

2019-014

**DECISION OF THE DISCIPLINE COMMITTEE
WITH RESPECT TO PENALTY**

In the matter of a Discipline Committee Hearing held pursuant to Section 23(1) of *An Act to Incorporate the New Brunswick Real Estate Association* (the “Act”):

BETWEEN

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

-and-

Daniel Schurman
RESPONDENT

Date of Hearing: November 17, 2020, 1400hrs

Place of Hearing: Teleconference

Members of Committee: Karl Merrill, Chair
Kevin MacDonald
Chris Drysdale
Alissa Lee
Paul Blanchard, Government Appointee

Appearances: John Townsend, Q.C., Counsel for the Association

The Chair noted persons attending the hearing:

Present: N/A

Via Teleconference: Mr. Merrill, Mr. MacDonald, Mr. Drysdale, Mrs. Lee, Mr. Blanchard, Mr. Townsend, Mr. Schurman, Mr. Mitchell McLean (Registrar), and Mrs. Jodie Yerxa (Court Reporter).

The Chair read the charges, directly quoted from the Notice of Penalty Hearing, submitted by Mr. Townsend, Q.C., counsel for the Association:

Between May 15th, 2013 and June 21, 2013, both dates inclusive, Daniel Schurman, being a member, as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*), and while acting in Dual Agency capacity:

- 1) Failed to ensure that all agreements regarding a real estate transaction are in writing and in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement;

All as set out in the Complaint of [REDACTED] dated June 17, 2019, thereby committing an act of professional misconduct, in violation of Article 6 of the REALTOR® Code (effective March 2016), and punishable under ss. 23(4) and 23(5) of the *Act*.

The charges were contained in the Notice of Penalty Hearing dated 9 November 2020 (file 2019-014), which was entered into the record as Exhibit H.

All parties acknowledged the jurisdiction of the Committee to hold the hearing.

Mr. Schurman, representing himself, confirmed that he wished to proceed to the penalty hearing stage, without a hearing on the merits of the charges.

Submissions:

Mr. Townsend stated, as a result of pre-hearing consultation, he and Mr. Schurman had agreed to make a joint submission respecting the charges.

The Registrar recorded the acknowledgement of the Joint Submission entered into record as Exhibit I, “prosecutors note re: Joint Submission dated 9 November 2020”.

Mr. Townsend stated that joint submission should be accepted by Discipline Committees or Courts unless it can be demonstrated that the proposal is unreasonable or contrary to the public interest. He explained that a joint submission is not intended to take decision making power away from the Discipline Committee. He further explained that a joint submission demonstrates a high degree of cooperation between the parties as they work in a responsible, reasonable, and in good faith manner to resolve issues. He reiterated that the Discipline Committee retains the discretion to reject the terms of the joint submission, but only if the terms are unreasonable or contrary to the public interest.

Mr. Townsend stated that Mr. Schurman was willing to admit to the substance of the complaint and had accepted the proposed fine of \$500 and hearing costs of \$500, both to be paid within 30 days of receipt of the Committee’s decision.

Mr. Townsend recommended that the Discipline Committee accept the joint submission as presented.

Mr. Schurman also agreed upon the recommendation made by Mr. Townsend.

Findings:

The Committee considered the facts as set out in Exhibit I which was jointly submitted by all parties. Recognition was given to the Respondent’s willingness to accept responsibility for the substance of the complaint pursuant to a breach under Article 6 of the REALTOR® Code as alleged in the Notice of Penalty Hearing dated 9 November 2020.

The Committee finds that the Joint Submission is reasonable and hereby orders the following pursuant to s. 23(4) of *the Act*:

1. The Committee Accepts the Joint Submission of the parties dated 9 November 2020 including all terms and conditions contained therein. Mr. Schurman is directed to pay a fine of \$500 and a cost assessment of \$500 on or before 31 December 2020, 1700hrs.
2. Should the noted fine and cost assessment not be received by the deadline indicated, membership in the Association will be automatically suspended. Future membership with the Association will not be considered unless both the fine and cost assessment are paid in full to the Association by Mr. Schurman. Reinstatement of membership will be subject to Association policies, including an absence time limit of two years, reinstatement fees and mandatory course requirements.
3. Pursuant to s. 23(4)(f) of *the Act*, the Discipline Committee directs the Registrar to publish this decision on the Association website: 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.

Dated this 30th day of November, 2020.

Karl Merrill, Chair, on behalf of the Committee
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