

**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 -

Ellis Levine

Date of Hearing: June 24, 2015 2:00 pm via Teleconference

Place of Hearing: NBREA Boardroom, Fredericton

Members of Committee: Kevin MacDonald, Chair  
Karl Merrill  
Charlene Savoie  
Maria Taylor  
Edouard Allain, Government Appointee

Appearances: Trisha Gallant, Counsel for the Association  
Ellis Levine, Respondent

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

On or about July 28, 2014, Ellis Levine, a member as defined by the *Act*, failed to deal fairly with all parties to a transaction and to conduct business so as to avoid controversies with another Realtor® all as set out in the Compliant, thereby committing an act of professional misconduct, in violation of Articles 3.9 and 25.1 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.

Ellis Levine self-represented.

The Chairman read the charges and all parties acknowledged the jurisdiction of the Committee to hold the hearing. Mr. Levine confirmed that he 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 – Charge as contained in the Notice of Hearing.

### **Submissions:**

Ms. Gallant provided an overview of the facts. The Complainant alleged that, during a meeting with Mr. Levine (the Buyer's REALTOR®) to discuss an offer, Mr. Levine was verbally abusive and bumped and shoved the Complainant when he tried to leave. Witness statements confirmed they heard raised voices of both parties, with the Respondent using vulgar language towards the Complainant. One stated they saw the Respondent block the door and push the Complainant.

Ms. Gallant stated that Mr. Levine, in his response, said he was at the Complainant's office to act on behalf of the Buyer. He requested that the Complainant include a letter with the offer and alleges that the Complainant refused to do so. When Mr. Levine asked for the letter back, the Complainant refused. Mr. Levine denied using vulgar language and shoving the Complainant, admitted a scuffle ensued and maintained that he was provoked. To date, Mr. Levine has not filed a complaint against the Complainant. He acknowledged he could have acted more professionally in the circumstance, as could have the Complainant.

Ms. Gallant noted the two articles of the REALTOR® Code included in the charges. Article 3.9 states a REALTOR® must deal fairly with all parties by acting honestly and professionally. Article 25 addresses a REALTOR®'s obligation to conduct business so as to avoid controversies with other REALTORS®.

Ms. Gallant recognized Mr. Levine's decision to proceed to Penalty Hearing, thereby avoiding associated costs of a full hearing, as well as the fact that both parties played a role in the altercation. She recommended that the Committee consider a fine of \$500 and a cost assessment of \$500.

Ellis Levine spoke on behalf of himself. He stated he was embarrassed by this incident but felt he was the victim, not the perpetrator. He felt the process was flawed, that mediation should have been an option and the issue should not have gone to hearing. He cited his unblemished record, years of experience in real estate, and expertise in commercial real estate.

Mr. Levine stated he felt the property was overpriced and prepared a CMA. He went to the complainant's office to deliver an Offer to Purchase on behalf of his Buyer and requested his

CMA and an accompanying letter be included. He said the Complainant responded to his request by stating "I am not presenting this". Mr. Levine said he asked for the letter back, but again the Complainant refused his request. Mr. Levine admitted a scuffle ensued, during which the Complainant called him "an old man".

Mr. Levine denied using vulgar language and said he felt bad this incident happened. He apologized, saying this type of behavior was uncharacteristic of him and said it would not happen again.

**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 Ellis Levine shall pay to the Association the sum of \$500 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 Ellis Levine 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 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](http://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 10 day of July, 2015.

  
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Kevin MacDonald, Chair, on behalf of the Committee