

紀律研訊個案 Disciplinary hearing case

就香港境外物業發布違規廣告

Issuing non-compliant advertisements on uncompleted properties situated outside Hong Kong

引言

持牌人就參與香港境外未建成物業的銷售或發布廣告或宣傳物品時，必須遵守監管局發出的相關指引，否則有可能被監管局紀律處分。

Introduction

Licenses should comply with the EAA guidelines on the sale of uncompleted properties situated outside Hong Kong (“UPOH”) when participating in the sale or issuing advertisements or promotional materials to promote UPOH. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

監管局接獲一宗有關香港境外未建成物業網上廣告的匿名投訴。調查期間，監管局職員發現有四間地產代理公司均就該境外未建成物業發出違反監管局相關指引的網上廣告。

同時，監管局發現該四間地產代理公司並沒有在發布相關廣告或宣傳物品前，就賣方及/或該物業進行盡職審查。

Incident

The EAA received an anonymous complaint about an online advertisement regarding an UPOH. During the investigation, EAA staff discovered four estate agency companies had issued online advertisements related to the same UPOH, all of which failed to comply with the relevant guidelines of the EAA.

It was also found that the four estate agency companies failed to perform due diligence on the relevant vendor and/or the development before issuing the advertisements or promotional materials.

研訊結果

監管局紀律委員會認為，該四間地產代理公司違反了執業通告(編號17-03 (CR))第9, 10, 14(a), (b)及(c)段，即沒有在參與該物業的銷售或推廣活動前就賣方及/或該物業進行盡職審查，以及沒有在廣告中述明：(a)發展許可證或批文編號，以及發出該許可證或批文的有關當局的名稱；(b)買方是否將取得土地權益、建於該土地上的樓宇的權益及/或使用和佔用樓宇內的物業的權利；及(c)提醒買方購買境外未建成物業是複雜及存在風險的顯眼聲明。

此外，其中兩間公司所發出的物業廣告未有遵守執業通告(編號18-02 (CR))的規定，即未有清楚述明物業編號；而其中一間公司則因沒有在廣告中述明其牌照號碼或有關營業詳情說明書的號碼及營業名稱，違反《地產代理(發牌)規例》第14(1)(c)條。

Result

The EAA Disciplinary Committee was of the view that the four estate agency companies were in breach of paragraphs 9, 10 and 14(a), (b) and (c) of Practice Circular No. 17-03(CR) as they failed to perform due diligence on the vendor and/or the development before participating in the promotional activities for the UPOH and failed to state clearly the following in the advertisement: (a) the development permit or approval numbers, and name of the relevant authority which issued the permit or approval; (b) whether or not purchasers are acquiring an interest in the land, the building to be erected thereon, and/or a right to use and occupy the properties in the building; and (c) a prominent statement reminding purchasers that purchasing UPOH is complicated and contains risk.

Besides, two of the companies failed to comply with Practice Circular No. 18-02(CR) about property advertisements as they failed to state clearly and legibly the property number. Another one of the companies failed to state the number of its licence or the relevant statement of particulars of business and business name in the advertisement, which is in breach of section 14(1)(c) of the Licensing Regulation.

紀律委員會認為該四間地產代理公司違反了《操守守則》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、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地產代理公司的違規紀錄，紀律委員會決定譴責四間公司，並向它們分別罰款54,500元至56,000元不等。

The Disciplinary Committee found that all four companies were in breach of paragraph 3.2.1 of the *Code of Ethics*, which stipulates: "Estate agents and salespersons should be fully conversant with the *Estate Agents Ordinance*, its subsidiary legislation, this *Code of Ethics*, and other guidelines issued by the EAA."

Having considered the nature and gravity of the case and the disciplinary records of the estate agency companies, the Disciplinary Committee decided to reprimand all four companies and impose fines on each of them from \$54,500 to \$56,000 respectively.



郭昶先生
香港地產代理專業協會會長
Mr Anthony Kwok
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Real Estate Agents Ltd.

業界意見 Comment from trade

地產代理在銷售或推廣境外未建成物業前，應對賣方及該物業進行盡職審查，包括取得該物業所在地的專業人士（例如律師）、金融機構（例如銀行）及/或當地政府部門等發出的報告。此外，在發出有關廣告或宣傳物品時亦須遵守監管局相關指引。

Estate agents should perform due diligence on the vendor and/or the development and obtain a report issued by a professional person (e.g. practising lawyer), financial institution (e.g. bank) and/or government authority in the place where the UPOH are situated before participating in the sale or promotional activities for the UPOH. Moreover, they should comply with the relevant EAA guidelines when issuing advertisements or promotional materials.

