



Complaint 2022-010

NBREA v. Sandra Trafton

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..... 5

Issue..... 5

Charges 6

Background and Evidence 6

Findings and Reasons 8

Decision 9

Order..... 9

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-

Sandra Trafton

RESPONDENT

Date of Hearing: April 12th, 2022, 9:30 am

Place of Hearing: Delta Hotel, 225 Woodstock Rd, Fredericton, NB.

Members of Committee: Karl Merrill, Chair
Fanny Bodart
Anne Smith
Joan Hayes
Andrea Stierle-MacNeil, Government Appointee

Appearances: Dominic Caron, Counsel for the Association
Ellen Sterns, Assisting Counsel for the Association

The Chair noted persons attending the hearing:

Present: Mr. Karl Merrill, Mrs. Bodart, Mrs. Hayes, Mrs. Smith, Mrs. Stierle-MacNeil, Mr. Caron, Mr. Mitchell McLean (Registrar), and Mrs. Christine McLaughlin (Court Reporter).

Absent: Mrs. Sandra Trafton, Self-Representing Respondent.

Executive Summary

This Complaint concerns the actions and behaviors of a REALTOR® that occurred after one of her clients elected to end her representation and seek the services of a REALTOR®/friend who worked in the same office. The Respondent made several disparaging comments through social media against her former employer.

Ms. Trafton was charged with four (4) counts of professional misconduct under the REALTOR® Code of Ethics on behalf of the New Brunswick Real Estate Association. The Discipline Committee found her guilty on all counts and ordered that Ms. Trafton:

1. Pay a \$2,500 fine;
2. Pay \$5,000 in costs to the Association;
3. That she be required to re-take and successfully complete the Pre-Licensing courses of study inclusive of the exam;
4. Recommends to the Director of Consumer Affairs that FCNB impose conditions and limitations on the right to trade in real estate until such time that the respondent has completed the required courses of study as specified by the Discipline Committee; and
5. Publish the Decision to the NBREA Website with names;
6. Publish a Notice to the Profession.

Introduction

This complaint concerns allegations from the complainants that during the time in which the respondent represented their Agent as a salesperson, the Respondent engaged in conduct unbecoming or unprofessional of a REALTOR[®], engaged in the practice of discrediting other members of the Association and a licensed Agent, failed to cooperate in a Complaint Matter under investigation, and caused controversy through the use of social media. 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. The Respondent was sent a copy of the complaint and all evidence presented by the complainants on the 4th of April 2022 and was provided until the 22nd of April 2022 to submit a response. No such response was received. The Registrar acting in good faith to the member extended the deadline to submit a response to the middle of May. The Respondent failed to provide any response to the complaint submitted to the Office of the Registrar.

The Complaints Committee reviewed the evidence presented by the complainants in the absence of any rebuttal from the Respondent on the 7th of December 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. Trafton 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.

Ms. Trafton elected to proceed to the Discipline Committee's hearing without legal representation and participate in the Discipline process as a self represented party and in person. This was confirmed in a phone call with the Registrar in January of 2023.

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 7 December 2022, the Complaints Committee rendered its decision in complaint matter 2022-010 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.

Issue

The issue in this complaint matter is whether alleged actions of Ms. Trafton 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 against Mrs. Trafton:

Between March 18th, 2022, and March 28th, 2022, both dates inclusive, Sandra Trafton, 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. Engaged in conduct that is unbecoming and unprofessional of a REALTOR®;
2. Engaged in the practice of discrediting other members of the Association and a licensed Agent;
3. Failed to cooperate in a Complaint Matter under investigation; and
4. Caused controversy through the use of social media.

All as set out in the complaint dated March 28th, 2022, thereby allegedly committing acts of professional misconduct, in violation of, *inter alia*, Articles 19, 21, 23 and 26 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of *the Act*.

