



Staff Opinion on 1.5% Minimum Co-broking Commission on Real Estate Sale

Case #8191-22

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FAIR TRADING COMMISSION
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OPINION PROVIDED BY:
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Case Synopsis

By email dated January 5, 2022, the Fair Trading Commission (“FTC”) received a request for opinion from a real estate broker asking whether the Realtor’s Association of Jamaica (RAJ) could require its members to pay a minimum commission of 1.5% when two real estate companies are involved in the sale of a property. The letter further explains that commissions in the industry range from 2% to 7% on the sale of real property. The letter also mentioned that in a sale transaction involving two real estate brokers, some brokers are being offered a co-brokering commission of less than 1.5% + General Consumption Tax (“GCT”).

The broker advised that under co-brokering transactions commission is split on a 50/50 basis between the two real estate brokers. However, he stated that larger companies were finding it difficult when being offered a co-brokering commission of less than 1.5% +GCT. The broker wants to suggest to the RAJ the implementation of a minimum commission of 1.5% +GCT which would be paid to the co-brokering agency in the event that a buyer is introduced by another real estate company. He advised that this would not restrain a broker from charging their client the commission they feel entitled to.

Issue

Whether it is a contravention of the Fair Competition Act (FCA) for an Association to implement or require a minimum commission to be paid by its members when two real estate companies are involved in sale transactions.

Opinion

The FTC concluded that the implementation of a minimum commission and/or minimum commission split for co-brokered transactions would constitute a price fixing agreement and therefore, would likely breach section 34 of the Fair Competition Act (FCA).

Additionally, any such agreement(s) between members of the RAJ and/ or realtors, real estate dealers, brokers, agents etc. would likely contravene section 17 of the FCA being an agreement whose provision(s) have the purpose, effect, or likely effect of substantially lessening competition. The imposition or agreement to a minimum commission in such transactions could result in listing agents/dealers/brokers etc. charging a higher commission than they would otherwise charge for these services, and this would negatively impact consumers.

The FTC therefore advised against the implementation by the RAJ or any other body/entity of such a minimum commission fee or structure when two real estate companies are involved in the sale of a property. The FTC also reiterated that if members of the RAJ and/or realtors, real estate dealers, brokers, agents, salespersons etc. make such an agreement among themselves to set a minimum commission and/or a minimum commission on co-brokered transactions they will also be in breach of the FCA.

Realtors and real estate professionals must determine their cooperative compensation policies/commission on co-brokered transactions in the same unilateral and independent manner as they would establish their commission or other fees.