



# Complaint 2019-018

NBREA v. Johnathan Drisdelle

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-

Johnathan Drisdelle

#### RESPONDENT

Date of Hearing: December 9<sup>th</sup>, 2022, 9:30 am

Place of Hearing: Teleconference

Members of Committee: Joan Hayes, Chair  
Joanne MacMillan  
Chris Drysdale  
Jeffrey Smith  
Andrea Stierle-MacNeil, Government Appointee

Appearances: Dominic Caron, Counsel for the Association  
Hugh Cameron, K.C., Counsel for the Respondent  
Jonathan Drisdelle, Respondent

The Chair noted persons attending the hearing:

Present: N/A

Via Video conference: Mrs. Hayes, Mrs. MacMillan, Mr. Drysdale, Mr. Smith, Mrs. Stierle-MacNeil, Mr. Caron, Mr. Drisdelle, Mr. Cameron K.C. (Respondent’s Counsel), Mr. Mitchell McLean (Registrar), and Mrs. Jodie Yerxa (Court Reporter).

## Executive Summary

In 2014, the Complainant was made aware that sales data on the MLS® System of their local board was being altered. After further investigation, the complainant was able to determine that the alterations were being made by a member of the local Real Estate Board by using unauthorized credentials assigned to a local board administrator. The IP address for the Respondent, Mr. Drisdelle login credentials and the IP address for his office matched that of the login credentials being used by the unauthorized account. Even after the Administrator of the local board had changed their login password, Mr. Drisdelle was still able to gain access using the unauthorized credentials after the password had been changed.

In the instances of the altered data, a co-listing REALTOR® was being removed from historical listings after the properties had already sold. Additionally, the alterations to the data only occurred after the impacted REALTOR® had left the company where the Respondent was employed.

For added clarity, REALTOR® A and B work for company X. For the impacted listings, REALTOR® A and B were listed as co-listing REALTORS® credited equally for the sale of their co-listing. After REALTOR® A left the employment of Company X, the Respondent removed REALTOR® A from the historical co-listings, leaving only REALTOR® B to receive credit for the sale. REALTOR® A would therefore have no data in the MLS® System of the local board showing that they had been a party to these sales, thus adversely impacting their sales record.

Prior to the hearing date the parties mutually agreed to present a joint submission to the Discipline Committee.

Under the Joint Submission:

Mr. Drisdelle was charged with three (3) 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:

1. Mr. Drisdelle pay a \$2500 fine;
2. Mr. Drisdelle pay \$2000 in costs to the Association;
3. The Decision be published to the NBREA Website with names; and
4. A Notice to the Profession be issued and published.

## Introduction

This complaint concerns allegations from the Complainant that Mr. Johnathan Drisdelle misused the MLS® System of the Real Estate Board of the Fredericton Area Inc. from November 3<sup>rd</sup> 2010 until June 18<sup>th</sup> of 2014. In doing so, Mr. Drisdelle of Keller Williams Capital Realty misled other users of the MLS® database as to matters pertaining to a property, failed to operate the MLS® database in accordance with the Real Estate Board of the Fredericton Area Inc. By-laws, Rules, Regulations, and policies, thus engaging in conduct unbecoming of a REALTOR®. 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 information presented for their review on the 13<sup>th</sup> of May 2020 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. Drisdelle 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 was given a reasonable amount of time to object to the composition of the committee. No such objections were received.

## 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 13 May 2020, the Complaints Committee rendered its decision in complaint matter 2019-018 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 is satisfied that the Joint Submission of the parties 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. Drisdelle:

Between November 3<sup>rd</sup>, 2010, and June 18<sup>th</sup> 2014, both dates inclusive, Johnathan Drisdelle, 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 misled other users of the MLS® database as to matters pertaining to a property;
2. Has failed to operate the MLS® database in accordance with the Real Estate Board of Fredericton Area Inc. By-laws, Rules, Regulations, and policies; and
3. Engaged in conduct that is unbecoming of a REALTOR®.

thereby committing an act of professional misconduct, in violation of, *inter alia*, Articles 3.2, 17, 21, and 28.1 of the REALTOR® Code of Ethics.

## Background and Evidence

On the 29<sup>th</sup> of May 2014, the Complainant was notified that the information contained in the MLS® System relating to a salesperson's listing data had been altered after the fact. The incident in question relates to a co-listing REALTOR® no longer being credited for a listing they jointly sold with another REALTOR®. These changes had been made after the impacted REALTOR® left the company they worked for at the time that the property had been listed. This meant that the impacted REALTOR® no longer had credit or data reflecting sales they had historically conducted as a co-listing salesperson with their previous company, diminishing their performance record.

