

**DECISION OF THE DISCIPLINE COMMITTEE**

In the matter of a Discipline Committee Hearing held pursuant to Section 23(1) of *The Act to Incorporate the New Brunswick Real Estate Association* (the "Act"):

BETWEEN

The New Brunswick Real Estate Association (the "Association")

- and -

Alice Knox

RESPONDENT

Complaint File 2016-007

Date of Hearing: May 23, 2017

Place of Hearing: NBREA Boardroom, 22 Durelle St., Fredericton, NB

Members of Committee: Jean LeBlond, Chair  
Joanne MacMillan  
Charles Vienneau  
Melanie Daley  
Paul Blanchard, FCNB Appointee

Appearances: John Townsend, Counsel for the Association  
Daniel Leger, Counsel for the Respondent

UPON the following charges submitted by John Townsend, Prosecutor appointed by the Association:

Between November 1, 2014 and February 17, 2016, Alice Knox, a member as defined by *An Act to Incorporate the New Brunswick Real Estate Association* Chap 115 S.N.B., 1994 (the "Act"), while acting in a Dual Agency capacity, failed to protect and promote the interests of her clients, failed to ensure that all Service Agreements with consumers are in writing in clear and understandable language; and failed to advertise and promote a property accurately to reflect the property in accordance with the following particulars:

1. she advertised in the real estate listing that the property included a deck and above ground pool;

2. she permitted unknown individuals to remove the deck and above ground pool before the closing date;
3. she did not complete or have fully signed originals of the following documents:
  - Limited Dual Agency Agreement
  - Working with a REALTOR®
  - Final Copy of Agreement of Purchase and Sale
  - Amendment to Purchase and Sale Agreement

As set out in the complaint of [REDACTED] and [REDACTED], dated February 17, 2016 and May 13, 2016, respectively, and as set out in the Investigation Report of [REDACTED] dated August 12, 2016, thereby committing acts of professional misconduct, in violation of Articles 3, 6 and 13 of the REALTOR® Code (effective March, 2015), and punishable under subsections 23(4) and 23(5) of the *Act*.

Mr. Townsend presented on behalf of the Association.

Mr. Leger presented on behalf of the Respondent.

Both Parties acknowledged the composition and jurisdiction of the Discipline Committee (“Committee”) to hear and determine the complaint.

The Chair explained the distinction between a single hearing and a dual hearing format and allowed the parties to decide whether the hearing would be conducted in a single or dual hearing format. Both parties agreed to a single hearing format.

The Committee accepted the following as documentary evidence:

- Exhibit 1 – Notice of Hearing;
- Exhibit 2 – Book of Relevant Documents;

In addition to the documentary evidence noted above, the committee heard sworn testimony from the following witnesses:

- Complainant Mrs. S.
- Mr. S. (sequestered until testifying)
- Investigator Mr. M. (sequestered until testifying)

**Summary of Witness Testimony:**

Complainant Mrs. S., was first to testify. She stated in November 2014, she and her husband lived in Fort McMurray. They were notified by an acquaintance that the property they now own was on the market. Mrs. S. said she and her husband were familiar with the property and knew the owner. They were directed to Ms. Knox as the listing REALTOR® by the owner. Mrs. S. confirmed that Exhibit 2, Tab 1, Page 11 was the listing sheet she viewed. This listing sheet stated in the section entitled "Overview" that the property included an above ground pool and the section entitled "Features" listed a deck/patio and above-ground pool. The listing sheet also included a photo of the home in which a deck could be seen at the back of the house. Mrs. S. was shown a second listing sheet, Exhibit 2, Tab 2, Page 12, in which the words 'above ground pool' were removed from the "Overview". She also confirmed that the section entitled "Features" was unchanged and listed a deck/patio and above-ground pool.

Mrs. S. testified that a first offer was made on this property in November/December 2014 which did not result in a closing. A second offer was successful and the property closed in April, 2015, while Mr. and Mrs. S. were in New Brunswick for a brief visit. Mrs. S. stated they did not perform a pre-closing inspection and their daughter viewed the property, on their request, after they returned to Fort McMurray.

Mrs. S. stated she communicated with Ms. Knox by email and phone throughout negotiation period. Mrs. S. said she acted on behalf of her husband, who worked in the field with limited access to communication. His was the only name to appear on the deed.

Mrs. S. stated she understood Ms. Knox was her REALTOR®, acting on their behalf regarding the purchase of the property. When shown "Limited Dual Agency Agreement" (Exhibit 2, Tab 1, Page 6), Mrs. S. said she had never signed such a form.

Sometime between closing (April, 2015) and returning to New Brunswick in August, 2015, Mrs. S. testified that Ms. Knox informed them the pool had collapsed. Mrs. S. stated that she and her husband decided they would determine what to do with the pool when they moved in.

