

**DECISION OF HEARING PANEL
OF THE DISCIPLINE COMMITTEE WITH RESPECT TO FINDING OF FACT**

In the matter of a Discipline Committee Hearing held pursuant to Section 23(1) of *An Act to Incorporate the New Brunswick Real Estate Association*.

BETWEEN

The New Brunswick Real Estate Association
("The Association")

- and -

Richard Moore
RESPONDENT

Date of Hearing: October 5, 2017

Place of Hearing: NBREA Boardroom, 22 Durelle St., Fredericton, NB

Members of Panel: Jeff Sherwood, Chair
Lise Allen
Joan Hayes
Charlene Savoie
Miguel LeBlanc, FCNB Appointee

Appearances: John Townsend, Q.C., Counsel for the Association
Richard Moore, Respondent (representing himself)

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

Between approximately March 2012 and January 2013, both dates inclusive, Richard Moore, a member as defined by *The Act to Incorporate the New Brunswick Real Estate Association* Chap 115 S.N.B., 1994 (the "Act"), while acting in a Dual Agency capacity, failed to protect and promote the interests of his client, [REDACTED], and failed to provide to his client [REDACTED], skilled and conscientious service in conformity with standards of competence which are reasonably expected from a REALTOR®. All as set out in the complaint by [REDACTED] dated September

16, 2016, thereby committing acts of professional misconduct, in violation of Articles 3 and 12 of the REALTOR® Code (effective December 2011), and punishable under subsections 23(4) and 23(5) of the *Act*.

Mr. Townsend presented on behalf of the Association.

Mr. Moore, the Respondent, represented himself.

Mr. Townsend and Mr. Moore acknowledged the jurisdiction of the Committee to hold the hearing.

The Chair explained the distinction between single hearing and dual hearing format and stated the intention of the Committee was to conduct the hearing in the single hearing format. Mr. Townsend requested the dual hearing format for reasons which he stated would become apparent as the proceeding unfolded. Mr. Townsend submitted, as the Respondent was not represented by counsel, it was important proceedings be conducted in the dual hearing format. The Chair confirmed the Committee would conduct the hearing to make a determination of the evidence on the merits and, if necessary, a penalty hearing would be held at a later date to hear arguments and decide an appropriate penalty.

The Committee accepted exhibits as follows:

- a. Exhibit 1 Notice of Hearing
- b. Exhibit 2 Book of Relevant Documents
- c. Exhibit 3 Documents Submission from Richard Moore

In addition to the documentary evidence noted above, the committee heard witness testimony from:

- Complainant [REDACTED]
- Witness Ms. [REDACTED]
- Respondent Richard Moore

Unless otherwise noted, Exhibit 2 – Book of Relevant Documents was the source of all documents referenced during testimony.

Summary of Witness Testimony:

Witness Ms. [REDACTED] was not present in the room until being called to testify.

The Complainant, [REDACTED], stated Mr. Moore was a witness during a professional misconduct hearing held May 17, 2016, by the Regulator of another profession. Evidence provided during this testimony revealed evidence regarding Mr. Moore's conduct as a REALTOR® which the Complainant felt should be brought to the attention of Regulator for real estate professional misconduct issues, the New Brunswick Real Estate Association. The

complaint included an excerpt of the hearing transcript documenting Mr. Moore's statement that he placed his client's initials on an Agreement of Purchase and Sale. The Complainant testified she felt this action demonstrated a lack of integrity and was indicative of conduct which damages the reputation of the real estate industry.

In his cross examination of [REDACTED], Mr. Moore disputed the significance of his transcribed testimony by countering that the client had provided permission to place her initials on the Agreement of Purchase and Sale. He stated he had given evidence contrary to that provided by his client (also a witness) which was problematic for the Regulator in proving their case. Mr. Moore stated that the Complainant had registered her complaint with NBREA as an act of revenge for his testimony during the noted hearing. The Chair cautioned Mr. Moore and requested that he conduct his cross examination by addressing direct questions to the witness.

During his re-examination, Mr. Townsend inquired as to the results of the May 17, 2016 hearing. The Complainant testified that the Respondent (not Mr. Moore) was found guilty of professional misconduct and all documents relating to this hearing are public.

