



# Complaint 2023-048

NBREA v. Jeremie Richard

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.

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## Recitals

### DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO A JOINT SUBMISSION

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-

Jeremie Richard (the “Respondent”)

Date of Hearing: September 11<sup>th</sup>, 2024

Place of Hearing: Microsoft Teams, Virtual.

Members of Committee: Karl Merrill, Acting Chair  
Anne Smith  
Chris Drysdale  
Jeff Smith  
Andrea Stierle-MacNeill, Government Appointee

Appearances: Dominic Caron, Counsel for the Association  
Sue Duguay, Student-At-Law for the Association

Jeremie Richard, Respondent

The Chair noted persons attending the hearing:

Present: Mr. Merrill, Mrs. Smith, Mr. Drysdale, Mr. Smith, Mrs. Stierle-MacNeill, Mr. Caron, Ms. Duguay, Mr. Richard, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee Legal Counsel) and Mrs. Christine McLaughlin (Court Reporter).

## Executive Summary

- [1] This Complaint concerns the activities of a REALTOR<sup>®</sup> who, while representing first-time home buyers, failed to explain all terms and conditions of a contract, failed to render skilled and conscientious service, and failed to discover facts which a prudent REALTOR<sup>®</sup> would discover.
- [2] Prior to the hearing date, Mr. Richard and Mr. Caron mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Mr. Richard admitted guilt to the charges laid against him on behalf of the Association which amounted to three (3) counts of professional misconduct under the REALTOR<sup>®</sup> Code of Ethics. The Committee accepted his admission of guilt and, in accordance with the joint submission, ordered that:
1. The Respondent pay a \$1250 fine;
  2. The Respondent pay \$1000 in costs to the Association;
  3. The Decision be published including the name of the Member; and
  4. A Notice be published to the Profession.

## Introduction

- [4] This Complaint follows the experience of first-time home buyers as they attempted to purchase their first home. Unfortunately, the Complainants were unsuccessful in the subject transaction, largely due to the Respondent's representation. During the transaction, the Respondent failed to adequately explain the difference between removing an inspection clause from their Agreement of Purchase and Sale, and having an inspection done as part of a subsequent visit. Further, the Respondent failed to advise their clients about the difference between a concrete foundation and a concrete cinder block foundation, and the risks associated with the latter. Lastly, the Respondent failed to assist their clients with the recovery of their deposit following the termination of the agreement.
- [5] The Association's position is that, under the REALTOR® Code of Ethics, the failure to explain all terms and conditions of a contract, the failure to render skilled and conscientious service, and the failure to discover facts which a prudent REALTOR® would discover constitute acts of professional misconduct.
- [6] The 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 Complaint and all information presented as evidence supporting the Complainants' Claims were presented to the Respondent, who was provided until July 10<sup>th</sup>, 2023, to respond. The exchange of information ensued with a response from the Respondent on or about July 11<sup>th</sup>, a response from the Complainants on or about July 25<sup>th</sup>, and a final response from the Respondent on or about August 16<sup>th</sup>, 2023.

- [7] The Complaints Committee reviewed the evidence presented by the Complainants and the Respondent on February 27<sup>th</sup>, 2024, and rendered a Decision on May 9<sup>th</sup>, 2024, to forward the matter to the Discipline Committee pursuant to subsection 21(3)(a) of the *Act*.
- [8] In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Mr. Richard was a member of the New Brunswick Real Estate Association at or during the time of the alleged offence.
- [9] 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**

- [10] 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 May 9<sup>th</sup>, 2024, the Complaints Committee rendered its Decision in Complaint matter 2023-048 ordering the Discipline Committee to commence such a proceeding.
- [11] 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

[12] 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).

[13] 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.

[14] 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.

[15] 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.

[16] In the Decision of *R. v. Anthony*,<sup>1</sup> 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 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.<sup>2</sup> The Committee must approach the joint submission from a position of restraint

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<sup>1</sup> *R. v. Anthony-Cook*, 2016 SCC 43 at para 34.

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



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

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

## Charges

[18] Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charges against Mr. Richard:

*Between December 1<sup>st</sup>, 2022, and June 20<sup>th</sup>, 2023, both dates inclusive, Jeremie Richard, 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 explain all terms and conditions of the contract;*
- 2. Failed to render skilled and conscientious service; and*
- 3. Failed to discover facts which a prudent REALTOR<sup>®</sup> would discover.*

*All as set out in the Complaint dated June 20<sup>th</sup>, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Article 4, 5, and 12 of the REALTOR<sup>®</sup> Code of Ethics and punishable under ss. 23(4) and ss. 23(5) of the Act.*

[19] It was noted that although an additional charge against Mr. Richard had been referred to the Committee, it had been dropped by the Association prior to the hearing.

