



NBREA AAINB

OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE



COMPLAINT 2023-043

NBREA v. The Respondent

DISCIPLINE DECISION

This Discipline 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

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-

the “Respondent”

Date of Hearing: January 9 and 10, 2025, 9:30 am

Place of Hearing: Crowne Plaza, Saint John, New Brunswick

Members of Committee: Anne Smith, Chair
Shannon Auffrey
Kerry Culberson
Melissa Doucet
Michèle Morin, Public Appointee

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

A member of NBREA, the Respondent
Daniel Wilband, Member’s Counsel
Isaac Corey, Student-at-Law, for the Respondent

The Chair noted persons attending the hearing:

Present: Mrs. Smith, Mrs. Auffrey, Mrs. Culberson, Mrs. Doucet, Mrs. Morin, Mr. Caron, Mrs. Duguay, the respondent, Mr. Wilband, Mr. Corey, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee Legal Counsel), Rachell O’Donnell (the Complainant, present to testify only) and Mrs. Christine McLauchlan (Court Reporter).

Executive Summary

- [1] This Complaint concerns the actions of a REALTOR® who, while responsible for representing two individuals in the sale of a home, developed romantic feelings and engaged in a relationship with one of the clients. The REALTOR® did not disclose the relationship, and when the other client found out about the relationship, the REALTOR® unilaterally decided to de-list the property. At no time did the REALTOR® obtain approval from her clients to remove the listing.
- [2] The Committee finds that the conduct constitutes a breach of the REALTOR® Code of Conduct and professional misconduct. A hearing will be held on the penalty at a later date.

Introduction

- [3] This Complaint alleges that the Respondent, while representing her and her Ex-Partner, was intimately involved with her Ex-Partner while in the process of selling their home. The Complainant was unaware of the intimate relationship.
- [4] The Association's position is that the Respondent engaged in a romantic and/or sexual relationship with her client and breached the REALTOR® Code of Ethics thereby committing professional misconduct.
- [5] A Complaint was submitted to the Office of the Registrar 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 Complainant subsequently filed a Complaint Form on June 1, 2023. On the same day, the Complaint and all information presented as evidence supporting the Complainant's claims were provided to the Respondent, who was given until June 21, 2023, to respond to the allegations.
- [6] The exchange of information ensued with a response from the Respondent on June 20, 2023, a response from the Complainant on July 10, 2023, and a final response from the Respondent on July 27, 2023.

- [7] The Complaints Committee reviewed the evidence presented by the Complainant and the Respondent on February 27, 2024, and subsequently rendered a decision to forward the matter to the Discipline Committee pursuant to subsection 21(3)(a) of the *Act*.
- [8] In preparation for the hearing before the Discipline Committee (the “Committee”), the Registrar confirmed that the Respondent was a member of the Association at or during the time of the alleged offence.
- [9] The Respondent elected to proceed with a bifurcated hearing whereby the Committee will first decide on the merits and then proceed with a hearing on remedy.

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 April 17, 2024, the Complaints Committee rendered its decision in complaint matter 2023-043 directing the Discipline Committee to commence such a proceeding.
- [11] The Respondent confirmed at the hearing that she had no objections to the composition and jurisdiction of the Committee.

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). 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.

[13] 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.

Issue

[14] The Committee is tasked with determining whether the Respondent's conduct was a breach of the REALTOR®'s Code of Conduct and therefore professional misconduct as outlined in the charges issued by the Association.

Charges

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

Between April 1, 2023, and June 1st, 2023, both dates inclusive, the Respondent being a member, as defined by An Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):

- (i) Failed to deal fairly with all parties of a transaction;*
- (ii) Failed to promote and protect the interest of her client(s);*
- (iii) Failed to render skilled and conscientious service to her client(s); and*
- (iv) Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.*

All as set out in the complaint dated June 1st, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 12 and 21 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of the Act.

Background and Evidence

[16] During the hearing, the Committee received as evidence and carefully reviewed documents marked as Exhibits 1 to 8, a list of which documents is attached to this Decision as Schedule “A”.

[17] The Committee heard the sworn testimony of the following witnesses:

- the Complainant;
- the Respondent;
- the Manager, for the Respondent; and
- Mitch McLean, the Registrar.