The next witness to testify was Ms. [REDACTED]. She confirmed that she was the Complainant involved in the issue addressed at the May 17, 2016 hearing. She testified she was the client of the Respondent in the noted hearing, as well as of Mr. Moore, during the sale of property in 2012. Ms. [REDACTED] stated she wanted to sell her home because it required repairs which she could no longer financially manage. She contacted a mortgage broker recommended by a friend. The mortgage broker viewed the property and proposed that the house could be repaired, "flipped" and sold. He said her mortgage would be paid out and she would receive the balance from the sale price within six to eight weeks after the repairs were completed.

Ms. [REDACTED] stated she first met Mr. Moore when he and the mortgage broker came to her office on April 10, 2012, which happened to be her birthday. Mr. Townsend directed the witness to Tab 15. She identified the document as an Agreement of Purchase and Sale for her house. On Page 3, she stated the 'seller's' signature was hers but said she did not print her name below the signature and she did not know who signed as witness. When asked who her REALTOR® was, the witness stated she assumed her REALTOR® was Mr. Moore because he was present at the meeting and the mortgage broker informed her Mr. Moore would be working on the file. She said she asked if she would have to get her own lawyer. The mortgage broker told her no, they had a lawyer working on the file. She understood she was selling her property for \$100,000 plus an additional \$3000 for furniture.

Mr. Townsend referred to Tab 8 which Ms. [REDACTED] identified as a breakdown of the transaction payout (undated) which she signed at her lawyer's office. She was unsure of when she signed this document. Mr. Townsend asked the witness to describe her understanding of the term "take back financing of \$24,000 secured as a second security collateral mortgage on the subject property". Ms. [REDACTED] responded that she understood this statement secured her funds in order for her to receive the balance of the money owed to her from the sale of the home. She stated she understood this money would be paid in 6 to 8 weeks, after the repairs to the home were completed.

Mr. Townsend referred to Tab 9 – Addendum B to Purchase and Sale (undated). Ms. [REDACTED]

confirmed she signed this document but was unsure of when.

Mr. Townsend asked the witness to refer to Tab 14. Ms. [REDACTED] described the document contained in Tab 14 as an email string in which the mortgage broker explained to Ms. [REDACTED] the second (security collateral) mortgage aspect. She stated he explained, after the sale of the home to M.A., the home would be resold and this second mortgage would be paid out by the new owners. Ms. [REDACTED] said, based on this information, she understood the mortgage broker intended to use the second mortgage money to repair the home and then 'flip' the house at a profit. She stated she trusted that they (the mortgage broker, lawyer and Mr. Moore) knew what they were doing.

Mr. Townsend referred Ms. [REDACTED] to Tab 11, a Listing Agreement with a list price of \$149,000, dated May 3, 2012. Ms. [REDACTED] positively identified her signature as "seller".

Mr. Townsend referred back to the email dated May 2, 2012 contained in Tab 14 in which the mortgage broker informed Mr. Moore to contact Ms. [REDACTED] on May 3, 2012 to sign a Listing Agreement at \$149,000. Mr. Townsend noted the Listing Agreement contained in Tab 11 document indicated the list price as \$149,000 and that it was signed in Zealand on May 3, 2012. Ms. [REDACTED] stated she could not have signed this document in Zealand as she was not at that location on that date. She did not remember signing this document but confirmed it was her signature. She stated she was at work in Fredericton on May 3, 2012.

Mr. Townsend directed the witness, Ms. [REDACTED], to Tab 12. Ms. [REDACTED] noted the document was a Listing Agreement for a listed price of \$139,000, dated May 3, 2012. She confirmed the document contained her signature, did not recall signing the document and did not know who signed as witness. She did not recall the circumstances regarding signing this document. She had no explanation as to why she would have signed two Listing Agreements, for two different prices, on the same day.

Mr. Townsend directed the witness, Ms. [REDACTED], to Tab 23. She identified the document as an email exchange she had with the mortgage broker, commencing on May 23, 2012, in which she inquired about the status of the transaction, as well as to tell him that she saw people moving furniture out of her house. The Respondent, Richard Moore, was copied. The mortgage broker stated he was working on the paperwork and he confirmed the activity at the house was to move out furniture and measure for repairs. Ms. [REDACTED] stated she understood the mortgage broker was buying the furniture for a relative. Ms. [REDACTED] testified she received no advice from her REALTOR® Mr. Moore regarding the sale of her furniture or removal of the furniture before the sale closed. Later in the exchange (Tab 23), the mortgage broker indicated someone was moving into the house. The witness testified she did not know anything about this arrangement nor was she given advice from her REALTOR® regarding the arrangement. She said she was not comfortable with people in her home before it closed but the mortgage broker convinced her it was temporary and she understood the power was to be put into the occupant's name. She stated the power was never put into the occupant's name and she paid for the power.

