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紀律研訊個案：沒有披露利益衝突 DISCIPLINARY HEARING CASE: FAILING TO DISCLOSE A CONFLICT OF INTEREST

引言

持牌人應向客戶就處理其物業時所涉及的利益衝突作出全面披露，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should make a full disclosure of any conflict of interest 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

兩名地產代理受一名業主委託放售其店舖物業，並安排該業主與買方簽訂臨時買賣合約（「臨約」）。買方為一間有限公司，由該兩名地產代理在幕後共同擁有及控制，而該公司的唯一董事其實是其中一名地產代理的姪女，但業主對此並不知情。不久後，該物業再由同一間地產代理公司的另一名代理代表該公司以高於買入價\$4,500,000轉售予另一名新買家。業主在得悉該兩名地產代理與該買方公司的真正關係及有關轉售後，覺得被騙，遂向兩名地產代理追討賠償及向監管局作出投訴。

INCIDENT

Two estate agents were appointed by a vendor of a shop property and arranged for the vendor to sign a Provisional Agreement for Sale and Purchase with a purchaser. The purchaser was a limited company which was beneficially owned and actually controlled by the two estate agents, despite the fact that the sole director of the limited company was the niece of one of the estate agents. However, the vendor was not informed of this. Shortly after, the property was resold to another purchaser through another agent of the same estate agency company at the price of \$4,500,000 on top of the original purchase price. The vendor discovered the identity of the estate agent's niece and the resale. Feeling deceived, he claimed compensation against both agents and lodged a complaint with the EAA.

研訊結果

經紀律研訊後，監管局紀律委員會認為，該兩名地產代理沒有就該物業交易披露利益衝突，違反了《操守守則》第3.7.2段：「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。」

RESULT

The EAA Disciplinary Committee was of the view that the two estate agents failed to disclose the conflict of interest in the property transaction. They were 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”.

考慮個案性質及所涉金額後，紀律委員會決定譴責這兩名地產代理，並暫時吊銷其牌照6個月，以及要求他們在24個月內取得持續專業進修計劃下的24個核心科目學分。

Having considered the nature of the case and the amount of money involved, the Disciplinary Committee reprimanded the two estate agents, suspended their licences for six months, and required them to obtain 24 points in the core subjects of the CPD Scheme in 24 months.

另外，業主透過民事訴訟追討損失，最終高等法院頒令該兩名地產代理需向業主作出賠償。

Regarding the compensation claim by the vendor in a civil litigation against the two estate agents, the High Court decided that the two estate agents were liable to pay compensation to the vendor of the property.



香港房地產代理業聯會主席
郭德亮先生
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業界回應

作為專業地產代理，持牌人在處理物業交易時應向客戶全面披露所涉及的任何利益衝突。當有準買家出價給業主時，持牌人應向業主交代準買家的身份及詳細披露其與持牌人的關係。另外，持牌人可考慮為業主出售的物業作出專業估值，例如透過測量師行或銀行所作之估價，或收集同類單位的成交紀錄，提供予業主作為出價之參考。

COMMENT FROM TRADE

A professional estate agent should fully disclose to his/her client any conflict of interests in relation to the property handled by him/her. Licensees should provide the vendor with the identity of the prospective purchaser and disclose in details their relationship with the prospective purchaser. Besides, licensees may consider conducting a property valuation by surveyors or banks, or checking the transaction record of similar properties. Such information can be provided to the vendor as reference when setting the list price.