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未有履行回贈承諾

Failing to honour the promise of a rebate

引言

地產代理爭相向準買家提供更大的優惠，不只會引起同業間的惡性競爭，部份地產代理最終或會因未能履行巨大優惠的承諾而引起糾紛。倘若地產代理向準買家表示會提供任何優惠，必須以書面形式列明優惠的條款及形式並兌現有關優惠，否則有機會被監管局紀律處分。

Introduction

Competing to offer the biggest incentive to a prospective purchaser not only leads to unhealthy competition among estate agents, but would also bring disrepute to the trade if the estate agent fails to honour the promise of such a big incentive. If any incentive is offered to a client, it should be set out in writing and must be honoured. Otherwise, the non-compliant estate agent may be subject to disciplinary action by the EAA.

事件經過

甲公司的一名營業員向一名準買家提出，會提供一個一手住宅物業樓價的1.5%作為回贈。該準買家其後向乙公司的營業員表示，倘若其提供的回贈優惠比甲公司為多，他才會考慮透過乙公司購入物業。在視察物業後，乙公司的一名地產代理和該名營業員向該準買家表示，他們能夠提供樓價的2%作為回贈。該準

Incident

A prospective purchaser was offered a rebate of 1.5% of the property price for a first-hand residential property by a salesperson of Company A. The prospective purchaser solicited another salesperson of Company B that he would only consider purchasing the property through him if the rebate offered was more than that of Company A. After arranging a site visit of the property, an estate agent of Company B, accompanied by the salesperson, confirmed the prospective purchaser that a rebate of 2% of the property price could be offered. The prospective purchaser

買家即時以手機將他們作出的回贈承諾錄音作為憑證。

於簽訂臨時買賣協議後，乙公司的另一名地產代理卻向這位買家遞上回贈確認書，要求他在確認書上簽署的回贈優惠為樓價的1%。買家感到不滿及憤怒，他拒絕簽署有關確認書，並向監管局作出投訴。

immediately made a sound recording of the estate agent about the promise of the rebate offered with his mobile.

However, after signing the Provisional Agreement of Sale and Purchase, another estate agent of Company B asked the purchaser to sign a rebate confirmation form denoting that a rebate of 1% of the property price would be offered. Feeling discontent and aggrieved, the purchaser refused to sign the form and lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該地產代理及營業員未有向客戶履行回贈承諾，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受損及/或名聲受損的行為」。另外，他們亦違反執業通告（編號13-04（CR））的指引，即倘若持牌人向準買家承諾或表示會提供優惠，則須根據監管局規定，將其提供予準買家的任何優惠（包括任何送贈、折扣或回贈）以書面形式向準買家作出，並具體列明提供優惠的條款及形式。因此，他們亦違反了《操守守則》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、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、該地產代理及營業員的違規紀錄，紀律委員會決定譴責他們，並向他們罰款10,000元至11,000元不等，暫時吊銷他們的牌照四星期至兩個月，並於其牌照上附加條件，要求他們取得持續專業進修計劃下的12至24個學分。

Result

The EAA Disciplinary Committee was of the view that the estate agent and the salesperson had failed to fulfill the promise of providing a rebate to the client. Hence, they failed to comply with 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." In addition, they failed to comply with the guidelines set out in Practice Circular 13-04(CR), which stipulates that licensees must set out in writing any incentives, including any gifts, discounts or rebates, that they have offered to prospective purchasers, and stipulate clearly the terms and format thereof. Thus, they were in breach of paragraph 3.2.1 of the *Code of Ethics*, which stipulates: "Estate agents and salespersons should be fully conversant with the Estate Agents Ordinance, 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 estate agent and the salesperson, the Disciplinary Committee decided to reprimand them, impose a fine ranged from \$10,000 to \$11,000, suspend their licences from four weeks to two months, and attach a condition to their licences, requiring them to obtain 12 to 24 points under the CPD Scheme respectively.



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Mr Paul Lee
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業界意見 Comment from trade

為免爭拗，地產代理在銷售一手住宅新盤時，倘若向客戶承諾提供任何回贈或優惠，必須以書面清楚列明該回贈或優惠的條款及形式，與客戶雙方簽名作實，並履行相關承諾。

If estate agents promise to offer any rebate or incentive to clients in the sale of first-hand residential properties, they must set out in writing the terms and format of rebates or incentives they offered and arrange for both parties to sign the relevant document to avoid dispute. They should also honour their promises accordingly.