Topic 3

Video

1. What were the implications of the mistake in this case for the purchaser?

Answer should relate to the following:

Although he had won the auction with the reserve price having been met, and had signed an agreement to purchase the property, he could not purchase the property as the transaction did not complete.

2. There were several circumstances that led the licensee in this case to believe that it was correct to act on the instructions of the owner’s accountant as the ‘authorised person’. Describe these circumstances.

1. Answer should relate to the following:

The owner had given the licensee the accountant’s phone number and told the licensee to deal with the solicitor as well, but that the accountant was the main point of contact.

The licensee said that is what happened and that the accountant also told him that he was authorised to sign the listing agreement for the impending auction.

The licensee said he did not deal with the owner at material times because the owner had told him to deal with the accountant.

Both the accountant and the licensee said the owner had previously explained that due to his job the owner was often on the road and difficult to contact and commonly did not respond to messages, so neither party was particularly concerned that he hadn’t been communicating during the process.

The licensee said that when the owner declined to proceed with the sale, he, was baffled as he had been in constant touch with the owner for well over a year and knew he wanted the apartment sold and that had been constantly confirmed by the accountant and solicitor.

3. What should the licensee have done to avoid a finding of unsatisfactory conduct?

1. Answer should relate to the following:

He should have had the vendor sign the agency agreement or he should have acquired direct and written authority from the vendor that the accountant was nominated to act on his behalf rather than assumed authority from the vendor’s accountant.

Video

4. The CAC found the salesperson licensee to be in breach of rule 5.1. What two actions did the CAC say warranted this decision?

A. Answer should relate to the following:

1. The CAC found that by initiating the 180-day exclusive agency agreement and in failing to release the vendor (who was not GST registered) from the exclusive agency, the salesperson licensee was in breach of rules 5.1 (and 6.1). Setting up this length of agreement for this transaction was also not in line with agency policy.

2. Email evidence showed the salesperson licensee did not obtain the accountant’s signature on the listing agreement until after he was aware of the complaint. The email to the accountant requested his signature ‘To be correct …’

The CAC said the salesperson licensee’s action in asking the accountant to sign after-the-fact indicated that he knew that all the proprietors needed to sign the listing agreement, and that it was insufficient to have the vendor alone sign, even if as agent for a trustee company.

Video

6. What was the CAC’s reasoning for a ‘no further action against the licensee who conducted the auction?

A. Answer should relate to the following:

The CAC said: ‘The [salesperson licensee] as the listing [licensee] was responsible for communications with the complainants and was the licensee who had the day to day contact with [them], it would be expected that, given the short-term role of the auctioneer, he can rely on this relationship between the complainants and the listing licensee being correctly documented…

‘While it was not best practice of the auctioneer to proceed without the third signature, his reliance on the assertions and conduct of the complainants in allowing the auction to proceed and the preparatory work of [the salesperson licensee] as the listing agent, meant that his conduct in relying on the documentation provided to him did not amount, by a narrow margin, to unsatisfactory conduct.’

Video

7. What approach did the director state the agency would have taken (with hindsight) to try to resolve this matter through the agency’s internal complaints and dispute resolution procedures?

A, Answer should relate to the following:

The director of the agency said:

‘With hindsight, instead of referring the complainant to the lawyer [who the agency believed had the authority to authorise marketing on behalf of the trust] he would have initiated a meeting with the lawyer, the complainant and himself to discuss the matter…

‘Given the agency did not hold the complainant’s written authority for expenditure, a partial refund of the marketing money may have been an acceptable resolution.’

Video

8. What actions by the salesperson licensee did the CAC was a breach of rule 9.6?

1. Answer should relate to the following:

The CAC said… the agency agreement [did not appear to be] signed by trustee 1 in her capacity as agent for the trust until after the licensee offered the property for sale and introduced prospective buyers to the property. Marketing a property prior to the agency agreement being signed is therefore in breach of rule 9.6...

9. What did the salesperson licensee in this case fail to obtain or verify?

1. Answer should relate to the following:

The licensee failed to obtain or verify written confirmation of the authority for one of the trustees to sign the agency agreement on behalf of the complainant.

10. What error occurred in the agency agreement (drawn up the salesperson licensee) and the sale and purchase agreement (that the CAC said he was responsible for checking before proceeding)?

1. Answer should relate to the following:

The ‘vendor’ party to the agreement on the agency agreement and the ‘vendor’ on both the front and back pages of the sale and purchase agreement was entered as the three individual trustees’ names but without mention of the trust.

The licensee should have added the words ‘as trustees of the [trust]’ after the names of the trustees.

11. What discrepancy did the CAC say the agency office systems should have picked up?

1. Answer should relate to the following:

The CAC said the agency should have queried the discrepancy with dates on the agreement and had the licensee explain and amend the agreement accordingly. It had a date of signing of 28/XX/XX and a date of commencement of 23/XX/XX. An agency cannot commence before the date of the agency agreement.

Video

12. The Court of Appeal said that the real estate agency was not entitled to commission. Explain the reasons for this decision.

1. Answer should relate to the following:

The situation involved one entity (X Property Developments Ltd) that had entered into an agency agreement with the real estate agency and another entity (Coumat Ltd), with the same directorship, that signed the sale and purchase agreement (which became unconditional).

The Court of Appeal held that the agency could not rely on a deed of novation or the shared directorship, to claim the right to commission.

Video

13. The High Court judge accepted that ‘an agent would ordinarily be wholly remiss if he or she did not obtain the express authority of all the owners of a property when it is listed for sale’.

What was unusual about this case that prompted the judge to overturn the finding of unsatisfactory conduct?

1. Answer should relate to the following:

It was noted that this was not an ordinary case and found that the heads of agreement should be interpreted as not to require the signature of both owners on any listing agreement; and, rather, the heads of agreement contemplated each party engaging their own real estate agent, who would then work together to market the property for sale under a joint sole agency.

Video

14. Describe how the salesperson licensee in this case failed to meet her fiduciary duty obligations.

1. Answer should relate to the following:

The salesperson licensee never spoke to, or met, the complainant during the listing, marketing, and selling of the properties.

The salesperson licensee failed to verify the signature of the complainant, who was the sole proprietor on the property titles, on all three of the agency agreements and the sale and purchase agreements.

‘All contact should have been with the complainant, not the complainant’s husband, unless the [salesperson licensee] was satisfied that he had the requisite authority to act on the complainant’s behalf.’