For added clarity, let's say REALTOR® A and B work for company X. For the impacted listings, REALTOR® A and B were listed as co-listing REALTORS® credited equally for the sale of their co-listing. After REALTOR® A left the employment of Company X, the Mr. Drisdelle removed REALTOR® A from the historical co-listings, leaving only REALTOR® B to receive credit for the sale. REALTOR® A would therefore have no data in the MLS® System of the local board showing that they had been a party to these sales, thus adversely impacting their sales record.

Once duly informed, the Complainant launched an exhaustive internal investigation to determine the cause or source of the altered data. In doing so, they tracked a series of IP addresses and the login credentials that had been flagged in the initial report of the altered data. The Complainant was able to establish a trend in IP addresses and the altered data wherein the IP address assigned to Mr. Drisdelle matched that of the unauthorized credentials being used. These instances of data alteration, IP addresses, and Time stamps were entered into the record as evidence.

When Mr. Drisdelle changed companies in June of 2012, his login credentials changed IP addresses to reflect his change in office location. Coincidentally, so too did the unauthorized credentials that were being used to alter the historical sales data.

The Complainant's position is that:

1. The unauthorized credentials used by Mr. Drisdelle to alter the data would have also allowed him to view confidential information such as:
  - a. All listing information held in the database inclusive of expiry dates;
  - b. Contact information for vendors close to or at their expiry;
  - c. All information pertaining to unsold listings;
  - d. The statistics of every member of the Local Board, including dollar volumes and units; and
  - e. The ability to identify high performing sales representatives;
2. Mr. Drisdelle of Keller Williams Capital Realty has intentionally misled other users of the MLS® Database as to matters pertaining to a property, specifically as to the proper identification of a listing salesperson.
3. Mr. Drisdelle has failed to abide by the By-laws, Rules, Regulations and policies established by the member's real estate board and has failed to operate the MLS® database in accordance with the rules established for such site (CREA Code Article 17), specifically by modifying or manipulating the data relating to another member's listing and the unauthorized alteration, modification or reformatting of data on the database in any form whatsoever, electronic or otherwise, contrary to Sections 16.01 (b), 18.01, and 18.03(iii) of the Multiple Listing Service® Rules and Regulations of the Real Estate Board of the Fredericton Area Inc.
4. Mr. Drisdelle has failed to respect the ownership rights of the Board of the Fredericton Area Inc. wherein REALTORS® shall only access and use websites and other databases of Boards in accordance with the policies for the use established by the owner of the site.

5. Mr. Drisdelle, per article 21 of the REALTOR® Code of Ethics, has engaged in conduct unbecoming of a REALTOR® and as per Article 26, has created controversies with other REALTORS® instead of conducting business as to avoid controversies.

Prior to the hearing date, Mr. Cameron, K.C. and Mr. Caron negotiated a Joint Submission for presentation to the Discipline Committee. As per the Joint Submission, Mr. Drisdelle accepted full responsibility for his actions as confirmed by his legal counsel, Mr. Cameron, K.C. for the following:

1. Misleading other users of the MLS® Database as to matters pertaining to a property;
2. Failing to operate the MLS® database in accordance with the Real Estate Board of Fredericton Area Inc. By-laws, Rules, Regulations, and policies; and
3. Engaging in conduct unbecoming of a REALTOR®.

As part of the Discipline file prepared by the Registrar, the Discipline Committee reviewed the Complaint and the subsequent response between the Complainant and the Respondent, inclusive of the documentary evidence provided. We also reviewed the revised 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 and finds 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. Drisdelle 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. Drisdelle:

1. Mr. Drisdelle is ordered to pay a fine of \$2,500 CAD to the Association and is further directed to pay costs to the Association in the amount of \$2,000 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.

2. Mr. Drisdelle is further ordered to pay the total amount of the fine and hearing costs (\$4,500 CAD) within thirty (30) 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).
4. Pursuant to s. 23(4) of *the Act*, we direct the Registrar to publish a Notice to the Profession regarding this decision 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 22<sup>nd</sup> day of March 2023.

// Original Signed by Mrs. Hayes, Acting Chair//

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Joan Hayes, Acting Chair

Acting Chair; on behalf of the Discipline Committee,

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