

誠信與你

Integrity in Focus

紀律研訊個案 Disciplinary hearing case

以不正當手法向村屋買家收取金錢

Obtaining money from village house purchaser by improper practice

引言

持牌人必須時刻保持誠信，尤其不可以不正當手法向客戶收取金錢，否則會嚴重破壞行業聲譽，並會被監管局紀律處分。

Introduction

Licenseses must always act with integrity and must not obtain money from their clients by improper practice. Otherwise, the reputation of the trade will be seriously tarnished and they will be subject to disciplinary action by the EAA.

事件經過

一名營業員在一宗村屋交易中代表買家，在安排對方視察物業後，向該買家表示，他須向其額外支付 8 萬元，以作為給予賣方的「兄弟費」，並表示有關要求是由賣方提出，是村內的普遍做法。然而，事實上，賣方並沒有作出有關要求。後來，該買家從鄰居得悉，他們從未向賣方支付所謂的「兄弟費」。他懷疑受營業員欺騙，而報警求助，警方建議他向監管局作出投訴。監管局對個案進行調查，同時發現該營業員沒有在緊接訂立臨時買賣合約前，向該買家提供有關物業的土地查冊文本。

Incident

A salesperson represented a purchaser in a transaction of a village house. After arranging the purchaser to view the property, the salesperson told the purchaser that he had to pay him an additional fee of \$80,000, and the paid fee would be paid to the vendor's clansmen. The salesperson claimed that the fee was requested by the vendor and it was a common practice in the village but in fact the vendor had not made such a request. Later, the purchaser learnt from his neighbours that none of them had paid any additional fee to the vendor. Hence, the purchaser suspected he was being cheated by the salesperson and reported the matter to the Police. The police

suggested him to lodge a complaint with the EAA. During the EAA's investigation, it was also found that the salesperson had failed to provide a copy of the land search of the relevant property to the purchaser immediately before the provisional agreement of sale and purchase was entered into.



研訊結果

監管局紀律委員會認為，該名營業員違反了《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。」同時，他亦違反了該守則的第 3.2.1 段，即「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。」

考慮到個案的性質及該營業員的違規紀錄，紀律委員會決定就上述兩項的違規譴責該名營業員，罰款 \$3,000、暫時吊銷其牌照兩個月及附加條件於其牌照上，要求他於 24 個月內取得持續專業進修計劃下的 24 個學分，當中各 3 個學分須分別透過「專業操守及誠信科目」及「進行土地查冊」的講座或研討會獲取。

Result

The EAA Disciplinary Committee was of the view that the salesperson failed to comply with paragraph 3.7.2 of the *Code of Ethics*, which stipulates: “estate agents and salespersons should avoid any practice which may bring discredit and/or disrepute to the estate agency trade.” and paragraph 3.2.1 of the *Code of Ethics* issued by the EAA, which stipulates: “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.”

Having considered the nature and gravity of the case and the disciplinary record of the salesperson, the Committee, with regard to the two breaches, decided to reprimand the salesperson, impose a fine of \$3,000 and suspend his licence for two months. A condition was also attached to his licence requiring him to obtain 24 points under the CPD scheme in 24 months, among which at least three points should be gained separately from courses/seminars of “Professional Ethics and Integrity” and “Conducting a land search” respectively.



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業界意見 Comment from trade

監管局一向對從業員的職業操守要求嚴謹，絕對不會容忍任何有違誠信的行為。營業員及地產代理應以公平公正的態度對待每一位顧客，切勿心存僥倖，妄想可逃避懲處。

The EAA has stringent requirements on the conduct of practitioners and there will be no tolerance towards any dishonest behaviour. Salespersons and estate agents should act in an impartial and just manner to every client. They must not take chances and wish that they can escape sanction.

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安排買家在未有填上樓價的臨約上簽署

Arranging for a purchaser to sign a PASP with the property price left blank

引言

持牌人不可安排客戶在重要條款漏空的臨時買賣合約（「臨約」）上簽署，否則有機會被監管局紀律處分。

Introduction

Licenses must not arrange for clients to enter into a provisional agreement for sale and purchase ("PASP") with important terms left blank. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名營業員向一名準買家推介一個物業。在視察單位後，該準買家表示願意以不多於 1,150 萬元購入該單位。該營業員其後安排買家先行簽署一份漏空樓價資料的臨約，並向買家聲稱，他可以游說賣方以 1,150 萬元售出物業。該買家便把一張 20 萬元的支票交予營業員作為訂金。

