



# Complaint 2021-060

NBREA v. Jonathon Rasenberg

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 *The New Brunswick Real Estate Association Act* (the “Act”):

#### BETWEEN

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

-and-

Jonathon Rasenberg

#### RESPONDENT

Date of Hearing: November 8<sup>th</sup>, 2022, 1:00 pm

Place of Hearing: Teleconference

Members of Committee: Karl Merrill, Chair  
Kevin MacDonald  
Shannon Auffrey  
Alexandre Bellefeuille  
Andrea Stierle-MacNeil, Government Appointee

Appearances: Dominic Caron, Counsel for the Association  
Jonathon Rasenberg, Self-Representing Respondent

The Chair noted persons attending the hearing:

Present: N/A

Via Teleconference: Mr. Karl Merrill, Mr. MacDonald, Mrs. Auffrey, Mr. Bellefeuille, Mrs. Stierle-MacNeil, Mr. Caron, Mr. Rasenberg, Mr. Butler (Respondent’s Manager), Mr. Mitchell McLean (Registrar), and Mrs. Jodie Yerxa (Court Reporter).

## Executive Summary

In the Spring of 2021, the Complainants were in the process of selling their house. During this period, Mr. Rasenberg, while acting as a buyer's agent, took his clients to view the property following a home inspection where they intended to verify and assess the issues and concerns highlighted in the home inspectors report.

Following the viewing with his clients, Mr. Rasenberg failed to secure the key to the property in the assigned lock box, and instead, left the key in the deadbolt leaving the house unsecure. The Complainants were heading out of town on vacation when the viewing had taken place, so they returned several days later to find their front door ajar with the key still in it.

Prior to the hearing date Mr. Rasenberg and Mr. Dominic Caron mutually agreed to present a joint submission to the Discipline Committee.

Under the Joint Submission:

Mr. Rasenberg was charged with two (2) counts of professional misconduct under the REALTOR® Code of Ethics on behalf of the New Brunswick Real Estate Association. The Discipline Committee accepted his admission of guilt on all counts and in accordance with the Joint Submission, ordered that Mr. Rasenberg:

1. Pay a \$500 fine;
2. Pay \$500 in costs to the Association;
3. Publish the Decision to the NBREA Website with names; and
4. Publish a Notice to the Profession.

## Introduction

This complaint concerns allegations from the Complainants that during the sale of their property, Mr. Jonathon Rasenberg failed to lock the front door following a showing with his buyer clients. In failing to secure the property, Mr. Rasenberg of Coldwell Banker Select Realty failed to render skilled and conscientious service and engaged in conduct that is unprofessional. 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 a finding of professional misconduct for Real Estate Professionals within the province of New Brunswick. Following an exchange of information between the Complainant and the Respondent as part of the information gathering process, the Complaints Committee reviewed the evidence presented for their review on 12<sup>th</sup> of April 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 Mr. Rasenberg 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.

Mr. Rasenberg 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 12 April 2022, the Complaints Committee rendered its decision in complaint matter 2021-060 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 the respondent has admitted guilt on the charges contained in the 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 Mr. Rasenberg:

Between June 29, 2021, and July 4, 2021, both dates inclusive, Jonathon Rasenberg, 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. Failed to render skilled and conscientious service; and
2. Engaged in conduct that is unprofessional.

All as set out in the complaint dated July 5, 2021, thereby allegedly committing acts of professional misconduct, in violation of, *inter alia*, Articles 12 and 21 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of *the Act*.

## Background and Evidence

In the spring/summer of 2021, the Complainants listed their home for sale in the Saint John area. On Tuesday the 29<sup>th</sup> of June 2021, Mr. Rasenberg obtained consent to enter the home with his buyer clients who had an accepted offer on the property. The Complainants complied with the request even though they were heading out of town on a vacation. The viewing of the property was organized to assess and review the issues that were identified in a home inspectors report.

Mr. Rasenberg and his clients inspected and viewed the property for a few hours moving from the inside to the outside frequently. In doing so, Mr. Rasenberg maintained that they had locked and re-entered the property a few times to review the exterior and interior of the home as the clients wished to check and re-check certain areas of concern.

When departing the property following the viewing, Mr. Rasenberg failed to secure the key in the assigned lock box and lock the front door. The complainants returned on the 4<sup>th</sup> of July to find the key left in the front door's deadbolt, and the front door wide open.

Prior to the hearing date, Mr. Rasenberg and Mr. Caron negotiated a Joint Submission for presentation to the Discipline Committee.

As part of the Discipline file prepared by the Registrar and provided to the parties and to the Committee, we reviewed the Complaint, and the subsequent response between the Complainant and Respondent inclusive of the documentary evidence provided. We also reviewed the notice of hearing, and the decision of the Complaints Committee.

## Findings and Reasons

Having regard for the evidence and to the submissions made, the Committee accepts the joint submission. It is the finding of the Committee that the Joint Submission is just and is not offensive to the Committee as a decision maker. Further, the acceptance of the Joint Submission is consistent with matters heard by prior Committees.

## 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 Mr. Rasenberg 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 Mr. Rasenberg:

1. Mr. Rasenberg is ordered to pay a fine of \$500 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. Mr. Rasenberg is further ordered to pay the total amount of the fine and hearing costs (\$1,000 CAD) within thirty days of the date of this decision. 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 with names to the Association's website: [www.nbrea.ca](http://www.nbrea.ca).



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 9<sup>th</sup> day of December 2022

[Original Signed by Committee Chair]

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Karl Merrill, Chair

Chair; on behalf of the Discipline Committee,

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