In August, 2015, Mrs. and Mr. S. moved back to New Brunswick to the property they purchased in April, 2015. At this time, Mrs. S. testified they discovered the pool and deck had been removed from the property, and that concrete blocks were all that remained. They immediately went to Ms. Knox's office and were told the previous owner (wife) had sold the pool.

Mrs. S. testified both the lawyer and the mortgage broker used in the transaction were recommended by Ms. Knox.

The second witness to testify was Mr. S. He stated he purchased the property in New Brunswick while living in Fort McMurray and working in the oil patch. He said his wife handled all communications regarding the purchase, with his approval. He stated they had never retained the services of a REALTOR® before and it was his understanding that Ms. Knox was acting on their behalf.

Mr. S. said he understood he was purchasing the home with two out buildings, a deck and pool. He stated the listing information, Exhibit 2, Tab 1, Page 11, was posted on their fridge for some time. Mr. S. said Ms. Knox sent photos of the house in which the deck was clearly visible but the pool was not. He knew the pool had collapsed when he signed the purchase documents at the lawyer's office in April 2015. Mr. S. was shown a second listing sheet, Exhibit 2, Tab 1, Page 12, in which the words 'above ground pool' were removed from the "Overview". Mr. S. stated this was not the listing sheet he was familiar with and noted the section entitled "Features" still listed a deck/patio and above-ground pool.

Mr. S. stated after he purchased the property in April, 2015, his daughter did a walk-through of the house on his behalf and reported the home looked ok, but thought it may need a roof. She did not provide feedback on the status of the deck and pool. It was noted by Mr. S. that the winter of 2014/2015 had a substantial amount of snowfall.

Mr. S. stated he and his wife discovered the pool and deck were gone when they moved into their home in August, 2015. He testified they found the yard in a mess, with styrofoam and lattice all over the lawn. He said they went to Ms. Knox's office and he asked her who he would have to sue about the missing pool and deck. Ms. Knox replied that the previous owner (wife) had sold the deck and pool. Mr. S. admitted he was angry as he thought he was buying a house with a deck and pool, only to find them both gone.

The third witness to testify was Mr. M., appointed by NBREA Registrar in May, 2016, to perform an investigation into the circumstances leading to Complaint 2016-007, as directed by the Complaint Committee. Mr. M. said he contacted Ms. Knox on May 17, 2016 and requested documents related to the sale transaction of the property in question. Mr. M. stated Ms. Knox told him at this time that she did not know who purchased the pool. He said he met Ms. Knox in the parking lot of a local coffee shop on June 7, 2016 and she provided him with copies of transaction documents. She also told Mr. M. that a person named BB had purchased the pool and removed it with the assistance of another person named R.

Mr. M. testified that he more formally met with Ms. Knox on June 24, 2016 at the Fredericton Inn, for approximately one and one half hours. The meeting was recorded. Mr. M. stated Ms. Knox told him she filed the MLS® information provided on the listing sheet viewed by the Mr. and Mrs. S. and that she did not change the property information when the pool and deck were removed. She stated she told the Mr. and Mrs. S. that the pool was gone but she did not specifically state it had been removed. Mr. M. could not recall if the pool collapse was discussed.

When Mr. M. inquired about the original documents contained in the transaction file, Ms. Knox stated the originals were with the lawyers. Later in the interview, Mr. M. testified Ms. Knox said she had the originals but they were destroyed in a flood of her office in the fall of 2014. When reminded the sale occurred in April of 2015 later in the interview, Ms. Knox stated again that the original documents were with the lawyers.

Mr. M. testified he discussed the document copies with Ms. Knox as it looked like some had been altered. He stated Ms. Knox admitted to making changes to documents and said it was common for REALTORS® to use white out when making amendments to documents.

Mr. Townsend listed the four documents noted in Exhibit 1, Notice of Hearing and asked if Mr. M. received from Ms. Knox these documents as originals. Mr. M. reiterated that he did not receive any original documents from Ms. Knox, nor did he ever receive copies of any fully signed documents.

Mr. Townsend referred to Exhibit 2, Tab 2, Page 8: a copy of a receipt (poor image quality). Mr. M. noted the receipt was dated November 18, 2014 and was signed by the previous owner (wife). Mr. M. testified the stack of documents which Ms. Knox provided him on June 7, 2016 included another version of this receipt. This version had a different date, November 9, 2015 and was initialed by Ms. Knox.

Mr. M. stated that during his interview with Ms. Knox on June 24, 2016, they discussed the sale of the pool between the previous owner (wife) and an unknown purchaser. During this discussion, Ms. Knox stated BB purchased the pool and instructed her to fill out the receipt for the amount of \$650 in the name of RD.

