

紀律研訊個案：失實陳述導致客戶損失 DISCIPLINARY HEARING CASE: MISREPRESENTATION LEADING TO LOSS FOR CLIENT

引言

持牌人應保障客戶的利益，不應作出任何失實陳述，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should protect the interests of their clients and should not make any misrepresentation to them. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名客戶打算租用物業經營零售生意，一名地產代理向她介紹一座商業大廈的「樓上舖」。雖然該客戶從其他代理口中得知，該單位的許可用途為辦公室，但該名地產代理卻向她稱，該座商業大廈的大廈公契中並沒有註明該單位不可作零售用途，而且辦公室和零售皆屬商業性質。

由於得到該地產代理的保證，客戶遂決定承租該物業。後來，管理公司不允許該物業被用作零售用途，單位的裝修圖則亦因不符合該物業的大廈公契及佔用許可證中註明的「辦公室及其作非住宅用的附屬地方」用途而不獲管理公司批准。該租客最終只好提前退租，並向監管局作出投訴。

INCIDENT

A client was interested in renting a property for retail business and an estate agent introduced to her an “upstairs shop” in a commercial building. Though she heard from other estate agents that the permitted use of the said premises was for office purposes, she was told by this estate agent that there was no stipulation on the Deed of Mutual Covenant that the property was not allowed for retail use, and the use of “office” and “retail business” were both commercial in nature.

After being ensured by this estate agent, the client confirmed the leasing of the unit. Later on, the property management company refused to allow the property to be used for retail purpose, and rejected the renovation plan of that unit as it failed to comply with the Deed of Mutual Covenant and the occupation permit, which states that the premises is for “offices with ancillary accommodation for non-domestic use” only. The tenant therefore had to terminate the tenancy agreement and lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該名地產代理沒有提醒租客在訂立臨時租約前，尋求法律意見，也沒有事先通知租客將該單位用作零售的風險，她因而違反了《操守守則》第3.4.1段：「地產代理和營業員應保障和促進客戶的利益。」

考慮個案性質及該名地產代理的違規紀錄後，紀律委員會決定譴責她及罰款3,000元，並吊銷其牌照21日，以及要求她在12個月內取得持續專業進修計劃下的12個核心科目學分。

RESULT

The EAA Disciplinary Committee found that the estate agent failed to remind the tenant to seek legal advice before entering into the provisional tenancy agreement, or to inform the tenant in advance of the risk of using the unit for retail use. Hence, she was in breach of paragraph 3.4.1 of the *Code of Ethics* which stipulates that “Estate agents should protect and promote the interests of their clients.”

Having considered the nature and gravity of the case and the disciplinary record of the estate agent, the Disciplinary Committee decided to reprimand her, impose a fine of \$3,000 and suspend her licence for 21 days. She was also required to obtain 12 points in the core subjects of the CPD Scheme within 12 months.



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業界回應

不少地產代理因過分依賴自身經驗，或對自己過分自信而沒有建議客戶諮詢法律意見。地產代理應憑本身在地產方面的知識和經驗向客戶提供服務和意見，並且應盡責地建議客戶按需要尋求法律意見。

COMMENT FROM TRADE

Many estate agents rely too much on their own experience and hence do not advise their clients to get legal advice. Estate agents should not only provide services and opinions based on their knowledge and experience in the real estate business, but should also advise their clients to seek legal advice, if necessary, in a responsible manner.

紀律研訊個案：沒有提醒賣方有關額外印花稅 DISCIPLINARY HEARING CASE: FAILING TO BRING SPECIAL STAMP DUTY TO THE VENDOR'S ATTENTION

引言

持牌人應充分掌握有關物業市場的政府措施，以盡責地向客戶提供建議。例如，倘若有關物業交易會涉及額外印花稅，則持牌人應在訂立任何臨時買賣合約前提醒客戶。否則，他們有可能被監管局紀律處分。

INTRODUCTION

Licensees should be conversant with the Government's measures for the property market so as to advise clients in a responsible manner. For example, licensees should bring to their clients' attention before entering into any Provisional Agreement for Sale and Purchase ("PASP") if the disposal of the property is subject to Special Stamp Duty ("SSD"). Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名營業員在一項住宅物業交易中同時代表買賣雙方。在簽訂臨時買賣合約前，該營業員並沒有提醒賣方，由於是次交易是賣方在購入該物業的36個月內進行，故是次該單位的交易將須繳納額外印花稅。其後，賣方接獲稅務局通知須繳納額外印花稅，不滿之下遂向監管局作出投訴。調查期間，同時揭露了該營業員曾向賣方聲稱購買該物業的買家是其姪女，但事實上買方是其女兒。

INCIDENT

A salesperson represented both the purchaser and the vendor in a residential property transaction. Prior to the signing of the PASP, the salesperson failed to bring to the attention of the vendor that the sale of that property was within 36 months of the vendor's acquisition, and as such, the sale would be subject to SSD. Later on, the vendor was told by the Inland Revenue Department that she would be liable to pay the SSD. Feeling aggrieved, the vendor lodged a complaint with the EAA. During investigation, it was also revealed that the salesperson had told the vendor that the purchaser was her niece but in fact it was her daughter.

研訊結果

該營業員承認未有留意有關額外印花稅的事宜。監管局紀律委員會認為她在執業時未能熟悉並遵守《地產代理條例》、其附屬法例、《操守守則》及其他由監管局發出的指引，因而違反了《操守守則》第3.2.1段：「地產代理和營業員應熟悉並必須在執業時遵守《地產代理條例》、其附屬法例、本操守守則，以及由監管局不時發布的所有其他指引。」另外，由於她向賣方表示買家是其姪女，但實際上買方是其女兒，她同時違反了《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所涉及的金額後，紀律委員會決定譴責該營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24個月內須取得持續專業計劃下的24個核心科目學分以作為上述兩項違規事項的整體懲處。

RESULT

The salesperson said that she was not aware of the SSD. The EAA Disciplinary Committee was of the view that she had failed to be fully conversant with the EAO, its subsidiary legislation, the *Code of Ethics*, and other guidelines issued by the EAA, thus she was in breach of paragraph 3.2.1 of the *Code of Ethics* which states: “estate agents and salespersons should be fully conversant with the EAO, its subsidiary legislation, this *Code of Ethics*, and other guidelines issued by the EAA from time to time and shall observe and comply with them in the course of their practice”. In addition, as she had told the vendor that the purchaser was her niece but in fact it was her daughter, she was also in breach of paragraph 3.7.2 of the *Code of Ethics*, which provides: “estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade”.

Having considered the nature of the case and the amount of money involved, the Disciplinary Committee reprimanded the salesperson, suspended her licence for 14 days, and attached a condition to her licence, requiring her to obtain 24 points in the core subjects of the CPD Scheme in 24 months as the total sanctions for the two breaches.



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業界回應

地產代理有責任保障客戶利益，在處理交易過程中，向客戶提供專業意見。從業員亦必須經常留意政府及監管局發出有關物業買賣的法規與指引，並在執業時秉持誠實和嚴正的態度，真實無誤地向客戶披露一切有潛在利益影響的事項，發揮價值，提高行業專業認受性。

COMMENT FROM TRADE

When handling property transactions, estate agents have obligation to protect the interests of clients, as well as to provide professional advices.

Estate agents shall keep themselves informed of all property transaction regulations and guidelines issued by the Government and Estate Agents Authority from time to time. In the course of business, agents should provide services to clients with honesty and integrity, as well as disclosure of all potential issues that may cause impact to the interest of clients, so as to demonstrate one's professionalism and establish industry recognition.