

DECISION OF THE DISCIPLINE COMMITTEE

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 -

Gerald Webster

Date of Hearing: November 4, 2016 2:00 pm

Place of Hearing: NBREA Boardroom, Fredericton

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

Appearances: John Townsend, QC, Counsel for the Association

On November 4, 2016, a Discipline Hearing was held to consider evidence in a complaint of professional misconduct against Gerald Webster. The charge, directly quoted from the Notice of Hearing, is as follows:

Between March 12, 2015 and September 10, 2015, both dates inclusive, Gerald Webster (“Mr. Webster”), being a member, as defined by *The Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*):

- a) Did not protect and promote the interests of his client, by failing to deal fairly with his client, the particulars of which are as follows:
 1. On March 27, 2015, he entered into a Listing Agreement at a price of \$189,900 with his client, the Complainant, [REDACTED] (Mrs. A.), (at the time an 80 year old widow) to sell her home (the “Property”) and misrepresented to her that if the Property did not sell within 120 days, he would buy it for \$160,000;

2. The Property did not sell within 120 days and he refused to complete the transaction as represented;
3. Further to the representation made by Mr. Webster as stated in paragraph 1 above and as a result of further representations made by Mr. Webster, Mrs. A. agreed to rent an apartment (the "Apartment") from a landlord who was not at arm's length with Mr. Webster, and she moved into the Apartment.
4. During the course of the Listing Agreement Mr. Webster made various reductions to the sale price without Mrs. A.'s authorization.
5. Further to the representations referred to in paragraphs 1 and 3, Mr. Webster, who was in a fiduciary relationship with Mrs. A., instructed her to:
 - i. Leave all keys to the Property on the counter;
 - ii. Vacate the Property; and
 - iii. Leave any furniture she could not move to the Apartment and he would have auctioneers sell it, with 30% of the proceeds going to the auctioneer and 70% to Mrs. A..
6. Mrs. A. followed Mr. Webster's instructions left the keys and furniture in the Property and moved into the Apartment.
7. Immediately after July 31, 2015, Mrs. A. telephoned Mr. Webster and inquired about the status of her cheque for \$160,000 as referred to in paragraph 1 above. Mr. Webster's response was "we will have to discuss that".
8. Sometime later in August 2015, Mrs. A. again telephoned Mr. Webster and inquired as to the proceeds from the sale of her furniture. Mr. Webster informed Mrs. A. that he hired professional cleaners to clean the Property and paid them by giving them the furniture.
9. Mr. Webster continued to list the Property and did not remove his "For Sale" signs until sometime in September 2015 despite repeated requests that he do so.
10. It was later determined that Mr. Webster instructed the cleaners he hired, [REDACTED] and [REDACTED] to remove the furniture to the local dump.

b) Did not render a skilled and conscientious service, in conformity with standards of competence which are reasonably expected of a REALTOR®; the particulars of which are as follows:

1. See particulars as set out in paragraph (a) above.

As set out in the complaint [REDACTED], received by the Registrar on September 11, 2015.

The charge was included in the Notice of Hearing, which was identified as Exhibit 1.

Mr. MacDonald noted that Gerald Webster was not in attendance. The Registrar, Carolyn Cameron, confirmed that Mr. Webster received proper notice of the hearing. Mr. Townsend requested the Registrar testify on this issue. After being sworn in, Mrs. Cameron confirmed that Mr. Webster received proper notice of hearing and the Affidavit of Service provided by the Process Server, Leslie Gillet, was provided to the Committee. This document was entered in to evidence as Exhibit 2. Mrs. Cameron then confirmed the exact Notice of Hearing sent to Mr. Webster was returned in the mail on October 28, 2016. On this document was a hand written note stating "send this to someone who really cares". This Notice of Hearing, with the handwritten note, was entered into evidence as "Response to Notice of Hearing" Exhibit 3. Mr. Townsend stated there was ample proof that Mr. Webster received notice of this hearing and that he had provided a response.

There were no objections from the Panel members to continuing the hearing in the absence of Mr. Webster.

Mr. Townsend presented on behalf of the Association.

Submissions:

Mr. Townsend stated the Discipline Committee, in their decision of June 21, 2016, found Mr. Webster guilty of charges stemming from another complaint (2016-003). Subsequently, in a Penalty Hearing decision dated September 27, 2016, the Discipline Committee imposed penalties on Mr. Webster which included a \$5000 fine, the maximum allowable under *the Act*, and a \$5500 cost assessment. In accordance with s. 23(5) of the Act, the Committee recommended to the Director, Financial and Consumer Services Commission, that, should Mr. Webster ever apply to be licensed to trade in real estate, he must meet the following conditions:

1. Mr. Webster must be a member of good standing of the Association, pursuant to s. 18(1), having paid all penalty and cost assessment fees and fulfilling applicable education requirements.
2. The Director impose restrictions on Mr. Webster's real estate trading activities as follows:

- a) Mr. Webster be deemed ineligible to hold a manager's license.
- b) Should Mr. Webster successfully obtain a salesperson's license, he not have access to trust accounts and all his activities relating to handling deposits be strictly supervised by a licensed manager.

Mr. Townsend stated the Financial and Consumer Services Commission also investigated the incidents central to Complaint 2016-003. As a result of their investigation, the Commission suspended Mr. Webster's manager license on June 29, 2016. Further to their process, on July 12, 2016, the Commission cancelled both Mr. Webster's manager license and the Unity Realty Inc. dba Realty Executives Saint John's agency license for a period of one year.

Mr. Townsend said, in the process of formulating his submission for today's hearing, he considered the penalties now existing against Mr. Webster and that testifying may potentially have negative impact on the health of the Complainant. As a result, Mr. Townsend stated he was of the opinion that it would be in the public interest to request the Discipline Committee stay the charges against Mr. Webster. He explained that the file would be made available for consideration by the Discipline Committee, should circumstances change.

Mr. Townsend recommended the Committee stay the charges against Mr. Webster, for the reasons noted above.

Findings:

The Committee considered the Prosecutor's recommendation and concurred with his assessment of the reasons why such action was appropriate. The Committee determined a stay of proceedings regarding File 2015-023 was warranted and halted consideration of evidence at this time.

DATED this 17 day of November, 2016.



Kevin MacDonald, Chair, on behalf of the Committee