



NBREA AAINB

OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE



COMPLAINT 2023-011

NBREA v. JANIK NADEAU

DISCIPLINE DECISION

This Decision was 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*.

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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-

Janik Nadeau (the “Respondent”)

Date of Hearing: April 2, 2025

Place of Hearing: Microsoft Teams, Virtual

Members of Committee: Fanny Bodart, Acting Chair
Parise Cormier
Melissa Doucet
Kelly Cavigny Bourque
Andrea Stierle-MacNeill, Government Appointee

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

Janik Nadeau, Respondent
Virginia Gillmore, Counsel for the Respondent

The Chair noted persons attending the hearing:

Present: Mrs. Bodart, Mrs. Cormier, Mrs. Doucet, Mrs. Cavigny Bourque, Mrs. Stierle-MacNeill, Mr. Caron, Ms. Duguay, Mrs. Nadeau, Mrs. Gillmore, Mr. Mitchell McLean (Registrar), Ms. Sheila Mecking (Committee Legal Counsel), Ms. Lauren Sorel (Committee Legal Counsel), and Mrs. Christine McLauchlan (Court Reporter).



Executive Summary

- [1] This Complaint outlines the actions of a REALTOR® who is alleged to have engaged in professional misconduct.
- [2] The Respondent is alleged to have misled a client, failed to promote and protect the client's interests, not treated all parties involved in the intended transaction fairly, not disclosed to the client the benefits a co-REALTOR® may receive, and failed to render a skilled and conscientious service (collectively the "Allegations").
- [3] On March 14, 2025, the Respondent was notified by the Association that the Discipline Committee (the "Committee") had scheduled a hearing for April 2-4, 2025 (the "Notice of Hearing").
- [4] Prior to the hearing date, the Respondent, through her legal counsel, and the Association, through its legal counsel, mutually agreed to present a joint submission to the Committee.
- [5] Pursuant to the joint submission, the Respondent admitted to the charges laid against her on behalf of the Association which amounted to six (6) counts of professional misconduct under the REALTOR® Code of Ethics. The Committee accepted the Respondent's admission of guilt and issued an order in accordance with the joint submission.

Introduction

- [6] The Association's position is that, under the REALTOR® Code of Ethics, the Allegations, if founded, constitute acts of professional misconduct.
- [7] The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent on July 10th, 2023, and by decision dated August 14th, 2023, referred the matter to the Committee pursuant to subsection 21(3)(a) of the *Act*.

Jurisdiction

- [8] The Respondent confirmed at the hearing that she had no objection to the composition and jurisdiction of the Committee.

Legal Test

- [9] The standard of proof required in a hearing before the Committee refers to the level of proof that must be met for the 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).
- [10] The Association has the onus of proving the Allegations against the Respondent, on a balance of probabilities, through documentation and testimony given under oath or affirmation.

[11] In the case of the Committee, it may find a member of the Association guilty of professional misconduct or incompetence. 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.

[12] Where the parties have presented a joint submission to the Committee and the Respondent has admitted guilt on the charges contained in the Notice of Hearing, the Committee has a duty to consider the joint submission.

[13] In the decision of *R. v. Anthony-Cook*,¹ the Supreme Court of Canada 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

¹ *R. v. Anthony-Cook*, 2016 SCC 43 (“Anthony-Cook”).

promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.”²

[14] The public interest test, as established in *Anthony-Cook*, is widely accepted and unequivocally applies to disciplinary bodies.³

[15] When considering the joint submission, 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.⁴ 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

[16] The issue to be determined by the Committee is whether it should accept the joint submission presented by the parties.

Charges

[17] Counsel for the Association presented the following charges against the Respondent:

² *Ibid*, at para 34.

³ *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303, at para 14.

⁴ *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), at para 28.

Between December 18th, 2022, and February 16th, 2023, both dates inclusive, Janik Nadeau being a member, as defined by The Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act) has allegedly:

- (i) Misled her client;*
- (ii) Failed to promote and protect the interest of her client;*
- (iii) Failed to treat all parties to a transaction fairly;*
- (iv) Failed to disclose benefits of co-REALTOR® to her client;*
- (v) Failed to render a skill[ed] and conscientious service; and*
- (vi) Engaged in conduct that is unprofessional.*

All as set out in the complaint dated February 16th, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 8, 12 and 21 of the REALTOR® Code and punishable under ss. 23(4) and 23(5) of the Act.

Background and Evidence

[18] During the hearing, the Committee received as evidence and carefully reviewed the documents marked as Exhibit 1, a list of which documents is attached to this Decision as Schedule “A”.

[19] This Complaint was made by an out-of-province purchaser who was represented by the Respondent in an intended property transaction for the purchase of a home in Saint-Joseph, New Brunswick (the “Intended Transaction”).

[20] The Complainant placed an offer on a property and entered into a dual agency agreement with the Respondent and the listing REALTOR®, Naomie Caron. Early in the Intended Transaction, the Complainant sought recommendations for a local property management company from the Respondent. The Complainant planned to be out of the province during

the Intended Transaction closing, and for several weeks thereafter, and was seeking to hire a property management company to oversee the property in his absence.

[21] The Respondent suggested the Complainant engage the services of Gold Estate Management, which was owned and managed by the listing REALTOR®. The Complainant was unaware at the time of the recommendation that the property management company, suggested by the Respondent, was also owned and managed by the listing REALTOR®.

[22] The Respondent did not specifically indicate the property manager was the listing REALTOR®, nor did she specifically state that the property manager was working as a REALTOR® in the same office as her. The Respondent did, however, provide the Complainant with the property manager's name at the time of the referral. At this time, the Complainant had already entered into the dual agency agreement with the Respondent and the listing REALTOR®. In text message correspondence between the Complainant and Respondent, following the referral to Gold Estate Management, the Respondent continually referred to the listing REALTOR® as the "other agent" or the "property manager". It was not initially clear to the Complainant that the listing REALTOR® and the Gold Estate Management property manager were the same person.

