



Complaint 2019-011

NBREA v. Lorraine Goguen-Doiron

A Discipline Decision produced by the Discipline Committee of the New Brunswick Real Estate Association in accordance with "*An Act to Incorporate the New Brunswick Real Estate Association*". This decision is published and distributed by the Office of the Registrar under the direction of the Discipline Committee of the NBREA.

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Recitals

DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO MERIT AND PENALTY

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

BETWEEN

The New Brunswick Real Estate Association (the “Association”)

-and-

Lorraine Goguen-Doiron

RESPONDENT

Date of Hearing: May 18th, 2022, 9:30 am

Place of Hearing: Virtual (Microsoft Teams)

Members of Committee: Anne Smith, Chair
Fanny Bodart
Chris Drysdale
Sarah Justason
Marc Richard, Government Appointee

Appearances: Dominic Caron, Counsel for the Association
Lorraine Goguen Doiron, Self-Representing Respondent

The Chair noted persons attending the hearing:

Present: N/A

Via Teleconference: Mrs. Smith, Mrs. Bodart, Mr. Drysdale, Mrs. Justason, Mr. Richard, Mr. Caron, Mrs. Goguen-Doiron, Mr. Mitchell McLean (Registrar), and Mrs. Christine McLaughlin (Court Reporter).

Executive Summary

In August of 2016, the Complainants requested the services of Mrs. Lorraine Goguen-Doiron to represent them during the sale of their home situated in the Dieppe, New Brunswick area. During the time of the sale of the property, the Complainants were in the Nunavut Territory and were relying on the expertise of Mrs. Goguen-Doiron to represent them remotely. Mrs. Goguen-Doiron had buyer clients that were interested in the property that was being sold by the Complainants and thus they entered into a dual agency agreement.

While representing both parties in her capacity as a dual agent, Mrs. Goguen-Doiron collected a non-refundable deposit of \$3,000. The monies paid in deposit were not entered into the trust account held with Re/Max Quality Real Estate of Moncton contrary to section 2(a) of the Agreement of Purchase and Sale for the property. Instead, \$1,500 was transferred directly to the Complainants, and the remainder was retained by Mrs. Goguen-Doiron. The Agreement of Purchase and Sale also included a “Rent to Own Agreement” located at schedule A which was structured, produced, and authored by Mrs. Goguen-Doiron.

The Rent to Own Agreement stipulated the conditions that were to exist between the tenants and the Complainants, it did not stipulate the conditions in which Mrs. Goguen-Doiron was to be remunerated. On or around the time that the Agreement of Purchase and Sale was signed, Mrs. Goguen-Doiron offered to act as her Complainants’ property manager while they were still in Nunavut, a position for which no contractual agreement existed in writing. There were notes scribbled on the back of one of the contract documents that loosely made mention of remunerations, but it was undated, and lacked any signatories to prove consent between the parties, rendering the fee structure invalid as a contractual obligation.

Before the Agreement of Purchase and Sale had been signed, Mrs. Goguen-Doiron recommended that the Complainants should have their home professionally cleaned to ensure that it was in sale ready condition. The Complainants agreed, and paid Mrs. Goguen-Doiron \$150 for the purposes of having their house cleaned while they were out of province. Without disclosing to the Complainants, Mrs. Lorraine Goguen-Doiron contracted her daughter to clean the house in lieu of obtaining professional cleaners as directed by the Complainants.

Throughout the period of the Rent to Own Agreement, the tenants were to pay \$1,395 per month for a period of 36 months as stipulated in the Rent to Own Agreement. Of this, \$150 was to be set aside for the down payment of the property to be held in trust by Mrs. Goguen-Doiron as the property Manager. Again, this money was not deposited into an interest-bearing trust account by either Re/Max Quality Real Estate at the commencement of the Rent to Own Agreement or Ever Tree Realty for the later months of the Rent to Own Agreement.

In September of 2018, Mrs. Goguen-Doiron reached out to the Complainants to inform them that they were behind on their water and sewer bill and that the sellers were responsible to pay the

outstanding balance. At which point, acting as a property manager, Mrs. Goguen Doiron offered to make the payment on the Complainants' behalf for the months of September to October and would take \$50 off the monthly rent transfer to cover her expenses for having paid the outstanding water bill. Following the payment of the overdue amount, Mrs. Goguen-Doiron continued to pay for the water bill, without the express consent of the Complainants. Throughout this period, Mrs. Goguen-Doiron continued to retain amounts of the rent transfers to cover her expenses and for services rendered all without having an agreement in writing.

