



Complaint 2023-055

NBREA v. the Respondent

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

In the matter of a Discipline Committee Hearing held pursuant to Subsection 23(1) of
The New Brunswick Real Estate Association Act (the “Act”):

BETWEEN

The New Brunswick Real Estate Association (the “Association”)

-and-

The Respondent

Date of Hearing: December 10, 2024

Place of Hearing: Microsoft Teams, Virtual

Members of Committee: Anne Smith, Chair
Mandy Barrieau
Fanny Bodart
Chris Drysdale
Andrea Stierle-MacNeill, Government Appointee

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

The Respondent
Robert Basque, Counsel for the Respondent

The Chair noted persons attending the hearing:

Present: Ms. Smith, Ms. Barrieau, Ms. Bodart, Mr. Drysdale, Ms. Stierle-MacNeill, Mr. Caron, Ms. Duguay, Ms. Respondent, Mr. Basque, Mr. Mitchell McLean (Registrar), Ms. Sheila Mecking (Committee Legal Counsel), Ms. Lauren Sorel (Committee Legal Counsel), and Ms. Christine McLauchlan (Court Reporter).



Executive Summary

- [1] This Complaint concerns the activities of a REALTOR® who committed a breach by failing to seek advice from outside professionals, failing to render a skilled and conscientious service and failing to deal fairly with all parties.
- [2] Prior to the hearing date, Ms. Respondent and Mr. Caron mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Ms. Respondent admitted guilt to the charges laid against her on behalf of the Association which amounted to three (3) counts of professional misconduct under the REALTOR® Code of Ethics. The Committee accepted her admission of guilt and, in accordance with the joint submission, ordered that:
1. The Respondent pay a \$500 fine;
 2. The Respondent pay \$500 in costs to the Association;
 3. The Decision be published without the name of the Member; and
 4. A Notice be published to the Profession without the names of the Member or her employer.

Introduction

- [4] This Complaint concerns allegations that the Respondent, while representing the Complainants' landlord, failed to respect the Complainants' lease or to attempt to seek appropriate advice while dealing with the tenants and their rights.
- [5] The Association's position is that, under the REALTOR® Code of Ethics, the failure to seek advice from outside professionals, the failure to render a skilled and conscientious service and the failure to deal fairly with all parties 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 August 8th, 2023, to respond. The exchange of information ensued with a response from the Respondent on or about August 9th, 2023.
- [7] The Complaints Committee reviewed the evidence presented by the Complainants and the Respondent on April 3rd, 2024, and rendered a Decision on July 24th, 2024, to forward the matter to the Discipline Committee pursuant to paragraph 21(3)(a) of the Act.
- [8] In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Ms. Respondent 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 paragraph 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 July 24th, 2024, the Complaints Committee rendered its Decision in Complaint matter 2023-055 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*, it is 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, submissions 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-Cook*,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, is consistent with the range of sanctions imposed in similar circumstances and 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

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

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.

Charges

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

Between July 7th, 2023, and July 18th, 2023, both dates inclusive, The Respondent, being a member as defined by An Act to Incorporate the New Brunswick Real Estate Association, c. 115, S.N.B. 1994 (the Act):

- (i) Failed to seek advice from outside professionals;*
- (ii) Failed to render a skilled and conscientious service; and*
- (iii) Failed to deal fairly with all parties.*

All as set out in the Complaint dated July 19th, 2023, and documents subsequently produced, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 10, and 12 of the REALTOR® Code of Ethics and punishable under subss. 23(4) and 23(5) of the Act.

Background and Evidence

[19] This Complaint was filed by the tenants of a property placed up for sale by the Respondent. The Respondent scheduled a visit with the Complainants shortly after they were informed that the property was being sold. The Respondent arrived more than 30 minutes late for this meeting, viewed the property, commended the cleanliness of the unit, mentioned that lease termination was subject to three months' notice, and confirmed that she would return the following day to copy the apartment key and take photos.

[20] The next day, the Respondent took the key to make a copy and advised the Complainants there might be a delay in returning the key. The Complainants informed the Respondent of their time constraints due to their work schedules. After 10:00 p.m. that night, the Complainants received a text message from the Respondent to say she would bring the key to the house at 11:00 a.m. the next day.

[21] At 11:30 a.m. the next day, the Respondent had still not appeared, which led the Complainants to text her to make sure she would be coming before they had to leave. At 11:43 a.m., the Respondent replied that she was on her way to Canadian Tire and had not yet copied the key. On arriving more than one hour late, the Respondent explained she had gone to two stores because Canadian Tire cost more. The Respondent then requested to record a video for her social media site, to which the Complainants consented.

[22] Two days after listing the property for sale, the Respondent contacted the Complainants to schedule a showing. In the course of the messages between them, the Respondent stated that their landlord “*can not stay in debts to satisfy you.*” After the showing, the Respondent thanked the Complainants for keeping the house tidy and then asked them what they thought about the three months’ notice for terminating their lease. The Complainants replied that they would be consulting the Coalition for Tenants Rights before responding.

[23] After speaking with the Coalition, the Complainants emailed the Respondent to state that they would not be terminating their lease before the lease end date and that, based on the information provided by the Coalition, the new property owners would have to notify the Complainants three months before the end of their lease if they did not wish to renew.

[24] In a text message to the Complainants, the Respondent indicated that she recommended a smooth transition and agreed to three months' notice for terminating their lease. The Respondent mentioned that she would be using the \$1,200 deposit to hire a cleaning company because the new owner was allergic to cats, and advised the Complainants, "*don't make things difficult so it will be difficult for everybody.*" The Complainants replied that their landlord had never registered their deposit with SNB and should do so.

[25] At the hearing, Counsel for the Association submitted that he 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 her by the Association. The Respondent also acknowledged that she had not been aware of tenants' rights and had been late to the appointments scheduled with the Complainants.

[26] 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

[27] 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

[28] The Committee accepts the joint submission of the parties in which the parties agree that Ms. Respondent's actions constitute professional misconduct and finds that the Respondent is guilty of professional misconduct pursuant to paragraph 23(2)(b) of the Act.

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

- a. Ms. Respondent is encouraged to understand that she is required to maintain the highest standards in the level of service provided to all clients. This is particularly important in relation to properties with tenants, since applicable legislation exists which Real Estate Professionals are required to understand and comply with.
- b. Ms. Respondent is encouraged to request advice or assistance regarding a transaction from outside professionals, such as legal counsel or her manager, when circumstances warrant.

Order

[30] In light of the above and in accordance with the joint submissions of the parties, we hereby order the following pursuant to paragraphs 23(4)(d), 23(4)(f) and 23(4)(g) of the Act for Ms. Respondent:

1. Ms. Respondent is ordered to pay a fine of \$500.00 CAD to the Association and is further directed to pay costs to the Association in the amount of \$500.00 CAD as reimbursement for costs incurred in the prosecution of this complaint matter.
2. Ms. Respondent is further ordered to pay the total amount of the fine and hearing costs (\$1,000.00 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 Ms. Respondent from the Register until such time that payment is made.
3. Pursuant to paragraph 23(4)(f) of the Act, we direct the Registrar to publish this decision without the Respondent's name.
4. Pursuant to paragraph 23(4)(f) of the Act, we further order the Registrar to distribute a summary of this decision, without the Respondent's or the Respondent's employer's name, including a website link to the decision to all members of the Association by way of electronic dispatch (Notice to the Profession).

[31] 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 12th day of February 2025.

//Original Signed by Acting Chair//

Anne Smith, Acting Chair
on behalf of the Discipline Committee,
Complaint 2023-055