



紀律研訊個案 Disciplinary hearing case

發出住宅物業廣告前未取得賣方的書面同意 Failed to obtain the vendor's written consent prior to the issuance of residential property advertisements

引言

地產代理公司在未有取得賣方的書面同意前，不得發出住宅物業廣告，否則有可能被監管局紀律處分。

Introduction

Estate agency companies must not issue any residential property advertisements before obtaining the vendor's written consent. Otherwise, they may be subject to disciplinary action by the EAA.

事件經過

監管局接獲投訴，指兩間地產代理公司於網上物業平台發布住宅物業廣告前，未有取得賣方書面同意。

監管局調查後發現，該兩間地產代理公司在同一個網上廣告平台分別為同一個住宅物業發布廣告。其中A公司在該平台曾刊登兩則廣告，而B公司則刊登了一則廣告，而兩間公司在刊登這些廣告前，均未有取得賣方的書面同意。有關個案遂交由監管局紀律委員會審理。

Incident

The EAA received a complaint that two estate agency companies failed to obtain written consent from vendors before issuing advertisements of a residential property on an online property platform.

Upon investigation, the EAA found that the two concerned estate agency companies published advertisements for the same residential property on the same online property platform respectively. Company A published two advertisements while Company B published one advertisement. However, both companies did not obtain any written consent from the vendor before issuing those three advertisements. Hence, the case was referred to the EAA Disciplinary Committee for a hearing.

結果

紀律委員會認為，所涉的廣告清楚列出答辯人的公司名稱及其地產代理牌照號碼，縱使沒有證據證明該網站是屬於答辯人或是由答

Result

The EAA Disciplinary Committee was of the view that the company name and licence number of the respective estate agency companies were clearly stated on the advertisements, even though there was no

辯人管理的，相關廣告自然和合理地讓公眾人士理解為是由答辯人發出、或同意發出的。事實上該兩間地產代理公司在發出該些住宅物業廣告前，並未取得賣方的書面同意，違反了《地產代理常規（一般責任及香港住宅物業）規例》第9(2)條的規定。

考慮到個案的性質及兩間地產代理公司的違規紀錄，紀律委員會決定譴責該兩間地產代理公司，並分別罰款125,000港元及20,500港元。

該兩間地產代理公司不服判決作出上訴。上訴審裁小組經詳細研究文件及聆訊中雙方觀點後同意監管局作為規管持牌地產代理及營業員的唯一法定機構，保障公眾利益是必然及必須的，故以一般合乎公眾人士的認知作為違規情況的考量基礎之一亦屬合理，最終維持監管局紀律委員會之判決，駁回兩間地產代理公司的上訴。

evidence to prove that the online property platform was managed by the estate agency companies concerned, those advertisements naturally and reasonably led members of the public to believe that they were issued by or with the consent of the estate agency companies. In fact, both estate agency companies failed to obtain the vendor's written consent prior to the issuance of those residential property advertisements and were in breach of section 9(2) of the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation.

Having considered the nature of the case and the disciplinary record of the estate agency companies, the Committee decided to reprimand the two estate agency companies and imposed a fine of HK\$125,000 and HK\$20,500 respectively.

Both estate agency companies lodged an appeal against the decision of the EAA Disciplinary Committee. After detailed examination of the submissions and the points raised by both parties at the hearing, the Appeal Tribunal opined that, being the sole regulator of the licenced estate agents and salespersons, it is imperative and necessary for the EAA to protect the public interest. Therefore, it is justifiable for the EAA to consider the public's perception and use it as one of the basis to determine whether there had been any non-compliance, and thus the decision of the EAA Disciplinary Committee was upheld.



