

Files 2016-001 & 2016-002

**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 -

Devon Ramsay & Nancy MacPherson

Date of Hearing: November 17, 2016 11:00 am via Teleconference

Place of Hearing: NBREA Boardroom, Fredericton

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

Appearances: John Townsend, QC, Counsel for the Association
Devon Ramsay, Respondent, self-represented
Nancy MacPherson, Respondent, self-represented

The Chair acknowledged the occurrence of a pre-hearing conference between Counsel for the Association, the Respondents and their Manager, Dwayne Hayes, during which both Mr. Ramsay and Ms. MacPherson agreed to a joint hearing as the incidents, the complainant and the charges were identical in both complaint files 2016-001 Ramsay and 2016-002 MacPherson. Mr. Townsend, Mr. Ramsay and Ms. MacPherson confirm this agreement.

All parties acknowledged the jurisdiction of the Committee to hold the hearing.

The Chair read the charges, directly quoted from Notices of Hearing, submitted by John Townsend, Counsel for the Association:

File 2016-001:

Between December 2015 and January 2016, Devon Ramsay, a REALTOR® failed to deal fairly with all parties to a transaction, failed to ensure that all advertising and promotion of properties accurately reflected the property, and failed to respect the agency and other contractual obligations of other REALTORS® by altering, without proper authority, the expiration dates expressed in Listing Agreements entered into between various property owners and Royal LePage Atlantic, which alterations were to the benefit of Devon Ramsay and to the detriment of Royal LePage Atlantic.

All as set out in the complaint of [REDACTED], dated January 15, 2016, thereby committing acts of professional misconduct, in violation of Articles 3, 13 and 20 of the REALTOR® Code (effective March, 2015), and punishable under subsections 23(4) and 23(5) of the *Act*.

The charge, contained in the Notice of Discipline Hearing File 2016-001, was entered into the record as Exhibit #1.

File 2016-002:

Between December 2015 and January 2016, Nancy MacPherson, a REALTOR® failed to deal fairly with all parties to a transaction, failed to ensure that all advertising and promotion of properties accurately reflected the property, and failed to respect the agency and other contractual obligations of other REALTORS® by altering, without proper authority, the expiration dates expressed in Listing Agreements entered into between various property owners and Royal LePage Atlantic, which alterations were to the benefit of Nancy MacPherson and to the detriment of Royal LePage Atlantic.

All as set out in the complaint of [REDACTED], dated January 15, 2016, thereby committing acts of professional misconduct, in violation of Articles 3, 13 and 20 of the REALTOR® Code (effective March, 2015), and punishable under subsections 23(4) and 23(5) of the *Act*.

The charge, contained in the Notice of Discipline Hearing File 2016-002, was entered into the record as Exhibit #2.

Respondents Mr. Ramsay and Ms. MacPherson confirmed they wished to admit to the substance of the complaints concerning Article 20 and to proceed with the hearing as a penalty hearing. Both Respondents stated they understood, from the pre-hearing conference, Articles 3 and 13

were to be extracted from the charges.

Mr. Townsend confirmed he wished to amend both the Notices of Discipline Hearing and remove references to Articles 3 and 13 of the REALTOR® Code.

The Chair acknowledged the penalty hearing status and read the charges as amended.

Between December 2015 and January 2016, Devon Ramsay and Nancy MacPherson, REALTORS®, failed to respect the agency and other contractual obligations of other REALTORS® by altering, without proper authority, the expiration dates expressed in Listing Agreements entered into between various property owners and Royal LePage Atlantic, which alterations were to the benefit of Devon Ramsay and Nancy MacPherson and to the detriment of Royal LePage Atlantic.

All as set out in the complaint of [REDACTED], dated January 15, 2016, thereby committing acts of professional misconduct, in violation of Article 20 of the REALTOR® Code (effective March, 2015), and punishable under subsections 23(4) and 23(5) of the *Act*.

The Amended Charges were entered into the record as Exhibit 3.

The Respondents Mr. Ramsay and Ms. MacPherson admitted to the charges as amended.

Submissions:

Mr. Townsend stated, as the result of the pre-hearing conference, he and the Respondents had agreed to make a joint submission as to penalty and costs, specifically: \$1500 penalty and \$500 cost assessment against each Respondent. He stated the Committee must be satisfied that this agreement is reasonable and in the public interest. He said the pre-hearing conference was productive and the Respondents admitted that REALTORS® cannot amend listing contracts to their own benefit and that such contracts are the property of the Agent.

Mr. Townsend noted that, the Respondents' actions, while wrong, did not result in harm to any member of the public. He suggested the proposed fine of \$1500 each was applicable relative to the spectrum of seriousness, in which the maximum fine of \$5000 is reserved for the most serious offenses.

With the Respondents' cooperation and willingness to proceed to a joint penalty hearing, Mr. Townsend stated Association costs were mitigated. In his opinion, the cost assessment of \$500 each was reasonable.

Mr. Ramsay and Ms. MacPherson both confirmed they agreed with the terms of the joint submission, as outlined by Mr. Townsend.

Findings:


After considering the submissions of the parties, the Committee concurred with the terms of the joint submission as presented.

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

1. Respondent Devon Ramsay shall pay to the Association the sum of \$1500 as a penalty for the preceding violation within 30 days of the date of this decision. Should the penalty payment 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 Nancy MacPherson shall pay to the Association the sum of \$1500 as a penalty for the preceding violation within 30 days of the date of this decision. Should the penalty payment 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. Respondent Devon Ramsay shall pay to the Association the sum of \$500 towards costs incurred by the Association during the prosecution of the preceding violation within 30 days of the date of this decision. Should the cost assessment 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.
4. Respondent Nancy MacPherson shall pay to the Association the sum of \$500 towards costs incurred by the Association during the prosecution of the preceding violation within 30 days of the date of this decision. Should the cost assessment 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.
5. 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 5th day of December, 2016.


 Karl Merrill, Chair, on behalf of the Committee