In May of 2019, the tenants party to the Rent to Own agreement submitted their notice to vacate the property and were refusing to pay rent for the month of June. In doing so, they voided the Rent to Own Agreement which contained a provision that the \$150 retained monthly for the down payment held by Mrs. Goguen Doiron, in addition to the initial \$1,500 deposit would be returned to the Complainants. The Complainants received neither as Mrs. Goguen-Doiron withheld all monies as payment for her services rendered as the property manager and for her commission which should have resulted from the completion of the sale of the home as per the Agreement of Purchase and Sale. The Commission amounts should have been given to Re/Max Quality in Moncton as per the agreement, however this never occurred.

When the tenants left the property following the termination of their tenancy, the Complainants requested that Mrs. Goguen-Doiron attend the property to verify its condition. It was at this time that the Complainants were informed that there had been extensive damages and alterations made to the property. The Complainants pushed to have Mrs. Goguen-Doiron collect June's rent considering the damages, however only half was received where Mrs. Goguen-Doiron felt that pushing for more could result in further damages to the property.

Mrs. Goguen-Doiron was charged with ten (10) counts of professional misconduct or incompetence under the REALTOR® Code of Ethics on behalf of the New Brunswick Real Estate Association. Of the ten (10) charges, the Discipline Committee found the member guilty of nine (9).

The Discipline Committee thereby ordered that the respondent:

1. Pay a \$4,000 fine;
2. Pay \$10,000 in costs to the Association;
3. Be suspended as a member of the NBREA for a period not less than six (6) months; and
4. Retake the Pre-licensing practicum course and recertify for the pre-licensing exam.

All of which must be satisfied before the Respondent will be eligible for reinstatement as a member of the New Brunswick Real Estate Association.

The Discipline Committee also made recommendations to the Director of Consumer Affairs at the Financial and Consumer Services Commission of New Brunswick:

1. That the Respondent's licence to trade in real estate be revoked or suspended for a period not less than six (6) months;
2. That the Director impose terms, conditions, and limitations on the right to trade in real estate until such time that the Respondent has completed the Pre-Licensing Practicum and successfully passed the Pre-Licensing Exam.
3. That the Director impose specific restrictions on the right to trade in real estate including, but not limited to requiring the Respondent to engage in the sale of real estate only under the personal supervision and direction of another member or manager.

Introduction

This complaint concerns the Complainants' claims that while they were being represented by Mrs. Lorraine Goguen-Doiron, she mishandled the sale of their home, inclusive of the rent to own agreement. Additionally, they maintain that the conduct and actions of Mrs. Lorraine Goguen-Doiron throughout the transaction were outside of her mandate as a REALTOR® and beyond her competencies as a real estate professional.

The complaint was submitted to the Office of the Registrar primarily to ascertain if there were elements of professional misconduct during the sale of their home as they weren't sure if their situation was within the parameters of normalcy for real estate transactions in New Brunswick. Following an exchange of information between the parties, the Complaints Committee reviewed the evidence presented for their review on 30 September 2019 and rendered a decision to forward the matter to the Discipline Committee pursuant to s. 21(3)(a) of *the Act*.

Due to delays caused by a change in Registrar and compounded delays caused by the COVID 19 pandemic, the matter was not heard by the Discipline Committee until the 18th of May 2022. The matter had been previously scheduled for hearing in English, but the respondent objected to an English hearing, and elected to have her hearing in French instead. This objection was honoured, and a new panel, prosecutor, and Discipline Committee legal counsel were arranged and selected to honour Mrs. Goguen-Doiron's request and right to be heard in the language of her choice.

The matter was then rescheduled to be heard by way of a teleconference system to be conducted virtually, however, the respondent objected to a virtual hearing. This objection was honoured, and several attempts were made to hold an in person hearing but were subsequently cancelled due to rapid changes in Provincial Health Measures, as the Mandatory Order was from time to time amended. After several unsuccessful attempts to hold an in-person hearing, Mrs. Goguen-Doiron agreed to participate in a virtual hearing to be conducted by way of Microsoft Teams for the purposes of bringing the matter to a close.

