

紀律研訊個案 Disciplinary Hearing Case

未有就銷售或推廣香港境外的未建成項目進行盡職審查及取得物業所在地執業律師的法律意見

Failure to carry out customer due diligence and obtain the legal opinion issued by a lawyer practising in the jurisdiction where the uncompleted properties outside Hong Kong is situated before participating in the sale or the promotional activities for such properties



引言

持牌人參與推廣或銷售境外未建成物業前，必須遵從監管局發出的執業通告編號23-02(CR)的指引，否則會被監管局紀律處分。

事件經過

監管局職員在進行店鋪巡查時，發現一間地產代理公司的店鋪櫥窗外張貼了兩則境外未建成物業的廣告，監管局遂要求該地產代理公司提供關於該兩項物業及賣方的盡職審查報告，同時亦要提供該兩項物業所在地執業律師的法律意見。

但該地產代理公司只能提供於巡查日期後發出的法律意見及由當地官方機構就該兩項物業發出的證明文件，但該些文件均未有述明該兩項物業賣方的資金來源，及有關物業當時有效的產權負擔。有關個案遂交由監管局紀律委員會審理。

Introduction

When carrying out sale or promotional activities for an uncompleted property situated outside Hong Kong ("UPOH"), licensees must comply with the guidelines set out in the Practice Circular No. 23-02(CR) ("Practice Circular") issued by the EAA. Licensees failing to do so may be disciplined by the EAA.

Incident

During an enforcement inspection, EAA staff found two advertisements that an estate agency company had displayed in its shop window for two UPOH. The EAA therefore requested the estate agency company to provide due diligence reports on the two properties concerned and their vendors, together with the legal opinions from practising lawyers in the jurisdiction where the two properties are situated.

However, the estate agency company could only provide the relevant legal opinion issued after the inspection date. Additionally, the estate agency company provided documentations from local authorities in respect of the two properties, but those documents did not specify the source of funds of the vendors and the subsisting encumbrances of the properties. Hence, the case was referred to the EAA Disciplinary Committee for a hearing.

結果

紀律委員會認為，該地產代理公司未能於銷售或推廣活動前取得關於賣方及相關物業完整的盡職審查報告及物業所在地執業律師發出的法律意見，並沒有遵守相關《執業通告》的指引，因而違反《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、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地產代理的違規紀錄，紀律委員會決定向該地產代理作出紀律處分，包括譴責及向其罰款合共港幣200,000元。

Result

The Disciplinary Committee was of the view that the concerned estate agency company failed to obtain a complete due diligence report on the vendors and the properties, as well as legal opinions from practicing lawyers in the jurisdiction where the UPOHs are situated prior to the promotional activities. The estate agency company failed to comply with the requirements under the Practice Circular and breached paragraph 3.2.1 of the *Code of Ethics* issued by the EAA 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 of the case and the disciplinary record of the estate agency company, the Disciplinary Committee decided to impose disciplinary sanctions on the estate agency company, including a reprimand and a total fine of \$200,000.



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業界意見 Comment from the trade

市面上很多境外物業銷售也沒有委託香港持牌地產代理的，但其實受到地產代理監管局監管下的香港持牌代理，才對消費者較有保障！以上個案正反映：香港持牌地產代理因必須遵守《地產代理條例》及所有監管局的指引，包括嚴謹履行盡職審查責任，因此消費者可獲得重要的基本保障。

Many sales of properties outside Hong Kong are not handled by Hong Kong licensed estate agents. However, licensed agents in Hong Kong which are regulated by the EAA, offer greater consumer protection. The above case demonstrated that licensed estate agents in Hong Kong are required to comply with the Estate Agents Ordinance and other guidelines issued by EAA, including strictly fulfilling their due diligence obligations, therefore providing consumers with essential basic protection.

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未有於租約內提供業主的通訊地址

Failure to provide the correspondence address of the landlord in a tenancy agreement



引言

持牌人在填寫臨時租約和正式租約時，須遵從執業通告編號15-04(CR)有關提供訂約各方的地址的指引，否則會被監管局紀律處分。

Introduction

Licensees should comply with the requirement in Practice Circular No. 15-04(CR) ("Practice Circular") on providing the parties' addresses in the provisional tenancy agreement and tenancy agreement. Otherwise, they may be subject to disciplinary action by the EAA.