



紀律研訊個案 Disciplinary hearing case

未有遵守有關處理劏房租賃的指引 Failure to comply with the guidelines regarding the handling of subdivided units tenancies

引言

地產代理在處理《業主與租客（綜合）條例》第IVA部所規管的分間單位（俗稱「劏房」）租賃時，必須遵從監管局發出的相關執業通告（編號22-01(CR)）（「該執業通告」）的指引，否則有機會被監管局紀律處分。

Introduction

When handling tenancies in respect of subdivided units (“SDUs”) under Part IVA of the Landlord and Tenant (Consolidation) Ordinance, estate agents must comply with the guidelines set out in the relevant Practice Circular (No. 22-01(CR)) (“Practice Circular”) issued by the EAA. Estate agents failing to do so may be disciplined by the EAA.

事件經過

監管局接獲一宗有關劏房租賃的投訴，指一名營業員於處理該宗劏房租賃的交易時，沒有向租客提供臨時租約之副本，其所屬地產代理公司亦沒有向租客發出佣金收據。

監管局的調查發現，除上述指稱外，該營業員亦沒有遵從該執業通告的指引，當中包括：

- (i) 沒有告知租客臨約中不應載有「租期為一年死約一年生約」及「業主與租客各分擔一半印花稅」等與該《條例》的規定不一致的條款；

Incident

The EAA received a complaint about a salesperson who did not provide a copy of the provisional tenancy agreement to the tenant when handling the letting of an SDU. In addition, the estate agency company of that salesperson did not issue a commission receipt to the tenant.

Upon investigation, the EAA found that in addition to the above allegations, the salesperson failed to comply with the guidelines set out in the Practice Circular, including that:

- (i) The salesperson failed to advise the tenant that the provisional tenancy agreement should not contain provisions, such as “it shall be a fixed term tenancy in the first year with an option to renew in the second year” and “Stamp Duty shall be borne by the Landlord and the Tenant in equal shares”, which are inconsistent with the requirements stipulated in the Ordinance;

- (ii) 在安排租客簽署臨約前，沒有向租客提供該執業通告附件之副本；及
- (iii) 在安排租客簽署臨約前，沒有提醒租客臨約中有關水電收費的條款可能違反該《條例》的規定。
- (ii) Before arranging for the signing of the provisional tenancy agreement with the tenant, the salesperson failed to provide the tenant with a copy of the Annex of the Practice Circular; and
- (iii) Before arranging for the signing of the provisional tenancy agreement with the tenant, the salesperson failed to advise the tenant that the terms in relation to water and electricity charges contained in the said agreement may be contrary to the Ordinance.

結果

個案交由監管局紀律委員會審理。紀律委員會認為，該營業員違反了執業通告中的多項規定。考慮到個案的性質、該營業員及其所屬地產代理公司的違規紀錄，紀律委員會決定紀律處分該營業員，包括向其罰款6,000港元及在其牌照附加進修條件，並訓誡其所屬地產代理公司。

Result

The case was presented to the EAA Disciplinary Committee. The Disciplinary Committee was of the view that the salesperson failed to comply with a number of requirements stipulated in the Practice Circular. Having considered the nature of the case, the disciplinary record of both the salesperson and her estate agency company, the Disciplinary Committee decided to, inter alia, impose a fine of HK\$6,000, and attach a condition of attending CPD courses to her licence. Her estate agency company is also admonished.



何潔芝女士
地產代理人協會主席
Ms Rosanna Ho
Chairman, Property Agents Association

業界意見 Comment from trade

我相信今次事件對處理劏房業務的地產代理帶來警惕。地產代理公司應加強對代理的培訓，因處理出租《業主與租客（綜合）條例》第IVA部下的分間單位的處理指引，以及《2024年水務設施（修訂）條例》相對較新，地產代理未必熟悉這些條例，希望業界日後會提高對處理劏房業務的警覺性。

I believe that this case will alert estate agents who handle sub-divided units. Estate agency companies should enhance the training provided to their agents as the guidelines for handling sub-divided units under Part IVA of the Landlord and Tenant (Consolidation) Ordinance and the Waterworks (Amendment) Ordinance 2024 are relatively new to them and they may not be familiar with these ordinances. I hope that the trade will be more vigilant in handling sub-divided units in the future.