Mr. M. testified he was not successful in his attempts to interview BB. He was surprised to receive an affidavit from BB in the mail (unregistered) dated June 16, 2016. Mr. M. stated he had not requested an affidavit from BB.

Mr. M. said during their discussions on June 24, Ms. Knox disclosed to him that she had had a personal relationship with BB.

Mr. M. testified he contacted KA, lawyer for the Mr. and Mrs. S., regarding the transaction's original documents. He was told by KA that he did not have all the originals, only one for the disposition of the mortgage. Mr. M. stated he did not talk to the previous owners' lawyer as he felt the previous owners would not give their consent to allow the lawyer to discuss the file with Mr. M., considering they had been uncooperative with his investigation to this point.

Mr. M. stated Ms. Knox told him she represented both the buyer and seller and they both knew that.

Mr. Leger notified the Committee that he was not presenting any evidence for their consideration and, therefore, would not be calling Ms. Knox to testify. He submitted a Non Suit Motion, stating the Association had not proven its case regarding the charges in the Notice of Hearing.

The Committee recessed to consider the motion put forward by Mr. Leger.

Upon the Committee's return, the Chair addressed the issue of the Non Suit Motion. He stated the Committee considered the Non Suit Motion and denied the motion. He requested that counsels proceed with their closing submissions.

**Submissions:**

Mr. Townsend reviewed the charges and noted aspects which he felt provided enough evidence to find Ms. Knox guilty.

He stated, Mr. M.'s testimony determined that Ms. Knox knew she was acting in a dual agency capacity. Mr. Townsend stated, as dual agent, Ms. Knox was obligated to treat each party fairly and could not favour one party over the other.

Mr. Townsend said Ms. Knox admitted that she did not change the listing information when it was no longer accurate and she failed to inform the Mr. and Mrs. S. of the sale of the pool and deck.

Mr. Townsend stated it was clear in the affidavit provided by BB that Ms. Knox facilitated the sale of the pool and deck. Mr. Townsend noted the affidavit relayed information similar to that provided by Ms. Knox in her response, which indicated that BB was aware of details only Ms. Knox could provide.

Mr. Townsend said that Mr. and Mrs. S. testified they did not know the pool and deck were gone. He noted a REALTOR® has a high degree of responsibility to represent clients, especially if the clients have never used the services of a REALTOR® before.

Mr. Townsend indicated that the facts are that the previous owner (wife) sold the pool for cash and Ms. Knox was aware of such sale and failed to advise Mr. and Mrs. S.. Mr. Townsend submitted there was no doubt Ms. Knox failed to advertise and promote a property accurately, she was aware of the details of the removal of the pool and deck and failed to protect and promote the interests of her clients.

Mr. Townsend stated witness Mr. M. testified Ms. Knox did not provide copies of fully executed documents and told him different accounts of where the originals were located. Mr. Townsend said Ms. Knox did not provide proof that all of the agreement documents were properly orchestrated and executed, specifically, the Limited Dual Agency Agreement; Working with a REALTOR®; Agreement of Purchase and Sale; and Amendment to Purchase and Sale Agreement.

Mr. Leger commenced his submission by stating there was no evidence of violations of the Code by Ms. Knox. He stated there was no nefarious activity in relation to Ms. Knox's actions regarding: 1) dual agency explanation, 2) pool and deck advertised information, 3) her knowledge about the removal of the pool and deck, and 4) missing original documents.

Mr. Leger referred to Exhibit 2, Tab 1, Pages 11 and 12. He stated the second listing sheet, (Page 12) indicated there was no pool on the property when Mr. and Mrs. S. originally contacted Ms. Knox and that the failure to remove the pool and deck from the "Feature" section was a mistake, not professional misconduct.

Mr. Leger referred to Exhibit 2, Tab 1, Page 14, a copy of the second page of a purchase and sale agreement. He noted the section on the bottom of the page entitled 'Agency', (c) which addressed dual agency. Mr. Leger stated the complainant's initials on this page indicated their consent to a dual agency situation.

Mr. Leger referred to Exhibit 2, Tab 1, Page 19 which is a copy of an email exchange between Ms. Knox and Mrs. S. He stated this email, with reference to forms requiring signatures, was proof that Ms. Knox had provided the required forms and they were sent back with signatures. Mr. Leger stated Ms. Knox was unable to provide the originals of these documents however it is evident they existed as they were referred to in this email.

Regarding the affidavit provided by BB, Mr. Leger stated this document shows the pool was removed before Mr. and Mrs. S. expressed interest in the property.

Mr. Leger said the standard of proof for professional misconduct and/or incompetence of a REALTOR® has a high threshold. He stated the Prosecution failed to meet this threshold and he recommended the charges be dismissed.

