



NBREA  **AAINB**
OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE



COMPLAINT 2023-051
NBREA v. the Respondent

DISCIPLINE DECISION

This Decision was produced by the Discipline Committee of the New Brunswick Real Estate Association in accordance with *The New Brunswick Real Estate Association Act*.

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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-

(the "Respondent")

Date of Hearing: August 26, 2025

Place of Hearing: Kingswood Radisson Hotel, Hanwell, New Brunswick

Members of Committee: Karl Merrill, Chair
Alissa Lee
Melissa Doucet
Sarah Justason
Andrea Stierle-MacNeill, Government Appointee

Appearances: Dominic Caron, Counsel for the Association
Sue Duguay, Counsel for the Association
The Respondent

The Chair noted persons attending the hearing:

Present: Mr. Merrill, Ms. Lee, Mrs. Doucet, Mrs. Sarah Justason, Mrs. Andrea Stierle-MacNeill, Mr. Caron, Ms. Duguay, the Respondent, Ms. Jane Girard (Director of Finance and Inspections), Mr. Mitchell McLean (Registrar), Ms. Katelynn Kozlowski (NBREA Summer Student), Ms. Emanuelle Picard (Compliance Assistant), Ms. Brittany Trafford (Committee Legal Counsel), and Ms. Christine McLauchlan (Court Reporter).

Executive Summary

- [1] This Complaint outlines the actions of a REALTOR® who is alleged to have engaged in professional misconduct for failure to comply with the Association’s inspection process (the “Allegation”).
- [2] On August 8, 2025, the Respondent was notified by the Association that the Discipline Committee (the “Committee”) had scheduled a hearing for August 26, 2025 (the "Notice of Hearing").
- [3] Prior to the hearing date, the Respondent and the Association, through its legal counsel, mutually agreed to present an Agreed Statement of Facts (the “Agreed Statement of Facts”) to the Committee. Pursuant to the Agreed Statement of Facts, the Respondent admitted to the Allegation and specifically, admitted to a number of deficiencies found during the inspection process including: previous recommendations not being implemented; hinderance during the inspection, no trust ledger maintained; books records and accounts not provided; closing procedure deficiency; Canada Deposit Insurance Corporation insurance deficiency; missing signature and initials on various agreements; and delay in depositing trust funds into trust bank account.
- [4] In accordance with the Agreed Statement of Facts, as of June 21, 2024, the closing inspection procedure had been completed and there were no longer any outstanding deficiencies with the Respondent’s real estate agency. The Respondent was suffering from

an ongoing illness during the relevant period and continues to suffer from an ongoing illness.

[5] The parties agree that, given the admissions of the Respondent, the purpose of the hearing was for the Committee to determine sanctions.

[6] Having considered the submissions and evidence on penalty, the Committee determined that the professional misconduct of the Respondent violated Articles 17, 18 and 22 of the REALTOR® Code and the Committee ordered that the Respondent:

- a. be reprimanded and the reprimand remain on file;
- b. pay a fine of \$3,500 CAD;
- c. pay costs of \$5,000 CAD;
- d. complete a Training Session covering Modules 1–11 of the 2019 Mandatory Continued Professional Development curriculum;

[7] In addition, the Committee ordered that this decision be published without the Respondent's name and that notice be sent to the Association Members without the Respondent's name. This decision was a result of the specific circumstances in this case including the Respondent's medical condition.

[8] Finally, the Committee recommends that the Director of Consumer Affairs require that the Respondent be subject to supervision for the completion of 100 transactions, and that Respondent be restricted from being licenced as a Manager under the *Real Estate Agents Act*, 2011, c. 215.

Background

[9] The Association's position is that, under the REALTOR® Code of Ethics, the Allegation constitutes professional misconduct.

[10] The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent on October 3, 2024, and by decision dated January 22, 2025, referred the matter to the Committee pursuant to subsection 21(3)(a) of the *Act*.

[11] The Respondent subsequently admitted to professional misconduct in the Agreed Statement of Facts which were submitted in writing to the Committee at the hearing. The Respondent and Counsel for the Association agreed that the purpose of the hearing was for the Committee to determine the appropriate penalty.

Jurisdiction

[12] The Respondent confirmed at the hearing that they had no objection to the composition and jurisdiction of the Committee.

Legal Test

[13] The Committee 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.

[14] Where the parties have presented an Agreed Statement of Facts to the Committee in which the Respondent has admitted to being guilty of professional misconduct, the Committee must consider the penalty attributable to the professional misconduct.

Issue

[15] The issue to be determined by the Committee is the penalty attributable to the professional misconduct admitted by the Respondent.

