Topic 5

Video

1. Explain why the CAC decided to make a ‘no further action’ decision in relation to the handling of the complainant’s offer in this case.

A. Answer should relate to the following:

The CAC accepted that at the time the salesperson licensee was first contacted by the complainant, he was already under instruction from the vendor to arrange a sale with the company that successfully purchased the property.

The CAC noted that the director of the vendor company had already decided that, even if the complainant offered her a higher price, she would not consider this offer and would still sell to the company that successfully purchased the property.

The obligation under the rules is to deal fairly with all parties, while at the same time acting in accordance with the client’s instructions as long as they are not contrary to law.

‘In this case, there was no evidence that the vendor’s instruction, with regard to the consideration of offers, was contrary to law. Therefore, the salesperson licensee was obliged to follow the vendor’s instructions.’

2. What did the CAC say, in most multiple offer situations, should be completed?

A. Answer should relate to the following:

A Multiple Offer Acknowledgment form

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3. In this case, what impact did licensee 1’s actions, which were a breach of rule 6.1, have on the client vendor?

A. Answer should relate to the following:

The CAC said that the chance of a (possibly) better offer has been lost to the vendor as the complainant’s offer was never clarified or recorded in writing for him to consider. The CAC considered fiduciary obligations to the client vendor were not been met in this regard and found a breach of rule 6.1. The CAC noted, had the vendor wished to pursue the offer from the complainant and her husband, the offer could not be binding if not in writing.

The CAC accepted the vendor had a right to choose not to deal with a multiple offer but considered the vendor was not able to make an informed choice as licensee 1 misrepresented the offer from the complainant and her husband.

4. The CAC considered the agency’s advice to present a verbal offer on behalf of the complainant and her husband with the intention of avoiding a multiple offer situation was not adequate and not fair to all parties.

What advice did the CAC say would have been appropriate in these circumstances?

A. Answer should relate to the following:

The CAC had serious concerns that this advice was given when the offer from the complainant and her husband was not in writing in any form and they had no knowledge their ‘offer’ was even being presented, let alone was effectively part of a multiple offer.

The CAC considered advice should have been given that licensee 1 step aside from negotiations with the vendor, as she could not be impartial in a presentation in these circumstances.

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5. What conduct by the salesperson licensee did the CAC consider to be in breach of rules 6.2 and 9.16?

A. Answer should relate to the following:

The CAC said it was clear the salesperson licensee had information confidential to the vendor (the value and conditions of the complainant’s offer), and could use that information to benefit himself (although that may not have been his motivation).

The CAC said a senior independent person within the agency should have handled the multiple offer situation and present the offers to ensure that the process was transparent and that all parties were dealt with fairly.

The CAC considered the licensee’s conduct in presenting both offers was in breach of rules 6.2 and 9.16.

6. In which areas was the agency found to have failed to meet its obligations?

A. Answer should relate to the following:

The agency was found to have failed to have an adequate policy in place for multiple offer situations in which the licensee stood to benefit, or systems that ensured correct procedure regarding section 134.

The agency was also found to have failed to supervise the salesperson licensee; both in the multiple offer situation and in ensuring he met the requirements of sections 134 and 135.

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7. Why was the listing licensee in this case found to have breached rules 6.2 and 9.1?

A. Answer should relate to the following:

The listing licensee was found in breach of rules 6.2 and 9.1 as she failed to inform her branch manager of the complainants' offer, and did not follow the agency's proper course of action for a multiple offer situation.

8. The agency’s policy rule regarding what must occur when a single offer develops into a multiple offer was presented as evidence in this case.

Describe the process outlined in this policy.

A. Answer should relate to the following:

The policy said: ‘At any stage of negotiations, as soon as a second customer has a written offer, negotiations with the first party MUST stop and the multiple offer rules commence.

‘Salespeople MUST immediately notify; in the first instance, the listing branch manager.’

It further goes on to say ‘It is noted the final decision as to whether or not to proceed with the multiple offer process remains with the client. It is the responsibility of the manager to give the client that option.’