In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that the Respondent was in fact a member of the Association at the time of the alleged offences. The Respondent was provided with a list of panel members in advance of the hearing

and was given a reasonable time to object to the composition of the committee. No such objections were received.

The Respondent was furnished with the documents that would be entered as evidence at the hearing a reasonable amount of time in advance of the prescribed hearing date. Mrs. Goguen-Doiron was also served a Notice of Hearing, which included the time, date, and log in credentials of the hearing. The Notice of Hearing also contained the charges that had been brought forth by the Association's prosecutor.

Mrs. Goguen-Doiron was afforded ample opportunity to search for legal counsel and was provided with the option to do so prior to the hearing. In light of this, Mrs. Goguen-Doiron elected to represent herself at the hearing. Throughout the hearing, a secondary person was overheard providing advise and guidance to the Respondent, however, where Mrs. Goguen-Doiron was self representing, the Committee gave significant leeway to the assistance and there were no objections on that basis from the prosecution. The Association's prosecutor did motion for an objection regarding the assistance when Mrs. Goguen-Doiron was providing testimony as a witness. The objection by the Prosecution was allowed with no contest by the Respondent.

Jurisdiction

Under section 23(1) of the Act, the Discipline Committee shall, when so directed by the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association. On 30 September 2019, the Complaints Committee rendered its decision in complaint matter 2019-011 so ordering the Discipline Committee to commence such a proceeding.

The Discipline Committee exists in legislation as an administrative legal body and is therefore not bound by the same rules of court as a court of law, and as such, may admit evidence that might not otherwise be deemed admissible in other courts. Where the Discipline Committee is not bound by the Rules of Court, they are bound by the Complaints and Discipline Procedures Manual as approved by the Board of Directors of the New Brunswick Real Estate Association.

Legal Test

The standard of proof required in a hearing before the Discipline refers to the level of proof that must be met in order for the Discipline Committee to find a member guilty of an alleged offence. That level of proof, or threshold, is the civil standard of a "balance or probabilities" which is 51% or higher (i.e., is it more likely than not that the Respondent is guilty of one or more of the alleged offences).

The Association has the onus of proving the allegations against the Respondent, on a balance of probabilities, through documentation, submission and testimony given under oath or affirmation.

In the case of the Discipline Committee of the Association, we may find a member guilty of professional misconduct or to be incompetent. Pursuant to s. 23 of the *Act*, a finding of professional misconduct or incompetence must meet the following criteria:

1. A member may be found guilty of professional misconduct if:
 - a. The member has been convicted of an offence which in the opinion of the Committee, is relevant to the member's suitability to trade in real estate; or
 - b. The member has been guilty, in the opinion of the Committee, of professional misconduct.
2. A member may be found to be incompetent if:
 - a. The member has displayed in carrying out the members' professional responsibilities a lack of knowledge, skill, or judgement, or disregard for the welfare of the public of such a nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in trading in real estate; or
 - b. The member is suffering from a physical, or mental condition or disorder of such a nature or extent as to render the member unfit to engage in trading in real estate.

Issue

The issue in this complaint matter is whether the actions of Mrs. Lorraine Goguen-Doiron during the transaction constitute professional misconduct or incompetence as prescribed by s. 23 of the *Act*.

Charges

Mr. Dominic Caron, representing the Association as the appointed prosecutor presented the following charges:

Between August 2016 and October 31, 2019, both dates inclusive, Lorraine Goguen-Doiron, being a member, as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994:

1. Has acted outside her mandate;
2. Has failed to adequately and reasonably disclose her role to the clients;
3. Did not protect or promote the interests of the clients and did not treat all parties fairly in the transaction;

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4. Did not seek to discover pertinent facts pertaining to a property;
5. Did not obtain consent for all services rendered to the clients and did not provide written confirmation of all services that would be rendered;
6. Did not fully inform the clients regarding the type of expenses related to the transaction or her services;
7. Did not provide skilled and conscientious service;
8. Has engaged in conduct unbecoming of a REALTOR®;
9. Misrepresented that she was with Re/Max Quality;
10. Was in a conflict of interest by subcontracting her daughter without disclosing it to the clients.

All as set out in the complaint of the Complainants dated May 27, 2019, and subsequent documents, thereby committing an act of professional misconduct, in violation of Articles 2,3,4,5,7,12, and 21 of the REALTOR® Code (effective March 2016), and punishable under s. 23(4) and 23(5) of the *Act*.