Background and Evidence

In March of 2022, Ms. Trafton was working for an Agent in the Saint John area and carried several listings with said Agent. This complaint concerns the actions of Ms. Trafton once one of her selling clients elected to cease using her services and decided to begin working with another REALTOR® within the same office. The REALTOR® that took over this listing had been a long-time friend of the sellers and where this was a case of transferring the representing salesperson's representation within the same agent, it does not relate to a dispute between companies. This interoffice dispute led to the complaint before the committee.

This Complaint has been submitted on behalf of the Agent by the Agent's Manager of Record.

When the Respondent's client changed salespersons, Ms. Trafton began launching a series of inquiries with the local Real Estate Board. At which time, where the matter related to a personnel issue, the matter was referred to the Manager of Record to handle as an internal dispute between employees.

At the first notification of the allegations being levelled by the Respondent against her colleague allegedly stealing her client, the Manager of Record for the Agent attempted to schedule a meeting with her to discuss the issue at length. Following several unanswered attempts by the Manager to set up virtual meetings to discuss the matter, they selected 11:00 a.m. on the 19th of

March as a final meeting date. The Respondent failed to show and at 11:21 a.m., they closed the virtual meeting.

Following the meeting, the Manager sent the Respondent an email indicating that given the difficulties in not being able to contact her, and her inability to present herself at the meeting, the Agent would not be renewing her licence through the Financial and Consumer Services Commission of New Brunswick (“FCNB”). She was further notified that she would have until the 23rd of March 2022 to transfer her licence to another Agent to avoid having her licence cancelled as a subsequent condition of their decision not to renew.

On the same date, the 19th of March 2022, the Respondent sent the Manager an email outlining that the Agent was “the most unprofessional company to work for and that she had been calling all week because she quit”. Further, the complainant indicated that they had received an email from the Respondent to the effect that she would see them in court over her termination.

Given the conduct and behaviour of their representative, the complainant moved to cancel the Respondent’s licence with FCNB to ensure they were no longer associated with the Agent. They also notified NBREA and the local real estate board of the same once the Respondent was no longer licensed with them.

Prior to the Respondent’s termination with the Agent on the 21st of March, 2022, she made a series of social media posts about the Agent on the 20th of March 2022. These posts contained the following:

1. snippets of emails between the Complainant and Respondent regarding her employment status and the attempted meetings;
2. Text messages and emails between the Respondent and the REALTOR[®] that she alleged stole her clients;
3. A letter from the “*Central Intelligence Agency of the United States of America*” outlining an incident that allegedly occurred in the Saint John area between an operative and the Respondent’s Daughter; and
4. The Respondent’s termination letter from her previous Agent.

Following the Respondent’s termination, the complainant reached out to those members of the public that had previously been represented by the Respondent. In doing so, one of the Respondent’s previous clients conveyed to the complainant that the Respondent had landed on their doorstep in tears. During this meeting, the respondent complained to her clients that she was without power, food, or water. The Respondent’s clients felt bad and sympathetic of her conveyed hardship, and provided the Respondent with gift cards for food, gas, and some cash. These clients also disclosed that the Respondent hadn’t provided them with copies of their signed listing agreement, or anything else pertaining to their future transaction and that they could never reach the Respondent.

In the beginning of March 2023, the Registrar attempted to contact the Respondent by email, and then by phone. This was regarding the potential for an upcoming hearing date in April. The Registrar's Assistant was the first to make contact, however, the Registrar had additional points to articulate regarding the hearing. During this phone call, the Registrar testified that the Respondent's mother had yelled at him for calling, and that the number used should not be used any further. The Registrar did speak with the Respondent, who confirmed that she had received the complaint, the Complaints Committee Decision, and that she was aware that the matter had been referred to the Discipline Committee. Per the Registrar, the Respondent expressed her need to have the hearing heard in person where a virtual hearing was out of the question. The Registrar testified that per the Respondent's position, her email had been hacked, and her phones were being tapped by a CIA operative working from Fredericton.

