

File 2017-010

**DECISION OF THE DISCIPLINE COMMITTEE
WITH RESPECT TO PENALTY**

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-

Maurice Poirier and Tanya Hannah
RESPONDENTS

Date of Hearing: October 10, 2019

Location: 22 Durelle Street, Unit 1, Fredericton, NB

Members of the Discipline Committee: Karl Merrill, Chair
Mona Payne
Kevin MacDonald
Jean LeBlond
Paul Blanchard, Government Appointee

Appearances: John Townsend, QC, Pink Larkin

On June 18, 2019, a Discipline Hearing was held to consider evidence in a complaint of professional misconduct against Maurice Poirier and Tanya Hannah. The charge was included in the Notice of Hearing, which was identified as Exhibit 1. The charge, directly quoted from the Notice of Hearing, is as follows:

Between May 2013 and May 2015, both dates inclusive, Maurice Poirier and Tanya Dawn Hannah, members, as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*):

1. Failed to protect the interests of their client;
2. Failed to render skilled and conscientious service to their client; and

2.

3. Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®

All as set out in the complaint of Chantal M. Landry and Suzanne A. McIntyre-Wood dated May 26, 2017, thereby committing various acts of professional misconduct, in violation of Articles 3, 12, and 21 of the REALTOR® Code (effective December 2011 and March 2015), punishable under subsection 23(4) of the *Act*.

After considering all the evidence and the submissions of the parties, the Committee, in their decision of July 23, 2019, determined that Maurice Poirier and Tanya Hannah were guilty of professional misconduct as stated in the charges contained in the Notice of Hearing (Exhibit 1). The decision on merit was entered into the record as Exhibit (3).

The Chair explained the purpose of this penalty hearing was to determine sanctions further to the Committee's decision on merit (Exhibit 3).

The Chair noted the absence of the Respondents, Mr. Poirier and Ms. Hannah. He acknowledged the extensive efforts made to contact the Respondents directly to facilitate service of the Notice of Hearing for the June 18, 2019 hearing and stated these efforts were confirmed by the Committee's Orders for Substituted Service on Hannah and Poirier, dated December 17, 2018 and April 25, 2019. The Chair referred to the Committee's decision on merit (Exhibit 3), dated July 23, 2019, which instructed service of the decision be accomplished by sending a copy by courier to the Respondents in care of Ms. Hannah's parents.

Mr. Townsend called the Registrar, Carolyn Cameron, as a witness.

Ms. Cameron testified that she sent the July 23, 2019 decision (Exhibit 3) by courier package, with a tracking number, to Tanya Hannah's parents, Bonnie and John MacLeod, as directed by the Committee. She stated on August 2, 2019, she received the unopened courier package back, with a letter from the MacLeod's. This letter, dated August 1, 2019, was entered into record as Exhibit 4. Ms. Cameron said in their letter, the MacLeod's instructions were explicit in that they did not want to receive any more correspondence from NBREA regarding Ms. Hannah or Mr. Poirier.

In response to Mr. Townsend's question regarding what action she took regarding the Notice of Penalty Hearing, Ms. Cameron stated she posted the date of the penalty hearing on the NBREA website (nbrea.ca) under the Discipline Hearing schedule.

Ms. Cameron identified a document shown to her as hearing costs details for this file (2017-010) and confirmed the total estimated cost to date was \$34,619.92. The document, entitled 2017-010 Hearing Costs was entered into evidence as Exhibit 5.

The Chair confirmed the Committee members had no objection to continuing the hearing in the absence of the two Respondents.

Submissions

Mr. Townsend stated that this is one of the most serious discipline cases NBREA has encountered and protecting the public interest and the reputation and integrity of the profession is at stake. He said it was very important that this committee denounce, in the strongest terms, the actions of the Respondents.

Mr. Townsend quoted from Paragraph 157 of the Financial and Consumer Services Commission decision of February 5, 2018 (Exhibit 2, Tab 11), which the Committee had included in their Decision of July 23, 2019:

“The Licensees (Respondents) befriended a vulnerable senior with an admitted drug problem and what doctors reported was limited capacity. They struck a deal with him that was one sided and completely self-serving. They received a significant renovation credit, of which they barely utilized. They failed to prove any evidence of significant work done to the property to make it saleable. They provided no credible evidence to demonstrate they provided him with the cash difference between his rent and the \$1000 owing monthly. In the end it appears they also financially benefited from the additional mortgage they obtained on the property.”

