

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.