During this conversation, the Registrar testified that he indicated that he would be sending her a notice of hearing by mail, email, and through a process server. She confirmed she would be willing to accept service. She also requested that the Registrar prepare a full file of all of the documents regarding the complaint to have on hand for her to pick up at the NBREA Office. Between the time of the phone call and the hearing date, the Respondent did not avail herself to retrieve the documents she requested.

Prior to the Complaints Committee meeting (Complaint Screening Body), the Respondent neglected to submit any evidence in support of her position. The Registrar afforded the respondent three deadline extensions to ensure she had a reasonable amount of time to submit her side of the Complaint, however, no such responses were received.

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 documentation provided by the complainant in support of their allegations. We also reviewed the notice of hearing, the Affidavit of Service for the Notice of Hearing, the decision of the Complaints Committee, and the communications from the office of the Registrar.

Findings and Reasons

This complaint file presented the Committee with a most unusual situation where the Respondent failed to appear before the Committee pursuant to the Notice of Hearing issued by way of process server. We therefore had to decide whether to continue in the Respondents Absence or not. As a matter of procedural fairness, we confirmed with the Registrar under sworn testimony that the Respondent had been notified of the Complaint, provided a copy of the Complaints Committee Decision, and that the Notice of hearing had been served on the Respondent.

We are satisfied that the Respondent was aware of the date of the proceeding, and was provided a reasonable amount of time, being 23 days, to make reasonable arrangements to attend the hearing. Further, the Respondent demonstrated a complete lack of regard for the Complaints and Discipline process leading up to this hearing, and as such, we find there to be no reasonable

explanation for her failure to appear having been provided with adequate notice of the hearing and the Committee elected to proceed with the hearing in the Respondent's absence.

Where the respondent failed to appear at an in-person hearing, that she personally requested, and offered no attempt to resolve this complaint or cooperate prior to these proceedings, we find that the member clearly failed to cooperate in a complaint matter under investigation. We also find this to be an aggravating factor and have taken it into consideration for the ordered costs.

In reviewing the evidence provided by the Complainant, and further presented by the prosecution, we find that the posts made on social media were unprofessional and unbecoming of a professional in our industry and are the source of controversy. We also note an aggravating factor surrounding the posts in that, at the time of the hearing, they were still visible on the Respondent's social media accounts and available for public view. Additionally, the Committee noted that the Respondent is still holding herself out as representing the complainant's Agent on Instagram and her previous Agent on Facebook.

Having considered the evidence, and our findings with respect to the positions of the parties, we find against the member that She:

1. Engaged in conduct that is unbecoming and unprofessional of a REALTOR®;
2. Engaged in the practice of discrediting other members of the Association and a licensed Agent;
3. Failed to cooperate in a Complaint Matter under investigation; and
4. Caused controversy through the use of social media.

Decision

Pursuant to s. 23 of *the Act*, we are of the opinion that the conduct and actions of Mrs. Trafton during the period specified in charges laid by the prosecution constitute professional misconduct.

Order

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

1. Ms. Trafton 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 \$5,000 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
2. Ms. Trafton is further ordered to pay the total amount of the fine and hearing costs (\$7,500 CAD) within thirty days of the date of this decision.

3. Ms. Trafton 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 at 50% cost. The Respondent will be afforded 3 free attempts to successfully pass the exam before being required to pay for additional attempts.
4. Ms. Trafton shall not be eligible for membership reinstatement with the NBREA until such time as she pays all costs, fines, and completes the courses of education so ordered in this decision, and pays the required reinstatement fee.
5. 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.
6. Pursuant to s. 23(4) of the Act, we further order the Registrar to publish a summary of this decision including a website link to the decision to all members of the Association by way of electronic dispatch (Notice to the Profession).
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 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.

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 6 day of July 2023

//Original Signed by the Committee Chair//

Karl Merrill, Chair

Chair; on behalf of the Discipline Committee,

Complaint 2022-010