Mr. Townsend presented the Prosecution's recommendations regarding penalty and cost assessment, should the Committee find Ms. Knox guilty of the charges. He recommended a fine in the range of \$1200 to 1500. He recommended cost assessment in the range of \$6000 to 8000, citing Hearing 2010-034 for comparison.

### **Findings:**

After considering all of the evidence and the submissions of the parties, the Committee determines that Alice Knox is guilty with respect to the charges contained in the Notice of Hearing (Exhibit 1), except as they related to the following:

1. she permitted unknown individuals to remove the deck and above ground pool before the closing date;
2. she did not complete or have fully signed originals of the following documents:
  - Working with a REALTOR®

Regarding the above noted issues, the Committee determined the Ms. Knox was not guilty as the evidence did not support the charge.

Regarding the charges as they related to the remaining issues, the Committee determined there was evidence to conclude Ms. Knox was guilty. She did not accurately promote the property by failing to make necessary changes to listing information posted on the MLS® system; therefore advertising that the property included a deck and above ground pool when she had facilitated the

sale of the pool and deck to another party. Ms. Knox did not adequately provide REALTOR® services to Mr. and Mrs. S. by ensuring they fully understood her obligations as dual agent and the nature of the property they were buying. The Committee accepts the testimony of both Mr. and Mrs. S. as evidence that Ms. Knox did not promote their best interests in that they believed a pool and deck were included in the purchase and that Ms. Knox was not forthright in advising that the pool and deck had been sold and removed.

The Committee accepted as credible evidence regarding the lack of documentation required for the sale transaction. Ms. Knox failed to produce copies of the properly executed Limited Dual Agency Agreement, Agreement of Purchase and Sale, and Amendment to Purchase and Sale Agreement and did not provide any testimony regarding the whereabouts of the documents. The Committee noted, as Manager of her own company, Ms. Knox was solely responsible for administration. The Committee concluded Ms. Knox failed to ensure all aspects of the transaction were completed in a professional and fair manner to both parties and Ms. Knox's failure to properly administer the transaction documents amounted to incompetence.

After reviewing the evidence and considering submissions, the Committee hereby orders as follows pursuant to s. 23(4) of the *Act*:

1. Respondent Alice Knox shall pay to the Association the sum of \$1000 as a fine for the preceding violation. Payment in full must be received at the Association office within 120 days of the signing date of this decision. Should the fine not be received within 120 days, Ms. Knox's membership in the Association will automatically be suspended. Reinstatement of her membership will be subject to Association policies, including an absence time limit of two years, reinstatement fees, mandatory course requirements (including as noted in Item 3) and payment of monies noted in this decision.
2. Respondent Alice Knox shall pay to the Association the sum of \$6000 towards costs incurred by the Association relating to the Complaint. Payment in full must be received at the Association office within 120 days of the signing date of this decision. Should the cost assessment not be received within 120 days, Ms. Knox's membership in the Association will automatically be suspended. Reinstatement of her membership will be subject to Association policies, including an absence time limit of two years, reinstatement fees, mandatory course requirements (including as noted in Item 3) and payment of monies noted in this decision.
3. Respondent Alice Knox is required to successfully complete (passing grade of 75%) Units 9, 10, 13 and 14 of the NBREA Pre-licensing Education program, to attend at least one full session of the Pre-licensing Education Practicum within 120 days of the signing date of this decision and to pay associated costs. The NBREA Director of Education will administer this educational component, including determining associated costs, and will provide confirmation of Ms. Knox's successful completion of all requirements. Should Ms. Knox fail to successfully complete this educational component within 120 days, her membership in the Association will automatically be suspended. Reinstatement of her

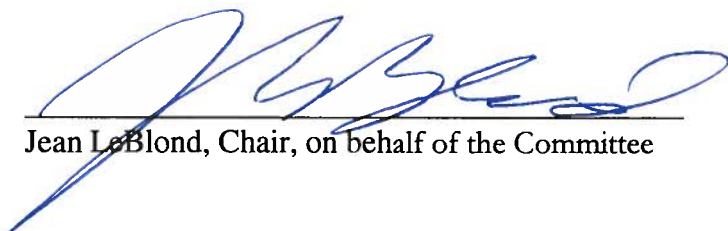


membership will be subject to Association policies, including an absence time limit of two years, reinstatement fees, mandatory course requirements (including course noted herein) and payment of monies noted in this decision.

4. Pursuant to s. 23(4)(f) of the *Act*, the Discipline Committee directs the Registrar to publish this decision on the Association website: [www.nbrea.ca](http://www.nbrea.ca).

In accordance with s. 25(1) of *the Act*, Ms. Knox may appeal this decision within thirty (30) days from the date of the decision.

DATED this 13 day of June, 2017.

A handwritten signature in blue ink, appearing to read 'J. LeBlond', is written over a horizontal line.

Jean LeBlond, Chair, on behalf of the Committee