



Complaint 2023-016

NBREA v. Art Dadson

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 the Discipline Committee of the NBREA.

Contents

Recitals	2
Executive Summary	3
Introduction	4
Jurisdiction	5
Legal Test	6
Issue	8
Charges	8
Background and Evidence	9
Findings and Reasons	12
Decision	13
Order	14

Recitals

DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO MERIT AND PENALTY

In the matter of a Discipline 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-

Art Dadson (the “Respondent”)

Date of Hearing: June 18th, 2024, 10:30 am

Place of Hearing: Microsoft Teams, Virtual.

Members of Committee: Jean LeBlond, Acting Chair
Don Ketchum
Sarah Justason
Jeff Sherwood
Andrea Stierle-MacNeill, Government Appointee

Appearances: Dominic Caron, Counsel for the Association

The Chair noted persons attending the hearing:

Present: Mr. LeBlond, Mr. Ketchum, Mrs. Justason, Mr. Sherwood, Mrs. Stierle-MacNeill,
Mr. Caron, Mr. Dadson, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee
Legal Counsel) and Ms. Laura Melles (Court Reporter).

Executive Summary

- [1] This Complaint concerns the actions of a REALTOR[®] who failed to represent their client fairly and render skilled and conscientious service.
- [2] Prior to the hearing date, Mr. Dadson and Mr. Caron, on behalf of the Association, mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Mr. Dadson admitted guilt to the charges laid against him on behalf of the Association which amounted to two (2) counts 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:
1. The Respondent pay a \$1000 fine;
 2. The Respondent pay \$1000 in costs to the Association;
 3. The Decision be published with names; and
 4. A Notice be published to the Profession.

Introduction

- [4] This complaint follows the transaction of an income property in the Plaster Rock NB area. The Respondent represented a potential buyer located in Ontario and made commitments to conduct a virtual showing / gather 360° photos of the property within five days of obtaining an accepted offer, as evidenced in text messages and detailed in the Agreement of Purchase and Sale.
- [5] The Respondent ultimately reneged on his commitment to provide his client with the required viewing / photography as his position was that it would be a 14-hour round trip from his Moncton office to the Plaster Rock location.
- [6] The Association's position is that, under the REALTOR® Code of Ethics, the Respondent's failure to provide adequate service to his client and to respect the commitments made to his client constitute professional misconduct.
- [7] A complaint was submitted to the Office of the Registrar primarily to ascertain if the complaint met the threshold required for a finding of professional misconduct for Real Estate Professionals within the province of New Brunswick. The Complainant subsequently filed a Complaint Form on February 27th, 2023. The Complaint and all information presented as evidence supporting the Complainant's claims were presented to the Respondent, who was provided until March 17th, 2023, to respond.
- [8] On March 3rd, 2023, the Complainant sent the Registrar a letter by email requesting that the Complaint be withdrawn. On April 3rd, 2023, the Registrar received a letter from the

Respondent highlighting that the Complaint had been withdrawn, and as such, there was nothing to respond to.

- [9] The withdrawal of a complaint is not currently contemplated under the *NBREA Act* and the consideration of a complaint by the Complaints Committee is mandatory under section 21(1) of the *Act*. As a result, even though the Complainant had requested that the Complaint be withdrawn, the Complaints Committee was legally obligated to review the Complaint and any subsequent documents before the matter could be resolved.
- [10] The Complaints Committee reviewed the evidence presented by the Complainant and the Respondent on July 10th, 2023, and subsequently rendered a decision to forward the matter to the Discipline Committee pursuant to subsection 21(3)(a) of the *Act*.
- [11] In preparation for the hearing before the Discipline Committee, the Registrar confirmed that Mr. Dadson was a member of the New Brunswick Real Estate Association at or during the time of the alleged offence.
- [12] 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.

Jurisdiction

- [13] Under subsection 23(1)(a) of the *Act*, the Discipline 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 August 14th, 2023,

the Complaints Committee rendered its decision in complaint matter 2023-016 directing the Discipline Committee to commence such a proceeding.