Background and Evidence

Undisputed Evidence

In August of 2016, the Complainants requested the services of Mrs. Lorraine Goguen-Doiron to represent them during the sale of their home situated in the Dieppe area. During the time of the sale of the property, the Complainants were in the Nunavut Territory and were relying on the expertise of Mrs. Goguen-Doiron to represent them remotely. Mrs. Goguen-Doiron had buyer clients that were interested in the property that was being sold by the Complainants and thus they entered a dual agency agreement.

While representing both parties in her capacity as a dual agent, Mrs. Goguen-Doiron collected a non-refundable deposit of \$3,000 from the buyers/tenants. The deposit monies were not entered into the trust account held with Re/Max Quality Real Estate of Moncton contrary to section 2(a) of the Agreement of Purchase and Sale for the property. Instead, \$1,500 was transferred directly to the Complainants, and the remainder was retained by Mrs. Goguen-Doiron. The Agreement of Purchase and Sale also included a "Rent to Own Agreement" located at schedule A which was structured, produced, and authored by Mrs. Goguen Doiron.

In this transaction, the Agreement of Purchase and Sale was the governing document of the transaction with the Rent to Own Agreement forming schedule A in a subordinate capacity. The

Agreement of Purchase and Sale contained several clauses and conditions; however the following list are the most pertinent clauses and is not exhaustive:

1. The sale price for the property would be set at \$199 900.
2. Deposit will be payable to the Listing Agent, to be held in trust, pending completion or other termination of this Agreement. The deposit(s) shall be credited towards the purchase price on completion and the buyer shall pay the remainder of the purchase prices on closing or as otherwise stated in this agreement.
3. The buyer submits with this offer \$3 000.
4. The closing date shall be completed on or before 30 October 2019.
5. This agreement is further subject to the following terms and conditions: Schedule "A" forming part of the agreement.
6. Property taxes, rentals, municipal charges, fuel/heating items on the premises and assessments are to be adjusted to the closing date. The cost of municipal improvements, betterments charges, and capital charges for utility or municipal services completed as of the date of this agreement, whether billed or not are to be paid by the seller on or before the Closing Date unless otherwise stated.
7. If the buyer defaults in the completion of the sale under the terms and conditions of this agreement, any and all money paid hereunder shall be forfeited to the seller without interest or penalty by way of liquidated damages or the seller may, at the sellers' option, compel the buyer to complete the sale.
8. The buyer and seller acknowledge that by signing this agreement they have consented to a dual agency relationship with Re/Max Quality Real Estate as represented by Lorraine Goguen Doiron.
9. The Agreement of Purchase and Sale is effective as of 8:00 P.M. 25 October 2016.

Schedule "A" of the Agreement of Purchase and Sale, labelled the "Rent to Own Agreement" contained the following provisions in short form:

1. Tenants/Buyers are responsible to insure personal property as of the date of occupancy.
2. Deposit of \$3 000 to be paid on or before November 1st 2016.
3. Rent Payment, due on the first to be \$1 395 per month with expenses to landlord being \$1 245 and \$150 going towards down payment for purchase.

4. Rent payments (method Cash Cheques or e transfers) will be for a period of 36 months at which time closing of the property shall occur and transfer of ownership will take place.
5. Landlord/Vendor will be responsible to pay property taxes, insurance & W/S [Water and Sewer] which are included in the tenant's rent. Rent portion could be adjusted once per year to cover extra expenses.
6. Landlord/Vendor will be responsible to maintain adequate fire insurance and also be in good standing with private lender during rent to own term.
7. Tenants/buyers will be responsible to maintain property, and make improvements, at their own expenses.
8. In case of default in rent to own payments All built up equity + original deposit and tenants cost of improvements shall be forfeited to the landlord as liquidated damages.
9. Tenants/buyers acknowledge that Lorraine Goguen Doiron is a licensed real estate agent in the province of NB.
10. After 36 months (October 31st 2019), this contract becomes null and void with all built up equity + original deposit paid by the tenant (purchaser) will be forfeited to the landlord as liquidated damages and owner has the option to have the tenants/buyers vacate the property with a 30 days' notice.