Testimony of the Complainant

[18] Complainant in this matter testified that she purchased a home in or around June of 2022 with her then partner and now ex-partner (the “Ex-Partner”). The home was located [in

New Brunswick] (the “Home”) and both the Ex-Partner, and the Complainant were listed on the mortgage for the Home.

- [19] The Respondent had acted as the REALTOR® for the purchase of the Home and, according to the Complainant’s testimony, had been chosen to represent the couple because she had been a long-time friend of the Ex-Partner and was at that time also a friend of the Complainant through her Ex-Partner.
- [20] In December of 2022, the Complainant’s relationship with her Ex-Partner started to deteriorate and the couple started to break up. The Complainant testified that she got an apartment in December 2022 and started living at the apartment in February 2023. The Ex-Partner continued to reside at the Home.
- [21] The Complainant testified that a listing agreement was signed on March 30, 2023, by both herself and the Ex-Partner to put the Home up for sale. The Ex-Partner and the Complainant were represented by the Respondent through the real estate team “[the Team],” which included the Respondent and [her colleague]. According to the Complainant’s evidence, the former couple had chosen to have the Respondent represent both of them because she was a mutual friend and long-time friend of the Ex-Partner.
- [22] The Complainant testified that she found out that the Respondent was having an intimate relationship with the Ex-Partner on May 17, 2023. She was told about the relationship from the ex-fiancé of the Respondent who called and told her about the Respondent and her Ex-Partner. Prior to this date, she had been informed by mutual friends of hers and the Ex-Partner that her Ex-Partner and the Respondent were in an intimate relationship, but she had not thought this was true. She later testified that she had been told by a friend and neighbour to the Home that the Respondent had been bringing belongings into the Home in March 2023.
- [23] After the Complainant found out about the intimate relationship, she testified that she called the Association and [the Manager] on May 17, 2023. She explained to [the Manager] that the Respondent was having sexual relations with a client and was selling the Home and that this was unacceptable. The Complainant testified that [the Manager] told her that he had no problem assigning another professional and that both the Ex-Partner and the

Complainant would need to agree to have another professional assigned. Her evidence was that she called [the Manager] on the morning of May 17, 2023, and he did not indicate that he was aware of the situation at that time.

[24] The Complainant testified that the Home was removed from the Multiple Listing Service® System of the Local Board (“the MLS® System”) within 24 hours of her call with [the Manager] on May 17, 2023. The Complainant’s evidence was that she was never contacted by the Respondent or the other REALTOR® who was part of [the Team].

[25] During her testimony, the Complainant reviewed text messages with her Ex-Partner. These texts included:

- a. Correspondence between the Complainant and the Ex-Partner which the Complainant testified was about her call on May 17, 2023, with the Respondent’s former boyfriend in which the Complainant wrote, *“I don’t remember he was just really mad [...] I can’t remember what else he said and he was like iv never been this mad”*. To which the Ex-Partner responded, *“[...] I feel bad. Heavy conscious on me for sure you know me better then most. Anyways again I appreciate you.”*
- b. Correspondence between the Complainant which the Complainant testified was sent May 22, 2023, and showed that the Respondent was selling her home and the Ex-Partner and Respondent had plans to live together. The Ex-Partner wrote, *“The house is going up this week. What isn’t fair? I’m making the payments I’m literally helping your credit. Things do not happen overnight. It will be done. 110% it will be done.”* The Complainant responded, *“So should we not post ours now then? If she is moving in. I’m just thinking logically.”* The Ex-Partner responded *“I’m letting it roll out is what [the Respondent] wants to do just let hers sell which it will I assume quickly. Then take it down. In case theirs didn’t and ours did and I would find something out [location in New Brunswick] with her.”*

[26] The Complainant testified that, based on her text messages with the Ex-Partner, she understood that the Ex-Partner was feeling responsible for the Respondent’s break up and that the Respondent and Ex-Partner were planning to live together as of May 22, 2023.

