



香港新界地產代理商聯會永遠會長
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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。



地產代理管理協會會長
葉國雄先生
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President of Estate Agents Management Association

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.

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.