

2018-010

**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-

Juliet Yao
RESPONDENT

Date of Hearing: February 17, 2020, 1345hrs

Place of Hearing: Teleconference

Members of Committee: Karl Merrill, Chair
Fanny Bodart
Jeremy Deering
Joan Hayes
Marc Richard, Q.C., 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, Mrs. Bodart, Mr. Deering, Mrs. Hayes, Mr. Richard, Mr. Townsend, Mrs. Yao, Mr. Kevin Butler (Manager), Mr. Zhondong Zhao (Chinese Interpreter), Mr. Mitchell McLean (Registrar), and Mrs. Jill Whitlock (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 September 8, 2018, and September 19, 2018, both dates inclusive, Juliet Yao, being a Member, as defined by The Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):

- (i) did not protect and promote the interests of her Client;
- (ii) did not deal fairly with all parties to a transaction; and

- (iii) failed to disclose to the owner of real estate which was listed for sale of her intention to acquire an interest in the real estate.

All as set out in the complaint of [REDACTED] dated October 12, 2018, thereby committing an act of professional misconduct, in violation of Article 3 of the REALTOR® Code and ss. 38(3) of the Real Estate Agents Act S.N.B. 2011, Ch. 215 (effective March 2016), and punishable under ss. 23(4) and 23(5) of the Act.

The charges were contained in the Discipline Committee File dated 8 February 2021 (file 2018-010), which was entered into the record as Exhibit #1.

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

Mrs. Yao with the assistance of her manager Kevin Butler and a Chinese Interpreter, confirmed that she 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 Mrs. Yao had agreed to make a joint submission respecting the charges. The pre-hearing consultation was conducted at an earlier date between Mrs. Yao, Mr. Butler, Mr. Zhongdong Zhao, and Mr. Mitchell McLean and was held without prejudice.

Mr. Townsend stated that the 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 Mrs. Yao was willing to admit to the substance of the complaint through an admission of guilt respecting all charges. Mrs. Yao had also accepted the proposed fine of \$1000 and hearing costs of \$1000, 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.

Mrs. Yao also agreed upon the recommendation made by Mr. Townsend which was also confirmed by her manager, Mr. Kevin Butler.

Findings:

The Committee considered the facts as set out in Exhibit 1 which was jointly submitted by all parties. Recognition was given to the Respondent's willingness to accept full responsibility for the substance of the complaint pursuant to a breach under Article 3 of the REALTOR® Code as alleged in the Discipline Committee File.

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 February 2021 including all terms and conditions contained therein. Mrs. Yao is directed to pay a fine of \$1000 and a cost assessment of \$1000 on or before 5 April 2021, 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 Mrs. Yao. 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 4 day of March, 2021.



Karl Merrill, Chair, on behalf of the Committee
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