

Complaint File 2015-003

**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 -

Dudley Clark

Date of Hearing: August 25, 2016 9:45 am via Teleconference

Place of Hearing: NBREA Boardroom, Fredericton

Members of Committee: Jacques Piche, Chair
Kevin MacDonald
Joan Hayes
Maria Taylor
Edouard Allain, Government Appointee

Appearances: John Townsend, Counsel for the Association
Dudley Clark, Respondent

UPON the following charges submitted by John Townsend, Prosecutor appointed by the Association:

On or about December 16, 2014, Dudley Clark, 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® as required by Article 3 and 25, respectively of the REALTOR® Code (effective December, 2011), as more fully set out in the Complaint (2015-003).

Mr. Townsend presented on behalf of the Association.

Mr. Clark self-represented.

The Chairman read the charge and all parties acknowledged the jurisdiction of the Committee to hold the hearing. Mr. Clark 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 Penalty Hearing.

Submissions:

Mr. Townsend provided an overview of the facts. The Complainant alleged that, in the course of doing business at Mr. Clark's office, the Complainant was physically assaulted by Mr. Clark. The RCMP were notified and charges were laid. As a result, a Recognizance Order was issued with the conditions that Mr. Clark must keep the peace and be of good behavior and must keep the peace and be of good behavior towards the Complainant.

Mr. Townsend noted the two articles of the REALTOR® Code which apply to this circumstance. Article 3 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®. Mr. Townsend suggested Complaint File 2014-029 involved similar circumstances and the resulting Discipline Committee decision has established a precedent which should be considered in the decision regarding the current file.

Mr. Townsend recognized Mr. Clark's decision to proceed to Penalty Hearing, thereby avoiding associated costs of a full hearing. He recommended that the Committee consider a fine of \$500 and a cost assessment of \$500.

Mr. Clark spoke on behalf of himself. He stated he accepted responsibility for the situation getting out of hand in his office but disputed the term 'assault' being applied in this circumstance. He admitted he touched the Complainant's shoulder, but in a non-aggressive manner. He said he would accept whatever penalty the Committee imposed.

In his response, Mr. Townsend clarified the legal definition of 'assault'. He stated the action does not have to be aggressive and is interpreted as 'the least touching in anger'.

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 Dudley Clark 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 Dudley Clark 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.

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

DATED this 3rd day of September, 2016.



Jacques Piche, Chair, on behalf of the Committee