- [27] The Complainant's evidence was that another professional was assigned to sell the Home and it ultimately sold on July 22, 2023.
- [28] The Complainant testified that she felt that there were "*lines crossed*." She testified that her motivation for making the Complaint was not personal but based on the Respondent's breach of professionalism.
- [29] On cross-examination, the Complainant testified that she was aware of the friendship between the Respondent and the Ex-Partner. She also testified that she was the one who had ended the relationship with the Ex-Partner on December 16, 2022, and that the decision to use the Respondent's services to sell the Home was a mutual decision.
- [30] On cross-examination, the Complainant agreed that she did not raise any issues about the Respondent from the time of the listing on April 3, 2023, to May 17, 2023, and had not observed any inappropriate conduct by the Respondent during that time. The Complainant confirmed that her "solid evidence" that the Respondent was in an intimate relationship with the Ex-Partner was from the Respondent's ex-fiancé.
- [31] When questioned by the Committee, the Complainant stated that she did not feel that she had been excluded from conversations about the sale of the Home.

Testimony of [the Manager]

- [32] [the Manager] testified on behalf of the Respondent. He testified that he works for [an Agent] in [City in New Brunswick] and has been a Broker/Owner since 1997 and involved in real estate since July 1997. He testified that the Respondent was a professional working with [the Agent] since May 2022.
- [33] According to [the Manager]'s testimony, there had been no issues raised with the Respondent until May 17, 2023. [The Manager] testified that there was another complaint against the Respondent by the father of the Respondent's ex-fiancé about three to four months after the within Complaint, which he understood was later withdrawn and dismissed.

- [34] [The Manager] testified that on May 17, 2023, the Complainant called him and sounded upset. He was told by the Complainant that the Respondent was having intimate relations with a client and that she had found this out through the Respondent's ex-fiancé. [The Manager] testified that he was shocked and surprised by the information. He took down the Complainant's information and asked to call her back.
- [35] [The Manager] testified that, after the call with the Complainant, he attempted to call the Respondent, but she did not answer. He then called [the colleague of the Respondent] who was also on the listing. He told [the colleague] about the call with the Complainant and testified that [the colleague] seemed surprised by the details, but that he was told by [the colleague] that the Respondent had called her to ask that the listing be removed.
- [36] [The Respondent] testified that when he talked to his front desk personnel after a short personal break, they were already aware of the request to remove the listing and had completed the form to withdraw the listing. He confirmed that the Home was taken off the MLS® System on May 17, 2023.
- [37] On cross-examination, [the Manager] agreed that withdrawing a listing from MLS® System is serious and withdrawing without the approval of a client was usual but, in this case, the sellers had not signed the form to have the listing removed.

Testimony of the Respondent

- [38] The Respondent testified that she works for [the Agent] and has been a Real Estate Salesperson since March 2020. The Respondent worked with [the colleague] on about 50% of her transactions and the pair call themselves "[the Team]." The Respondent acted as the Salesperson for the Complainant and the Ex-Partner when they purchased the Home in 2022. She had known the Ex-Partner since approximately 2011, and they had transitioned from acquaintances to friends.
- [39] The Respondent testified that the Complainant knew that she was friends with the Ex-Partner and the Complainant did not raise any issues with her relationship to the Ex-Partner in 2022 when she acted for the then couple purchasing the Home.

- [40] The Respondent testified that the Complainant similarly did not raise any issue with her representing the Complainant and the Ex-Partner on March 30, 2023, when they signed the listing agreement with her. According to her testimony, she was aware that the Complainant and the Ex-Partner had broken up in December 2022 and testified that after mid-December, the Ex-Partner was living in the home without the Complainant.
- [41] The Respondent testified regarding her efforts to sell the Home which included taking photos, using marketing materials, a video and drone footage for the listing, responding to inquiries and hosting an open house BBQ. Discussions about the Home were done in a Facebook group chat between [the colleague], the Respondent, the Ex-Partner and the Complainant.
- [42] The Respondent testified that the Home was listed on April 3, 2023. The Complainant did not raise any issues with her services or professionalism between that date and May 17, 2023.
- [43] The Respondent testified that her relationship with her ex-fiancé of ten years ended in April 2023 and that he did not respond well. According to her testimony, her ex-fiancé tried to rekindle the relationship with the last effort being on May 17, 2023. On that date, she let him know that she was *“developing feelings for someone else”* to *“get him off [her] back.”* When asked who she was developing feelings for, she told him that it was for her client, the Ex-Partner. She testified that she was herself trying to figure out her feelings for the Ex-Partner at that time. She was not certain if the feelings existed before May 17, 2023. She testified that she did not tell her ex-fiancé that she was having a sexual relationship with the Ex-Partner.
- [44] The Respondent testified that, after telling her ex-fiancé about her feelings, she called [the Colleague] and asked her to withdraw the listing for the Home as she felt that she could not represent the clients fairly. It was about a 20-second call. She understood that [the Colleague] then called the office to remove the listing from MLS® System. She did not call the Respondent or the Ex-Partner regarding the listing withdrawal.
- [45] The Respondent testified that she was not in a sexual relationship with the Ex-Partner in May 2023. She testified that there was no plan as of May 22, 2023, that she would move in

