

**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 -

Katherine Bacon

Date of Hearing: February 26, 2015, 10:00 am via Teleconference

Place of Hearing: NBREA Boardroom, Fredericton

Members of Committee: Jacques Piche, Chair
Kevin MacDonald
Annette Comeau
Mona Payne
Marc Richard, Government Appointee

Appearances: Trisha Gallant, Counsel for the Association
Lise Keenan, Counsel for the Respondent

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

As against Katherine Bacon, between February 25, 2014 and May 30, 2014, both dates inclusive, Katherine Bacon, 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 _____ and _____; dated May 28, 2014, and the reply of Katherine Bacon dated June 19, 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.

Trisha Gallant presented on behalf of the Association.

Lisa Keenan presented on behalf of the Respondent, Katherine Bacon.

The Chairman read the charges and all parties acknowledged the jurisdiction of the Committee to hold the hearing. Ms. Keenan confirmed that Ms. Bacon 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, included in the Book of Relevant Documents;

Submissions:

Ms. Gallant quoted Article 3.9 of the REALTOR® Code: *“Dealing fairly” means acting honestly and professionally. The obligation to deal fairly does not in any way reduce a REALTOR®’s obligation to fulfill his or her fiduciary duties to a Client and follow the Client’s lawful instructions.*”

She stated there were two areas of concern within the complaint:

1. During a phone call with the Complainant on March 25, 2014, Ms. Bacon acted in an unprofessional manner.
2. Ms. Bacon was a party to negotiations coordinated by the then Manager and conducted in bad faith to the detriment of the Complainant. Evidence of her concurrence with the Manager’s actions and her disdain for the Complainant are contained in the tone of her reply.

Ms. Gallant recommended a fine of \$1000 and cost assessment of \$2000.

Ms. Keenan stated the phone call in question was a misunderstanding in that, while the Respondent did raise her voice, she did so in order to be clearly understood and did not intend to do so in an aggressive manner. As for the second concern, Ms. Keenan said her client was aware of the actions of her Manager after the fact but admits, in hindsight, the inflammatory elements contained in her response. It is for this reason that the Respondent decided to proceed to the penalty phase.

Ms. Keenan concluded by stating her Respondent’s conduct qualified for penalty on the lowest end of the scale in that there was no deliberate intent to mislead. She requested the Committee, when determining penalty amount, consider that the Respondent admitted to the charges.

Findings:

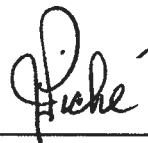
After reviewing the evidence and considering the submissions of the parties, the Committee was of the opinion that the Respondent missed the opportunity to amicably resolve the situation in the early stages. Instead, her attitude and the actions of the then Manager escalated a misunderstanding to a level of animosity uncomplimentary to what one would expect from a REALTOR®. The Committee deemed it unfortunate that the then Manager was not held accountable for his contribution to the complaint, but recognized that he is no longer trading in real estate. Regardless, the Respondent has recognized her contribution and admitted the substance of the charges, choosing to proceed to a penalty hearing.

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

1. Respondent Katherine Bacon 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 Katherine Bacon shall pay to the Association the sum of \$2000 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 Respondents may appeal this decision within thirty (30) days from the date of the decision.

DATED this 18 day of March, 2015.



Jacques Piche, Chair, on behalf of the Committee