A document submitted with the record of evidence, both in the initial complaint of the Complainants and in the subsequent reply of Mrs. Goguen Doiron, show scribbles of the math completed as part of a fee breakdown structure. The following was presented by the parties:

1. Purchase Price \$199 900 at sale.
2. \$3 000 deposit: \$1 500 Lorraine for work, \$1 500 [REDACTED] and [REDACTED]
3. \$1395 rent each month: \$150 Lorraine, \$1 245 [REDACTED] and [REDACTED]
4. 36 Months (nov, dec, jan, feb, mar, apr, may, jun, jul, aug, sept, oct) x 3 years 31 Oct 2019 or before if possible
5. Purchase Price

\$199 900
-\$3 000 already given
-\$5 400 150 x 36 we will give them back
=\$8400

6. Balance owing from clients: \$191 500

7. New Contract Commission – 5% = \$9 995(+ 15% tax) = \$1 499.25 = \$11 494.25

8. Collected in three years:

$$\$1\,500 + 1245 \times 36 = \$44\,820 = \$46\,320$$

9. Lawyer fees at closing

10. Balance \$180 005.7

Respecting the damages that were inflicted upon the property, we heard testimony from the complainant that the extensive damages required repairs for which they were not provided financial compensation. The exact costs of the Repairs were not presented to the committee; however, the Complainants confirmed the approximate amount to be a few thousand dollars.

Disputed Evidence

During the time that the Rent to Own agreement was in force, the Complainants maintain that Mrs. Goguen-Doiron remitted \$150 per rent payment to be deposited in trust as a down payment on the property to be returned to the Buyers for the purchase of the property, or to be returned to the Complainants in the event that the Buyers failed to close on the property as per the Agreement of Purchase and Sale.

Mrs. Goguen-Doiron maintains that as per a verbal contract made with the Complainants via phone, the \$150 was to be retained by her from the rent amount collected for her services rendered while acting as a property manager on their behalf. Mrs. Goguen-Doiron also argued that as per their Rent to Own Agreement, the Complainants were to retain the \$150 per month to be given to the Buyers upon closing for the purposes of purchasing the home. The markings presented in the record of evidence are according to Mrs. Goguen-Doiron, the explanation of the fee break down structure which the Complainants agreed to verbally over the phone.

Of the \$3,000 deposit made to Mrs. Goguen-Doiron by the Buyers, the Complainants testified that Mrs. Goguen-Doiron deposited \$1,500 into their account by way of e-transfer without their consent remarking that the money was part of the deposit and that as per their contract, they were to receive the money directly.

Mrs. Goguen-Doiron was of the position that the money was deposited into their accounts with their consent under the verbal agreement made based on her fee break down structure explanation. Additionally, she retained \$1,500 of the deposit for the purposes of remunerating herself for her services rendered for drafting the agreement.

In September of 2018, the Respondent reached out to the Complainants to inform them that their water and sewer bill were past due, and that the services were in jeopardy of being cut off to the detriment of the Tenants/Buyers. The Complainants were shocked when they heard this news as

they had habitually paid their water and sewer bill once per year when they filed for their tax returns. The Complainants maintain that they authorised Mrs. Lorraine Goguen-Doiron to make the payment for the months of September, October, November, and December only. Mrs. Goguen-Doiron was further instructed to retain \$50 per month for the purposes of reimbursing her for paying for the water bill.

On April 28th, 2019, Mrs. Goguen-Doiron texted the Sellers to indicate her intentions with the water and sewer bill. The text message presented to the committee read:

Hi, hope you're doing well. How are things with [REDACTED]? Are you okay to pay the water and sewer bill? I am going to stop the \$150 payment. I paid 8, so kept \$50 for Sept-Oct-Nov-Dec-Jan-Feb-Mar-Apr, \$400. The balance is \$800. I will keep additional \$200 this month, and \$150 after that for 4 months, then we'll make sure everything is ok.

Mrs. Goguen-Doiron maintained that she was instructed to do so verbally by the Complainants, and to withhold \$50 per month from the rent payments for the months of September to April.

In May of 2019, the Complainants were informed by Mrs. Goguen-Doiron that the tenants/Buyers were seeking to breach their Rent to Own Agreement as they wished to no longer go through with the purchase of the property. The Complainants also learned that the Tenants/Buyers were refusing to pay for June's rent where they didn't feel as though they were required to. The Complainants requested that Mrs. Goguen-Doiron attend the property to take pictures upon their departure, and that she demand that the rent be paid in full for the month of June.

