

**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 -

Andrew Libby & Louissette Higgins

Date of Hearing: February 17, 2015, 10:00 am via Teleconference

Place of Hearing: Fredericton Chamber of Commerce, York Street, Fredericton

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

Appearances: Trisha Gallant, Counsel for the Association
Andrew Libby, Respondent
Louissette Higgins, Respondent

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

As against Andrew Libby, between June 29, 2014 and in or about July 30, 2014, both dates inclusive, Andrew Libby, being a member, as defined by *The Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the Act):

1. Did not deal fairly with all parties to a transaction as required by Article 3 of the REALTOR® Code as set out in the complaint of Fran and Kevin McLean, dated July 30, 2014, and the reply of Andrew Libby dated September 3, 2014, thereby committing an act of professional misconduct,

in violation of the said Article of the REALTOR® Code (effective May, 2011), and punishable under subsection 23(4) and 23(5) of the *Act*.

And as against Louissette Higgins, between June 29, 2014 and in or about July 30, 2014, both dates inclusive, Louissette Higgins, being a member, as defined by *The Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*) and a Manager (Principal) as defined by *The Real Estate Agents Act*, S.N.B., 1983, Chap R-1:

1. Did not deal fairly with all parties to a transaction as required by Article 3 of the REALTOR® Code as set out in the complaint of Fran and Kevin McLean, dated July 30, 2014, and the replies of Louissette Higgins and Andrew Libby each dated September 3, 2014, thereby committing an act of professional misconduct, in violation of the said Article of the REALTOR® Code (effective May, 2011), and punishable under subsection 23(4) and 23(5) of the *Act*; and
2. Failed to supervise and control the activities of Andrew Libby, a REALTOR® for whom she was responsible, as required by Article 21 of the REALTOR® Code.

Trisha Gallant presented on behalf of the Association.

Both Andrew Libby and Louissette Higgins presented on their own behalf.

The Chairman read the charges and all parties acknowledged the jurisdiction of the Committee to hold the hearing. Mr. Libby and Ms. Higgins 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 Hearing/Notice of Penalty Hearing;

Submissions:

Ms. Gallant stated the evidence provided in the complaint and the response indicate that all parties to the matter share a certain amount of responsibility for unprofessional behavior which contributed to the circumstances of this complaint. She recommended a fine of \$1000 and cost assessment of \$1000 for each Respondent.

Mr. Libby admitted the tone and wording of some of his emails were problematic but were reflective of his frustration. He felt the situation did not warrant penalty or cost assessment.

Ms. Higgins agreed with Mr. Libby and stated she regretted the wording of her emails which were out of character for her, but were evidence of her frustration as well. She concurred that she had additional obligations as Manager and was prepared to accept the Committee's decision.

Findings:

After reviewing the evidence and considering the submissions of the parties, the Committee was of the opinion that the situation could have been avoided if all parties to the transaction had acted professionally, as one would expect of a REALTOR®. The Committee felt the tone of the transaction was set when Mr. Libby submitted an offer to purchase, involving a complicated commercial transaction, which contained an unreasonable irrevocable time. The demanding transaction was further compounded in that the timeframe occurred during a summertime long weekend. Subsequent ineffectual communication only served to increase frustration levels.

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

1. Respondent Andrew Libby shall pay to the Association the sum of \$1000 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 Louisette Higgins shall pay to the Association the sum of \$1000 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
3. Respondent Andrew Libby shall pay to the Association the sum of \$1000 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.
4. Respondent Louisette Higgins shall pay to the Association the sum of \$1000 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

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 23rd day of February, 2015.

A handwritten signature in cursive script, appearing to read 'Alan VanWart', is written above a horizontal line.

Alan VanWart, Chair, on behalf of the Committee