Mr. Townsend referred to the first page of Tab 23, an email dated May 29, 2012, from Ms. [REDACTED] to the mortgage broker. He asked the witness what she meant by the term "cover my butt". Ms. [REDACTED] replied that she wanted written details regarding the transaction because of

the delays, discrepancies, various prices, and confusing details. She wanted to understand exactly what was happening with the transaction. She said the final email response on May 29, 2012 (Tab 23) was from the mortgage broker stating the deal would close on June 1 or June 5, 2012. On closing, Ms. [REDACTED] was to receive \$78,000 and she was to carry a second mortgage on the property for \$25,000 until renovations were complete and the home resold. She said the mortgage broker assured her that upon closing, she would be free of all responsibility for the property. Ms. [REDACTED] stated it was her understanding that the house would be sold and within 6 to 8 weeks she would receive the remaining \$25,000. She confirmed the sale of her property to M.A. closed in early June, 2012.

Mr. Townsend directed Ms. [REDACTED] to Tab 5. She confirmed she signed this document, titled "Letter of Direction – Vendor Solicitor - Letter of Direction Agreement" while at the lawyer's office in September of 2012, but did not print her name below her signature.

Mr. Townsend referred to page 2 of Tab 5, which was a list of figures relating to the real estate transaction in question. Ms. [REDACTED] stated the first time she saw this list was in September of 2012. She noted the document listed \$145,000 as a loan amount, minus \$8192.50 real estate fees, minus \$102,000 to Ms. [REDACTED], leaving a balance of \$34807.50, then added \$25000 second mortgage for a final total of \$58,807.50. Ms. [REDACTED] testified she was not aware of a loan for \$145,000 nor did she receive \$102,000 as purchase price for her property. She did not pay Mr. Moore any REALTOR® fees. The Witness stated she did not receive \$25,000 and did not understand the mortgage broker fee of \$58,807.50. She stated the second mortgage was not registered until months after the transaction occurred in June 2012.

Ms. [REDACTED] testified that in September of 2012, she wrote the mortgage broker and threatened to start legal action if she did not receive her \$25,000. She said she had no contact with the Respondent at this time. She stated that, in February 2013, she met with the owner of the mortgage company (not the mortgage broker) and the Respondent at the Respondent's office and was told they would arrange for her to get her money. She stated she understood that the second mortgage would be registered at this time.

Ms. [REDACTED] said she filed complaints against the REALTOR® and the lawyer as well as sued both to recover her \$25,000. She said she eventually received \$18,000 from the law suit but was out approximately \$20,000 which represented the difference between the amount she received and the \$25,000 second mortgage owed to her, in addition to lawyer fees incurred.

Mr. Townsend referred Ms. [REDACTED] to Tab 6. Ms. [REDACTED] confirmed the document was an Agreement of Purchase and Sale, dated May 9, 2012, between herself and buyer M.A. for the amount of \$145,000, with Referral Real Estate Services noted as the real estate company involved (Richard Moore sole proprietorship). She said she did not know why it showed the purchase price at \$145,000 and she did not know who prepared it. She noted the signature was hers but she did not know who signed as witness. She stated the initials on the first page were not hers, that she was positive of this fact.

Mr. Townsend referred Ms. [REDACTED] to Tab 7, entitled Limited Dual Agency Agreement. Again, Ms. [REDACTED] recognized her signature but did not know who signed as witness. She stated she did not know the purpose of this document nor did she recall signing it.

Referring to Tab 11 (Listing Agreement dated May 3, 2012 for \$149,900) and Tab 12 (Listing Agreement dated May 3, 2012 for \$139,000), Mr. Townsend asked Ms. [REDACTED] if she recognized her signature on either document. Ms. [REDACTED] replied they appeared to contain her signatures but she did not recall the circumstances around or actually signing the documents noted.

Mr. Townsend referred Ms. [REDACTED] to Tab 13. He quoted from the document: "Rick will call and meet you tomorrow morning." Ms. [REDACTED] testified she never had a meeting alone with Mr. Moore and she never received any advice from Mr. Moore regarding her vulnerability in being involved with a second mortgage take back.