with the Ex-Partner and that there had only been discussions about what they could do for living situations individually. The Respondent leased a home in [location in New Brunswick] on May 23, 2023. She was the only listed tenant on that lease. The Ex-Partner stayed over at the home but did not “officially” move in.

- [46] The Respondent testified that her relationship with the Ex-Partner transitioned in late June 2023 when she was on a spontaneous trip to Ontario with the Ex-Partner and they asked the Respondent to be their girlfriend on June 22, 2023, and that they kissed at that time. She further testified they began a sexual relationship near the end of June or beginning of July.
- [47] On cross-examination, the Respondent confirmed that she did not have instructions from her clients to take the Home off of the MLS® System on May 17, 2023, but agreed that it is a “big deal” to remove a listing and that this is the only time she has removed a listing without approval of the clients. The Respondent admitted that there were other options available including having [the Colleague] take over or another Salesperson.
- [48] On cross-examination, the Respondent testified regarding messages to [the Manager] in June 2023. In one message, the Respondent wrote: *“I called [the Colleague] prior to [the Complainant] calling you to get her to call the office to withdraw the listing because at that point I knew I had developed feelings and [the Complainant] was completely fine with the whole thing when she thought I was going to take over the mortgage but where I decided against that and got my own place, all shit hit the fan because she didn't get her own way and here we are..”* The Respondent testified, in relation to the above text message, that when it came up that she take-over the Home mortgage, she decided against it.
- [49] The Respondent had been issued a Summons to provide communication with the Ex-Partner between April 1, 2023, to June 30, 2023, but testified that she did not have any messages from this period with the Ex-Partner because she had a new phone. She admitted there would have been some text messages at that time. When asked about the fact that there were messages with [the Manager] produced, the Respondent testified that she thought maybe these were available because they were iPhone messages.

[50] On cross-examination, the Respondent also testified that she did spend some nights at the Home before May 17, 2023.

Testimony of Mitch McLean

[51] Mr. McLean is the Registrar of the NBREA and testified that, to his knowledge, June 1, 2023, was the official date of the Complaint though the date was cut-off of the Complaint form when submitted electronically.

Findings and Reasons

[52] The Committee considered the evidence, and the submissions made. The Committee considered the case law presented in this hearing before making its finding but notes that they are not bound by decisions from other jurisdictions or decisions from other regulated professions.

[53] In this case, the Respondent was at all material times representing both the Complainant and the Ex-Partner. The evidence, taken as a whole, shows that the Respondent had romantic feelings for one of her clients (the Ex-Partner) which rendered her unable to deal fairly with and to promote the interest of both of her clients and resulted in a failure to render skilled and conscientious service.

[54] The Committee has considered and weighed all evidence and the testimonies of all witnesses carefully. The Committee is mindful that the Complainant's information about the Respondent's sexual relationship was through a third party. As explained below, based on the evidence provided, the Committee finds that there is sufficient evidence to support an inference that the Respondent engaged in a romantic and/or intimate relationship with the Ex-Partner which the Committee finds in this case is unprofessional or unbecoming conduct of a REALTOR®.

[55] The evidence shows that, as the Respondent's relationship with her ex-fiancé was ending, she was simultaneously growing closer to the Ex-Partner. The Respondent also admits to

having stayed overnight at the Home with the Ex-Partner while she was trying to sell the Home and before May 17, 2023.

