



Complaint 2022-015

NBREA v. Tina Lynch

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 NBREA's Discipline Committee.

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Recitals

DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO A JOINT SUBMISSION

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-

Tina Lynch

RESPONDENT

Date of Hearing: August 14th, 2023, 10:00 am

Place of Hearing: Teleconference

Members of Committee: Karl Merrill, Chair
Gordon Breau
Joanne MacMillan
Sarah Justason
Andrea Stierle-MacNeil, Government Appointee

Appearances: Sheila Mecking, Counsel for the Association
Tina Lynch, Self-Representing Respondent

The Chair noted persons attending the hearing:

Present: Mr. Karl Merrill, Mr. Breau, Mrs. MacMillan, Mrs. Justason, Mrs. Stierle-MacNeil, Mrs. Mecking, Ms. Lynch, Mr. Simon-Pierre Godbout (Committee Counsel), Mr. Mitchell McLean (Registrar), and Mrs. Jodie Yerxa (Court Reporter).

Executive Summary

- [1] During a transaction conducted in the Beersville area, Ms. Lynch, acting on behalf of her buyers, elected to communicate directly with the sellers, who were clients of the complainant. During this transaction, she also disparaged the complainant's reputation and credibility with his clients by indicating that he had misrepresented the property based on information her client's legal counsel had discovered.
- [2] The Complainant alleged that these actions amount to professional misconduct and an utter disregard for the duty of fairness and collegiality between professionals. He further alleged that these actions constitute a disregard for the respect of a contractual relationship between a REALTOR[®] and their client.
- [3] Prior to the hearing date, Ms. Lynch and Mrs. Sheila Mecking mutually agreed to present a joint submission to the Discipline Committee.
- [4] Under the Joint Submission, Ms. Lynch admitted guilt to the charges laid against her on behalf of the New Brunswick Real Estate Association which included five (5) counts of professional misconduct under the REALTOR[®] Code of Ethics. The Discipline Committee accepted her admission of guilt on all counts and, in accordance with the Joint Submission, ordered that:
- a. The Respondent pay a \$1,500 fine;
 - b. The Respondent pay \$1000 in costs to the Association;
 - c. The Respondent complete the REALTOR[®] Code of Ethics Course;
 - d. The Decision be published with names; and
 - e. A notice be published to the Profession.

Introduction

- [5] In December of 2022, the clients of Tina Lynch retained her services for the purposes of purchasing a property situated in the area of Beersville, New Brunswick. The Complainant was the Listing REALTOR[®] representing the current owners of the property.
- [6] The property in question was listed as having 150 acres of property (149.98 imperial) and was marketed as the perfect place to build a home, hobby farm, or camp. It included a well, a stream, and a cleared 2-3 acre area that was intended for a building. Prior to the transaction, approximately 25 acres had been cleared in a strip-cut fashion. The property being sold was composed of 2 PID's, both of which were being sold as a package. PID 1 was represented as 49.98 acres and PID 2 was represented as 100 acres.
- [7] The lot sizes were verified as correct through Service New Brunswick during the preparation of this transaction, as well as when the sellers purchased the property the year prior.
- [8] Prior to closing, the lawyer representing the buyers discovered a discrepancy during the title search that would lead them to believe that the property was not 150 acres as advertised, but rather 127 acres. This discrepancy had not been detected when the sellers originally purchased the property.
- [9] When the discrepancy was detected, the respondent notified the complainant and requested that the sellers reduce the purchase price already agreed to in the Agreement of Purchase and Sale. Further, the Respondent requested that the sellers contact the buyers to begin discussing possible next steps. The sellers refused to make any concessions to the sale price and indicated that they intended to carry on with the sale as agreed.
- [10] In an email, the Complainant's clients indicated that the Respondent attended the property and spoke with them directly advising that the buyer's lawyer had discovered a

discrepancy in the amount of land and that the missing amount was sizeable. The Respondent further conveyed that her clients were upset because they were looking to pay a certain price point per acre, but considering the missing land, they were looking for an extension to the closing date so that the discrepancy could be resolved by giving her clients the time to “go after whoever made the mistake.”

