she would not have come clean on her own accord. Even though the Respondent had many opportunities to come clean and admit her mistakes, she chose not to do so. A strong signal should be sent to salespersons that conduct involving fraud and dishonesty affect the core of their duties and will not be tolerated.

The DC also noted that the Respondent had no previous disciplinary record and promptly made restitution of the commission paid by X, as well as the Respondent’s personal circumstances – she was the sole breadwinner and had to bear the medical expenses of her husband and parents, as well as to support 3 children.

Accordingly, the DC imposed the following financial penalties and disciplinary orders on the Respondent:

Charges 1 and 3: A financial penalty of S\$ 6,000 and a suspension of 6 months for each charge.

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

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