



Complaint 2024-023

NBREA v. Paul Burns

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-

Paul Burns (the “Respondent”)

Date of Hearing: September 11th, 2024, 1:00 pm

Place of Hearing: Microsoft Teams, Virtual.

Members of Committee: Alissa Lee, Acting Chair
Gordon Breau
Chris Drysdale
Jeff Smith
Andrea Stierle-MacNeill, Government Appointee

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

Paul Burns, Respondent

The Chair noted persons attending the hearing:

Present: Mrs. Lee, Mr. Breau, Mr. Drysdale, Mr. Smith, Mrs. Stierle-MacNeill, Mr. Caron, Mr. Burns, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee Legal Counsel) and Mrs. Christine McLaughlin (Court Reporter).

Executive Summary

- [1] This matter concerns the managerial activities of a REALTOR[®] who, while operating a trust account for a Real Estate Agent (company), failed to render proper accounting to the REALTOR[®]'s clients with respect to monies and other property of the clients which have been entrusted to the care of the REALTOR[®], failed to provide adequate supervision of the Principal's trust deposits, and engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR[®].
- [2] Prior to the hearing date, Mr. Burns and Mr. Caron mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Mr. Burns 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[®] Code of Ethics. The Committee accepted his admission of guilt and, in accordance with the joint submission, ordered that:
1. The Respondent pay a \$3,500 fine;
 2. The Respondent pay \$1,000 in costs to the Association;
 3. The Respondent be suspended until February 7, 2025;
 4. The Respondent complete the Pre-Licensing Course as a condition of re-entry to the Profession;
 5. The Decision be published with names; and
 6. A Notice be published to the Profession.

Introduction

- [4] This complaint follows a decision of the Energy and Utilities Board (“the EUB”) in matter *Financial Consumer Services Commission v. Century 21 A&T Countryside Realty Inc. and Paul Burns*, Matter no. CA-002-2022 . This was the EUB’s first decision respecting the *Real Estate Agents Act*. The NBREA Board of Directors, having reviewed the decision, considered that the actions of the Respondent constituted professional misconduct under the *Act*.
- [5] The Association’s position is that, under the REALTOR® Code of Ethics, the failure to render proper accounting to the REALTOR®’s Client(s) with respect to monies and other property of the Client(s) which have been entrusted to the Care of the REALTOR®, the failure to provide adequate supervision of the Principal’s trust deposits, and the engagement in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR® constitutes acts of professional misconduct.
- [6] The complaint was submitted to the Office of the Registrar as a resolution of the Board of Directors of the New Brunswick Real Estate Association (“the Board”), primarily to ascertain if the actions contained in 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 Board’s Claims were presented to the Respondent, who was provided until August 30th, 2024, to respond. The Respondent filed a response on August 15th, 2024.

- [7] Pursuant to subsection 22(6)(c) of the *Act*, the Complaint was submitted by the Board of Directors, by way of a resolution, directing the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence against the member.
- [8] In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Mr. Burns 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 Board of Directors, hear and determine allegations of professional misconduct or incompetence against a member of the Association. At the Board of Directors meeting conducted on July 18th, 2024, the Board of Directors rendered a resolution, thereby instructing 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 members’ 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*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 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

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

² *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 charge against Mr. Paul Burns:

Between June 1st, 2019, and February 26th, 2024, both dates inclusive, Paul Burns, 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 render proper accounting to the REALTOR[®]'s Client with respect to monies and other property of the Client which have been entrusted to the Care of the REALTOR[®];*
- 2. Failed to provide adequate supervision of the Principal's trust deposits; and*
- 3. Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR[®].*

All as set out in the resolution of the NBREA Board of Directors, dated July 18th, 2024, and the EUB Decision in Matter no. CA-002-2022, thereby allegedly

committing acts of professional misconduct, in violation of, inter alia, Article 3, 21, and 22 of the REALTOR® Code and punishable under ss. 23(4) and 23(5) of the Act.

Background and Analysis of the Evidence

[19] On February 7th, 2024, the Energy and Utilities Board (“EUB”) released a decision involving NBREA’s co-regulating partner the Financial and Consumer Services Commission (“the Commission”) against the company Century 21 A&T Countryside Realty Inc. (“the Agent”) along with its manager, the Respondent.

[20] As a point of reference, it is important to note that the Financial and Consumer Services Tribunal, established in 2013 under the *Financial and Consumer Services Commission Act* was disbanded in June of 2023. The Tribunal’s jurisdiction was transferred to the Energy and Utilities Board on or about the same date by order of the Provincial Government.

[21] Under the decision issued by the EUB, matter CA-002-2022, the EUB ordered that:

- a. The Agent’s licence be permanently cancelled;
- b. The Agent is to pay a \$30,000 *administrative penalty*;
- c. Mr. Paul Burns’ licence as a manager be permanently cancelled;
- d. Mr. Paul Burns’s be restricted from reapplying for a salesperson’s licence for one year; and
- e. Mr. Paul Burns to pay a \$15,000 *administrative penalty*.

- [22] The order stems from breaches of subsections 10(1.2), 20(1), 43.1(2), and 43.1(3) of the *Real Estate Agents Act*. It must be noted that the actions of the owner and any other Agents referenced in the EUB decision are not at issue in this disciplinary matter.
- [23] The day-to-day operations of the Agent were managed by Ms. Audrie Beaulieu, the owner and member of the public, and the manager of record Mr. Paul Burns, a member of NBREA.
- [24] As part of its delegated mandate under the *Real Estate Agents Act*, the NBREA inspection team discovered a trust account shortage at the Agent in the amount of \$57,838. It was established that the company eventually transferred money back into the trust account to mostly replenish this shortage.
- [25] After the Commission's compliance review, the owner and the Respondent provided undertakings to the Commission's Director of Consumer Affairs in November of 2019 that they would provide monthly bank records to the Commission. However, the owner and the Respondent did not comply with their undertakings and despite these undertakings, shortages in the trust account continued to happen regularly.
- [26] One particularly concerning shortage was in February 2020. The shortage showed that \$21,504.50 was missing from the Agent's trust account. The owner justified this as a bank error. In August 2023, the Commission learned that most of the shortage was the result of the owner transferring \$20,000 from the trust account to the operating account.
- [27] There were 13 instances of early withdrawal of trust funds. The Agent tried to justify these by stating that the transaction had closed earlier, however, there was no documentation to support these claims.