It was at this time that the Complainants were informed that there were damages caused to the property during the Tenants/Buyers' residency. The Complainants also maintained that Mrs. Goguen-Doiron recommended that they not push to obtain the last months rent where it may cause more damages to the property than those that currently existed. The damages to the property included a newly constructed wall in the basement, holes in a few of the walls, broken and cracked floors, the landscaping outside had been damaged, the pool was black, and the walls all had to be repainted.

The Complainants contacted the Manager of Re/Max Quality Real Estate who informed them that the initial Agreement of Purchase and Sale was never filed with his office and that he was not aware of the Rent to Own Agreement that had existed between Mrs. Goguen-Doiron and the Complainants. Some time before the eviction of the current tenants/Buyers, Mrs. Goguen-Doiron left Re/Max Quality Real Estate and began working with Ever Tree Realty of Sackville, New Brunswick.

Mrs. Goguen-Doiron provided no objections to these claims either in oral testimony at the hearing, or in written evidence presented as part of the Complaints and Discipline stages that preceded the hearing.

When the Rent to Own Agreement was terminated by the parties, the Complainants inquired with Mrs. Goguen-Doiron to obtain their portion of the \$150 down payment that she had been collecting from each rent payment as per the Rent to Own Agreement. They were informed by

Mrs. Goguen-Doiron that the \$150 that she was withholding monthly, was for her property management services. The Complainants maintain that those monies were supposed to be held in trust by Mrs. Goguen-Doiron to be paid back to them if the Agreement was terminated, or to the Buyers if they proceeded with the purchase of the property.

Mrs. Goguen-Doiron again maintained that those monies were collected for her services rendered as their property manager as per their verbal agreement, which was subsequently explained to them in writing as mentioned previously.

Findings and Reasons

Where the Rent to Own Agreement outlined that the \$150 would be withheld from the total rent amount of \$1,395 and that the Complainants would receive \$1,245 pursuant to clause 3 of the Agreement, we find on a balance of probabilities that the Complainants were reasonably under the impression that Mrs. Goguen-Doiron was retaining this amount for the down payment. The Committee did weigh the evidence presented by both parties with respect to the verbal agreement, however such an agreement was never signed, and documentary proof was not provided to the Committee that clearly outlined the terms of the agreement and confirmed that the Complainants had agreed to those arrangements in writing as required under article 5 of the REALTOR® Code of Ethics. In the absence of documentary evidence to confirm the Respondent's entitlement to the \$150 she retained as compensation for her services on a monthly basis, we are satisfied that the said amount was to be held in trust as a deposit to be released only in accordance with the terms of the agreement.

With respect to the \$3,000 deposit, we considered again, the Rent to Own Agreement, the Agreement of Purchase and Sale, and the testimony of both parties during the hearing. Although the explanation of the fee breakdown structure as presented by Mrs. Goguen-Doiron contained a distribution of the deposit, The Agreement of Purchase and Sale outlined that the Money was to be deposited and held in trust by Re/Max Quality Real Estate of Moncton. We find that Mrs. Goguen-Doiron misappropriated trust funds on behalf of her Buyer and Seller Clients, regardless of whether the funds were refundable to either party or not. This represents a gross breach of public trust and confidence in our profession, and as such, we find in favour of the prosecution.

Having considered the testimony and text messages surrounding the payment of the water and sewer bill, we find in favour of the prosecution. Although we heard testimony from both the Respondent and the Complainants, there was little documentary evidence of the arrangements that existed between the Sellers and Mrs. Goguen-Doiron. Again, these arrangements were made on a presumably verbal basis, as per the testimony of Mrs. Goguen-Doiron, however the Sellers refuted these claims. Where there was no documentary evidence to support the claims made by Mrs. Goguen-Doiron, other than a text message from her explaining her actions in paying the water and sewer bill, we find in favour of the prosecution where Mrs. Goguen-Doiron had acted outside of the instructions of paying for the water and sewer bill for four additional months. This is further testament to the lapse in skill and judgement expected by a real estate professional to disclose and provide agreements to parties in writing, especially when it relates to the alteration

of fee payment structures that have previously been agreed to in writing pursuant to the Rent to Own Agreement.

