



# NBREA AAINB

OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE



## COMPLAINT 2023-030

### NBREA v. ELIZABETH FEARON

# 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-

Elizabeth Fearon (the “Respondent”)

Date of Hearing: April 23, 2025

Place of Hearing: Virtually, via Microsoft Teams

Members of Committee: Anne Smith, Acting Chair  
Mandy Barrieau  
Kerry Culberson  
Chris Turner  
Andrea Stierle-MacNeill, Government Appointee

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

Elizabeth Fearon, Respondent

The Chair noted the following persons attending the hearing:

Present: Mrs. Smith, Mrs. Barrieau, Mrs. Culberson, Mr. Turner, Mrs. Stierle-MacNeill,  
Mr. Caron, Ms. Duguay, Mrs. Fearon, Mr. Mitchell McLean (Registrar), Ms. Kaitlynn Kozlowski  
(Student with the Association), Ms. Sheila Mecking (Committee Legal Counsel), Ms. Kathleen  
Starke (Committee Legal Counsel), Jamie Ryan (Chief Executive Officer of the Association), and  
Mrs. Christine McLauchlan (Court Reporter).



## Executive Summary

- [1] This Complaint concerns the actions of a REALTOR® who, while managing a property for her client, failed to render a proper accounting of monies entrusted to her by her client; misappropriated client funds; failed to promote and protect the interests of her clients; failed to ensure that the service agreement with the clients was clear, understandable and in writing; failed to render skilled and conscientious service; and engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR® (collectively, the “Allegations”).
- [2] On April 7, 2025, the Respondent was notified by the Association that the Discipline Committee (the “Committee”) would commence a hearing respecting the Allegations on April 23, 2025 (the "Notice of Hearing").
- [3] Prior to the hearing date, the Respondent and the Association, through its legal counsel, mutually agreed to present a joint submission to the Committee.
- [4] Pursuant to the joint submission, the Respondent admitted guilt 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

- [5] The Association's position is that, under the REALTOR® Code of Ethics, the Allegations, if founded, constitute acts of professional misconduct.
- [6] The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent on October 3, 2024, and by decision dated December 18, 2024, referred the matter to the Committee pursuant to subsection 21(3)(a) of the *Act*.

## Jurisdiction

- [7] The Respondent and legal counsel for the Association confirmed at the hearing that they had no objection to the composition and jurisdiction of the Committee.

## Legal Test

- [8] 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).
- [9] 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.

[10] In the case of the Committee, it may find a member of the Association guilty of professional misconduct. Pursuant to subsections 23(2) and 23(3) of the *Act*, a finding of professional misconduct 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.

[11] 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.

[12] In the decision of *R. v. Anthony-Cook*,<sup>1</sup> 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*

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<sup>1</sup> *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.”<sup>2</sup>*

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

[14] 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.<sup>4</sup> 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

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

## Charges

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

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<sup>2</sup> *Ibid*, at para 34.

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

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

*Between January 1<sup>st</sup>, 2023, and April 18<sup>th</sup>, 2023, both dates inclusive, Elizabeth Fearon, being a member, as defined by The Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):*

- (i) Failed to render a proper accounting of monies entrusted to her by her client;*
- (ii) Misappropriation of client funds;*
- (iii) Failed to promote and protect the interests of her clients;*
- (iv) Failed to ensure that the service agreement with the clients was clear, understandable and in writing;*
- (v) Failed to render skilled and conscientious service;*
- (vi) Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.*

*All as set out in the complaint dated April 18<sup>th</sup>, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 12 and 21 of the REALTOR® Code and punishable under ss. 23(4) and 23(5) of the Act.*

## **Background and Evidence**

[17] During the hearing, the Committee received as evidence and carefully reviewed the Book of Documents, the list of which is attached to this Decision as Schedule “A”.