Charges

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

Between September 26th, 2021, and August 19th, 2024 both dates inclusive, [the Respondent], 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 comply with the Association's inspection process.*

All as set out in the complaint of Jane Girard, the Association's Director of Finance and Inspections, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 17, 18 and 22 of the REALTOR® Code and punishable under ss. 23(4) and 23(5) of the Act.

Background and Evidence

Summary of Evidence

[17] During the hearing, the Committee received as evidence and carefully reviewed the documents marked as Exhibits 1, 2 and 3, a list of which documents is attached to this Decision as Schedule "A".

[18] At the hearing, the Respondent and the counsel for the Association confirmed that they had agreed to the Statement of Facts which were included at pages 132-139 of Exhibit 1.

[19] The Committee heard arguments relating to Exhibits 2 and 3 at the hearing as follows:

- a. Counsel for the Association submitted that the Association did not object to the medical records being entered as Exhibit 2 but noted that as no expert witness would testify, the Committee must carefully consider the weight of the evidence. The Association requested, and the Respondent did not object, to the removal of page 140 of Exhibit 2 as irrelevant.
- b. Counsel for the Association and the Respondent further requested that Exhibit 2, if admitted, be subject to a publication ban.
- c. Counsel for the Association did not object to Exhibit 3 being an email dated August 26, 2025, but submitted that the correspondence was not written by a medical expert and the contents therein, or any opinions expressed, must be weighed carefully by the Committee.

[20] The Committee admitted the medical records into evidence as Exhibit 2 (excluding page 140) and the correspondence of August 26, 2025, as Exhibit 3. The Committee confirmed that the weight of the documents would be considered in making any decision in this matter.

[21] The Committee ordered that Exhibit 2 be subject to a publication ban.

Agreed Statement of Facts

[22] As set out in the Agreed Statement of Facts, the Respondent was the manager of record for a real estate agent (the “Real Estate Agent”) from approximately 2006 until closure of the Real Estate Agent on May 30, 2022. The Respondent and the Real Estate Agent operated and traded in real estate up to the date of closure of the Real Estate Agent on April 30, 2022.

[23] As part of a routine inspection, the Real Estate Agent was subject to an inspection by the Association for the period of August 1, 2018 to July 31, 2021. On September 16, 2021, inspector Nicole LeBlanc initiated the fieldwork to conduct the inspection. However, this inspection was substantially delayed, namely because of the Respondent’s ongoing illness.

[24] In April 2022, NBREA was informed by the Respondent that the Real Estate Agent would permanently close. Consequently, the inspection period was amended to August 1, 2018 to April 30, 2022, the date of closure of the Real Estate Agent.

[25] On June 30, 2023, the Association’s Director of Finance referred Complaint 2023-051 to the Registrar. The Complaints Committee reviewed all evidence presented by the Complainant and the Respondent and referred the matter to this Committee.

[26] In the Agreed Statement of Facts, the Respondent admits to a number of deficiencies identified in the inspection including the following:

- ***Previous recommendations not implemented:*** During the inspection, it was noted that the implementation of some recommendations from the previous inspection were not completed. Most notably the correct procedure for a bank reconciliation is

not being followed and there is no trust liability listing maintained detailing the transactions to which the balance in the trust bank account relates.

- ***Hindrance during the inspection process:*** During the inspection, there were several delays in setting the inspection date and several instances when information requested by the inspector was not provided in a timely and complete manner. The Association would like to acknowledge that the licensed manager indicated that they were experiencing some personal health challenges which contributed to the noted delays and may also have contributed to the state of the books, records and accounts during the inspection period.
- ***No trust ledger maintained:*** During the inspection, it was noted that there was no evidence that a trust ledger was maintained to track specific deposits in and out of the trust account in a manner which would allow a trust liability listing to be completed at any given point in time. A list of transactions was maintained; however, the list did not outline the deposit amount for each transaction, date deposited, method of deposit or date deposit was withdrawn.
- ***Sales record sheets not completed:*** During the inspection it was noted that sales record sheets are not being used for every sales transaction.
- ***Books, records and accounts not provided:*** During the inspection, it was noted that there were several instances during the sales testing which resulted in the inspector having no ability to trace or relate the deposits received on a specific sales file to a deposit book and subsequently into the bank statement. Additionally, there were also several instances during the sales testing where the inspector did not have the ability to, on closing of a sales transaction, trace the trust deposit withdrawal to the specific sales file. For this reason, there were several instances during the transaction testing when it could not be verified if the commission was paid after the closing date. The primary reason for the above is that the sales files did not include evidence of the date of deposit of a trust deposit or provide the deposit books. In addition, no cancelled cheques or evidence of EFTs were provided to identify withdrawals. The only evidence provided was a summary of banking transactions for the period of the inspection; however, each transaction on the bank statement (or print out by the bank) was not identified as to which sales file it related.
- ***Trust Account Monthly Reconciliations:*** During the inspection, it was noted that there was no evidence that trust account bank reconciliations are completed on a regular and consistent basis. In addition, no trust liability listings were provided for the months requested.
- ***Closing Procedures:*** During the inspection, it was noted that [the Real Estate Agency] is no longer operating and has closed. There are specific procedures that are required