數天後，該營業員告知買家，賣方只願意以 1,200 萬元出售該物業。買家拒絕，並要求營業員退回支票但不果。

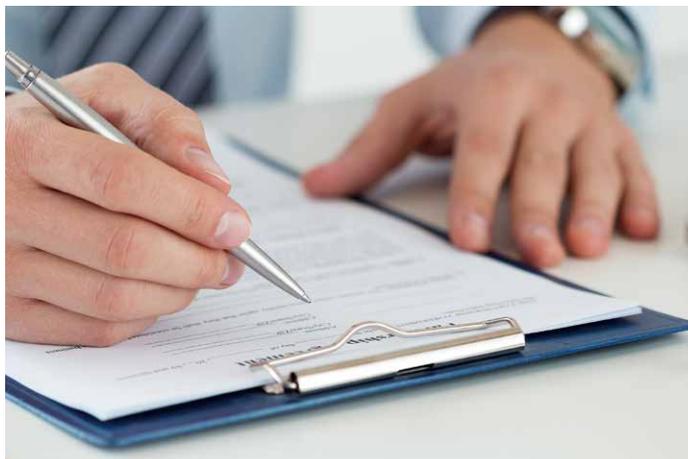
及後，買家發現該營業員在未經他同意下，擅自在臨約的樓價一欄填上 1,200 萬元。買家最終停止兌現該支票，同時向監管局投訴。

Incident

A salesperson introduced a property to a prospective purchaser. After the inspection, the purchaser was willing to purchase the property at a price of not more than \$11,500,000. The salesperson then arranged for the purchaser to sign on a PASP with the property price left blank and told the purchaser that he could persuade the vendor to sell the property for \$11,500,000. The purchaser then gave a cheque of \$200,000 as the deposit to the salesperson.

A few days later, the salesperson informed the purchaser that the vendor would only sell the property at the price of \$12,000,000. The purchaser did not accept the price and asked the salesperson to return the cheque to him but in vain.

Later, the purchaser found out that the salesperson actually filled in the amount of \$12,000,000 as the property price in the PASP without seeking his consent. The purchaser finally dishonoured the cheque and lodged a complaint with the EAA.



研訊結果

監管局紀律委員會認為，該名營業員安排買家簽署一份漏空重要條款的臨約，違反了執業通告（編號 13-06(CR)）的規定。此外，在沒有得到買家的同意而擅自在臨約填上樓價，他同時亦違反了《操守守則》第 3.4.1 段，即「作為代理或受委託為代理的地產代理和營業員，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示」。

考慮到個案的性質及該營業員的違規紀錄，紀律委員會就上述兩項違規決定譴責該名營業員、向其罰款 10,000 元、暫時吊銷其牌照 28 天及附加條件於其牌照上，要求他於 24 個月內取得持續專業進修計劃下有關「合規及有效管理」類別的講座或研討會共 24 個學分。

Result

The EAA Disciplinary Committee was of the view that the salesperson was in breach of Practice Circular (No.13-06(CR)) by arranging for the purchaser to sign a PASP with essential terms of the transaction left blank. In addition, by filling in the property price in the PASP without the purchaser's consent, the salesperson was in breach of paragraph 3.4.1 of the *Code of Ethics*, which stipulates: "estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction".

Having considered the nature and gravity of the case, and the disciplinary record of the estate agent, the Committee, with regard to the two breaches, decided to reprimand the salesperson, impose a fine of \$10,000 and suspend his licence for 28 days. A condition was also attached to his licence requiring him to obtain 24 CPD points in 24 months by participating in courses/seminars of "Compliance and Effective Management".



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業界意見 Comment from trade

根據《地產代理條例》及由地產代理監管局制訂的《操守守則》，持牌地產代理及營業員在買賣過程中，應保障和促進客戶的利益、按照地產代理協議執行客戶的指示，並對交易各方公平公正。在填寫臨時買賣合約時，樓價一欄絕對不可漏空，在未得到客戶同意前，亦不可擅自更改樓價。

According to the Estate Agents Ordinance and the *Code of Ethics* promulgated by the EAA, estate agents and salespersons, in engaging and accepting an appointment as an agent, should protect and promote the interests of their clients, carry out the instructions of their clients in accordance with the estate agency agreement and act in an impartial and just manner to all parties involved in the transaction. The property price must not be left blank in the PASP and must not be amended before seeking the client's consent.