



Complaint 2021-089

NBREA v. Brian Belyea

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 (the “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-

Brian Belyea (the “Respondent”)

Date of Hearing: October 17th, 2023, 10:00 am

Place of Hearing: Teleconference

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

Appearances: Joël Michaud, K.C., Counsel for the Association
Brian Belyea, Self-Representing Respondent

The Chair noted persons attending the hearing:

Present: Mr. Karl Merrill, Mr. Drysdale, Mrs. Smith, Mrs. Bodart, Mrs. Stierle-MacNeil, Mr. Michaud, Mr. Belyea, Mrs. Sheila Mecking (Committee Counsel), Mr. Mitchell McLean (Registrar), and Mrs. Jodie Yerxa (Court Reporter).

Executive Summary

- [1] In the fall of 2021, Mr. Belyea had a vacant lot listed for sale in the Cumberland Bay area. The property was described as having a newly developed driveway and pad, with recent site work completed that situated the property to be above the 2018/2019 high water levels. However, it was subsequently determined that the advertised site alterations were, not in fact, above high water levels.
- [2] The Complainant alleges that these actions amount to false advertising and failure to discover pertinent facts about a property.
- [3] Prior to the hearing date, Mr. Belyea and Mr. Michaud, K.C. mutually agreed to present a joint submission to the Committee.
- [4] Under the joint submission, Mr. Belyea admitted guilt to the charge laid against him on behalf of the Association which amounted to one (1) count of professional misconduct under the REALTOR[®] Code of Ethics. The Committee accepted his admission of guilt and, in accordance with the joint submission, ordered that:
- a. The Respondent pay a \$1,000 fine;
 - b. The Respondent pay \$1,000 in costs to the Association;
 - c. The Decision be published with names; and
 - d. A notice be published to the Profession.

Introduction

- [5] In September of 2021 Mr. Belyea listed a vacant lot for sale in the Cumberland Bay area. The property was advertised as having recent site work, including a driveway and pad. The listing stated the property was situated well above the 2018/2019 high water levels.
- [6] The Complainant submitted an offer on the property through their REALTOR[®] shortly after the listing was live on the MLS[®] system. The only conditions on their offer were to determine whether a well and septic system could be installed on the property.
- [7] The Complainant contacted town planning and public safety who advised that there would be no issues with developing the land and installing a septic system and well. The Complainant also contacted a local contractor who further advised that there were no obvious concerns with developing the property. The only concern the Complainant had at this time was that the lot would need to be built up a few feet to safeguard against future flooding. The vendor offered a price reduction from the Complainant's original offer to account for building up the lot.
- [8] After submitting their deposit on the property and nearing closing, the Complainant was advised by their lawyer that the property was flagged as a wetland on the GeoNB website. After being advised of the wetland, the Complainant contacted a Wetland Biologist who agreed to conduct a site survey. The same Biologist had previously completed a site survey on the adjacent lot previously listed by Mr. Belyea earlier the same year.
- [9] The site survey revealed that the property was situated between two Provincially Significant Wetlands (PSW), which both overlapped the lot. The Biologist informed the Complainant that because it was a PSW, the land was considered highly protected, and a Watercourse and Wetland Alteration (WAWA) permit would not be approved. This meant

that any land within the PSW buffer zone would be considered undevelopable, limiting less than half of the land for development. The driveway was also identified to fall within the PSW buffer zone, creating issues with the existing access to the property.

[10] The Biologist also referred the Complainant to a water resource specialist from the Department of Environment who provided a detailed Light Detection and Ranging (LIDAR) reading. The LIDAR reading indicated that the flood levels reached 21 feet above the lot, meaning the property was not above the 2018/2019 flood levels as indicated in the listing.

[11] After discovering the issues noted above, the Complainant sent an email to Mr. Belyea, outlining their concerns. The Complainant requested the vendor to consider a price reduction since half of the property would be undevelopable. The vendor refused.

[12] The Complainant's lawyer then notified the vendor and Mr. Belyea that they would not be moving forward with the purchase of the property due to the access issues and the vendor's unwillingness to negotiate a reduced purchase price. The Complainant requested their deposit be returned.

[13] This complaint concerns allegations from the Complainant that while representing the listing, Mr. Belyea failed to discover that the property was below the recent flood zone, despite representing and advertising that it was above the 2018/2019 high water levels.

[14] The Association submits that this allegation constitutes professional misconduct under the REALTOR[®] Code of Ethics.

[15] The complaint was submitted to the Office of the Registrar primarily to ascertain if it 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 its review on the 24th day of February, 2023, and rendered a decision to forward the matter to the Committee pursuant to s. 21(3)(a) of *the Act*.

[16] In preparation for the hearing to be commenced before the Committee, the Registrar confirmed that Mr. Belyea was a member of the Association at or during the time of the alleged offence. 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.

[17] Mr. Belyea elected to proceed to the Committee's hearing without legal representation and to participate in the discipline process as a self-represented party.

[18] Mr. Belyea elected to submit a joint submission in conjunction with the Association-appointed prosecutor prescribing the fine, costs, and sanctions for the alleged offence and admitted to the substance of the charge.

Jurisdiction

[19] Under section 23(1) of *the Act*, the 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 4th day of May, 2023, the Complaints Committee rendered its decision in complaint matter 2021-089 so ordering the Committee to commence such a proceeding.

[20] The 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 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 Association.

Legal Test

[21] The standard of proof required in a hearing before the Committee refers to the level of proof that must be met for the 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).

[22] 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.

[23] Pursuant to s. 23 of *the Act*, the jurisdiction of the Committee is limited in scope to findings of professional misconduct or incompetence, which 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 member’s 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.

[24] Where the parties have presented the Committee with a joint submission and the respondent has admitted guilt on the charge 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 its credibility ineffective.

Issue

[25] The issue in this complaint matter is whether the 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

[26] Mr. Joël Michaud, K.C., representing the Association as the appointed prosecutor presented the following charge against Mr. Belyea:

Between September 16th, 2021, and November 10th, 2021, both dates inclusive, Brian Belyea, being a member, as defined by An Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):

i. Failed to accurately advertise the property subject to this complaint.

All as set out with respect to the transaction found in the complaint dated December 22nd, 2021, thereby allegedly committing an act of professional misconduct, in violation of Article 13 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, the Committee reviewed the complaint, and the subsequent response between the Complainant and Respondent inclusive of the documentary evidence provided. The Committee 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*, the Committee accepts the joint submission of the parties in that the parties agree that the actions of Mr. Belyea in this transaction constitute professional misconduct.

Order

[30] Considering the above and in accordance with the joint submission, the Committee hereby orders the following pursuant to s.23(4) of *the Act*:

- a. Mr. Belyea is ordered 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 \$1,000 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
- b. Mr. Belyea is further ordered to pay the total amount of the fine and hearing costs (\$2,000 CAD) within thirty days of the date of this decision. If payment is not received by the prescribed deadline, Mr. Belyea will be ineligible for reinstatement 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 fee upon reinstatement.
- c. Pursuant to s. 23(4) of *the Act*, the Registrar is directed to publish this decision, with names.
- d. 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 day of December 2023

//Original signed by Committee Chair//

Karl Merrill, Chair

On behalf of the Discipline Committee,

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