



紀律研訊個案 Disciplinary hearing case

在社交平台上披露客戶的個人資料 Disclosing a client's personal data on social media

引言

持牌人應遵守《個人資料（私隱）條例》以及由監管局發出有關收集、使用和處理個人資料的指引。否則，有可能被監管局紀律處分。

Introduction

Licencees should comply with the Personal Data (Privacy) Ordinance and the relevant guidelines issued by the EAA in respect of the collection, use and handling of personal data. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一名持牌營業員在處理物業租賃時取得租客的個人資料，包括其身份證號碼及職員證副本，作為向業主提供的工作證明。租客與業主簽訂為期兩年的租約，數月後，租客要求提前終止租約，但被業主拒絕。其後，租客停止繳付租金。該名營業員獲業主授權處理物業事宜，遂自行決定在社交平台上發布遮蓋了部分資料的租客姓名、手機號碼、身份證號碼及職員證副本。租客發現該帖文後，向私隱專員公署及監管局作出投訴。在監管局調查期間，該名營業員承認在社交平台發布相關貼文，藉此代表業主逼使租客繳付租金。私隱專員公署調查亦發現該營業員在事件中涉及違反《個人資料（私隱）條例》附表一的保障資料第3原則的規定。

Incident

A salesperson obtained personal data from a tenant, including her ID number and a copy of her staff card, as proof of employment to provide to the landlord. The tenancy term was for two years but after a few months the tenant requested an early termination which was rejected by the landlord. After the rejection the tenant stopped paying rent. Being authorised by the landlord to handle the tenancy matter, the salesperson decided to post on a social media platform the tenant's name, mobile number, ID number and a copy of her staff card with partial details redacted. The tenant discovered the post and lodged a complaint with the Office of the Privacy Commissioner for Personal Data ("PCPD") and the EAA. During the EAA investigation, the salesperson admitted that he had uploaded the post to pressure the tenant into paying rent on behalf of the landlord. A PCPD investigation also found that the behaviour of the salesperson contravened the Data Protection Principle 3 in Schedule 1 of the Personal Data (Privacy) Ordinance.

研訊結果

Result

監管局紀律委員會認為該營業員沒有遵守監管局發出的執業通告（編號13-05(CR)），在沒有取得租客的同意下，在社交平台上披露租客的個人資料。因此，該營業員違反了監管局發出的《操守守則》第3.2.1段：「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，委員會決定譴責他，罰款共12,000港元，暫時吊銷其牌照一個月，並要求他在12個月內取得持續進修計劃下的12個學分。

The EAA Disciplinary Committee was of the view that the salesperson failed to comply with the Practice Circular (No. 13-05(CR)) issued by the EAA, disclosing the personal data of the tenant on social media without obtaining her consent. Hence, the salesperson was in breach of paragraph 3.2.1 of the *Code of Ethics*, which states 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, as well as the disciplinary record of the salesperson, the disciplinary committee decided to reprimand him, impose a fine of HK\$12,000, suspend his licence for one month and required him to obtain 12 points under the CPD Scheme in 12 months.



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- 業界意見 **Comment from trade**

地產代理應該尊重客戶的私隱，在處理客戶個人資料時要小心，不可利用客戶的個人資料作其他用途，更不應在網上發布客戶的個人資料。損害客戶的私隱是非常嚴重的違規行為，業界應引以為戒。即使租客與業主發生租務糾紛，身為代理亦不應用違法的手段代表業主追討租金

Estate agents must respect clients' privacy and exercise care when handling clients' personal data. They must not use their clients' personal data for other purposes or post their clients' personal data online. Infringing upon client's privacy is a serious non-compliance and every practitioner should be vigilant against such behaviour. Even in the case of a tenancy dispute between the tenant and landlord, estate agents must not use any illegal means to recover the rent for the landlord.

紀律研訊個案 **Disciplinary hearing case**

發布虛假或具誤導性的網上物業廣告 Issuing a false or misleading online advertisement

引言

Introduction

地產代理公司切勿發布含有虛假或誤導性陳述或詳情的物業廣告，亦不得在未獲准許便擅自使用屬於其他人士或公司的相片作廣告宣傳。否則，有可能被監管局紀律處分。

Estate agency companies must not include any false or misleading statements or particulars in property advertisements and must not use photos belonging to other people or company without permission. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

監管局接獲地產代理公司A的投訴，稱在未獲得其許可的情況下，被地產代理公司B擅自取用了其物業廣告的相片。監管局調查發現，B公司未能提供相關的「出售香港住宅物業用的地產代理協議」（表格三）及相關廣告所載物業的詳細地址。B公司在發布有關物業廣告前未獲得物業擁有人的委託及書面同意。此外，物業廣告上的相片亦證實屬於A公司，B公司於未得到A公司同意下便刊登了有關相片。

Incident

The EAA received a complaint from estate agency company A that the photos of one of its residential property advertisements were misappropriated by estate agency company B. During the EAA's investigation, company B failed to provide the Estate Agency Agreement for Sale of Residential Properties in Hong Kong (Form 3) and the detailed address of the advertised property. Company B did not obtain the instruction and written consent from the vendor before issuing the advertisement. Additionally, it was proved that the photos in the advertisement belonged to company A and were published without the consent of company A.

研訊結果

地產代理公司B擅自取用了未獲准使用的相片發布物業廣告，此行為可能被視為盜取其他地產代理公司的知識產權。因此，監管局紀律委員會認為B公司違反了監管局發出的《操守守則》第3.7.2段：「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。」

此外，該物業廣告令人認為地產代理公司B已獲得該物業擁有人的委託代為出售物業，惟事實並非如此。因此，B公司發布了一則載有虛假或具誤導性的陳述或詳情的廣告，違反了《地產代理常規（一般責任及香港住宅物業）規例》第9(1)條。

考慮到個案的性質及該營業員的違規紀錄，委員會決定譴責B公司，並罰款合共94,000港元。

Result

Estate agency company B had issued an advertisement using photos that it had no permission to use, which could be considered as an infringement of intellectual property rights of another estate agency company. Hence, the EAA Disciplinary Committee was of the view that company B was 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."

In addition, the concerned advertisement could also mislead consumers into believing company B was appointed by the vendor to list the property for sale, which was not true. Hence, company B issued an advertisement which included a statement or particular that was false or misleading in a material particular and thus was in breach of section 9(1) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

Having considered the nature and gravity of the case, as well as the disciplinary record of company B, the disciplinary committee decided to reprimand the company and impose a fine of HK\$94,000 in total.



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● 業界意見 Comment from trade

地產代理公司在未經同意下使用其他公司的相片發布物業廣告，不但影響同業，亦令地產代理的專業形象受損。此外，該公司事實上沒有受到物業擁有人的委託，而是利用他人的相片發布虛假廣告，此舉會令公眾對地產代理失去信心，令行業信譽受損。

Using photos from another estate agents company to issue property advertisements without permission not only harms the other company but also tarnishes the professional image of the estate agency industry. Besides, the company was not even appointed by the property owner but issued a false advertisement by using photos belonging to another company. This act can lead to a loss of public trust and bring discredit to the trade.