[23] Throughout the communication with the Complainant, the Respondent consistently referred the Complainant to Gold Estate Management for property management services. In particular, the Respondent recommended Gold Estate Management to conduct the pre-closing inspection for the Intended Transaction on the Complainant's behalf.

[24] After signing the Purchase and Sale Agreement (the "Agreement") for the Intended Transaction, the Complainant's legal counsel discovered that the Agreement did not

include the addition of a tractor and snowblower, as originally requested by the Complainant. The Respondent had previously confirmed to the Complainant that these items would be included in the list of inclusions in the Agreement, but they were not, due to the Respondent's error.

[25] The Complainant's counsel suggested the Respondent complete an amendment to add the items to the Agreement. After completing the amendment to the Agreement, the Respondent contacted the Complainant stating that the snowblower and tractor were no longer available to be added to the Agreement.

[26] As a result, the Complainant decreased his offer by \$1,000 to compensate for the items not being included in the Agreement. The Complainant's reduced offer was not accepted prior to the expiration date.

[27] On the day before closing, the Complainant visited the property with the Respondent. Upon arrival, the water pump and electricity were not working. The listing REALTOR® was able to get it working by turning on a breaker. About an hour later, they returned to the property to discover a water pipe had burst in the kitchen, causing water to leak into the basement. The vendor was advised of the issue and took immediate action to repair the damage.

[28] On the scheduled day of closing, the Complainant was advised that the necessary repairs had been completed, however, when he requested proof of same, a receipt showing the work completed was not disclosed to the Complainant. This led the Complainant to express concerns to the Respondent about proceeding with the Intended Transaction. The Respondent then misled the Complainant by advising that failure to close would result in

the loss of the Complainant's downpayment. Specifically, the Respondent sent the Complainant a text message stating that:

"She need the final inspection before end of day signed to close the deal if you dont do that during open hours and décide only to make the deal fall through. ...you will loose the deal and your deposit and the seller can come.back at you....which we all dont want that ...after inspection done and papiers done you will have your key to your property"

[29] Ultimately, the Complainant decided not to proceed with the Intended Transaction.

[30] At the hearing, Counsel for the Association submitted that it had come to an agreement with the Respondent and was making a joint submission. As part of the joint submission, the Respondent admitted to the charges in the Notice of Hearing. She acknowledged that she omitted the chattels from the Agreement but attempted to negotiate a price reduction to account for this error. The Respondent also acknowledged that she did not explicitly advise the Complainant of the identity of the property manager, stating that this was an unintentional oversight. She recognizes her wrongdoing and has committed to refraining from such behaviour in the future.

[31] 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 submitted by 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

[32] After receiving the evidence presented by both parties and considering the submissions made at the hearing, the Committee accepts the joint submission. The Committee finds that the joint submission is appropriate, reasonable, and is sufficient to protect the public interest.

Decision

[33] The Committee accepts the joint submission of the parties and finds that the Respondent is guilty of professional misconduct pursuant to section 23(2)(b) of the *Act*.

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

- a. In the future, the Respondent is advised to maintain a comprehensive list of chattels to be included in the Purchase and Sale Agreement. The omission of the tractor and the snowblower from the list of inclusions would have been avoided had the Respondent maintained an updated list of inclusions throughout the Intended Transaction.
- b. The Respondent is encouraged to be mindful in her communications with clients. Communication via text messaging and email can lead to misunderstandings, and it is the Respondent's responsibility to ensure that her messages to clients are clear and unambiguous.

Order

[35] The Committee hereby orders the following:

1. The Respondent pay a fine in the amount of \$3,500.00 CAD to the Association.
2. The Respondent pay costs in the amount of \$1,500.00 CAD to the Association as partial reimbursement for costs incurred in the processing of the Complaint.
3. The Respondent shall pay the fine and costs outlined in paragraphs 1 and 2 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 the Respondent's membership in the Association until such time that payment is made.
4. The Respondent shall, within six (6) months of the date of this Decision, attend a three (3) hour training session delivered by the Director of Education of the Association to cover Modules 1-11 of the 2019 Mandatory Continued Professional Development Curriculum. The Respondent must successfully complete a learning comprehension assessment as directed by the Director of Education following the completion of the training session.
5. Pursuant to subsection 23(4)(f) of the *Act*, that the Registrar publish this Decision, including the Respondent's name, on the Association's website.
6. Pursuant to subsection 23(4)(f) of the *Act*, that the Registrar distribute a summary of this Decision, including the Respondent's name and a website link to the Decision, to all members of the Association by way of email (Notice to the Profession).

7. It is the Respondent's responsibility to ensure that she fulfills the requirements in paragraphs 1, 2, 3 and 4, and a failure to fulfill the requirements may result in the suspension of the Respondent's membership in the Association.

[36] 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 5th day of May 2025.

//Original signed by committee chair//

Fanny Bodart, Acting Chair
on behalf of the Discipline Committee,
Complaint 2023-011

Schedule “A” – Documents reviewed by the Discipline Committee

<u>Exhibit</u>	<u>Description</u>
1.	<p><i>Book of Documents</i> consisting of a bound book of documents including:</p> <ul style="list-style-type: none">• Complaint and enclosures, dated February 16, 2023• Respondent’s Response and enclosures, dated March 9, 2023• Additional Comments from the Complainant, dated March 20, 2023• Additional Comments from the Respondent, dated March 28, 2023• Decision of the Complaints Committee, dated August 14, 2023• Notice of Discipline Hearing, dated March 14, 2025• Notice of Panel Composition, dated March 26, 2025