



Complaint 2021-085

NBREA v. Cheryl Trask

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.

Contents	2
Recitals	2
Executive Summary	3
Introduction	4
Jurisdiction	4
Legal Test	4
Issue	5
Charges	6
Background and Evidence	6
Findings and Reasons	7
Decision	7
Order	8

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-

Cheryl Trask

RESPONDENT

Date of Hearing: August 24th, 2022, 9:30 am

Place of Hearing: Teleconference

Members of Committee: Karl Merrill, Chair
Anne Smith
Joanne MacMillan
Fanny Bodart
Andrea Steirle-MacNeil, Government Appointee

Appearances: Dominic Caron, Counsel for the Association
Ellen Sterns, Assisting Counsel for the Association
Cheryl Trask, Self-Representing Respondent

The Chair noted persons attending the hearing:

Present: N/A

Via Teleconference: Mr. Karl Merrill, Mrs. Smith, Mrs. MacMillan, Mrs. Bodart, Mrs. Steirle-MacNeil, Mr. Caron, Ms. Sterns, Ms. Trask, Mr. Mitchell McLean (Registrar), Mr. Simon-Pierre Godbout (Discipline Committee Legal Counsel) and Mrs. Laura Melles (Court Reporter).

Executive Summary

In the Winter of 2021, the complainant listed a property for sale, advertised on Facebook Marketplace as a private sale on behalf of another party. Ms. Cheryl Trask reached out to the complainant at the time to find out more information about the property as she had a personal interest as a potential buyer.

Ms. Trask asked a series of questions of the complainant, who was a private seller and not an experienced Real Estate Professional. The complainant provided information to Ms. Trask regarding her questions, but Ms. Trask was left unsatisfied with the response that the complainant was listing the property on behalf of a relative and that they had signing authority to sell the property.

Ms. Trask felt that the response provided was questionable and took it upon herself to post a “Buyer Beware” message about the subject property and seller to the “Ask Moncton” Facebook page. In doing so, she dissuaded members of the public from taking the private sale of the property seriously. The public Buyer Beware post noted the complainant by name, the property location, and street. When the complainant learned of the post, she confronted Ms. Trask.

During the corresponding conversation and in confrontation, Ms. Trask called the complainant “Batshit crazy”, “c r a y” and accused the complainant of attempting to sell the property without the express consent of the property owner.

Prior to the hearing date, Ms. Trask, and Mr. Dominic Caron, prosecutor for the Association agreed to proceed on the basis of a Joint Submission to the Committee. In accordance with the Joint Submission, an amended notice of hearing was issued to the respondent to reflect the agreement between the parties.

Under the Joint Submission:

Ms. Trask was charged with one (1) count of professional misconduct under the REALTOR® Code of Ethics on behalf of the New Brunswick Real Estate Association. The Discipline Committee accepted her admission of guilt on all counts and in accordance with the Joint Submission, ordered that Ms. Trask:

1. Pay a \$1,000 fine;
2. Pay \$500 in costs to the Association;
3. Publish the Decision to the NBREA Website with names; and
4. Publish the Order of this decision to the membership by way of electronic dispatch with a link to the full decision on the website.

Introduction

This complaint concerns the Complainant's claims that while they were privately advertising a listing on behalf of a relative, Ms. Trask of eXp Realty, actively dissuaded members of the public from taking her ad seriously and engaged in name calling while attempting to acquire Real Estate all of which constitutes an act of professional misconduct under the REALTOR® Code of Ethics.

The Complaint was submitted to the Office of the Registrar primarily to ascertain if the complaint met the threshold required for professional misconduct, for Real Estate Professionals within the province of New Brunswick. Following an exchange of information between the Complainant and the Respondents as part of the information gathering process, the Complaints Committee reviewed the evidence presented for their review on 5th of May 2022 and rendered a decision to forward the matter to the Discipline Committee pursuant to s. 21(3)(a) of *the Act*.

In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Ms. Trask was a member of the New Brunswick Real Estate Association at or during the time of the alleged offences. The Respondent was provided with a list of the panel members in advance of the hearing and were given a reasonable amount of time to object to the composition of the committee. No such objections were received.

Ms. Trask elected to proceed to the Discipline Committee's hearing without legal representation and participate in the Discipline process as a self represented party.

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 5 May 2022, the Complaints Committee rendered its decision in complaint matter 2021-085 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 Committee refers to the level of proof that must be met 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 of 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 providing 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.

Where the parties have presented the Discipline Committee with a Joint Submission whereby the respondents have admitted guilt on the charges contained in the amended notice of hearing, the Committee must decide if based on the documentary evidence they were presented, the Joint Submission represents a just result for the parties and that such a result would not offend the carriage of justice. For the Committee to refuse a Joint Submission, the Committee must prove in their decision that the acceptance of such a Submission would be offensive to their decision-making authority, and further bring the credibility of the Committee to such a state of disrepute as to render their credibility ineffective.

Issue

The issue in this complaint matter is whether the Discipline Committee supports the Joint Submission of the parties and find in favour that the Joint Submission does not offend the Committee and the carriage of justice.