[18] The Complainant in this matter retained the Respondent to assist in their purchase of a rental unit. In May of 2022, the Complainant purchased the rental property, which contained two units, with the help of the Respondent. The Complainant then decided to also retain the Respondent as their property manager, mainly to assist in collecting rent and maintaining the property.

[19] The Respondent collected rent payments from the tenants but did not remit the money to the Complainant. The Complainant made inquiries about the rent payments and the Respondent indicated that the tenants were not paying rent and other excuses.

[20] The Complainant instructed the Respondent to evict the tenants for non-payment of rent. However, the Respondent failed to comply with the Complainant’s instructions. As time



went by, the tenants remained in the property and the Complainant had not yet been sent any payments for rent.

[21] The Complainant travelled to the Moncton area to investigate and meet with the current tenants. The Complainant discovered that both tenants had been paying their rent on time via e-transfer to the Respondent. The Complainant then confronted the Respondent regarding the missing rent payments. In total, the Respondent collected just over \$10,000 in rent payments which were not remitted to the Complainant.

[22] At the time the Complaint was filed, the rent payments had not been remitted to the Complainant.

[23] At the hearing, counsel for the Association submitted that whether the Respondent's actions were intentional or not, she misappropriated the funds of the Complainant, and this is egregious conduct.

[24] 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 and acknowledged that she misappropriated funds from the Complainant. She recognized her wrongdoing and committed to refraining from such behaviour in the future.

## **Findings and Reasons**

[25] After receiving the evidence presented by both parties and considering the submissions made at the hearing, the Committee finds that the joint submission is appropriate,

reasonable, and is sufficient to protect the public interest and is consistent with matters heard by prior Committees.

## Decision

[26] 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*.

## Order

[27] The Committee hereby orders the following:

1. The Respondent pay a fine in the amount of \$3,000.00 CAD to the Association.
2. The Respondent pay costs in the amount of \$1,000.00 CAD to the Association as partial reimbursement for costs incurred in the processing of the Complaint.
3. The Respondent's membership in the Association is suspended for a period of three (3) months from August 1, 2025, to November 1, 2025.
4. 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.
5. 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 ("MCPDC") and must successfully complete a learning

comprehension assessment as directed by the Director of Education following the completion of the training session.

6. The Respondent shall, within six (6) months of the date of this Decision, take and successfully pass the REALTOR® Code of Ethics Course as delivered online by the Canadian Real Estate Association, and provide a copy of the course completion certificate to the Registrar.
7. If the Respondent fails to provide confirmation of completion of the MCPDC in accordance with paragraph 5 and/or a copy of the REALTOR® Code of Ethics Course completion certificate in accordance with paragraph 6 of this Decision within six (6) months, the Registrar is directed to suspend the Respondent's membership in the Association until such time as a session completion confirmation and/or a copy of the REALTOR® Code of Ethics Course completion certificate is furnished to the Registrar. The Respondent will be subject to a reinstatement fee upon reinstatement in the event of a suspension in accordance with this paragraph.
8. 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.
9. 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).
10. It is the Respondent's responsibility to ensure that she fulfills the requirements in paragraphs 1, 2, 4, 5, and 6.

[28] 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 25th day of April 2025.

//Original signed by committee chair//

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Anne Smith, Acting Chair  
on behalf of the Discipline Committee,  
Complaint 2023-030

## Schedule “A” – Documents reviewed by the Discipline Committee

<u>Exhibit</u>	<u>Description</u>
1.	<i>Book of Documents</i> consisting of a bound book of documents including: <ul style="list-style-type: none"><li>• Complaint and enclosures, dated April 18, 2023</li><li>• Respondent’s Response and enclosures, dated June 12, 2023</li><li>• Reply by the Complainant, undated</li><li>• Decision of the Complaints Committee, dated December 18, 2024</li><li>• Notice of Discipline Hearing, dated April 7, 2025</li><li>• Notice of Panel Composition, dated April 9, 2025</li></ul>