刑事個案 Criminal case

申領牌照時沒有申報刑事定罪紀錄

Failure to disclose a criminal record in connection with an application for a licence

引言

牌照申請人如有任何刑事紀錄，必須在向監管局申請牌照時作出披露(除非有關罪行屬夾附於補充表格的「毋須向地產代理監管局申報的輕微罪行列表」所列的輕微罪行)，以便監管局考慮其是否符合發牌的適當人

Introduction

Licence applicants must disclose their criminal records (unless the offences are under the "List of Minor Offences Requiring No Disclosure to the EAA" attached to the Supplementary Form) when applying for a licence for the EAA's consideration of whether they fulfil the "fit and proper person" criterion of granting a licence. According to Sections 55(1)(c) and

選資格。根據《地產代理條例》（《條例》）第55(1)(c)條及第55(1)(d)條，任何人無合理辯解而在申請批給牌照或牌照續期方面，作出任何在要項上是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，即屬犯罪。

55(1)(d) of the Estate Agents Ordinance (“EAO”), a person, without reasonable excuse, 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, commits an offence.

事件經過

監管局在向警方查核持牌人/牌照申請人的刑事定罪紀錄時，發現一名牌照申請人分別在2004年、2007年、2012年及2023年向監管局提出營業員及地產代理（個人）牌照的申請或續期申請時，未有在有關的申請表格及補充表格申報其定罪紀錄。由於事件涉及違返《條例》第55(1)(c)條及第55(1)(d)條，監管局遂將個案轉介予警方跟進。

Incident

During the EAA's inspection with the Police about licensees' / licence applicants' criminal records, it was discovered that a licence applicant failed to disclose his previous convictions in the relevant application forms and supplementary forms when applying for / renewing his salesperson's and estate agent's (individual) licence in 2004, 2007, 2012 and 2023 respectively. The EAA referred the case to the Police as it involved a breach of section 55(1)(c) / section 55(1)(d) of the EAO.

結果

警方完成調查後，案件交由裁判法院審理。結果，法院裁定該牌照申請人在申請批給地產代理（個人）牌照及營業員牌照或牌照續期方面，作出在要項上是虛假的或是具誤導性的陳述或提供在要項上是虛假的或是具誤導性的資料罪名成立，被判罰款1,000港元及監禁兩個月，緩刑三年。該牌照申請人曾持有的牌照已於較早前屆滿，而其於2023年作出的牌照申請亦被監管局拒絕。

Result

Upon the completion of the investigation by the Police, the case was taken to court. As a result, the licence applicant was convicted of making false or misleading statement or providing false statement or misleading information in the application or renewal of an estate agent's (individual) licence and a salesperson's licence. He was fined HK\$1,000 and sentenced to imprisonment for two months, suspended for three years. The licence formerly held by this licence applicant had expired earlier and his application for the grant of a licence submitted in 2023 was refused by the EAA.

如牌照申請人在監管局裁定其個案當日起計的前5年內曾因干犯《條例》下所訂的任何罪行並已就此被判處監禁（不論是否緩刑），其牌照申請一般會被拒絕。

It should be noted that if a licence applicant was, within a period of five years prior to the date when his case is being determined by the EAA, convicted of any offence under the EAO and in respect of which he has been sentenced to imprisonment (whether suspended or not), his licence application will normally be refused.



汪敦敬博士
香港專業地產顧問商會會長
Dr Lawrence Wong, MH
President, Hong Kong Chamber of
Professional Property Consultants

業界意見 Comment from trade

個案中的牌照申請人被法院裁定違反了《地產代理條例》而被定罪，判予罰款及監禁，意味着他未來5年也可能失去持有牌照的資格。因此，各從業員應引以為鑑，切勿犯上同類錯誤。

The licence applicant in this case has been convicted of breaching the Estate Agents Ordinance and sentenced to a fine and imprisonment by the court, which means the applicant may also be disqualified from holding a licence in the next five years. Hence, all practitioners should learn a lesson from this case and make sure they do not make a similar mistake.