Regarding sanction, Mr. Townsend recommended the following for each Respondent, citing the applicable sections of *An Act to Incorporate the New Brunswick Real Estate Association* (the *Act*) which dictates the authority of the Discipline Committee:

- Max fine of \$5000, s. 23(4)(d).
- Mr. Poirier’s and Ms. Hannah’s NBREA membership be revoked s. 23(4)(a). Should they wish to become members in the future, they must reapply for membership consideration.
- The Committee use their discretion to fix cost assessment. Mr. Townsend suggested each Respondent pay half of a total of \$27,500, taking into account the increased costs created when the Respondents’ avoided service, s. 23(4)(g).
- Revocation of membership be published, s. 23(6). Mr. Townsend suggested publications in the Moncton area, in both official languages.

Mr. Townsend also noted the Committee’s powers to recommend to the Financial and Consumer Services Commission the following, s. 23(5):

- If the Respondents apply for licencing, they must be in good standing with NBREA, having paid all outstanding fines and costs, having taken all required courses and passing required examinations.
- They not be allowed to operate trust accounts.

- All their real estate trade activities must be supervised by a licensed manager.

Findings

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

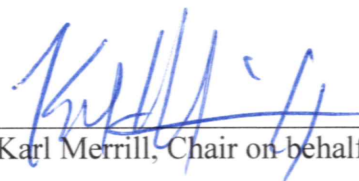
1. NBREA Membership for Respondents Maurice Poirier and Tanya Hannah are revoked. Due to this revocation of membership, neither will qualify for reinstatement consideration and therefore must make application for membership should they wish to join NBREA in the future.
2. Respondent Maurice Poirier shall pay to the Association the sum of \$5000 as a fine for violations as noted in the decision on merit, dated July 23, 2019 (Exhibit 3). Future membership with NBREA will not be considered unless this penalty is paid to NBREA by Mr. Poirier.
3. Respondent Tanya Hannah shall pay to the Association the sum of \$5000 as a fine for violations as noted in the decision on merit, dated July 23, 2019 (Exhibit 3). Future membership with NBREA will not be considered unless this penalty is paid to NBREA by Ms. Hannah.
4. Respondents Maurice Poirier and Tanya Hannah, jointly and severally, shall pay the sum of \$36,000 for costs incurred by the Association. In addition to the costs noted in Exhibit 5, the Committee took into account transcript and publishing costs yet to be incurred. Future membership with NBREA will not be considered unless this cost assessment fee is paid to NBREA by the Respondents.
5. Should either Mr. Poirier or Ms. Hannah desire NBREA membership in the future, each must successfully complete pre-licensing education requirements as determined by the Committee of Examiners.
6. The Committee directs the Registrar to:
 - a. Publish "Notice of Revocation of Membership" naming both Respondents in newspapers Times Transcript and L'Acadie Nouvelle.
 - b. Publish both decisions (merit and penalty) on the Association website (www.nbrea.ca).
 - c. Provide both decisions (merit and penalty) to appropriate contacts with the Canadian Real Estate Association and real estate regulators for each province across Canada.

In accordance with s. 23(5) of the *Act*, the Committee recommends, should either Respondent ever apply to be licensed to trade in real estate, that the Financial and Consumer Services Commission consider the following conditions:

1. The Respondents, Maurice Poirier and Tanya Hannah, must be members in good standing of NBREA, pursuant to Sections 18(1), having met all education requirements and having paid all penalty and cost assessment fees.
2. The Respondents, Maurice Poirier and Tanya Hannah, never be allowed to engage in the trade of real estate except under the following restrictions:
 - a. The Respondents', Maurice Poirier and Tanya Hannah, real estate activities must be personally supervised and directed by a licensed manager, including customer and client interaction. All documents relating to the trade of any property must be reviewed and initialed by a licensed manager.
 - b. The Respondents, Maurice Poirier and Tanya Hannah never be eligible to hold a manager's license.
 - c. The Respondents, Maurice Poirier and Tanya Hannah never have access to trust accounts and their management of deposits must be supervised by a licensed manager.
 - d. The above noted restrictions should remain in effect while either Maurice Poirier or Tanya Hannah holds a real estate license, in perpetuity.

In accordance with s. 25(1) of the Act, Mr. Poirier and/or Ms. Hannah may appeal this decision within thirty (30) days from the date of the decision.

DATED this 8th day of November 2019



Karl Merrill, Chair on behalf of the Committee