



紀律研訊個案 Disciplinary hearing case

未能有效監管員工遵從規定 Failure to monitor employees' compliance effectively

引言

地產代理公司須設立妥善的程序及制度，以確保其員工或其轄下的人遵守《地產代理條例》及其附屬法例、《操守守則》、執業通告及由監管局不時發布的指引（「該等條例及指引」）。否則，有可能被監管局紀律處分。

Introduction

Estate agency companies should establish proper procedures and systems to ensure that their employees and persons under their control comply with the Estate Agents Ordinance and its subsidiary legislation, the Code of Ethics, practice circulars and guidelines from time to time issued by the EAA ("Ordinance and Guidelines"). Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

一間地產代理公司在16個月內接連發生10宗涉及其12名員工在網上平台發布19個違規物業廣告的違規個案。監管局因此懷疑該公司沒有設立妥善的程序及制度，以確保其員工遵守該等條例及指引，於是展開調查。調查發現，該地產代理公司僅透過發出內部通告及提供培訓班的方式，提醒員工遵守物業廣告的規定。儘管該公司辯稱已有規定員工必須於發放網上廣告前向公司作出申請並取得管理層的有關批核，亦曾懲處涉及違規事件的員工，但該規定明顯沒有效用及懲處欠缺阻嚇性。此外，該公司涉及違規的員工來自不同的職級，由分行經理以至非持牌員工不等，反映該公司員工發布違規廣告的情況十分普遍，並非只是個別員工的違規事件。

Incident

An estate agency company was involved in 10 non-compliant cases where its 12 employees issued 19 online non-compliant advertisements within 16 months. Therefore, the EAA suspected that the company has not established proper procedures and systems to ensure its employees' compliance with the Ordinance and Guidelines, and initiated an investigation. During the investigation, the EAA found that the estate agency company only relied on internal notices and training courses to remind employees of the regulations regarding the issuance of property advertisements. Even though the company alleged that the sales employees are required to obtain approval from the managerial level staff before any online advertisement could be issued, and it also had previously sanctioned non-compliant employees; nevertheless, such requirement was ineffective and the sanctioning measures were not a deterrent. Furthermore, the non-compliant employees are at different levels in the company, ranging from branch managers to unlicensed trainees, indicating that the issuance of non-compliant advertisements was prevalent in the company and not merely isolated incidents of individual employees.

研訊結果

Result

監管局紀律委員會認為，該地產代理公司沒有設立妥善的監管制度及措施有效地遏止及預防其員工違規，導致違規事件持續發生。該公司違反了《地產代理常規（一般責任及香港住宅物業）規例》第15條，即：「持牌地產代理須設立妥善的程序或制度以監督和管理其地產代理工作的業務，以確保其僱員或其轄下的人遵守本條例的條文。」

考慮到該地產代理公司承認指稱、個案的性質及其違規紀錄，委員會決定譴責該公司及罰款80,000港元。

The EAA Disciplinary Committee was of the view that the estate agency company failed to implement an adequate monitoring system and measures to deter and prevent its employee's malpractice effectively, hence there were non-compliant cases occurring continuously. The company was in breach of Section 15 of the *Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation*, which states that, "A licensed estate agent shall establish proper procedures or systems to supervise and manage his business of doing estate agency work to ensure that his employees or persons under his control comply with the provisions of the Ordinance."

Having considered the estate agency company's admission to the allegation, nature and gravity of the case, as well as the disciplinary record of the company, the disciplinary committee decided to reprimand the company and impose a fine of HK\$80,000.



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● 業界意見 Comment from trade

地產代理公司應設立完善的制度確保員工守規，透過不同的平台發放物業廣告前，管理層應有責任檢視，確保內容真確，如有員工證實違規亦應檢討工作流程，並訂立有效改善方案作出跟進，避免同類事件再發生。假如地產代理公司疏於管治，違規事件接連出現，會影響業界聲譽及消費者的信心。

Estate agency companies should establish a proper system to ensure compliance among all staff members. Prior to advertising a property, the management team of estate agency companies is responsible for verifying the accuracy of the information contained in the advertisement. In case of any malpractice by staff, the company should review the workflow and implement an improvement plan to prevent any recurrence of malpractice. Continuous non-compliances and failure to demonstrate proper governance of estate agency companies will significantly damage the trade's reputation and diminish the consumers' confidence in the trade.

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以電話及載有粗言穢語的訊息滋擾準買家 Harassing prospective purchaser with phone calls and abusive messages

引言

Introduction

持牌人應時刻保持有禮及尊重他人，避免做出令地產代理行業信譽及/或名聲受損的行為，否則有可能被監管局紀律處分。

Licensees should always behave in a polite and respectful manner and must not 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

一名持牌營業員安排準買家參觀一個一手住宅物業樓盤，其後該名營業員多次致電準買家推銷該樓盤，並游說準買家購買該樓盤的物業。準買家向他明確表示，不會透過他購買物業，並表明不希望該營業員再次聯絡他。然而，該名營業員仍然以不同的電話號碼致電準買家，並向準買家發出載有粗言穢語的WhatsApp貼圖，該名準買家遂向監管局作出投訴。

Incident

A salesperson arranged for a prospective purchaser to visit a first-hand residential property development. After the visit, the salesperson persistently made phone calls to the prospective purchaser to promote the property of the development and persuade him to make a purchase. The prospective purchaser clearly stated that he would not purchase any property through the salesperson and requested him to stop contacting him. However, the salesperson continued to call him by using different phone numbers and even sent him a WhatsApp sticker containing words of abusive and foul language. Hence, the prospective purchaser lodged a complaint with the EAA.

研訊結果

監管局紀律委員會認為，雖然該營業員並沒有向準買家傳送載有粗言穢語的文字訊息，但他傳送的WhatsApp貼圖明顯載有粗言穢語及具有辱罵對方的意思。再者，該營業員以不同的電話號碼滋擾對方。因此，他違反了《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。」

考慮到該名營業員承認指稱、個案的性質及其違規紀錄，委員會決定譴責他，並暫時吊銷其牌照一個月。

Result

The EAA Disciplinary Committee pointed out that although the salesperson did not literally send messages with abusive and foul language to the prospective purchaser, the WhatsApp sticker he sent obviously contained offensive and vulgar wording. Furthermore, the salesperson had used different phone numbers to harass the prospective purchaser. Hence, the salesperson 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”.

Having considered the salesperson's admission to the allegation, nature and gravity of the case, as well as the disciplinary record of the salesperson, the Disciplinary Committee decided to reprimand him and suspend his licence for one month.



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● 業界意見 Comment from trade

地產代理應尊重客戶的意願，在推銷的過程中不要太進取，並且應注意言行，保持專業有禮，既然客戶已明確表示不希望代理繼續聯絡，代理便應停止推銷，不應滋擾客戶，更不應使用粗言穢語。這不但影響地產代理專業的形象，損害與客戶的關係，更加因違反守則而被處分，後果嚴重。

Estate agents should respect their clients and avoid being over-aggressive when promoting properties. They should be mindful of their conduct and behaviour and uphold a professional manner. If clients have expressly indicated they do not want to have any more contact, the estate agents should stop engaging in further promotional activities and should never harass clients by using abusive or foul language. Otherwise, it will not only tarnish the image of the estate agency trade and damage the relationship with clients, but could also result in serious sanctions.