- [56] Text messages between the Complainant and the Ex-Partner show that on May 17, 2023, the Ex-Partner had a “*heavy conscience*” in a conversation about the Respondent’s break up with her ex-fiancé. Five days later, messages on May 22, 2023, show that the Ex-Partner suggest that there was consideration of the Respondent living together with the Ex-Partner and possibly taking over the mortgage of the Home. While the Respondent’s evidence was that she was not aware of the conversation and there was no plan to take over the mortgage, the Committee accepts the text messages as evidence of a romantic relationship between the Respondent and the Ex-Partner. The Committee further notes that the Respondent’s own text to [the Manager] indicated that she “*decided against*” taking over the mortgage. The Committee accepts that the Respondent signed a lease for a home herself, but this evidence does not refute the other evidence presented and the Respondent admitted that the Ex-Partner did stay over at the leased home also.
- [57] No text messages between the Respondent and the Ex-Partner during the period in question were provided as evidence though they were subpoenaed by the Association. The Respondent admitted that they did communicate through text. The Respondent was however able to produce text messages with [the Manager] during this same period. Although the Committee considered the Respondent’s explanation for the lack of texts, it does not find the Respondent’s testimony on this matter to be credible and draws a negative inference that the communication between the Respondent and the Ex-Partner would not have corroborated the Respondent’s evidence that she was not in an intimate relationship with the Ex-Partner before May 17, 2023.
- [58] The Committee finds that it is significant the Ex-Partner was not a witness presented by Counsel for the Respondent. The Committee draws an adverse inference that the Ex-Partner’s evidence would have been unfavourable to the Respondent and would not have corroborated the Respondent’s evidence about the nature of the relationship on or before May 17, 2024.

- [59] The Committee notes that the Respondent, in her initial reply to the Complaint, did not deny that she was in a romantic or sexual relationship with her client and that her initial response was dated June 20, 2023. This initial response was made on the same weekend the Respondent admitted that the Ex-Partner asked her to be their girlfriend during their trip to Toronto together.
- [60] The Committee finds that the evidence of the Complainant is credible. Although she did not have direct knowledge of the nature of the relationship, there is circumstantial evidence that there was a romantic relationship and/or an intimate relationship as: the Respondent stayed at the Home prior to May 17, 2023; text messages from the Ex-Partner reveal a guilty conscience in relation to the Respondent's break-up; text messages suggest it was considered by the Respondent and Ex-Partner that they move in together; by June, about a month later, the Respondent and the Ex-Partner were officially a couple and were intimate by late June or July. Finally, based on the Respondent's own testimony, she told her ex-fiancé on May 17, 2023, that she was developing feelings for the Ex-Partner. This evidence is convincing and compelling evidence that Respondent had romantic feelings for the Ex-Partner and was in a romantic relationship with the Ex-Partner between April 1, 2023, and June 1, 2023. This was not disclosed by the Respondent to the Complainant at any time.
- [61] The Committee finds that the Respondent's evidence was not credible with regard to when her romantic feelings and/or romantic relationship with the Ex-Partner began. The evidence supports a reasonable inference that, on the balance of probability, the Respondent had romantic feelings for the Ex-Partner and was in a romantic relationship before May 17, 2023, given the evidence outlined above. Even if the Respondent had not engaged in a sexual relationship with the Ex-partner prior to May 17, 2023, the Committee finds that she had developed romantic feelings for her client and should have ceased to represent the Ex-partner and the Complainant.
- [62] By her own admission, the Respondent began officially dating the Ex-Partner by June 22, 2023, when they travelled to Toronto together and was in an intimate relationship at that time having kissed. By the end of June or beginning of July she admitted that she was in a

sexual relationship with the Ex-Partner. It is important to remember that this was her client whose home she had delisted only a few weeks before and who she was representing at the same time as another client who had been through a break-up with Ex-Partner.

- [63] The Respondent did not call her clients on May 17, 2023, but instead called [the Colleague] and, without her clients' approval or knowledge, instructed that the Home be removed from the MLS® System. The Respondent acknowledged that there were other options available and that the action to remove a property from the MLS® System is a significant step. When [the Manager] attempted to call the Respondent on May 17, 2023, after his call with the Complainant, the Respondent did not answer and appears to have gone silent. Meanwhile, the process of removing the Home from the MLS® System was in progress without a signed form from either of the Respondent's clients, the Ex-Partner or the Complainant. It is not clear when the Ex-Partner was notified the Home was removed from the MLS® System.
- [64] [The Colleague] did not testify at the hearing. As a result, there is no direct evidence from [the Colleague] about her phone call with the Respondent to corroborate her evidence and no evidence about her directions to the [Agent] office about removing the listing from the MLS® System.
- [65] The Respondent continued to represent both clients despite developing feelings for one of the clients. In engaging in a romantic relationship with a client while representing another client on the same transaction, the Respondent engaged in conduct that is unbecoming of a REALTOR®.
- [66] Having not disclosed the relationship to allow another professional to take over the representation the Respondent was unable to deal fairly with her clients and ultimately did not provide skilled and conscientious services to her clients. At no time, did the Respondent raise with her client (the Complainant), that she was developing feelings for her other client. Instead, it was only on the same day that the Complainant found out about the intimate relationship that the Respondent took any action. This was a violation of her duty to protect and promote the interest of her clients.