[14] The Discipline 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 Discipline Committee is not bound by the *New Brunswick Rules of Court*, they are bound by the *Complaint and Discipline Procedures Manual* as approved by the Board of Directors of the New Brunswick Real Estate Association.

Legal Test

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

[16] 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.

[17] In the case of the Discipline Committee, it may find a member guilty of professional misconduct or to be incompetent. Pursuant to subsections 23(2) and 23(3) of the *Act*, a finding of professional misconduct or incompetence must meet the following criteria:

1. A member may be found guilty of professional misconduct if:

- a. 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
 - b. the member has been guilty, in the opinion of the Committee, of professional misconduct.
2. A member may be found to be incompetent if:
- a. 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
 - b. 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.

[18] 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 has a duty to consider the joint submission.

[19] In the decision of *R. v. Anthony*¹ the Supreme Court adopted a high standard for rejecting joint submissions explaining that, "*rejection [of a joint submission] denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that*

¹ *R. v. Anthony-Cook*, 2016 SCC 43 at para 34.

the proper functioning of the justice system had broken down.” In the context of administrative law, the Committee must decide whether the mutual agreement with regard to sanctions is appropriate, reasonable and fitting, consistent with the range of sanctions imposed in similar circumstances and that the agreement is not contrary to the public interest.² The Committee must approach the joint submission from a position of restraint but may refuse a joint submission should be it so unreasonable as to bring the administration of justice into disrepute or otherwise be contrary to the public interest.

Issue

[20] The issue in this complaint matter is whether the Committee accepts the joint submission of the parties.

Charges

[21] Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charge against Mr. Dadson:

Between October 31st, 2022, and February 27th, 2023, both dates inclusive, Art Dadson, 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 deal fairly with his client; and

² *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII) at para 28.

2. *Failed to render skilled and conscientious service to clients.*

All as set out in the complaint dated February 27th, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3 and 12 of the REALTOR[®] Code of Ethics and punishable under ss. 23(4) and ss. 23(5) of the Act.

[22] It was noted that although two other charges against Mr. Dadson had been initially referred to the Committee, those charges had been dropped by the Association prior to the hearing.

Background and Evidence

[23] The Complainant in this matter met the Respondent through an online real estate mentoring group and notification system. Through the course of their business relationship, the Complainant found a viable investment property situated in the municipality of Plaster Rock, New Brunswick, in October of 2022. While living in Ontario, the Complainant depended on the Respondent to act as their “eyes and ears” throughout the transaction and went insofar as to include a provision in their Agreement of Purchase and Sale to stipulate that the property was to be made available within five days for the Respondent to conduct a 360° virtual tour.

[24] Shortly after the offer was accepted on October 31st, 2022, the Respondent notified the Complainant that he was in Ottawa for a conference and that he would be unable to conduct the showing within the prescribed five-day deadline. A short time later, the Respondent notified the Complainant that he would not be able to conduct the virtual

showing at all as the location of the listing was so far away that it would be a 14-hour round trip, and that he had no other business in the area. In closing, the Respondent indicated to the Complainant that they should request their home inspector to take the required pictures that the Respondent was no longer able to collect.

[25] Due to scheduling availability on the part of the home inspector, the home inspection could only be completed on the date set for the fulfillment of conditions, November 18th, 2022.

[26] There was some confusion as to who had organized to provide the home inspector with access to the property whereas the Respondent indicated that the home inspector was to contact the Seller's agent directly to organize access. The home inspector allegedly did so, but that the Seller's agent failed to return his calls. Unfortunately, no one attended the property on the scheduled date of the home inspection and the home inspection was unable to be completed. This led the Complainant to withdraw their offer as they were uncomfortable placing a deposit on a property they had yet to see.

[27] In a series of text messages exchanged between the Complainant and Respondent, the Complainant expressed their frustration with the situation and the failure to secure the home inspection. The Respondent replied and indicated that this situation is "*normal*", and that "*people aren't going to put that much energy into a deal that nets almost no commission.*"

[28] On December 19th, 2022, the Complainant contacted the Office of the Registrar to see if the information presented constituted professional misconduct. As the Registrar is not a

decision maker in these matters, he referred the Complainant to the Complaints and Discipline process so that the Complaints Committee could render such a decision.