## Background and Evidence

[20] This Complaint was made by three individuals. In 2022, two of the Complaints (the “Clients”) engaged the services of the Respondent as their REALTOR® for the purchase of their first home. The two Complainants met with the Respondent in December of 2022 to discuss the possibility of purchasing their first home in the Moncton area. At this time, the prospective purchasers provided the Respondent with a list of their wants and needs in a home. The third Complainant (who was the father and father-in-law to the Clients) was not a client of the Respondent until an amendment to the Agreement of Purchase and Sale dated May 9<sup>th</sup>, 2023. From April 27<sup>th</sup> to May 9<sup>th</sup>, 2023, the Respondent’s clients were that Complainant’s son and daughter-in-law.

[21] Several months after the initial meeting, the Respondent contacted his Clients on April 26<sup>th</sup>, 2023 to present them with a potential property that met their needs. He suggested that they attend the property that day to conduct a viewing. At this time, the Clients were not preapproved for financing and had a loose understanding of their price ceiling.

[22] The property in question checked off several boxes that the clients were looking for in their first home. These included a garage, shed, finished basement, and a price within their price range. The list price of this property was \$289,900.

[23] Following the viewing, the Respondent contacted the Clients and notified them that the house would likely sell very quickly due to market conditions at the time, and that they should submit an offer on the property before it was sold. That evening, without having the night to think it over, the Clients submitted an offer on the property for \$283,000.

[24] The following morning, April 27<sup>th</sup>, the Clients were notified that the sellers had indicated that they would be holding offers until the April 30<sup>th</sup>. The Respondent contacted his Clients and told them that if they submitted a new offer at the asking price and without an inspection clause, they would have a greater chance of being the successful buyers.

[25] The Clients were provided a Residential Property Disclosure Statement (RPDS) on April 29<sup>th</sup>, 2023, which had been completed by the sellers on April 27<sup>th</sup>, 2023. The RPDS indicated, at clause 10. D. under the question “are there any mould/mildew problems in the property?”, the sellers indicated “Yes” and included the following comment, “*First sights of dark spots in basement while packing – have professionally looked at and repaired prior to closing.*”

[26] The Clients maintain that they were apprehensive about the removal of the inspection clause, where they did not want to purchase a “*money pit*” for their first home. The Respondent informed them that he could have one of his contacts attend the property on a subsequent visit and that if there were any deficiencies with the property, they could be noted in an amendment and that the sellers would have to make any of the required or noted repairs. A new offer was submitted to the sellers on April 29<sup>th</sup> 2023, which included the increased price and the removal of the inspection condition.

[27] On May 3<sup>rd</sup> 2023, the inspector attended the property with the clients and the Respondent to identify any visible issues with the property. There were a series of items noted as potential deficiencies, but only three were noted in an amendment to the Agreement of Purchase and Sale, dated May 6<sup>th</sup>, 2023.

[28] The Amendment to the Agreement of Purchase and Sale included the following insertions:

- a. *Seller shall fix window that is not sealing properly in bedrooms before closing.*
- b. *Seller shall ensure that a full tank of propane is provided to test the garage heater on or before closing day.*
- c. *Seller shall ensure matching vinyl siding that is in working order is located in the garage on closing day.*
- d. *Financing condition to be on May 9<sup>th</sup>, 2023.*
- e. *Deposit due date to be May 9<sup>th</sup>, 2023.*
- f. *Buyer to provide refundable deposit on May 5<sup>th</sup>, 2023 non-refundable after financing clause is waived/fulfilled.*

[29] The following deletions were also included in the amendment:

- a. Deposit May 5<sup>th</sup>, 2023.
- b. Financing May 5<sup>th</sup>, 2023.

[30] On May 9<sup>th</sup>, 2023, an additional amendment to the Agreement of Purchase and Sale was made to make the following additions:

- a. Seller shall give a copy of all work done and pertaining to the supposed mold issue in the basement room, proof of all findings and reports shall be given to the buyers agent, if any findings have been made pertaining to this subject it will be at the sellers cost to fix all issues and proof of completion shall be given to the buyers agent before closing.

- b. Seller and Buyer agree to having [Complainant] added to the agreement of purchase and sale as a buyer, and may be placed on all legal forms as a purchaser of [subject property].

[31] On May 17<sup>th</sup>, the Clients requested to attend the property again to take measurements to begin preparing for future renovations to the property.

[32] On June 4<sup>th</sup>, the Respondent contacted the seller's agent to verify that the repairs contained in the subsequent amendments to the Agreement of Purchase and Sale had been made. Specifically, the Respondent asked for proof of the mold issue in the basement being remediated, and if the sellers had the propane tank filled so that they could test the heater on closing. The tank had not been filled prior to this, so the Respondent requested that the sellers leave money on the counter of the home so that they could have it filled on closing day. Where these agreements were not made in writing, the money was not left on the counter and the tank had not been filled pursuant to the amendments to the Agreement of Purchase and Sale.

[33] On the day of closing, June 5<sup>th</sup>, 2023, the three Complainants, and a contractor attended the property. The parties discovered that some of the required repairs detailed in the Agreement of Purchase and Sale and subsequent amendments had not been executed. Additionally, there were minor discrepancies with the receipt of the mold /mildew remediation that caused concerns for the clients. The contractor noted during the walk-through that although the listing had indicated that the property had a concrete foundation, the foundation was actually constructed of cinderblocks.

