

**DECISION OF THE DISCIPLINE COMMITTEE
WITH RESPECT TO PENALTY**

In the matter of a Discipline Committee Hearing held pursuant to Section 23(1) of *The Act to Incorporate the New Brunswick Real Estate Association* (the "Act"):

BETWEEN

The New Brunswick Real Estate Association (the "Association")

- and -

Hubert LeBlanc

Date of Hearing: January 18, 2016, 10:00 am via Teleconference

Place of Hearing: NBREA Boardroom, Fredericton

Members of Committee: Karl Merrill, Chair
Kevin MacDonald
Anne Smith
Mona Payne
Marc Richard, Government Appointee

Appearances: Trisha Gallant, Counsel for the Association
Edwin G. Ehrhardt, Counsel for the Respondent

UPON the following charges submitted by Trisha Gallant, Prosecutor appointed by the Association:

1. Complaint File No.: 2014-003 – In or about November of 2011, Hubert LeBlanc failed to render skilled and conscientious service in conformity with standards of competence reasonably expected of a REALTOR® by electronically pasting his client's signature, without consent, acknowledging receipt of a Property Condition Statement.

All as set out in the complaint of [REDACTED], dated February 25, 2014, thereby committing an act of professional misconduct, in violation of Article 12 of the REALTOR® Code (effective May, 2011), and punishable under subsections 23(4) and 23(5) of the *Act*.

2. Complaint File No.: 2014-004 - In or about May of 2011, Hubert LeBlanc failed to render skilled and conscientious service in conformity with standards of competence reasonably expected of a REALTOR® by electronically pasting his client's signature, without consent, on a Property Condition Statement.

All as set out in the complaint of [REDACTED] dated February 26, 2014, thereby committing an act of professional misconduct, in violation of Article 12 of the REALTOR® Code (effective May, 2011), and punishable under subsections 23(4) and 23(5) of the *Act*.

Trisha Gallant presented on behalf of the Association.

Edwin Ehrhardt presented on behalf of the Respondent, Hubert LeBlanc.

The Chairman read the charges and all parties acknowledged the jurisdiction of the Committee to hold the hearing. Mr. Ehrhardt confirmed that Mr. LeBlanc admitted the substance of the charges without requiring a hearing on the merits. The Committee therefore proceeded as a Penalty Hearing.

The Committee accepted the following documentary evidence:

- Exhibit 1 - Charges as contained in the Notice of Penalty Hearing

Submissions:

Ms. Gallant provided historical perspective regarding the complaints. Between February 25, 2014 and March 24, 2014, seven separate complaints were received by the Association against Mr. LeBlanc. Each complainant maintained Mr. LeBlanc had cut and pasted signatures without their consent. In most cases, several years have passed between the time of the noted transaction and the filing of a complaint.

Upon receipt of the seven complaints, the Complaint Committee appointed an investigator to obtain available details. After considering each complaint, the replies and investigation report, the Complaint Committee, in their decision dated July 28, 2015, forwarded the seven complaints to the Discipline Committee.

Ms. Gallant stated, in her preparation for this hearing, she analyzed all of the complaint documents and the investigation report as well as conducted interviews with the complainants. Her analysis also included consideration of her professional obligations as a lawyer, defined in the Law Society of New Brunswick Code of Professional Conduct, specifically Chapter 8, Commentary 13 (a) which she quoted:

"When acting as a prosecutor in a criminal or quasi-criminal matter it is recognized that the lawyer is fulfilling a public duty on behalf of the state. Therefore the lawyer as prosecutor (i) shall commence a criminal or quasi-criminal prosecution only when satisfied that there is

evidence to provide a reasonable prospect of conviction and that the public interest requires a prosecution."

Ms. Gallant stated she concluded, in her professional opinion, that five of the seven complaints, 2014-005, 2014-006, 2014-007, 2014-008, and 2014-011, did not present enough evidence to provide a reasonable prospect of conviction. Therefore, the charges as contained in the Notice of Penalty Hearing (Exhibit 1) involve complaints 2014-003 and 2014-004 only.

In both these files, the Complainants stated they did not give consent to paste their signatures on the subject real estate documents. Ms. Gallant stated, in each case, the transaction file did not contain proper documentation to support the existence of the Complainant's consent for Mr. LeBlanc to act on their behalf.

Ms. Gallant said this was a serious matter which negatively affected public interest. She recognized Mr. LeBlanc admitted to the substance of the charges and took that into account when determining her recommendation for penalty and cost assessment. She recommended a fine of \$2500 and cost assessment of \$2500.

Mr. Ehrhardt stated Mr. LeBlanc realizes he did not properly document his interaction with his clients and he apologizes, assuring that it will not happen again. Mr. Ehrhardt also stated Mr. LeBlanc concurs with Ms. Gallant's recommendation on fine and cost assessment.

Findings:

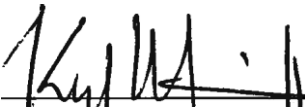
After reviewing the evidence and considering the Respondent's decision to proceed to penalty hearing and the submissions of the parties, the Committee was of the opinion that the Respondent was guilty of breaching articles of the REALTOR® Code as noted in the charges.

The Committee hereby orders as follows pursuant to s. 23(4) of the Act:

1. Respondent Hubert LeBlanc shall pay to the Association the sum of \$2500 as a penalty for the preceding violation within 30 days of the date of this decision. Should the penalty not be received within 30 days, membership in the Association will automatically be suspended. A reinstatement fee of \$250.00 plus HST, will then apply, in accordance with NBREA's standard practice for reinstatement of membership.
2. Respondent Hubert LeBlanc shall pay to the Association the sum of \$2500 towards costs incurred by the Association during the prosecution of the preceding violation within 30 days of the date of this decision. Should the costs not be received within 30 days, membership in the Association will automatically be suspended. A reinstatement fee of \$250.00 plus HST, will then apply, in accordance with NBREA's standard practice for reinstatement of membership.
3. Pursuant to s. 23(4)(f) of the *Act*, the Discipline Committee directs the Registrar to publish this decision on the Association website: www.nbrea.ca.

In accordance with s. 25(1) of *the Act*, the Respondents may appeal this decision within thirty (30) days from the date of the decision.

DATED this 10th day of February, 2016.



Karl Merrill, Chair, on behalf of the Committee