



紀律研訊個案 **Disciplinary hearing case**

以有別於賣方指示的價格宣傳物業 Advertising property at a price different from that instructed by the vendor

引言

持牌人應注意物業廣告中顯示的放盤價必須與業主指示的一致。否則，他們有機會被監管局紀律處分。

Introduction

Licensees should note that the price stated in property advertisements must be in accordance with the vendor's instructions. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名業主的代表委託數家地產代理公司放售一個屬於其已去世親屬的住宅物業。其後，其中一家地產代理公司向他查詢是否更改了該物業的放盤價。該名業主代表此時才發現他委託的另一家地產代理公司，在其店舖櫥窗刊登一則廣告，指該物業的放盤價為1,368萬元，比他指示的放盤價下調了很多。業主代表深感不滿，遂向監管局作出投訴。

Incident

A vendor's representative appointed several estate agencies to sell a residential property belonged to a deceased relative. Later, he received an inquiry from one of the appointed agencies that if the listing price of the property concerned has been revised. The vendor's representative then discovered that another agency he appointed had issued an advertisement of the property in its shop window with a listing price of \$13,680,000, which was much lower than his instructed price. Feeling dissatisfied, the vendor's representative lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，該地產代理公司以有別於賣方指示的價格宣傳該物業，因而違反了《地產代理常規（一般責任及香港住宅物業）規例》第9(3)條。

此外，監管局於調查期間發現該地產代理公司在接受客戶的委託處理該物業的出售事宜前，只依賴客戶的口頭表述而未有核實其賣方的身份，因而違反了《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該地產代理公司的違規紀錄，紀律委員會決定譴責該公司，並向其罰款共45,000元。

Result

The EAA Disciplinary Committee was of the view that the estate agency company advertised the property at a price different from that instructed by the vendor. Hence, it was in breach of Section 9(3) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

Moreover, during the investigation of the case, the EAA found out that the estate agency company only relied on the client's verbal representation without any verification of his capacity as vendor when accepting the appointment to handle the sale of the property. Thus, it failed to comply with 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 the disciplinary record of that estate agency company, the Committee decided to reprimand it and impose a fine of \$45,000.



蕭亮鴻先生
地產代理人員協會副主席
Mr Keith Siu
Vice-chairman of Property Agents
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業界意見 Comment from trade

地產代理除了應具備專業知識外，保持誠信亦不可忽視。必須遵照客人的意願及指示行事。不能為了促成交易或其他原因，而未經客人同意下，擅自更改客人指示。這樣不但違反有關法例及操守守則，亦破壞了客人的信任。若此等不當行為不加以遏止，會對整個地產代理行業的專業形象造成負面影響。

In addition to professional knowledge, integrity is also a must for being a professional estate agent. They should act according to the instructions of their clients and should not change the clients' instructions without seeking the clients' consent, as it will breach the regulations and *Code of Ethics*. Such behaviour will also damage the clients' confidence and tarnish the professional image of the entire estate agency trade.

紀律研訊個案 Disciplinary hearing case

買方取消交易後被扣起臨約及訂金 Withholding the PASP and deposit after the purchaser cancelled the transaction

引言

持牌人在執業期間，應避免作出任何損害地產代理行業信譽及/或名聲的行為，否則有機會被監管局紀律處分。

Introduction

Licensees should avoid any behaviour that may bring discredit and/or disrepute to the estate agency trade in their practice. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名地產代理在一項物業交易中擔任雙邊代理。她安排買家單方面簽署臨時買賣協議（「臨約」），並收取一張由買家提供的十萬元支票作為訂金（「訂金支票」）。

其後，買家告知該地產代理，她因財政問題決定取消該交易，並要求取回該份賣方尚未簽署的臨約和訂金支票。然而，該地產代理要求買家先向其地產代理公司支付佣金及賣方的律師費，否則不會退還該臨約及訂金支票。

買家於是向監管局作出投訴。調查期間，該地產代理未能出示賣方已簽署該臨約或任何顯示賣方不同意終止相關交易的證據。

Incident

An estate agent was appointed as a dual agent in a property transaction. She arranged for the purchaser to sign the provisional agreement for sale and purchase ("PASP") unilaterally and received the purchaser's cheque of \$100,000 as the deposit ("Deposit Cheque").

Later, the purchaser informed the estate agent that she had decided to cancel the transaction due to financial problems and requested to have the unilaterally signed PASP and the Deposit Cheque back. However, the estate agent refused to do so and told the purchaser that she had to settle the estate agent's commission and the vendor's legal expenses before her request would be entertained.

Hence, the purchaser lodged a complaint with the EAA. During the investigation, the estate agent failed to provide any evidence indicating that the PASP had been signed by the vendor or the vendor disagreed to terminate the transaction.

研訊結果

監管局紀律委員會認為，該地產代理違反了《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。」委員會指出該地產代理不應拒絕退還該臨約和訂金支票，而應透過適當途徑追討相關費用。

考慮到個案的性質及該地產代理的違規紀錄，紀律委員會決定譴責該地產代理，並向其罰款共3,000元，並要求她在12個月內取得持續專業進修計劃下的12個學分。

Result

The EAA Disciplinary Committee was of the view that the estate agent failed to comply with 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". The Committee pointed out that the estate agent should recover the relevant fees through appropriate means instead of withholding the purchaser's PASP and the Deposit Cheque.

Having considered the nature and gravity of the case and the disciplinary record of that estate agent, the Disciplinary Committee decided to reprimand her, impose a fine of \$3,000 and require her to obtain 12 points in the Continuing Professional Development Scheme within 12 months.



吳元興先生
地產代理（從業員）總會主席
Mr Evan Ng Yuen-hing
Chairman of Estate Agent
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業界意見 Comment from trade

個案中賣方仍未簽署臨約，而買方因財務問題而終止交易，並立刻通知代理代理。作為一個具有專業操守的地產代理，應該退回訂金及該份臨約，反而拒絕退還並向買方追討賠償或佣金是無理的。在此提醒準買家，在簽約前應先向銀行或財務機構查詢可獲批核的按揭。

In the case, the vendor had not yet signed the PASP when the purchaser decided to cancel the transaction due to financial problems and informed the estate agent. As an ethical professional estate agent, she should return the deposit and the PASP to the purchaser. It is unreasonable to decline the purchaser's request and demand compensation or commission from the purchaser. I would like to remind prospective purchasers to consult with banks or financial institutions for the mortgage that can be approved before entering into any agreement.