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9. Why was the successful purchaser’s offer considered to be a better offer by the vendor in this case?

A. Answer should relate to the following:

The vendor was not 100% confident of weathertightness issue at the property (though in fact no issues were present). The vendor decided to accept the offer from another party who made an unconditional offer at the same price with an earlier settlement date and no mention of the weathertightness issue (in clause 10.2 of the disclosure agreement).

10. What did the Tribunal say the salesperson licensee should have confirmed with the vendor before presenting any offers?

A. Answer should relate to the following:

The Tribunal said: ‘The [salesperson licensee] should have communicated with the vendor to say that pre-disclosure needed to be completed before he could present any offers or called the vendor to confirm which clause was appropriate.’

11. Based on what reasoning did the Tribunal overturn the CAC’s finding of unsatisfactory conduct against the branch manager?

A. Answer should relate to the following:

The Tribunal said the licensee's decision (as branch manager) to not present the multiple offers himself and instead to allow the salesperson licensee to do this was reasonable given the lack of conflict between the salesperson licensee and any of the potential purchasers. They were all the salesperson licensee’s direct contacts, so there was no evidence, or reason, for any personal bias.

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12. Only offers that contain an actual price can be presented.

A. True

13 Only records of successful offers need to be kept for 12 months to meet the requirements of rules10.12 and 11.6.

A. False

14 The agency’s multiple offer acknowledgement form needs to be completed by all potential purchasers/lessees participating in a multiple offer.

A. True

15. Licensees must always ensure their supervising agent/branch manager is aware of a multiple offer situation.

A. True

16. If a property that was offered for sale by auction is sold to a person who attended the auction, before the end of the first working day following the day of the auction, it must be treated as an auction sale.

A. True

17. An offer made by a prospective lessee for a commercial space was rejected by the lessor. The prospective lessee is interested in making an improved offer, but a multiple offer situation involving a second potential lessee has arisen.

Describe four important pieces of information that a licensee would need to ensure the prospective lessee understands about the process they are now involved in.

A. Answers could relate to the following, or similar, relevant points:

It needs to be clearly explained that the multiple offer situation is a new sale process and the potential purchaser/lessee has the chance to submit a new offer that should be their ‘highest and best’ offer.

The customer (potential purchaser/lessee) must be made aware that they may only have one opportunity in terms of making their highest and best offer.

The customer (potential purchaser/lessee) should also be made aware that the vendor/lessor may choose to negotiate to the exclusion of others or indeed negotiate with all interested parties.

The customer (potential purchaser/lessee) will need to be assured that no other party will be made aware of the nature or extent of their offer).

18. The offers from the parties described in question 17 were presented in a multiple offer situation, but were not agreeable to the lessor. The lessor instructed the licensee to try to obtain a better price.

Describe the process that the licensee would need to follow in this situation.

A. Answers could relate to the following, or similar, relevant points:

In situations where the client instructs the licensee to try to obtain a better price than those offered on closing date, a suggested solution is for the licensee to go back to each potential purchaser/lessee on the basis that the vendor/lessor has instructed the licensee that none of the current offers have reached the vendor/lessor’s expectations and ask if they are prepared to increase their offer at this time.

It is also important to ask the potential purchasers/lessees not to withdraw their offer until the vendor/lessor has had more time to consider the situation. The potential purchaser(s)/lessee(s) need to agree to keep their offer(s) ‘alive’.

It should always be remembered, however, that either party is able to withdraw its offer or counter-offer at any time prior to acceptance and, the Notice of Withdrawal is communicated prior to the Notice of Acceptance. The parties should be advised of their rights with regard to this.

In these cases, a timeframe should be imposed by the licensee and indeed any potential purchaser/lessee may require an answer within a stated timeframe. This is important to give certainty as to final close-off time for acceptance or otherwise.

Vendor/lessor timeframes must be reasonable and in writing.

All offers should be in a sealed envelope and should be presented to the vendor/lessor at the same time.

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