Charges

Mr. Dominic Caron, representing the Association as the appointed prosecutor presented the following charges against Ms. Cheryl Trask:

Between December 11, 2021, and December 15, 2021, both dates inclusive, Cheryl Trask, being a member, as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the Act):

1. Has engaged in conduct that is disgraceful, unprofessional, and unbecoming of a REALTOR®.

All as set out in the complaint dated December 15, 2021, thereby allegedly committing acts of profession misconduct, in violation of, *inter alia*, Article 12 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of *the Act*.

Background and Evidence

In the Winter of 2021, the complainant listed a property for sale, advertised on Facebook Marketplace as a private sale on behalf of another party. Ms. Cheryl Trask reached out to the complainant at the time to find out more information about the property as she had a personal interest as a potential buyer.

In the series of messages between the parties, Ms. Trask requested the PID number for the property, asked if the owner was aware the property was being advertised, and further wanted access to the owner's phone number and name. The Complainant responded back with, "not sure where this is going, but I am a relative and signing authority to sell this home. Thank you for your time". Shortly after the initial exchange of messages, Ms. Trask posted a "Buyer Beware" notice to the Ask Moncton Facebook page which is included below:

BUYER BEWARE: A woman named [Complainant] is supposedly selling a property by Cocagne privately. I was potentially interested and was asking questions about whether she was selling privately or on [the board's MLS® System] (privately), if there was an address I could drive by (was in ad which has been deleted now, but was MacDougall Settlement), if she had a PID (She didn't), and whether she was owner (she is not). I asked for seller info so I could call and discuss the property which is what I would assume a person interested in buying would ask for. She deleted the ad and removed herself from the convo.

After the Buyer Beware statement was posted publicly, the complainant reached out to Ms. Trask to express her frustration regarding the public announcement and to indicate that they would be filing a formal complaint about the incident. Ms. Trask responded by stating "you're officially batshit crazy. Take care". Over the duration of the Facebook Messenger conversation, Ms. Trask continued to chastise the complainant going so far as to say "please get your facts right if you're

going to try and sell someone's property without telling them", laughing at the complainants responses, and referring to the ad and the complainant's lack of responses to her demands as "C r a y". Ms. Trask further agitated the complainant by quipping "also a great move to sell a property. Maybe I'll use that one" after the complainant informed her that they had blocked Ms. Trask from Facebook to prevent Ms. Trask from viewing the ad further.

In a statement provided by Ms. Trask in response to the complaint, Ms. Trask expressed her remorse with the situation and that "I am sorry this woman's feelings were hurt; however, I stand behind my suspicious judgement and I still, in this moment, am confused why she has chosen to take the time to lodge a complaint instead of answer the question of why she didn't just give me the information if she was trying to legitimately sell the house?".

Ms. Trask was suspicious of the ad and deemed it to be fictitious or fraudulent when her demands for information weren't being answered. Instead of contacting a body with the jurisdiction to investigate what in her view, was a suspicious ad, she committed an act of unbased vigilantism against a member of the public. Further, Ms. Trask proceeded to verbally attack the complainant acting as a private seller for a relative, all of which constituting conduct that is disgraceful, unprofessional and unbecoming of a REALTOR®.

Prior to the hearing date, Ms. Trask and Mr. Dominic Caron, prosecutor for the Association met to hold a pre-hearing conference to present the possibility of a Joint Submission to the Committee. The parties negotiated a Joint Submission, whereby an amended notice of hearing was issued with a reduction of the charges contained in the original notice of hearing.

As part of the Discipline file presented by the Registrar to the parties, and to the Committee, we reviewed the chat messages and Facebook post, the Complaint, and the subsequent response from the Respondent. We also reviewed the notice of hearing presented to the parties, and the amended notice of hearing as a result of the pre-hearing conference between the parties.

Findings and Reasons

Having regard for the information presented to the Committee as evidence, the Committee accepts the Joint Submission agreed to by the parties. It is our view that the Joint Submission reflects the carriage of justice and is not offensive to the Committee or our role as a decision maker and is consistent with previous complaint matters presented and heard by this committee.

Decision

Pursuant to s. 23 of *the Act*, we accept the Joint Submission of the parties in that the parties agree that the actions of Ms. Trask in this transaction constitute Professional Misconduct.

Order

In light of the above and in accordance with the Joint Submission, we hereby order the following pursuant to s.23(4) of *the Act* for Ms. Trask:

1. Ms. Trask is directed to pay a fine of \$1,000 CAD to the Association and is further directed to pay costs to the Association in the amount of \$500 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
2. Ms. Trask is further directed to pay the total amount of the fine and hearing costs (\$1,500 CAD) on or before the 15th day of November 2022. If payment is not received by the prescribed deadline, the member will be suspended as a member of the Association until such time that the fine and costs are paid in full. The member will not be subjected to a reinstatement fee upon reinstatement in the event of a suspension.
3. 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
4. Pursuant to s.23(4) of *the Act*, we further direct the Registrar to publish the Order of this decision including a link to the website decision to all members of the Association by way of electronic dispatch.

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 King's Bench of New Brunswick.

Dated at Fredericton, New Brunswick this 15th day of September 2022



Karl Merrill, Chair

Chair; on behalf of the Discipline Committee.

Complaint 2021-085

