

**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 -

Fernand Levesque
RESPONDENT

Date of Hearing: September 8, 2015

Place of Hearing: 22 Durelle St., Fredericton, NB

Members of Committee : Jacques Piché, Chair
Maria Taylor
Lise Allen
Anne Smith
Marc Richard, appointed by the Financial and Consumer Services
Commission

Appearances: Trisha Gallant, Counsel for the Association
Andrée Poitras, Counsel for the Respondent

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

Between June 24, 2013 and August 15, 2013, dates inclusive, Fernand Levesque, being a member as defined by the *Act*:

1. Failed to protect and promote the interests of his clients by failing, as a dual agent, to deal fairly with all parties to the transaction, as required by Article 3 of the REALTOR® Code;

2. Failed to encourage parties to a transaction to seek the advice of outside professionals where such advice is beyond the expertise of the REALTOR®, by advising them to waive the requirement of a home inspection before making an offer to purchase real estate, as required by Article 10 of the REALTOR® Code; and
3. Failed to render skilled and conscientious service, in conformity with standards of competence which are reasonably expected of a REALTOR®, as required by Article 12 of the REALTOR® Code.

All as set out in the Complaint, thereby committing acts of professional misconduct, in violation of the said Articles of the REALTOR® Code (effective December, 2011), and punishable under subsections 23(4) and 23(5) of the *Act*.

and further to the finding of professional misconduct in the decision of the Discipline Committee, dated July 10, 2015, this penalty hearing was held to determine possible sanctions as a continuation of the discipline process.

As one of the original Discipline Panel members had to excuse themselves, the Chair noted for the record, Section 22 (4) of the Act to Incorporate the New Brunswick Real Estate Association, which addresses circumstances when a member of the Discipline Panel is unable to continue to participate in the hearing :

22(4) Where the Committee commences a hearing and not more than two members become unable to act, the remaining members may complete the hearing and shall have the same authority as the full committee.

The Hearing Process continued with the remaining Discipline Panel members.

Ms. Gallant presented on behalf of the Prosecution.

Ms. Poitras presented on behalf of the Respondent, Mr. Levesque.

Trisha Gallant, on behalf of the Association, reviewed the facts of the Discipline Committee's decision arising from a hearing held June 10, 2015. She noted the Respondent was found guilty of all three charges contained in the Notice of Hearing. She therefore recommended the following sanctions for the Committee's consideration:

1. Penalty of \$2000.
2. Cost Assessment of \$2500.

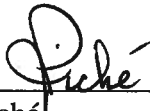
Representing the Respondent, Ms. Poitras suggested \$500 was sufficient penalty in addition to \$500 cost assessment, given that this was the first discipline hearing involving Mr. Levesque.

After deliberation and in consideration of the points noted by both counsels, the Discipline Committee hereby orders as follows pursuant to Section 23(4) of the *Act*:

1. Respondent, Fernand Levesque, shall pay to the Association the sum of \$2000 as a penalty for the violation, as determined in the decision of July 10, 2015, within 90 days of the date of this decision. If this penalty amount is not paid within 90 days, Mr. Levesque's NBREA membership will be suspended. Reinstatement of NBREA membership will be subject to payment of appropriate fees.
2. Respondent Fernand Levesque, shall pay to the Association the sum of \$2500 as cost assessment, within 90 days of the date of this decision. If this cost assessment amount is not paid within 90 days, Mr. Levesque's NBREA membership will be suspended. Reinstatement of NBREA membership will be subject to payment of appropriate fees.
3. In accordance with paragraph 23(4)(f) of the *Act*, the Discipline Committee directs the Registrar to publish both hearing decisions, on the NBREA website.

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

DATED this 25th day of September, 2015.



Jacques Piché
Chair of the Discipline Committee, File 2014-025