[28] The EUB concluded that the Agent failed to adhere to:

- f. the undertakings with the Commission;
- g. the requirement of an independent accounting firm to provide the Commission with records of the trust account;
- h. the requirement to provide audited financial statements;
- i. the requirement to report any trust account deficiencies;
- j. the requirement to file bank reconciliations; and
- k. the requirement to keep adequate books, records, and accounts of the Agent.

[29] The findings of the Tribunal are clear. The Respondent failed in their duty to adequately supervise the Agent, and as a result, funds from the trust account were misappropriated. Trust accounts are sacrosanct. The Manager, a member of NBREA, is ultimately responsible to adequately supervise the Agency and its trust account.

[30] We agree, as submitted in the joint submission of the parties, that the contents of the EUB decision constitute acts of Professional Misconduct under articles 3, 3.6, 21, 22 and 22.6 of the REALTOR[®] Code of Ethics which provide as follows:

3. A REALTOR[®] shall protect and promote the interests of his or her Client. This primary obligation does not relieve the REALTOR[®] of the responsibility of dealing fairly with all parties to the transaction.

3.6 A REALTOR[®] shall, at all times, be able to render a proper accounting to the REALTOR[®]'s Client with respect to monies and other property of the Client which have been entrusted to the care of the REALTOR[®];

21. A REALTOR[®] shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR[®].

22. The principal of a brokerage is required to supervise and control the activities of the REALTOR® and other personnel for whom he/she is responsible.

22.2 In determining the adequacy of supervision, all relevant factors may be considered, including, but not limited to:

- i. Whether the principal had undertaken all reasonable steps to ensure compliance by all REALTORS® and other personnel,
- ii. whether each transaction was reviewed by the principal, including trust deposits, sales record sheets, Listing and sales contracts, and
- iii. Whether the principal took remedial action when a violation by a REALTOR® or other personnel was discovered.

[31] In the decision *NBREA v. Lorraine Goguen-Doiron*, Complaint 2019-011, a previous panel of this Committee determined that misappropriation of monies held in trust also constitutes conduct that is unbecoming of a REALTOR® in violation of Article 21 of the REALTOR® Code.

[32] In Complaint 2019-011, the salesperson misappropriated amounts of money significantly lower than the matter at hand. Amongst other things, the Respondent received a 6-month suspension and was mandated to redo the Pre-licensing requirements set by the Association's Committee of Examiners.

[33] Simply put, misappropriation of funds – whether for a nefarious purpose or by negligence – is a very serious offence. Therefore, we agree with the parties that the conduct of the

Respondent rises to the level of conduct unbecoming, unprofessional, or disgraceful of a REALTOR®

[34] At the hearing, Counsel for the Association submitted that it had come to a resolution with the Respondent and was making a joint submission. As part of the joint submission, the Respondent admitted to the charges laid against him by the Association. The Respondent also indicated at the hearing that it was intention to retire and to no longer practice as a REALTOR®.

[35] 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

[36] 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 panels of this Committee.

Decision

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

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

1. Mr. Burns is encouraged to understand that the management of trust accounts and those deposits held in trust are sacrosanct within our profession. Further, in cases of early closings and/or the early withdraw of funds held in trust by the agent must be supported by documentary evidence.
- m. Mr. Burns is encouraged to remember that good record keeping is a sign of good management, and that mismanagement by a licensed manager or unlicensed owner are no excuse for wrongdoing.

Order

[39] In light of the above and in accordance with the joint submissions of the parties, we hereby order the following pursuant to subsection 23(4)(d), 23(4)(f) and 23(4)(g) of the *Act* that:

1. Mr. Burns is ordered to pay a fine of \$3,500 CAD to the Association and is further directed to pay costs to the Association in the amount of \$1,000 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
2. Mr. Burns is further ordered to pay the total amount of the fine and hearing costs (\$4,500 CAD) within thirty days of the date of this decision.
3. Mr. Burns shall remain suspended as a member of the Association until the 7th of February 2025. The member will be required to apply for reinstatement of membership following the suspension period at a cost established through the Association By-Laws at the time of reinstatement.
4. Mr. Burns is directed to retake the Pre-Licensing Exam and Practicum, inclusive of the PLE practicum, offered by the Education department of the New Brunswick Real Estate Association and pass the Pre-Licensing Exam at a cost established by the Association By-Laws at the time of application.
5. Mr. Burns shall be ineligible for reinstatement as a member in good standing until such time that he:
 - a. Has paid all fines due to the Association,
 - b. Has paid all costs due to the Association,

- c. Has successfully completed the Pre-Licensing Course, inclusive of the PLE Practicum, and
 - d. Has successfully passed the Pre-Licensing Exam with a favourable result as set by the Committee of Examiners through their policies at the time of course completion.
6. Pursuant to s. 23(4) of the Act, the Registrar will publish this decision with names, to include, but not limited to, the Association's website and CanLII.
 7. 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).

[40] 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 3rd day of February, 2025.

//Original signed by the Acting Chair//

Alissa Lee, Acting Chair
on behalf of the Discipline Committee,
Complaint 2024-023