[29] On February 27th, 2023, the Complainant submitted their formal Complaint, with the following message:

“Attached is the filled out complaint form, as well as some supporting documentation.

I’ve sat on this for two months, unsure whether or not to send this – I’m a nurse so I don’t take Professional Conduct complaints lightly. However, I still think there is a potential for this to happen to someone else, so I’ve decided to file.”

[30] The Complaint and accompanying information were provided to the Respondent on the 27th day of February, 2023. No response was provided by the Respondent.

[31] On March 3rd, 2023, the Complainant submitted a letter by email in which the Complainant contradicted their previous emails and requested that their complaint be revoked, stating that:

“I would like to revoke my complaint against Art Dadson, NB Realtor. This was never meant to be escalated to a complaint until I had further information, which was the intent when I originally reached out to the NB Real Estate Association. I think wires have been crossed.”

[32] The Complainant’s request to revoke their complaint was sent to the Respondent, who was provided a response deadline of March 24th, 2023. On April 3rd, 2023, the Respondent notified the Registrar’s office that:

“The client withdrew their complaint and requested it be stricken from my record as it was not her intention to file ANY complaint, she was looking for guidance as to why her deal was voided and sold to someone else. [...]

I have nothing to respond to? Case closed, we are still working together each and everyday!”

[33] At the hearing, Counsel for the Association submitted that he had come to a resolution with the Respondent and was making a joint submission. The Respondent admitted that he failed to adequately represent his client, given the distance between his Moncton office and the listing’s location in Plaster Rock. As part of the joint submission, the Respondent admitted to the charges laid against him by the Association.

[34] 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

[35] Having regard for the evidence and for the submissions made, the Committee accepts the joint submission. It is the finding of the Committee that the joint submission is appropriate, reasonable, and in accordance with the public interest. Further, the acceptance of the joint submission is consistent with matters heard by prior Committees.

Decision

[36] The Committee accepts the joint submission of the parties and the admission of the Respondent that his actions constitute professional misconduct and finds that the Respondent is guilty of professional misconduct pursuant to subsection 23(2)(b) of the *Act*.

[37] Further, the Committee makes the following non-binding recommendations:

- a. Mr. Dadson is recommended to be familiar with the market conditions within any community served, as is expected of all REALTORS[®], both locally and outside of their normal or routine operating area;
- b. Mr. Dadson is encouraged to understand that a Buyer Agent's fiduciary duty and responsibility is to their buyer. It should be thoroughly understood that it is not a Listing Agent's responsibility to accommodate or otherwise look after the client of a Buyer's Agent in their absence; and
- c. Mr. Dadson is reminded that the level of service to be rendered in the course of providing professional services to clients be the same regardless of location, sale price, or commission value.

Order

[38] In light of the above and in accordance with the joint submissions of the parties, we hereby order the following pursuant to subsections 23(4)(d), 23(4)(f) and 23(4)(g) of the *Act* for Mr. Dadson:

1. Mr. Dadson is ordered to pay a fine of \$1000 CAD to the Association and is further directed to pay costs to the Association in the amount of \$1000 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
2. Mr. Dadson is further ordered to pay the total amount of the fine and hearing costs (\$2,000 CAD) within thirty (30) days of the date of this decision. If payment is not made within thirty (30) days, the Registrar is directed to suspend Mr. Dadson from the Register until such time that payment is made.
3. Pursuant to subsection 23(4)(f) of the *Act*, we direct the Registrar to publish this decision with names.
4. Pursuant to subsection 23(4)(f) of the *Act*, we further order the Registrar to distribute a summary of this decision including a website link to the decision to all members of the Association by way of electronic dispatch (Notice to the Profession).

[39] In accordance with subsection 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 1st day of October 2024.

//Original Signed by Committee Chair//

Jean LeBlond, Acting Chair
on behalf of the Discipline Committee,
Complaint 2023-016