



刑事個案 Criminal case

提供虛假或誤導性資料以申請牌照 Provision of false or misleading information in licence application

引言

《地產代理條例》（《條例》）55(1)(d)訂明，任何人無合理辯解而在申請批給營業員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在要項上是虛假或具誤導性的資料，即屬犯罪。有關罪行，一經循公訴程序定罪，可處第6級罰款及/或監禁一年；如循簡易程序定罪，可處第5級罰款及/或監禁六個月。

Introduction

According to Section 55(1)(d) of the Estate Agents Ordinance (“EAO”), a person, without reasonable excuse, makes any statement or furnishes any information, which is false or misleading in a material particular, in connection, with any application for the grant or renewal of a salesperson’s licence, commits an offence. The offence is punishable on conviction upon indictment by a fine at level six and/or imprisonment for one year or on summary conviction by a fine at level five and/or imprisonment for six months.

事件經過

監管局收到一宗營業員牌照的申請，局方在審批過程中懷疑申請人提交虛假學歷證明。由於表面證據顯示申請人的學歷證明屬虛假文書，違反《條例》第55(1)(d)的規定，局方遂將事件轉介警方跟進。

Incident

The EAA received an application for the grant of a salesperson’s licence, however the EAA suspected that the applicant had submitted false academic qualifications during the vetting process. As the prima facie evidence had shown that the applicant’s academic qualification was a false instrument, which was in breach of section 55(1)(d) of the EAO, the matter had been referred to the Police for follow up action.

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營業員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在要項上是虛假或具誤導性的資料的罪名成立，判處其監禁九星期。

如牌照申請人在監管局裁定其個案當日起計的前五年內曾因干犯《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。

Result

Upon the completion of the investigation by the Police, the case was taken to the Magistrates' Court. As a result, the licence applicant was convicted for the charge of "making statement or furnishing information, which is false or misleading in a material particular, in connection with any application for the grant or renewal of a salesperson's licence" and was sentenced to imprisonment for nine weeks.

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



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■ 業界意見 Comment from the trade

使用虛假文件的後果很嚴重，違反個人誠信，對地產代理來說，誠信尤其重要，加上近年來使用虛假文件行騙的案件增加，相信這次的判決具足夠阻嚇作用，亦可以引起社會對使用虛假文件所帶來的後果的關注。今時今日，公眾若要繼續進修並不困難，政府亦有提供進修資助給公眾，因此實在不應為符合領取牌照的學歷要求而以身試法。

Using false documents could bring serious consequences and it is an act against personal integrity, which is an important quality of estate agents. As the number of fraud cases involving the use of false documents has increased in recent years, I believe that the sentence this time will have a sufficient deterrent effect and will also raise public awareness on the consequences of using false documents.

Nowadays, it is not difficult for the public to pursue continuing education, which the Government also supports by providing continuing education subsidies. Therefore, there is no reason for the public to break the law in order to meet the educational requirements for obtaining a licence.

紀律研訊個案 Disciplinary hearing case

未有遵守盡職審查的指引 Failure to comply with due diligence guidelines

引言

為符合《打擊洗錢及恐怖分子資金籌集條例》的要求，監管局發出有關遵守反洗錢及反恐怖分子資金籌集規定的指引的執業通告（編號18-01(CR)），要求地產代理在與買賣物業的客戶建立業務關係之前，必須進行盡職審查。違反通告內的指引有機會被監管局紀律處分。

Introduction

In order to comply with the requirements of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, the EAA issued a Practice Circular on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements (No. 18-01(CR)) and requires estate agents to conduct customer due diligence before establishing any business relationship with their clients in relation to the sale and purchase of properties. Failing to comply with the guidelines of the Circular may be subject to disciplinary action by the EAA.

事件經過

監管局抽查一間獨資經營的地產代理公司，要求其提供某段時期內由其促成的物業成交文件及紀錄。局方發現該地產代理在處理一宗物業交易時，沒有在與買方客戶於簽訂物業的臨時買賣協議前為該客戶進行並完成盡職審查程序，文件顯示該地產代理亦未有在相關的身分核實表格中填寫第2部分的客戶地址、第5部分「風險評級」及第6部分「證明」。

Incident

The EAA conducted a random inspection of a sole proprietorship operated by an estate agent, requesting the provision of documents and records related to property transactions facilitated by the estate agent during a specified period. Upon investigation, the EAA discovered that the estate agent failed to conduct and complete due diligence process for the purchaser client prior to signing of the Preliminary Agreement for Sale and Purchase. In addition, the estate agent also failed to fill in the client's address in Section 2, Section 5 "Risk Assessment" and Section 6 "Certification" of the identity verification form.

結果

個案交由監管局紀律委員會審理。委員會認為，該地產代理未有遵守執業通告（編號18-01(CR)）內有關盡職審查的指引，因而違反了《操守守則》第3.2.1段。

考慮到個案的性質及該地產代理的違規紀錄，委員會決定譴責該地產代理，並於其牌照上附加條件，包括須於12個月內完成監管局的持續專業進修計劃下的「合規及有效管理」類別的講座或研討會並取得12個學分，而當中有六個學分須包括參加地產代理條例、其附屬法例、《操守守則》及執業通告科目的講座或研討會。

Result

The case was presented to the EAA Disciplinary Committee. The Committee was of the view that the estate agent failed to comply with the guidelines on due diligence set out in Practice Circular (No. 18-01(CR)) and thus failed to comply with the paragraph 3.2.1 of the *Code of Ethics*.

Having considered the nature and gravity of the case, as well as the disciplinary record of the estate agent, the Committee decided to reprimand the estate agent and impose conditions on his licence. The conditions include the requirement to obtain a total of 12 points through attending seminars or workshops in "Compliance and Effective Management" category of the Continuing Professional Development Scheme within 12 months, of these, six points must be obtained by attending seminars or workshops on Estate Agents Ordinance, its subsidiary legislation, the *Code of Ethics* and Practice Circulars.



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■ 業界意見 Comment from the trade

近年社會上多了洗黑錢的個案，地產代理業界在處理交易前也必須更加謹慎小心，做好盡職審查，以免違反監管局的指引。地產代理應該定時參與持續進修課程，以了解更多有關監管局的指引詳情。

In recent years the number of money laundering cases have been increasing in society. The estate agency trade must be more cautious and exercise due diligence before handling transactions, in order to avoid breaching the EAA's guidelines. Estate agents should participate in continuing professional development activities regularly to have a better understanding of the EAA's guidelines.