紀律研訊個案：沒有核實「購買資格證明書」 DISCIPLINARY HEARING CASE: FAILING TO VERIFY THE “CERTIFICATE OF ELIGIBILITY TO PURCHASE”

引言

持牌人應保障和促進客戶的利益，包括核實清楚於居屋第二市場放售的單位交易所需的有關文件是否有效，否則有可能被監管局紀律處分。

INTRODUCTION

Licensees should protect and promote the interests of their clients, including verifying the validity of the documents required in the transaction of flats under the Home Ownership Scheme (“HOS”) Secondary Market. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名居屋業主委託一名營業員在居屋第二市場放售其單位。該營業員在安排業主簽署臨時買賣合約（「臨約」）前，向該業主表示已核實買家已取得有效的「購買資格證明書」，並把買家的訂金交予該業主。

INCIDENT

A HOS home owner appointed a salesperson to list his property for sale in the HOS Secondary Market. Before arranging for the vendor to enter into the Provisional Agreement for Sale and Purchase (“PASP”), the salesperson told the vendor that he had verified that the purchaser had a “Certificate of Eligibility to Purchase” (“CEP”) and he then gave the vendor the deposit paid by the purchaser.

然而，該營業員其後告知該業主，買家所持有的是由香港房屋協會發出的「住宅發售計劃第二市場『購買資格證明書』」，並不適用於購買該物業。結果業主取消有關交易，但卻被買家追討已支付的訂金及其他賠償。該營業員解釋當他安排業主簽訂臨約時，臨約上所有資料已被填寫，他相信買家委託的營業員已核實該「購買資格證明書」，於是沒有索取該文件作核實之用。

However, the vendor was informed by the salesperson later that the CEP held by the purchaser was issued by the Hong Kong Housing Society for the Flat-for-Sale Scheme and it was not applicable for purchasing his property. As a result, the vendor cancelled the transaction, but the purchaser commenced a civil action to claim for the deposit as well as other compensation against the vendor. The salesperson explained that all the information on the PASP had been filled in when he arranged for the vendor to enter into the agreement and he believed that the salesperson appointed by the purchaser had verified the CEP beforehand. Thus, he did not ask for the CEP to be verified.

研訊結果

監管局紀律委員會認為，該營業員不應因代表買家的營業員聲稱已確認其「購買資格證明書」便沒有作出獨立的查核，他因而違反了《操守守則》第3.4.1段的規定，即「地產代理應保障和促進客戶的利益」。

在考慮個案的性質及該名代理的違規記錄後，紀律委員會決定譴責該營業員，罰款\$2,000及暫時吊銷其牌照七天，並要求他在12個月內須取得持續專業進修計劃下的12個核心科目學分。

至於受買家委託的另一名營業員，因未有遵守《操守守則》第3.2.2段的規定，即「地產代理和營業員應掌握有關的一切法律、政府規例，及地產市場的重要事實和發展」，亦被紀律委員會判以相同的處分。

RESULT

The EAA Disciplinary Committee found that the salesperson should have verified the validity of the CEP himself even though the other salesperson appointed by the purchaser claimed that he had verified the document. Thus, he 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 him, impose a fine of \$2,000 and suspend his licence for seven days. He was also required to obtain 12 points in the core subjects of the CPD Scheme within 12 months.

On the other hand, the other salesperson appointed by the purchaser also failed to comply with paragraph 3.2.2 of the *Code of Ethics*, which stipulates that “estate agents and salespersons should keep themselves informed of any laws, government regulations, essential facts and developments in the real estate market.” The same sanctions were imposed on him by the Disciplinary Committee.



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業界回應

《地產代理條例》、其附屬法例及《操守守則》俱有為處理住宅物業的買賣流程中需要的注意事項提供了清晰指引。從業員只要遵循指引及守則，便可保障買賣雙方及自己。個案中的營業員，對程序並不熟識。雖然他只代表業主一方，卻沒有核實買家的「購買資格證明書」。作為專業的地產代理，應以保障客戶利益為先。

COMMENT FROM TRADE

Estate Agents Ordinance, its subsidiary legislations and the *Code of Ethics* have provided clear guidelines on the points-to-note for practitioners when handling residential property transactions. Practitioners should follow such guidelines to protect both the vendor and purchaser. The salesperson in the case is not conversant with the procedures. Though he only acted for the vendor, he failed to verify the CEP. One of the most important duties of a professional estate agent is to protect the interest of his/her clients.