[11] This complaint concerns allegations from the Complainant that while representing his listing clients, Ms. Lynch discredited him, and communicated directly with his clients. In doing so she allegedly:

- a. Failed to treat all parties fairly;
- b. Failed to render skilled and conscientious service;
- c. Discredited another member of the Association;
- d. Failed to respect contractual relationships; and
- e. Engaged in conduct that is unbecoming and unprofessional of a REALTOR®.

[12] The Association submits that these allegations constitute professional misconduct under the REALTOR® Code of Ethics.

[13] 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 the 18th of October 2022 and rendered a decision to forward the matter to the Discipline Committee pursuant to s. 21(3)(a) of *the Act*.

[14] In preparation for the hearing to be commenced before the Discipline Committee, the Registrar confirmed that Ms. Lynch 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.

[15] Ms. Lynch elected to proceed to the Discipline Committee's hearing without legal representation and to participate in the Discipline process as a self-represented party.

[16] Ms. Lynch elected to submit a joint submission in conjunction with the Association appointed prosecutor prescribing the fine, costs, and sanctions for the alleged offences and admitted to the substance of the charges.

Jurisdiction

[17] 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 the 7th of December 2022, the Complaints Committee rendered its decision in complaint matter 2022-015 so ordering the Discipline Committee to commence such a proceeding.

[18] 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

[19] 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).

[20] 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.

[21] 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:

- a. A member may be found guilty of professional misconduct if:
 - i. 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
 - ii. The member has been guilty, in the opinion of the Committee, of professional misconduct.
- b. A member may be found to be incompetent if:
 - i. 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

- ii. 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.

[22] Where the parties have presented the Discipline Committee with a Joint Submission and 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 be satisfied that the acceptance of the Joint 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

[23] 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

[24] Mrs. Sheila Mecking, representing the Association as the appointed prosecutor presented the following charges against Ms. Lynch:

[25] Between January 1st, 2022, and May 4th, 2022, both dates inclusive, Tina Lynch, being a member, as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the Act):

- a. Failed to deal fairly with all parties;
- b. Failed to render skilled and conscientious service;
- c. Discredited another member of the Association;
- d. Failed to respect contractual relationships; and
- e. Engaged in conduct that is unbecoming or unprofessional of a REALTOR®.

[26] All as set out with respect to the transaction found in the complaint dated May 4th, 2022, thereby allegedly committing acts of professional misconduct, in violation of, *inter alia*, Articles 3, 12, 19, 20, and 21 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of *the Act*.

Background and Evidence

[27] 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

[28] 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

[29] 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. Lynch in this transaction constitute Professional Misconduct.

Order

[30] Considering the above and in accordance with the Joint Submission, we hereby order the following pursuant to s.23(4) of *the Act*:

- a. Ms. Lynch is ordered to pay a fine of \$1,500 CAD to the Association and is further directed to pay costs to the Association in the amount of \$1,000 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
- b. Ms. Lynch is further ordered to pay the total amount of the fine and hearing costs (\$2,500 CAD) within thirty days of the date of this decision. If payment is not received by the prescribed deadline, Ms. Lynch will be suspended as a member of the Association until such time that the fine and costs are paid in full. The member will be subjected to a reinstatement fee upon reinstatement in the event of a suspension.
- c. Ms. Lynch is further ordered to register for and complete the REALTOR® Code of Ethics Course. Upon completion, Ms. Lynch shall furnish a course completion document to the Registrar.
- d. Ms. Lynch is further ordered to complete the REALTOR® Code of Ethics course within six (6) months of the date of this decision. Should course completion not be attained within the prescribed deadline, Ms. Lynch will be suspended as a member of the Association until such time that proof of course completion has been furnished to

- the Registrar. The member will be subject to a reinstatement fee upon reinstatement in the event of a suspension.
- e. Pursuant to s. 23(4) of *the Act*, the Registrar is directed to publish this decision, with names.
 - f. Pursuant to s. 23(4) of the Act, the Registrar is further directed 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.

[24] 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 4th day of October 2023

//Original signed by Committee Chair//

Karl Merrill, Chair
Chair; on behalf of the Discipline Committee,
Complaint 2022-015

Corrigendum October 23, 2023

Please note that in paragraph 5, line 1, the date "2022" has been substituted for "2021".