to be completed as part of a closing inspection. When the NBREA inspectors conducted their work, insufficient information was provided to them to complete these procedures.

- **CDIC Insurance:** During the inspection, it was noted that there does not seem to be an annual formal process in place to confirm that the appropriate amount of CDIC insurance is in place for the entire balance in the trust bank account.
- **Signatures and initials are missing from various agreements:** During sales testing, it was noted that required initials and signatures were missing from specific pages on some of the Agreements of Purchase and Sales reviewed during the sales testing.
- **Delay in depositing trust funds into trust bank account:** During sales testing, it was noted that there was one instance where funds were not deposited into the trust bank account without delay as is required by the Act. The evidence for this was outlined on a sales record sheet. Insufficient evidence was available to confirm if there were any other instances in delays of placing trust deposits into the trust bank account.

[27] In the Agreed Statement of Facts, the Respondent admitted that they failed to comply with the Association's inspection process and admitted to the charge of failing to comply with the Association's inspection process as set out in the Notice of Hearing.

[28] The parties recognize that as of June 21, 2024, the closing inspection procedure had been completed and that there were no longer any outstanding deficiencies with the Real Estate Agent. This was confirmed by email by the Association's Director of Finance.

[29] A subsequent email dated June 24, 2024 from Sarah Billing, Compliance Officer with the Financial and Consumer Services Commission ("FCNB"), also confirmed that from the point of view of FCNB, the Real Estate Agent had "*satisfactorily addressed [its] inquiries*" and that FCNB was satisfied with the response to the inspection report and the evidence supporting closure of the trust account.

[30] The Agreed Statement of Facts provides that the Respondent suffered from an ongoing illness during the relevant period of the Complaint and continues to suffer from an ongoing illness.

Testimony of Respondent Regarding Penalty

[31] The Respondent testified that the investigation had been completed by June 21, 2024, and there were no missing funds in the trust account but that the issue was due to paperwork. The Respondent testified that they voluntarily gave up their Manager's licence and began working under another agent so that they would not have anything to do with a trust account. The Respondent now works with a team of REALTORS® and testified that since May 2022 they have never taken on a listing without backup.

[32] The Respondent testified regarding the details of their medical issues during the period of the investigation and presented documentation relating to the medical issues.

[33] The Respondent testified that their conduct was not intentional, and they had not willfully failed to respect the timelines of the investigation but had a lot going on due to their medical issues. The Respondent testified that prior to this complaint they had a long history as a REALTOR® and had previously been involved volunteering with the Association and the Northern New Brunswick Real Estate Board.

[34] When asked by the Committee, the Respondent confirmed that they now work with five (5) other REALTORS® and is not involved with a trust account in any way.

- [35] On cross examination, the Respondent confirmed that they had been a REALTOR® since 2003 and was the Manager of record for the Real Estate Agent between 2006 and April 2022, when it closed.
- [36] The Respondent confirmed that the Real Estate Agent operated on some level until April 30, 2022. The Respondent confirmed that their profile is listed online under the agent they now work under and that they are listed as a “Salesperson/Realtor” online.
- [37] The Respondent testified that they had received awards for reaching certain levels of sales in 2017, 2019, 2020, 2022, 2023 and 2024. According to their testimony, the awards received in 2022, 2023 and 2024 were team awards relating to sales.
- [38] The Respondent confirmed on cross examination that they received help from the Association, their mother and their sisters in order to complete the requirements of the Association in the inspection and closure of the trust account.
- [39] The Respondent testified that all money in the trust account was distributed except for some funds that remained unclaimed though the individuals who the funds belonged to had been identified.
- [40] The Respondent testified that what happened was their fault because of outstanding medical issues. The Respondent testified that everything became a challenge due to the medical issues but agreed that they deserved some sanctions.

Findings and Reasons

[41] After receiving the evidence presented by both parties and considering the submissions made at the hearing, the Committee accepts the Agreed Statement of Facts and finds that the Respondent failed to comply with the Association's inspection process and therefore committed acts of professional misconduct, in violation of Articles 17, 18 and 22 of the REALTOR® Code.

