

2020-014

**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-

Mai Thi Ngoc-Nu
RESPONDENT

Date of Hearing: March 10, 2021, 1345hrs

Place of Hearing: Teleconference

Members of Committee: Anne Smith, Chair
Fanny Bodart
Jean LeBlond
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: Mrs. Smith, Mrs. Bodart, Mr. LeBlond, Mrs. Justason, Mr. Richard, Mr. Townsend, Mrs. Ngoc-Nu, Mr. Andre Malenfant (Manager), Mr. Mitchell McLean (Registrar), and Mrs. Colette McLaughlin (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 on May 19th, 2020, Mai Thi Ngoc-Nu, being a member, as defined by The Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):

- 1) failed in her duty to treat all parties to a real estate transaction fairly

All as set out in the complaint of [REDACTED], dated June 11, 2020, thereby committing an act of professional misconduct, in violation of Article 3 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 Discipline Committee File dated 4 March 2021 (file 2020-014), which was entered into the record as Exhibit A.

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

Mrs. Ngoc-Nu, 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. Ngoc -Nu had agreed to make a joint submission respecting the charges. The pre-hearing consultation was conducted at an earlier date between Mrs. Ngoc-Nu, Mr. Malenfant, 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. Ngoc -Nu was willing to admit to the substance of the complaint through an admission of guilt respecting all charges. Mrs. Ngoc-Nu had also accepted the proposed fine of \$1200 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.

Mrs. Ngoc-Nu also agreed upon the recommendation made by Mr. Townsend.

Findings:

The Committee considered the facts as set out in Exhibit A 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 Discipline Committee was deeply concerned by the lack of judgement demonstrated by the respondent in allowing an unlicensed member of the public to show a home on their behalf and in their absence.

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. Ngoc-Nu is directed to pay a fine of \$1200 and a cost assessment of \$500 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. Ngoc-Nu. 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 26 day of March, 2021.



Anne Smith, Chair, on behalf of the Committee
2020-014