

S/N 21/2020 – Soliciting for Payment of Commission from Consumer who did not Engage One’s Services

Note: This case is related to S/N 22/2020 and involved the same transaction; the Respondent in S/N 22/2020 (i.e. Salesperson R) had represented the buyer of the Property (Mr J).

Facts of Case

The Respondent was at all material times a registered salesperson.

On or around 6 July 2018, Mr J and his wife saw an advertisement for the sale of a residential property in the Tiong Bahru estate listed by the Respondent.

Mr J’s wife contacted the Respondent to arrange for a viewing of the advertised property. The Respondent informed her that his partner, Salesperson R, would attend the viewing on his behalf.

On or around 7 July 2018, Mr J and his wife met Salesperson R for the first time during the viewing of the unit. Salesperson A did not attend the viewing.

Subsequently, on 14 July 2018, Salesperson R arranged viewings of several other properties in or around the Tiong Bahru estate for Mr J and his wife. During this viewing session, Salesperson R introduced them to another salesperson, Salesperson T, as Salesperson R’s manager. At all times, the Respondent, Salesperson R and Salesperson T purported to work as a team.

On 20 July 2018, Salesperson R and Salesperson T met with Mr J and his wife for them to view more properties in the Tiong Bahru estate. One of the properties viewed by Mr J and his wife during the period between 14 July 2018 and 20 July 2018 was the unit that they eventually purchased (the “Property”). At that time, the sellers’ asking price for the Property was \$1.05 million. After the viewings on 20 July 2018, Mr J and his wife proceeded to a coffeeshop with Salesperson R and Salesperson T for a discussion.

During this discussion on 20 July 2018, Mr J and his wife indicated to Salesperson R and Salesperson T that they liked the Property. Salesperson T urged Mr J to make an offer of \$950,000 and assured Mr J and his wife that he would negotiate with the sellers’ salesperson on the split of commission, and would be willing to forego a commission if the sellers were willing to accept Mr J’s offer of \$950,000.

Salesperson R then took out a blank commission agreement and a blank Offer to Purchase form (“Offer”) for Mr J to sign. Salesperson R procured Mr J’s signature on the Offer that contained a formal offer of \$950,000 to purchase the Property, which Mr J agreed to. Mr J also agreed to signing the commission agreement as he did not mind eventually paying a nominal sum to Salesperson R and Salesperson T as a token of appreciation. However, there was no express agreement by Mr J for a specific sum to be indicated in the blank commission agreement at this juncture. Salesperson R collected the signed commission agreement, Offer and a cheque for the option fee of \$9,500.

Later that day or the next day, Salesperson R passed the commission agreement (which was signed by Mr J) to the Respondent. The Respondent signed on the commission agreement as a “Witness” even though the Respondent was not present during Mr J’s signing of the commission agreement.

On 2 August 2018, the sellers issued an option to purchase (“OTP”) to Mr J at the offered purchase price of \$950,000, which Mr J exercised on 15 August 2018.

A dispute subsequently arose between Mr J and Salesperson R when he sought clarification from Salesperson R on why he had to pay a fee equal to 1% of the Property’s purchase price when a buyer’s salesperson would typically share a co-broking commission with the seller’s salesperson to be paid by the seller in transactions involving private properties.

When Mr J’s wife questioned Salesperson R on why Mr J was being asked to pay her a commission, Salesperson R informed Mr J’s wife that Mr J had already signed a commission agreement. Salesperson R then sent Mr J’s wife a copy of the signed commission agreement which now stated that Mr J was to pay a commission fee of \$10,165, and which was now signed by the Respondent as a witness. Both Mr J and his wife were shocked to see these additions to the commission agreement.

On 9 October 2018, Mr J received an invoice from the Respondent’s estate agent requesting for payment of \$10,165 for “services rendered in connection with purchase of the Property”. The salesperson listed on the invoice was the Respondent, and stated that Mr J was the buyer of the Property. Mr J did not make any payment of this invoice.

At all material times, the Respondent had not been engaged by Mr J as a salesperson in respect of the purchase of the Property. Save for signing as a witness on Mr J’s commission agreement which was blank at the material time, the Respondent had not conducted any estate agency work for Mr J in connection with the purchase of the Property. The Respondent had also signed on the commission agreement purportedly as a witness and not in the capacity of a salesperson representing Mr J in the transaction.

From the time the Respondent was first contacted by Mr J’s wife until Mr J exercised the OTP for the Property, the Respondent had never met or corresponded with Mr J. Save for the referral of Mr J to Salesperson R on or around 6 July 2018, the Respondent was not involved in respect of Mr J’s purchase of the Property.

At all times, Salesperson R was the salesperson who liaised with Mr J and handled Mr J’s purchase of the Property.

Despite the above, Mr J was issued with an invoice on 9 October 2018 requesting for payment of commission and which listed the Respondent as Mr J’s salesperson. In the circumstances, the Respondent had solicited for the payment of commission, by way of the said invoice, from Mr J who did not engage the Respondent’s services.

Charge

The Respondent faced the following charge:

Charge 1 (Proceeded)

For soliciting, by way of a pro-forma invoice issued by his estate agent, for the payment of commission from Mr J who had not engaged his services, in contravention of paragraph 7(4) of the Code of Ethics and Professional Client Care.

Outcome

Pursuant to a plea bargain, the Respondent pleaded guilty to Charge 1.

The DC imposed the following financial penalty and disciplinary order on the Respondent:

Charge 2: A financial penalty of \$1,500 and a suspension of 1 month.

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

In sentencing, the DC observed that the Respondent and Salesperson R had taken various steps in an attempt to mislead Mr J to potentially part with a sum of \$10,165 in commission that he had never agreed to pay.

The DC also took into consideration mitigating factors such as the Respondent's plea of guilt and lack of antecedents.