[42] The Committee considered the submissions from counsel for the Association and the Respondent regarding the appropriate penalty, including the case law presented by counsel for the Association in this matter in coming to their decision on penalty.

[43] In determining the appropriate penalty, the Committee also considered the following factors:

- a. The protection of the public;
- b. The principles of general and specific deterrence; and
- c. The impact of the conduct on the overall reputation of the profession.

[44] It is noted that there was no finding of misappropriation of trust funds in this case; however, the failure to comply with the Association's inspection process is a very serious matter and an obligation which must be respected. Proper management of trust accounts is essential and timely responses to such inspections are of critical importance. The admitted deficiencies in the Agreed Statements of Facts relating to the handling of the trust account are very concerning.

[45] The following mitigating factors were considered by the Committee in relation to penalty:

- a. the Respondent admitted to deficiencies and an Agreed Statement of Facts with the Association prior to the hearing; and
- b. the Respondent is no longer dealing with trust accounts and no longer takes on real estate listings without backup from the team of REALTOR®s with whom they now work.

[46] The Committee also considered the medical evidence and the Respondent's testimony regarding their medical issues over the time period in question. Though it would not always be the case, and every situation must be considered carefully based on the evidence, the Committee accepts that while the medical issues in this case did not cause the misconduct, they contributed to the Respondent's failure to comply with the Association's inspection process.

Decision on Penalty and Order

[47] In light of the above, the Committee hereby orders the following pursuant to s. 23(4) of the *Act*:

- a. The Respondent be reprimanded and the reprimand shall remain on the Respondent's file.
- b. The Respondent pay a fine in the amount of \$3,500.00 CAD to the Association.
- c. The Respondent pay costs in the amount of \$5,000.00 CAD to the Association as partial reimbursement for costs incurred in the processing of the Complaint.

- d. The total amount of the fine and costs ordered under paragraphs (b) and (c) above must be paid within six (6) months of the date of this decision. If payment is not made within six (6) months, the Registrar is directed to suspend the Respondent's membership in the Association until such time payment is made.
- e. 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 pass a learning comprehension assessment as directed by the Director of Education following the completion of the training session. Confirmation of successful completion of the training session must be provided to the Registrar. If confirmation of successful completion of the training session is not received by the Registrar by the deadline, the Registrar is directed to suspend the Respondent from the Association until such time as confirmation of the successful completion of the training session is received by the Registrar.
- f. Pursuant to subsection 23(4)(f) of the *Act*, that the Registrar publish this Decision, without the Respondent's name, on the Association's website.
- g. Pursuant to subsection 23(4)(f) of the *Act*, that the Registrar distribute a summary of this Decision, without 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).

[48] The Committee further orders that this decision be sent to the Respondent's Manager.

[49] The Committee hereby further recommends the following pursuant to s. 23(5) of the *Act*:

- a. In accordance with 23(5)(c)(i), that the Director of Consumer Affairs impose a specific restriction on the Respondent's right to trade in real estate, requiring that the Respondent be subject to supervision of another Member of the Association for the completion of 100 transactions.
- b. In accordance with 23(5)(b) and 23(5)(c), that the Director of Consumer Affairs impose a limitation on the Respondent's ability to trade in real estate by restricting the Respondent to being licenced as a Salesperson and not as a Manager under the *Real Estate Agents Act*, 2011, c. 215.

[50] 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 14th day of October, 2025.

//Original signed by committee Chair//

Karl Merrill, Committee Chair
on behalf of the Discipline Committee,
Complaint 2023-051

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 June 30, 2023• Receipt and Notice of Complaint, dated July 4, 2023• Response, dated July 31, 2023• Reply from the Complainant, dated August 1, 2023• Reply from the Respondent, dated May 15, 2024• Final Reply from the Complainant, dated May 23, 2024• Final Reply from the Respondent, dated August 19, 2024• Decision of the Complaints Committee, dated January 22, 2025• Notice of Discipline Hearing, dated August 8, 2025• Notice of Panel Composition, dated August 8, 2025• Additional Information – Membership Status, dated February 21, 2025• Summons – Jane Girard, dated August 8, 2025• Summons – Donat Poirier, dated August 8, 2025• The REALTOR® Code• Additional Information – Complainant (Email dated June 21, 2024)• Additional Information – Respondent (Email June 25, 2024)• Additional Information –Website• Agreed Statement of Facts, dated August 25, 2025
2.	<p><i>Book of Medical Records</i> (excluding page 140)</p>
3.	<p>Email from [the Manager] to the Registrar dated August 26, 2025</p>