

紀律研訊個案 Disciplinary hearing case

在「可供出售證明書」發出前安排簽署
臨時買賣協議

Arranging the signing of a PASP
before the "Certificate of Availability
for Sale" was issued

引言

持牌人在處理居者有其屋第二市場計劃下的物業交易時，須遵守相關規定，否則有可能被監管局紀律處分。

Introduction

Licenses should ensure that they follow the designated rules when handling 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

一名買家在視察一個居屋第二市場計劃下的單位後，決定透過其委託之營業員購買該單位。該營業員告知買家，賣方已申請「可供出售證明書」（「准賣證」），但該准賣證仍未獲批出。雖然如此，她在未有告知相關的風險的情況下仍建議買家先簽署臨時買賣協議（「臨約」）。

後來，該營業員通知買家，賣方已將單位售予另一名買家，並指出因當日賣方尚未取得准賣證，故其早前簽署的臨約無效。買家對此深感不滿，遂向監管局作出投訴。

Incident

A HOS flat purchaser appointed a salesperson to purchase a property in the HOS Secondary Market after inspection. The salesperson informed the purchaser that the vendor had applied for the "Certificate of Availability for Sale" ("CAS") but the CAS was not yet issued. However, without advising the risk of not having the CAS, she suggested the purchaser signing the Provisional Agreement for Sale and Purchase ("PASP") first.

Later, the salesperson informed the purchaser that the vendor had sold the property to another purchaser. She also told the purchaser that the PASP he signed was null and void since the vendor had not obtained the CAS at the time of signing it. Feeling aggrieved, the purchaser lodged a complaint with the EAA.

研訊結果

監管局紀律委員會指出，該營業員不應在賣方尚未取得准賣證前安排買家簽署臨約。她因而違反了《操守守則》第3.7.2段的規定，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。」

Result

The EAA Disciplinary Committee pointed out that the salesperson should not have arranged for the purchaser to enter into the PASP before the vendor obtained the CAS. She was in breach of 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."

另外，調查期間發現該營業員未有在買家簽署臨約後向其提供臨約副本，她因而未有遵守《操守守則》第3.2.1段的規定，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、類似個案的罰則，以及該營業員的違規紀錄，紀律委員會決定就該兩項違規譴責該營業員、向其罰款2,000元、暫時吊銷其牌照一個月，並要求她在24個月內取得持續專業進修計劃下的24個學分。

Besides, the Disciplinary Committee also found that the salesperson failed to provide the purchaser with a copy of the PASP as soon as the purchaser had signed it. Hence, she failed to comply with paragraph 3.2.1 of the *Code of Ethics* which stipulates that “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 Disciplinary Committee decided to reprimand her, impose a fine of \$2,000, suspend her licence for one month, and attach a condition to her licence, requiring her to obtain 24 points in the CPD Scheme within 24 months as the total sanctions for the two breaches.



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業界意見 Comment from trade

居者有其屋第二市場的交易受《房屋條例》規管，居屋業主在未取得房屋委員會發出「可供出售證明書」前，不得與任何買家訂立「臨時買賣合約」。持牌人也不得在該業主提供「可供出售證明書」前力勸或協助該業主訂立「臨時買賣合約」，否則便會觸犯《房屋條例》及監管局發出的《操守守則》。

Transaction of properties under the HOS Secondary Market is regulated by the *Housing Ordinance*, an HOS flat owner shall not enter into a PSAP with any purchaser before issuance of the CAS by the Housing Authority. Licensees must also not urge or assist the owner to enter into the PASP before the CAS has been provided by the owner otherwise, they would be in breach of the *Housing Ordinance* and the *Code of Ethics* issued by the EAA.

紀律研訊個案 Disciplinary hearing case

只安排其中一名註冊業主訂立租約

Arranging only one of the registered owners to enter into a tenancy agreement

引言

持牌人處理分權共有的物業時，不可在未取得所有註冊業主的同意前，便安排訂立臨時租約，或在未取得立約方的妥善授權便進行相關物業的交易，否則有機會被監管局紀律處分。

Introduction

Licensees must not arrange the signing of a provisional tenancy agreement without the consent of all the registered owners of a property under the ownership of a tenancy in common, or proceed with any transaction of that property without proper authorisation by the parties concerned. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名營業員受業主委託出租一個由兩名人士以分權共有形式持有的物業。當他與代表租客的地產代理安排訂立臨時租約時，他告知對方，委託他的業主已就擁有權問題與該物業的另一名註冊業主展開了訴訟，因此租約內只需要其中一名業主的單獨簽名。其後，租客遂與該名業主訂立正式租約及支付訂金。

後來，該物業的另一名業主（即並非租約上的立約方）發現她並未獲通知有關該租賃事宜。她認為該名營業員和地產代理不應在未取得她的授權前便安排該物業的租賃，於是向監管局作出投訴。

Incident

A salesperson was appointed by the landlord for the leasing of a property which is owned by two persons in the form of a tenancy in common. When he and the tenant's agent arranged for the tenant to enter into the provisional tenancy agreement, he informed the tenant's estate agent that there was a lawsuit between the two landlords for the ownership of that property and so only the signature of one of the landlords was needed. The tenancy agreement was then entered into by the tenant and one of the landlords and the tenant paid the deposit.

Later, the other landlord of the concerned property whose name was not included in the tenancy agreement, discovered that the property was leased out without her consent and knowledge. Believing that the salesperson and the estate agent should not have arranged the leasing of the property without her authorisation, she lodged a complaint with the EAA.

研訊結果

儘管土地查冊顯示該物業由兩名人士共同擁有，惟兩名持牌人卻只安排其中一名業主訂立租約。監管局紀律委員會認為他們違反了《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」。

考慮到個案的性質及他們的違規紀錄，紀律委員會決定譴責他們，並在他們的牌照上附加條件，要求他們在12個月內取得持續專業進修計劃下的12個學分。此外，他們的牌照亦被暫時吊銷一個月。

Result

As the land search showed that the property was owned by two persons, but the two licensees only arranged for one of the landlords to enter into the tenancy agreement, the EAA Disciplinary Committee concluded that they were in breach of paragraph 3.7.2 of the *Code of Ethics* which states 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 their disciplinary record, the Disciplinary Committee decided to reprimand them, attach a condition to their licences requiring them to obtain 12 points under the EAA's Continuing Professional Development Scheme in 12 months, and their licences were also suspended for one month respectively.



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Ms Rosanna Ho
Chairman of Property Agents Association

業界意見 Comment from trade

地產代理在履行職務時必須盡量小心和盡一切應盡的努力。若一個住宅物業的業權是由多於一名註冊業主擁有（無論是分權擁有或聯權擁有業權），地產代理需要先得到所有聯名業主的授權或妥善簽署地產代理協議，才可向有意承租方介紹該物業。

Estate agents shall exercise due care and due diligence when fulfilling their duties. For residential properties under co-ownership with more than one registered owner (no matter in the form of joint tenancy or tenancy in common), estate agents should obtain the authorisation or proper execution from all owners in respect of the Estate Agency Agreement before introducing the property to prospective tenants.