



刑事個案 Criminal case

未經主事人同意攤分佣金 Sharing commission without the principal's approval

引言

地產代理行業競爭激烈，然而，在爭取業績賺取佣金的同時，地產代理亦須恪守誠信，切勿以不當手段經營業務，否則可能會因此而需負上刑責，結果得不償失。

Introduction

Competition in the estate agency trade is intense. While trying to increase their commission estate agents must still act with integrity and avoid any business malpractice, or else they may be committing a criminal offence.

個案經過

一名地產代理高級營業主管，介紹其客戶給一名下線地產代理營業員，並指示該下線地產代理跟進相關的物業買賣事宜。在該營業主管及下線營業員的推介下，該客戶買入一個住宅物業。地產代理公司就該宗交易，向下線營業員及營業主管分別發放銷售及主管佣金。雖然該公司政策訂明，上線主管收取主管佣金後，不准攤分其下線營業員就同一宗交易所收取的銷售佣金，但該營業主管其後卻收受下線營業員提供的部分銷售佣金，作為轉介客戶的報酬。

Case

A senior sales supervisor of an estate agency introduced one of his clients to a downline estate agent and instructed the agent to follow up the client's property transaction. Upon the recommendation of the supervisor and the downline agent, the client purchased a residential property. In respect of the transaction, the estate agency paid the supervisor and the downline agent an overriding commission and a sales commission respectively. Although the estate agency has a policy which prohibits supervisors from sharing downline agents' sales commission for the same property transaction, the supervisor still accepted part of the sales commission from the downline agent as a reward for his business referral.

裁決

個案中的高級營業主管作為代理人（即地產代理公司僱員），在未有其主事人（即地產代理公司）的許可下，收受下線營業員提供的部分銷售佣金，作為轉介客戶及協助促成物業交易的報酬，觸犯《防止賄賂條例》第9條。法官判刑時稱，被告的行為荼毒地產代理業的營商環境，並令所屬地產代理公司蒙受經濟和商譽的損失。該名高級營業主管最終被判入獄，並須向所屬地產公司作出賠償。

Result

In this case, the senior sales supervisor, as an agent (i.e. employee of the estate agency), without the approval of his principal (i.e. the estate agency), accepted part of the sales commission from his downline agent as a reward for referring a client and providing assistance in the property transaction. The supervisor thus contravened Section 9 of the Prevention of Bribery Ordinance. In sentencing, the Judge said the defendant's act was detrimental to the business environment of the estate agency sector. He also caused a financial loss to his employer and undermined its reputation. The sales supervisor was sentenced to imprisonment and was ordered to pay a restitution to his employer.

廉署意見 ICAC's Advice

廉署提醒地產代理業從業員，在沒有主事人（可包括其僱主或買賣雙方）許可的情況下，絕不可利用職權索取或收受任何利益，否則提供及收受利益雙方均有可能觸犯《防止賄賂條例》。若地產代理觸犯刑事罪行而被定罪，亦有可能按《地產代理條例》第19條被視為並非作為持牌人的適當人選，因而影響他們獲批或持有牌照的資格，不能再從事地產代理工作。地產代理業從業員在業務過程中須注意相關的法規，並留意監管機構的操守指引及公司就員工索取或接受利益方面的守則。如遇到任何懷疑貪污的情況，應立即向廉署舉報。

The ICAC reminds practitioners of the estate agency industry not to solicit or accept any advantages when conducting their principal's affairs or business without the approval of their principal (which may include their employer, vendor or buyer), otherwise both the offer or and recipient of the advantage may breach the Prevention of Bribery Ordinance. Any conviction of bribery offences will render estate agents not being regarded as fit and proper persons under Section 19 of the Estate Agents Ordinance, which may in turn affect their eligibility to be granted or to hold their licences and shall inhibit them from participating in estate agency work. Practitioners should observe and comply with the relevant laws and regulations in the course of their business and should pay attention to the regulatory guidelines and their company's code of conduct on solicitation and acceptance of advantages when conducting business. Should anyone come across any suspected corruption, they should report it to the ICAC immediately.

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未有申報刑事定罪紀錄 Failure to disclose a criminal record

引言

在申請地產代理或營業員牌照時，不得提供任何虛假或具誤導性的資料；否則，申請人可能會觸犯刑事罪行並被警方起訴，因此而留下案底。

Introduction

An applicant must not provide any false or misleading information when applying for an estate agent's or a salesperson's licence; otherwise, the applicant may commit a criminal offence and be prosecuted by the police, resulting in a criminal record.