Additionally, we find that Mrs. Lorraine Goguen-Doiron mishandled this Rent to Own Agreement to such a degree to bring the reputation of the Profession of real estate in a state of disrepute. By withholding \$150 per month from the rent deposit for the down payment for the period of 31 October 2016 to 17 June 2019, the Complainants should have reasonably expected to receive \$4,800 (\$150 per month for 32 months of tenancy) from the funds the Respondent was to be holding in trust pursuant to the Rent to Own Agreement. We conclude that the Agreement for Property Management services was not agreed to in writing and that the Respondent was not authorized to withhold \$150 per month from the total rent amount for her personal use. We have the same conclusion for the deposit. Both the deposit and the \$150 withheld monthly for the down payment should have been held in trust pursuant to the Rent to Own Agreement and the Agreement of Purchase and Sale.

After reviewing the Rent to Own Agreement, Agreement of Purchase and Sale, documentary evidence provided during the Complaint and Discipline Process, and the testimony of the witnesses, we find no way in which this transaction could have been conducted in such a way to represent the best interests of the Sellers or the Tenants/Buyers. Therefore, we reject the claims of Mrs. Lorraine Goguen-Doiron that the verbal agreements she purports were in the best interest for the Complainants.

On assessment, if we consider all of the evidence presented, and on the Respondent's own accounts, she was expecting to collect \$150 per month for her services and that the Sellers were to collect \$1 245 in rent, and further invest \$150 per month on their own accord to be disbursed back to the Tenants/Buyers on closing, pay for the mortgage of the property for the period of the tenancy, and pay the on going water and sewer bills. This is in no way in the best interest of either party. It is our position that Mrs. Lorraine Goguen-Doiron acted outside of her mandate as a REALTOR® and in a conflict of interest in conducting a transaction in Dual Agency, acting as a property manager, and using the services of her daughters cleaning business.

She failed to disclose her role as a property manager in writing, and the separation of services between her role as a REALTOR® and that as a property manager.

She did not promote the interests of her Tenant/Buyer or Seller Clients and instead represented her own interests.

She failed to discover pertinent facts that would otherwise be discovered by a competent REALTOR® or property manager respecting damages to the property.

She repeatedly failed to obtain express consent in writing from her clients for services rendered during the transaction.

She did not fully inform the clients regarding her remuneration or expenses relating to the transaction.

She failed to provide skilled and conscientious service to her Tenant/Buyer Clients or her Seller Clients.

She engaged in conduct unbecoming of a REALTOR® by misappropriating monies intended to be deposited in trust by disbursing those same amounts in contravention to the Agreement of Purchase and Sale and by withholding deposit and rent amounts in the absence of express consent by her Seller Clients.

While she did not misrepresent that she was working with Re/Max Quality Real Estate, she failed to disclose to her Seller clients that she no longer was under the employ of Re/Max Quality Real Estate and that she had moved to Ever Tree Realty of Sackville.

In summation and having regard for the evidence presented to the Committee, we find that Mrs. Goguen-Doiron struggled to sell the property that was subject to this complaint and took advantage of her Tenant/Buyer and Seller Clients by not entering the deposit money to be held in trust by the Re/Max Quality Real Estate. She further took advantage of her Seller Clients by withholding \$1,500 of the deposit for her services provided in constructing the Rent to Own Agreement despite no clear authorization to do so under said agreement. She also took advantage of her Seller Clients by withholding \$150 per month for the duration of the occupancy for her services as a property manager and failed to withhold the \$150 per month to be held in trust for her Tenants/Buyer Clients which meant that either clients would not have money for liquidated damages or for the down payment if the property had closed per the Agreement of Purchase and Sale.

In conclusion, we reject the position of Mrs. Goguen-Doiron that she was in a position of financial loss resulting from the termination of the Rent to Own agreement where she did not receive a commission on the sale of the property. A REALTOR® is never entitled to a commission on a home sale that fails to close, and we further find that Mrs. Goguen-Doiron did not act in the best interest of her clients throughout the transaction. We find this complaint matter to be offensive to the profession of real estate and that the actions of Mrs. Goguen-Doiron are unbecoming of a REALTOR®.

Having considered the evidence, and positions of the parties, we find the following with respect to the charges laid by the prosecution:

Charge #1: Has acted outside her mandate

We find the Respondent Guilty.

Charge #2: Has failed to adequately and reasonably disclose her role to the clients.

Where there was no contract agreed to in writing with respect to the services rendered as a property manager, we find the Respondent Guilty.

