

2014-017 & 2014-023

**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 -

Harold Planetta

Date of Hearing: April 28, 2016, 11:00 am via Teleconference

Place of Hearing: New Brunswick Real Estate Association Boardroom, Fredericton

Members of Committee: Alan VanWart, Chair  
Kevin MacDonald  
Lise Allen  
Joan Hayes  
Edouard Allain, Government Appointee

Appearances: John Townsend, QC, Counsel for the Association  
Harold Planetta, Respondent

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

**FURTHER TO** the written complaints of \_\_\_\_\_ dated June 9<sup>th</sup>, 2014 and \_\_\_\_\_ dated August 11<sup>th</sup>, 2014 (collectively the "Complaints") referred to the Discipline Committee pursuant to s. 21(3) of the *The Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the "Act") by decisions of the Complaints Committee dated July 29<sup>th</sup>, 2014 and September 22<sup>nd</sup>, 2014 respectively;

Between June 5<sup>th</sup>, 2014 and June 6<sup>th</sup>, 2014, dates inclusive, Harold Planetta, a member, as defined by the Act:

1. Failed to protect and promote the interests of his clients, as required by Article 3 of the REALTOR® Code, by:
  - (i) as a dual agent, disclosing information contained in another offer thereby putting one client at a competitive advantage; and
  - (ii) failing to deal fairly with all parties to the transaction.
2. Failed to render skilled and conscientious services, in conformity with standards of competence which are reasonably expected of a REALTOR®, as required by Article 12 of the REALTOR® Code.

All as set out in the Complaints, thereby committing acts of professional misconduct, in violation of the said Articles of The REALTOR® Code (effective December, 2011), punishable under subsections 23(4) and 23(5) of the *Act*.

Mr. Townsend presented on behalf of the Association.

Mr. Planetta self-represented.

The Chairman read the charges and all parties acknowledged the jurisdiction of the Committee to hold the hearing. Mr. Planetta 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:**

Mr. Townsend commenced by outlining the circumstances of the complaints which involved multiple offers. Mr. Planetta, acting the listing REALTOR®, verbally discussed an initial offer (A) with the vendor and then verbally communicated acceptance of this offer to Purchaser A. No acceptance documents were signed. Another offer (B) was received shortly afterwards (Purchaser B) for a higher amount which the vendor wished to accept. Mr. Planetta communicated this to Purchaser A and, upon their objections to having their offer now rejected, he disclosed the second offer (B) amount to Purchaser A. A dispute arose which resulted in Purchaser B withdrawing his/her offer and sparked a lengthy litigation which finalized with the Vendor selling to Purchaser A for a lesser amount than Offer B.

Mr. Townsend stated the facts are clear that Mr. Planetta mishandled the multiple offer situation, to the detriment of his client, the Vendor. Acknowledging that Mr. Planetta at the time of the

complaints was new to the industry (this was his first deal), Mr. Townsend maintained that a member of the public was harmed by Mr. Planetta's actions. He further noted that:

- i. by choosing a Penalty Hearing format, Mr. Planetta has saved more time and expense for the Association;
- ii. Mr. Planetta is no longer in the real estate industry;
- iii. Mr. Planetta has no intention of returning to the real estate industry.

Mr. Townsend suggested the Committee consider a fine of \$500 and a cost assessment of \$1500.

Mr. Planetta confirmed he is presently not working in the real estate industry. He stated he has never before been involved in any type of legal proceedings. At the time of the incidents central to the complaints, he thought he was helping the Vendor address difficulties arising from her personal circumstances. He admitted the litigious transaction was his fault. As the circumstances were unfolding, he was unable to reach his manager. His mistake has cost him his real estate career, his substantial initial investment to get into real estate, and his peace of mind. Mr. Planetta concluded by stating he has no intention of getting back into the real estate industry.

In his reply to Mr. Planetta's submissions, Mr. Townsend, noting his obligations as lawyer dealing with an unrepresented person on the opposing side, reminded the Committee that penalties imposed by external sources may be taken into consideration when determining penalty during this hearing.

### **Findings:**

The Committee considered the submissions of both parties, including the circumstances of the complaints, the financial and personal toll on all those involved and Mr. Planetta's resulting permanent departure from real estate trading. It was felt that Mr. Planetta's inexperience and lack of communication with his manager were major factors.

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

1. Respondent Harold Planetta shall pay to the Association the sum of \$500 as a penalty for the preceding violation. Future membership with NBREA will not be considered unless this penalty is paid to NBREA by Mr. Planetta.
2. 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).

The Committee does not order a cost assessment amount. However, should Mr. Planetta ever wish to again trade in real estate, in accordance with s. 23(5) of the Act, the Committee recommends to the Director of Financial and Consumer Services Commission that he must meet the following conditions:

1. Mr. Planetta must successfully complete the NBREA Pre-Licensing Education and the 2015 Continuing Mandatory Education.

2. Mr. Planetta must be a member in good standing of NBREA, having paid the above noted penalty, education registration fees and the membership reinstatement fee.

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 24th day of May, 2016.

A handwritten signature in black ink, appearing to read "Alan VanWart", is written over a horizontal line.

Alan VanWart, Chair, on behalf of the Committee