- [67] Critically, the Respondent also failed to communicate with her clients before having the Home removed from the MLS® System as a result of the situation. She did not have any approval from her clients and did not provide any notice to either of her clients. The Respondent did not even make the request to have the listing removed from the MLS® System herself but told [the Colleague] to do so without any explanation. This was a clear violation of her duty to protect and promote the interest of her clients and a violation of her duty to provide skilled and conscientious service to her clients. While the Committee understands that the Respondent may have been dealing with her own emotions at the time, this does not excuse her from her professional duties.
- [68] The Committee finds that maintaining the professionalism of REALTORS® is essential and that engaging in a romantic relationship with a client constitutes conduct unbecoming of a REALTOR®. Having a romantic relationship with one client while representing two clients, and in this case, certainly constitutes conduct unbecoming. Having regard to the full circumstances in the within matter, the Respondent's conduct is unprofessional, egregious in nature and goes beyond simple error.
- [69] As a result of the above, the Committee finds that the Respondent's conduct breached sections 3, 12, and 21 of the REALTOR® Code of Conduct. Even if there was no sexual relationship before May 17, 2023, the Committee decision would remain unchanged given the conduct in this matter. As a result, the Committee finds that the Respondent is guilty of professional misconduct in accordance with section 23(2)(b) of the *Act*.
- [70] Finally, the Committee considered the argument by the counsel for the Respondent raised during closing arguments regarding procedural fairness and alleged lack of notice of the charge under section 12 REALTOR® Code of Conduct. The Committee notes that this was not raised as a preliminary issue. The Committee finds that the Respondent was properly made aware of the complaint and allegations and that the notice provided to the Respondent was sufficient. The Committee finds that there was no breach of procedural fairness.

Decision

[71] Having regard for the evidence and for the submissions made, the Committee finds that, on the balance of probabilities, the Respondent:

- a. Failed to deal fairly with all parties of a transaction;
- b. Failed to promote and protect the interest of her client(s);
- c. Failed to render skilled and conscientious service to her client(s); and
- d. Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.

[72] The Committee thereby find that the Respondent, committed acts of professional misconduct contrary to section 23(2)(b) of the *Act* which are punishable under sections 23(4) and 23(5) of the *Act*.

Order

[73] The Committee will hold a second hearing to hear arguments with respect to the appropriate penalty.

Dated at Fredericton, New Brunswick, this 8th day of April, 2025.

//Signed by the Acting Committee Chair//

Anne Smith, Acting-Chair
on behalf of the Discipline Committee,
Complaint 2023-043

Schedule “A” – Documents reviewed by the Discipline Committee

Exhibit	Description
1.	Book of Documents 2023-04 consisting of a bound book of documents including: <ul style="list-style-type: none"> • The Complaint • Respondent’s reply to the Complaint • Additional information from the Complainant • Additional information from the Respondent • Question from the Complaints Committee to the Respondent • Response from the Respondent to the Complaints Committee • Decisions of the Complaints Committee • Discipline Committee Compositions Documentation • Summons to the Complainant • Notice of Hearing • Summons to the Respondent • Documentary Evidence of Respondent • Notice of Hearing • Additional information from the Complainant • Screen captures from the Complainant • Discipline Committee composition documentation
2.	Notice of Change of Discipline Committee Chair
3.	Certification of the Chair of the Committee
4.	Listing Withdrawal form
5.	Five photos from social media posts
6.	Respondent’s lease for apartment in [location]
7.	Complaint from casefile 2023-052
8.	Decision of the Complaints Committee on casefile 2023-052