

2020-004A

**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-

Timothy Somerville
RESPONDENT

Date of Hearing: September 27, 2021, 1401hrs

Place of Hearing: Teleconference

Members of Committee: Jean LeBlond, Chair
Chris Drydale
Jeremy Deering
Sarah Justason
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. LeBlond, Mr. Drysdale, Mr. Deering, Mrs. Justason, Mr. Richard, Mr. Townsend, Mr. Somerville, Mr. Stephen Hughson (Manager), 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:

That between January 17, 2019, and January 10, 2020, both dates inclusive, Tim Somerville, 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. Failed to discover facts which a prudent REALTOR® would discover in order to avoid error or misrepresentation; and

2. Failed to render skilled and conscientious service in conformity with the standards of competence which are reasonably expected in the specific real estate discipline in which he was engaged.

All as set out in the Complaint of [REDACTED] and [REDACTED] dated February 10, 2020, thereby committing an act of professional misconduct, in violation of articles 4 and 12 of the REALTOR® Code of Ethics (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 16 September 2021 (file 2020-004A), which was entered into the record as exhibit F.

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

Mr. Somerville, 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. Somerville had agreed to make a joint submission respecting the charges. The pre-hearing consultation was conducted at an earlier date between Mr. Somerville, Mr. Hughson, 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 Mr. Somerville was willing to admit to the substance of the complaint through an admission of guilt respecting all charges. Mr. Somerville had also accepted the proposed fine of \$300 and hearing costs of \$150, 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. Somerville also agreed upon the recommendation made by Mr. Townsend.

Findings:

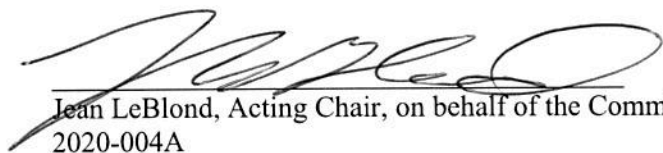
The Committee considered the facts as set out in Exhibits A through F which were jointly submitted by all parties. Recognition was given to the Respondent's willingness to accept full responsibility for the substance of the complaint pursuant to a breach under Article 4 and 12 of the REALTOR® Code of Ethics as alleged in the Discipline Committee File. The Discipline Committee felt that the penalty and hearing costs proposed through voluntary submission were adequate for the lack of attention to detail provided by Mr. Somerville to his buyer clients.

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 27 September 2021 including all terms and conditions contained therein. Mr. Somerville is directed to pay a fine of \$300 and a hearing cost assessment of \$150 on or before 3 December 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 hearing cost assessment are paid in full to the Association by Mr. Somerville. 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: <https://www.nbrea.ca/office-of-the-registrar/discipline-decisions/>

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 19th day of October, 2021.


Jean LeBlond, Acting Chair, on behalf of the Committee
2020-004A