

紀律研訊個案 — 作出令地產代理行業聲譽受損的行為

一名從業員在一次租賃交易中為業主及租客雙方行事，並安排業主和租客就有關物業訂立臨時租約。不過，該租客在繳付數千元臨時訂金後，決定不租用該物業，其訂金遂遭業主沒收。該從業員向業主聲稱，根據行規，他可向業主索取該筆被沒收的臨時訂金的50%。然而，業主細閱租約及向其他地產代理查詢後，得悉自己無須因有關交易告吹而與該名從業員攤分被沒收的訂金，遂向監管局投訴。

監管局經調查發現，在業主沒有律師代表的情況下，該名從業員在安排業主與租客在訂立臨時租約之前，沒有向業主解釋該臨時租約的每項條文的涵義，尤其是有關違約及違約一方需支付雙方佣金的條款。

Inquiry hearing case — Causing disrepute to the estate agency trade

A practitioner worked for both the landlord and the tenant in a lease transaction. The practitioner then arranged for them to enter into a provisional tenancy agreement in relation to the property. The tenant however decided not to rent the property after paying a deposit of several thousand dollars. The deposit was then forfeited by the landlord. The practitioner claimed that according to the trade practice, the landlord should pay her 50% of the forfeited deposit. Yet after perusing the tenancy agreement and making inquiries with other estate agents, the landlord realised that he was not required to share the forfeited deposit with the practitioner for the cancellation of the lease. Thus, he filed a complaint to the EAA.

After investigation, the EAA found that the practitioner did not explain to the landlord about the meaning of each clause of the provisional tenancy agreement when the landlord was not legally represented before the signing of the provisional tenancy agreement. In particular, the practitioner failed to explain the terms regarding the breach of contract and commission paid by the defaulting party, before the landlord entering into the agreement.

該名從業員在履行職務時，無理向該業主索取其所沒收的訂金，令地產代理行業信譽受損，未有遵守《操守守則》第3.7.2段。再者，該名從業員違反了《地產代理常規（一般責任及香港住宅物業）規例》第13(1)(a)條，即：如客戶非由律師代表，須向該客戶解釋該協議或租契的每項條文的涵義，並促使該客戶注意該協議或租契的重要條款及條文。結果，監管局紀律委員會決定譴責該名從業員及暫時吊銷其牌照14天，並在其牌照上附加條件，要求她在12個月內取得持續專業進修計劃下的12個核心科目的學分。



The practitioner's unreasonable request for 50% of the forfeited deposit may bring discredit and/or disrepute to the estate agency trade. Hence, she failed to comply with paragraph 3.7.2 of the Code of Ethics. Moreover, the practitioner breached section 13(1)(a) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation, which states that a licensee shall, before a client of the licensee who is not legally represented enters into an agreement for sale and purchase or a lease of a residential property, explain to the client the meaning of each clause of the agreement or lease, as the case may be, and draw to his attention the meaning of any essential terms and provisions thereof. Consequently, the EAA Disciplinary Committee decided to reprimand the practitioner, suspend her licence for 14 days and attach conditions to her licence, requiring her to obtain 12 points from the core subjects under the CPD scheme within 12 months.

紀律研訊個案 — 安排訂立臨時租約前沒有查核物業許可用途

單位的許可用途是物業的重要資訊，從業員如果不採取適當的步驟查核有關資料，不但可能會令客戶遭受損失，更可能因此被監管局紀律處分。

一名客戶委託一名從業員作為他的單邊代理，為他尋找合適的單位用作經營烘製蛋糕售賣工場。該從業員為客戶找到某幢大廈內的一個單位，並安排業主與該客戶訂立臨時租約。

其後該客戶獲大廈管理處通知，大廈公契規定業主不能在大廈內任何地方或處所從事含有澱粉成份的生產工序。由於澱粉是製作蛋糕的主要成份之一，管理處因此不允許該客戶在該單位從事烘製蛋糕的工作。

原來，從業員在安排該客戶簽訂臨時租約前，並沒有親自查核單位的許可用途。客戶因此蒙受損失，遂向監管局投訴。

監管局紀律委員會認為，從業員在安排客戶訂立臨時租約前，並沒有採取適當的步驟，查核該物業可否用作烘製蛋糕售賣工場，沒有遵守《操守守則》第3.4.1段的要求，即：保障和促進客戶的利益，並對交易各方公平公正。委員會決定對該從業員作出譴責，暫時吊銷其牌照21天，並在其牌照上附加條件，要求他在12個月內取得持續專業進修計劃下核心科目12個學分。

Inquiry hearing case — Failure to check the permitted use of a property before entering into a provisional tenancy agreement

A property's permitted use is important property information. Failing to carry out the appropriate steps to check the relevant information may not only cause a loss to clients, but also result in the practitioner being subject to disciplinary action by the EAA.

A client appointed the practitioner as his single agency to look for a suitable premises to run a bakery workshop. The practitioner identified a property inside a building. He then arranged for the client to enter into a provisional tenancy agreement with the landlord.

The client was later informed by the management office of the building that the building's deed of mutual covenant stipulated that no owner shall use the building or any part of the building for any production process involving "starch". As "starch" is a major ingredient of most baking products, the management office was of the opinion that the client should not run a bakery workshop inside the property.

It was later found out that the practitioner did not personally check the permitted use of the property before arranging for the client to enter into the provisional tenancy agreement. The client suffered a loss because of this and therefore lodged a complaint with the EAA.

The EAA Disciplinary Committee was of the view that the practitioner did not take the appropriate steps to check whether the property would be permitted to be used as a bakery before arranging for the client to enter into a provisional tenancy agreement. He thus failed to comply with paragraph 3.4.1 of the Code of Ethics in that he did not protect and promote the interests of his client and did not act in an impartial and just manner to all parties involved in the transaction. The Committee decided to reprimand the practitioner, suspend his licence for 21 days and attach conditions to his licence, requiring him to obtain 12 points from the core subjects under the CPD scheme within 12 months.