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■ 業界意見 Comment from trade

地產代理公司應要提升內部的監管質素，更密切地監察員工在網上平台發布的廣告內容，為發布網上廣告訂立更明確的守則，例如規定員工在發布廣告前，須取得廣告部負責人的同意。地產代理在發布一手住宅物業廣告前，應了解發展商的具體銷售安排，取得相關資料及書面同意後，才發布廣告。

Estate agency companies should enhance the quality of their internal monitoring mechanisms. They should closely monitor the content of advertisements issued by their staff and establish clearer guidelines on issuing advertisements on online platforms, such as requiring their staff to seek prior approval from the head of the advertising department. Estate agents should understand the sales arrangements of the developer, obtain relevant information and written consent prior to issuing any advertisements for first-hand residential properties.

刑事個案 Criminal case

使用虛假文書以申請地產代理牌照

Using forged document in connection with an application of an estate agent's licence

引言

根據《地產代理(發牌)規例》7(1)(a)，只有符合已完成中學五年級教育或同等程度的教

Introduction

Under Section 7(1)(a) of the Estate Agents (Licensing) Regulation, no licence shall be granted to an individual unless he has completed an

育條件的個人方可獲批給牌照。《地產代理條例》（《條例》）55(1)(d)訂明，若任何人在申請批給牌照或牌照續期時，作出任何虛假或具誤導性的陳述或提供任何虛假或具誤導性的資料，即屬違法。有關罪行，一經循公訴程序定罪，可處第6級罰款及/或監禁1年；如循簡易程序定罪，可處第5級罰款及/或監禁6個月。

education level of Form 5 of secondary or its equivalent. Section 55(1)(d) of the Estate Agents Ordinance (“EAO”) makes it an offence punishable by a fine at level 6 and/or imprisonment for 1 year on conviction upon indictment or by a fine at level 5 and/or imprisonment for 6 months on summary conviction if a person makes any false or misleading statement or furnishes any false or misleading information in connection with an application for the grant or renewal of a licence.

事件經過

監管局收到一宗營業員牌照的申請，申請人向監管局遞交了一份內地中學的畢業證書。監管局核實該申請人的學歷時，發現在該校的畢業生紀錄中找不到該申請人的姓名，證書上的校長姓名亦與當時的紀錄不符，而該校提供的資料亦指申請人並非該校的學生。監管局懷疑該張畢業證書為虛假文件，由於表面證據顯示申請人的學歷證書涉嫌屬虛假文書，違反《條例》第55(1)(d)的規定，遂將個案轉介警方處理。

Incident

The EAA received an application for the grant of a salesperson’s licence and the applicant submitted a graduation certificate of a middle school in Mainland. The EAA conducted verification on the applicant’s educational attainment and found that the applicant’s name could not be found in the school’s record of graduates and the name of the school principal printed on the certificate did not match the record at the material time. The EAA also received information from the school that the applicant was not one of the school students. The EAA suspected the graduation certificate is a false document and referred the case to the Police on the basis that there was prima facie evidence showing that the applicant was in breach of Section 55(1)(d) of the EAO that her educational qualification document is suspected to be a false instrument.

結果

警方完成調查後，涉案人被法庭裁定「使用虛假文書」的罪名成立，判處200小時社會服務令及留有刑事紀錄。涉案人不但未能成功申請牌照，同時在一般而言，局方在五年內都將不會批出其牌照申請。

Result

Upon the completion of investigation by the Police, the subject person was convicted of “using forged document” and was sentenced to a community service order of 200 hours with a criminal record by the court. The subject not only failed her licence application in this case but her licence application will normally be refused within a period of five years.



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■ 業界意見 Comment from trade

誠信是作為地產代理的基本素質，申請地產代理牌照時必須如實及準確地申報自己的個人資料（包括學歷），希望當事人可以深切反省這次事件的教訓。任何有意申請地產代理或營業員牌照的人士，都須緊記要遵守《地產代理條例》的規定，切勿在申請牌照的過程中提供虛假資料。

Integrity is one of the basic qualities of being an estate agent. One must truthfully and accurately declare one’s personal information (including academic qualifications) when applying for an estate agent’s licence. I hope the subject person can learn his lessons from this incident. Anyone who intends to apply for an estate agent’s or a salesperson’s licence should comply with the requirements of the Estate Agents Ordinance and refrain from providing false information in the process of applying for a licence.