- Charge #3: Did not protect or promote the interests of the clients and did not treat all parties fairly in the transaction
We find the Respondent Guilty.
- Charge #4: Did not seek to discover pertinent facts pertaining to a property
We find the Respondent Guilty.
- Charge #5: Did not obtain consent for all services rendered to the clients and did not provide written confirmation of all services that would be rendered
We find the Respondent Guilty.
- Charge #6: Did not fully inform the clients regarding the type of expenses related to the transaction or her services
We find the Respondent Guilty.
- Charge #7: Did not provide skilled and conscientious service
We find the Respondent Guilty.
- Charge #8: Has engaged in conduct unbecoming of a REALTOR®
We find the Respondent Guilty.
- Charge #9: Misrepresented that she was with Re/Max Quality
We find Mrs. Goguen-Doiron not guilty. The Prosecution failed to provide sufficient evidence that Mrs. Goguen-Doiron misrepresented that she was with Re/Max Quality Real Estate during the transaction.
- Charge #10: Was in a conflict of interest by subcontracting her daughter without disclosing it to the clients
We find the Respondent Guilty.

Decision

Pursuant to s. 23 of *the Act*, it is our opinion that Lorraine Goguen-Doiron's actions throughout this transaction constitute Professional Misconduct.

We further find that while acting in a dual agency capacity and as a property manager for the transaction, Mrs. Lorraine Goguen-Doiron has displayed in carrying out her professional responsibilities a lack of knowledge, skill, and judgement, and disregard for the welfare of the public of such an extent to demonstrate that she is unfit to carry out the responsibilities of a person engaged in trading in real estate.

Order

Given our findings, reasons, and decision, we hereby order the following pursuant to s.23(4) of *the Act*:

1. The Respondent is directed to pay a fine of \$4,000 to the Association and is further directed to pay costs to the Association in the amount of \$10,000 as reimbursement for costs incurred in the prosecution of this complaint matter. The Respondent is further directed to pay the total amount of the fine and hearing costs (\$14,000) on or before the 30th day of January 2023.
2. The Respondent shall be suspended from the Association for a period of not less than six (6) months following the date of this decision. The suspension shall take effect upon service of this decision in writing through email and/or ordinary mail service. The member will be required to apply for reinstatement of membership following the suspension period and will not be subject to a reinstatement fee.
3. The Respondent is directed to retake the Pre-Licensing Exam Practicum offered by the education department of the New Brunswick Real Estate Association and pass the pre-licensing exam. The Pre-Licensing Course will be offered at no cost to the Respondent and will be given two free attempts to pass the pre-licensing exam. Should the Respondent remain unsuccessful following two attempts, the Respondent will be financially responsible for any additional attempts.
4. Reinstatement as a member of the NBREA will not be considered unless the Respondent has completed the following actions:
 - a. Paid all fines due to the Association;
 - b. Paid all costs due to the Association;

- c. Successfully completed the Pre-Licensing Exam practicum; and
 - d. Successfully passed the Pre-Licensing Exam with a favourable result.
- 5. Pursuant to s. 23(4) of *the Act*, we direct the Registrar to publish this decision in redacted form to protect the identity of the witnesses to the Association's website: www.nbrea.ca
 - 6. Pursuant to s.23(4) of *the Act*, we further direct the Registrar to publish the executive summary of this decision including a link to the website decision to all members of the Association by way of electronic dispatch.
 - 7. Pursuant to s.23(5) of the Act, we make the following recommendations to the Director of Consumer affairs at FCNB (the Director) with respect to licensure:
 - a. That the Respondent's licence to trade in real estate be revoked or suspended for a period not less than six (6) months;
 - b. That the Director impose terms, conditions, and limitations on the right to trade in real estate until such time that the Respondent has completed the Pre-Licensing Practicum and successfully passed the Pre-Licensing Exam.
 - c. That the Director impose specific restrictions on the right to trade in real estate including, but not limited to requiring the Respondent to engage in the sale of real estate only under the personal supervision and direction of another member or manager.
 - 8. In accordance with s. 25(1) of *the Act*, the Respondent may appeal this decision within thirty (30) days from the date of the decision by application to the Court of Queens Bench of New Brunswick.

Dated at Fredericton, New Brunswick this 17 day of August 2022



Anne Smith, Acting Chair

Acting Chair; on behalf of the Discipline Committee,

Complaint 2019-011

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