

紀律研訊個案：未有披露個人利益

DISCIPLINARY HEARING CASE: FAILURE TO DISCLOSE PERSONAL INTERESTS

引言

持牌人在處理物業交易時，須向客戶披露與該物業相關的個人利益，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should disclose their own personal interests to their clients in relation to the properties they handle. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名地產代理在一住宅物業租賃中安排租客簽訂租約。在交易過程中，租客並未曾與業主會面。後來，租客發現租約上所寫的業主名稱是該地產代理的母親，但根據土地查冊，登記業主其實是該地產代理本人。

該地產代理解釋該物業其實是由其母親購買，而她只是登記業主。然而，監管局紀律委員會認為，該地產代理有意隱瞞自己為業主的身分，故在租約的業主名稱上寫上其母親的姓名。

INCIDENT

An estate agent arranged for a tenant to enter into a tenancy agreement in a leasing transaction. Throughout the transaction, the tenant had never met the landlord. Later on, the tenant discovered that the landlord's name stated in the tenancy agreement was the mother of the agent, and yet the land search revealed that the estate agent herself was in fact the registered owner.

The estate agent explained that the property was in fact bought by her mother and she was only the registered owner. However, the EAA Disciplinary Committee was of the view that the estate agent had the intention to conceal the fact that she was the owner by writing her mother's name as the landlord in the tenancy agreement.

研訊結果

監管局紀律委員會認為，該地產代理違反了執業通告(編號08-03 (CR))的指引，即地產代理不可以購買或租住其客戶的物業，亦不可以將自己的物業售賣或出租予客戶，除非地產代理與客戶達成任何協議前，已經向客戶全面披露所有有關事實，並在客戶知情和同意的情況下進行交易。

考慮到個案性質及該地產代理的違規紀錄後，委員會決定譴責該名代理，暫時吊銷其牌照一個月，並在其牌照上附加條件，要求她在24個月內取得持續專業進修計劃下的12個核心科目學分。

RESULT

The EAA Disciplinary Committee found that the estate agent had failed to comply with the guidelines set out in Practice Circular 08-03(CR), which stipulate that an estate agent may not purchase or rent property from his client, and he may not sell or let his own property to his client unless he has made a full disclosure of all the relevant facts to his client before entering into any agreement with his client and has obtained his client's informed consent to such a transaction.

Having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Committee decided to reprimand the estate agent and suspend her licence for a month. A condition was also attached to her licence, requiring her to obtain 12 points in the core subjects of the CPD Scheme in 24 months.



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業界回應

與客戶達成任何協議前，地產代理應先向客戶作出利益披露。地產代理在處理物業交易時，倘若該物業的業權人是其親屬或其本人，他應向客戶作出披露，並可考慮向客戶提供一份申報聲明，以保障雙方權益。

COMMENT FROM TRADE

Before entering into any agreement with clients, estate agents should declare interests to their clients. When handling property transactions, estate agents should disclose to their clients if they themselves or their relatives are the owners of the property involved. They may consider signing a declaration and provide the same to their clients, so as to protect the rights and interests of both parties.

紀律研訊個案： 未能兌現現金回贈承諾 DISCIPLINARY HEARING CASE: FAILING TO HONOUR PROMISE OF CASH REBATE

引言

持牌人應履行對客戶的優惠承諾，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should fulfill the incentives they promised their clients. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名買家透過一營業員購買一手住宅物業。在簽訂臨時買賣合約前，該營業員的主管對該買家作出口頭承諾，指如果她透過其地產代理公司購入該物業，她將可獲得發展商給予其公司的佣金的一半作為回贈。然而，由於該主管當時尚未知道發展商給予的佣金比率，故未有指明回贈的確實金額。

其後，該主管通知買家，發展商將給予其地產代理公司的佣金為該物業售價的2.5%。由於該物業的售價為\$3,071,350，故該買家期望可收取約\$38,000的回贈。可是，該買家發現佣金回贈確認通知書上的回贈金額只有約\$6,000，遂拒絕簽署該確認書，並向監管局作出投訴。

INCIDENT

A purchaser purchased a first-hand residential property through a salesperson. Before signing the provisional agreement for sale and purchase, the supervisor of the salesperson verbally promised to give the purchaser half of the commission offered to the estate agency by the developer if she purchased the property through the agency. Yet, the supervisor did not indicate the exact amount of the rebate as he did not know the commission rate at that time.

Later on, the supervisor informed the purchaser that the developer would offer 2.5% of the property price to the agency as commission. Given the property price was \$3,071,350, the purchaser expected she would receive a rebate of around \$38,000. However, the amount stated on the confirmation letter offered by the agency was only around \$6,000. Thus, the purchaser refused to sign the confirmation letter and lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該主管沒有遵守執業通告(編號13-04(CR))內的指引，當中規定持牌人須將其提供的任何優惠(包括任何送贈、折扣或回贈)以書面形式向準買家作出，並具體列明提供優惠的條款及形式。同時，他違反了操守守則第3.7.2段，即「地產代理和營業員應避免做出可能令地產代理行業信譽及/或名聲受損的行為。」

在考慮個案的性質及該主管的違規紀錄後，紀律委員會決定譴責該主管、吊銷其牌照14日及罰款3,000元，並在其牌照上附加條件，要求他在24個月內取得持續專業進修計劃下的24個核心科目學分。

RESULT

The EAA Disciplinary Committee found that the supervisor had failed to comply with the guidelines set out in Practice Circular 13-04(CR), which stipulates that licensees must set out in writing any incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format of the incentives so offered. He also failed to comply with paragraph 3.7.2 of the *Code of Ethics*, which stipulates that “Estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.”

Having considered the nature and gravity of the case and the disciplinary record of the supervisor, the Disciplinary Committee decided to reprimand him, suspend his licence for 14 days and impose on him a fine of \$3,000. A condition was also attached to his licence, requiring him to obtain 24 points in the core subjects of the CPD Scheme in 24 months.



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業界回應

類似個案過往常有出現，為避免無謂爭拗，持牌人應將其對客戶承諾提供的任何優惠或回贈，清楚地以書面形式向客戶作出，就上述個案而言，持牌人可以以書面向客戶承諾，地產代理公司會從發展商收到的佣金總額中回贈50%給予買家，便可避免有關之投訴。

COMMENT FROM TRADE

Similar cases are common. To avoid unnecessary argument, licensees should set out in writing any incentives, including any gifts, discounts or rebates that they have offered to prospective purchasers. In the above case, the estate agent should state in writing that the client will receive 50% of the commission received by the estate agency company from the developer. In so doing, the complaint may be avoided.