[34] The following day, the lawyers involved in the transaction authorised a local company specialising in foundation repairs and remediation to conduct a thorough assessment of the foundation. The company quoted \$19,020 for a major basement repair, and to unclog the drainage tile.

[35] On June 7<sup>th</sup>, the Respondent had a different contractor attend the property and assessed the work to be completed and quoted the approximate cost as \$12,995, which was lower than the company that the Complainants had contracted to conduct the assessment. The Complainants maintain that they had not asked the Respondent to conduct a secondary assessment.

[36] The following day, the Respondent sent the following email to his clients:

*a. Hello, I feel like there are some issues that need to be addressed, i know this has been a very frustrating transaction and that it has caused severe stress for everybody. I have done plenty of transactions in my career and had never had issues with any clients. [Client] when we wrote this offer I explained to you what it meant to waive the inspection clause, you loved this house and I got it for you at an amazing price. This house would have gone well over 300K in a multiple offer situation, I feel like there has been some hostility towards me as your agent. What I need everybody to realize is that I spent hours working on this for you during this time. I had nothing but your best interest in mind, I explained all the process and if you didn't understand you should have asked for more explanation. I did not force anybody to sign documents and told all parties to read thoroughly through the contract before signing. What i want you to know also and you can reach out to a expert for confirmation on this is*

*even with an inspection this drain tile issue would not of been found, inspectors do not include this in there packaging and from what we had confirmed is that there was no moisture in the walls and no water in the thermal scan. What we need to do now is handle this in the best possible way, going through the legal process is going to inflect months of stress the possibility of being found guilty and being forced to buy the property and a big amount of lawyer fees with the possibility of being liable to cover the selling parties fee now i am not a lawyer and i'm not giving legal advice i just want you to make an educated decision, i know it's frustrating to fix issues with a home you just bought but you're also adding value to your home at the same time, this is not money thrown in the garbage it will come back to you in the future when you sell.*

[37] On June 9<sup>th</sup>, the Respondent texted the Clients that, *“I believe you guys should be receiving an offer from the lawyer I’m giving 1K and I believe the other agent is also so that’s 2k to close it up.”* The Respondent confirmed in his written response to the Complaint that he was willing to contribute “out of his commission monies to aide the couple in “holding [the] deal together.”

[38] The Complainants did not complete the purchase of the transaction under section 19(b) of the Agreement of Purchase and Sale wherein the following clause exists:

- a. *“The Buyer shall have the right, upon providing the Seller with reasonable notice, to conduct a pre-closing inspection of the property to ensure that the property is in the same state of repair and condition as viewed on the date of this agreement. If the property is not in the same state of repair and condition and the Seller is unable or*

*unwilling to make the necessary repairs, then this agreement may become null and void at the Buyer's discretion.”*

[39] On or about July 19<sup>th</sup>, 2023, the Seller's agent released the deposit to the Sellers under the insertion contained in the amendment to the Agreement of Purchase and Sale dated May 6<sup>th</sup>, 2023, which stated, “*Buyer to provide refundable deposit on May 5<sup>th</sup>, 2023 non refundable after financing clause is waived/fulfilled*”.

[40] The matter of the deposit release and the ambiguity created between clause 19(b) and the insertion of the non-refundable deposit statement in the subsequent amendment are not at issue in this matter and are outside of the jurisdiction of this Committee.

[41] At the hearing, Counsel for the Association submitted that it had come to a resolution with the Respondent and was making a joint submission. The Respondent admitted that he made mistakes during this transaction and that the lessons learned as part of this process would be implemented in all of his future transactions and client relationships. As part of the joint submission, the Respondent admitted to the revised charges laid against him by the Association.

[42] 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 Complainants 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

[43] 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

[44] The Committee accepts the joint submission of the parties in that the parties agree that the actions of Mr. Richard constitute professional misconduct and finds that the Respondent is guilty of professional misconduct pursuant to section 23(2)(b) of the *Act*.

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

- a. Mr. Richard is encouraged to understand that the level of service to all clients should be of the highest standards. This is particularly important in relation to first-time homebuyers given their general lack of understanding of the various forms being signed, contractual obligations, and the ramifications of waiving certain conditions.
- b. Mr. Richard is encouraged to seek the advice and guidance of professionals outside of the transaction where circumstances warrant, such as legal counsel and his manager.

## Order

[46] 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. Richard:

1. Mr. Richard is ordered to pay a fine of \$1250 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. Richard is further ordered to pay the total amount of the fine and hearing costs (\$2,250 CAD) within thirty days of the date of this Decision. If payment is not made within 30 days, the Registrar is directed to suspend Mr. Richard 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 the Respondent's name.
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).

[47] 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 17<sup>th</sup> day of October, 2024.

//Original Signed by Committee Chair//

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Karl Merrill, Chair  
on behalf of the Discipline Committee,  
Complaint 2023-048