Mr. Townsend referred Ms. [REDACTED] to Tab 10. He asked the witness if she had seen this document at any time throughout the real estate transaction involving her property. Ms. [REDACTED] replied no, the first time she saw this document was after she registered her complaint against the lawyer, as this document was part of the hearing file. (Document is a list of disbursements paid to Ms. [REDACTED] which listed a promissory note of \$25,000, a bank mortgage payout of \$72,661.93 and funds amounting to \$5,807.6 paid to Ms. [REDACTED]). Ms. [REDACTED] confirmed that her bank mortgage of \$72,661.93 was paid.

Mr. Townsend asked Ms. [REDACTED] if she knew the status of the property after it was sold by Ms. [REDACTED] in June 2012. Ms. [REDACTED] replied that the purchaser declared bankruptcy and the bank repossessed the property.

Mr. Townsend referred to Tab 19 (Form 15.1 Collateral Mortgage, registered June 10, 2013). He noted the document identified the mortgagor as buyer M.A. and the mortgagee as Ms. [REDACTED]. Ms. [REDACTED] confirmed it was the collateral mortgage registration for the promissory note in the amount of \$25,000 previously arranged in June 2012. Mr. Townsend asked if the witness knew why the mortgage was not registered until June 2013. She replied that she had no explanation, she had understood the second mortgage was registered in February 2013.

Mr. Townsend referred the witness to Tab 21- Form 13, Transfer, dated July 16, 2012. She stated she did not recall signing a transfer document but could have done so during a brief meeting with the lawyer in June 2012. Mr. Townsend asked Ms. [REDACTED] if, at any time, she received advice from Mr. Moore regarding obtaining her own legal representation. She replied that she received no advice from Mr. Moore regarding lawyers. She stated she specifically asked the mortgage broker if she should get her own lawyer and was told by both he and Mr. Moore that would not be necessary and they named the lawyer who would be handling the file.

Mr. Townsend referred to Tab 6 and Tab 15. He noted these documents were two Agreements to Purchase and Sale, each containing a different purchase price (\$145,000 and \$100,000). He noted Ms. [REDACTED]'s signature on both documents and initials on pages acknowledging dual agency relationship with Referral Real Estate – Mr. Moore. Ms. [REDACTED] confirmed she signed the document in Tab 15 for the selling price of \$100,000 on her birthday April 10, 2012. Mr. Townsend asked the witness how she came to sign two Agreements to Purchase and Sale at different prices. She said she did not believe she did. She had no recollection of signing the document in Tab 6 for the selling price of \$145,000 and stated the initials on the bottom of the first page of this document were not placed there by her. She repeated that the document

contained her signature, she did not know who signed as witness and she did not recall signing the document.

Mr. Townsend referred to Tab 16 which was an email to Ms. [REDACTED] from the Respondent dated May 16, 2012 in which the Respondent noted the attachment entitled "Zealand Property Info.pdf" would provide her with 'all the documents in one place' and would be 'easier to take care of'. Ms. [REDACTED] acknowledged receipt of this email and the attachments.

The Respondent, Mr. Moore cross examined the witness, Ms. [REDACTED]. He referred to Tab 14 and stated the first time he met with Ms. [REDACTED] was on May 3, 2012, not April 10 as she had testified. Referencing Tab 15 (Agreement of Purchase and Sale for the amount of \$100,000 dated April 10, 2012), Mr. Moore asked Ms. [REDACTED] if it contained her signature. The witness positively identified her signature but did not recognize the signature of the witness. Mr. Moore again stated he was not in attendance to the signing of this document on April 10, 2012 and that he never met with the witness prior to May 3, 2012. The witness disputed this statement as her memory was clear on the circumstances.

The Chair cautioned Mr. Moore and requested that he conduct his cross examination by addressing direct questions to the witness.

Mr. Moore asked the witness, Ms. [REDACTED] where she was working in April 2012. Upon her reply, he asked her if, at that time, she wanted a quick sale of her property because she was afraid she would be bumped out of her current position and potentially lose her job. Ms. [REDACTED] replied that she continued to work for that employer for a period of time after the sale of the property.

Mr. Moore referred to Tab 14, second page to the last in the document. He noted an email from the mortgage broker to himself (the Respondent), copied to Ms. [REDACTED], in which the mortgage broker instructed him to have Ms. [REDACTED] sign a listing agreement and Agreement of Purchase and Sale. Mr. Moore asked Ms. [REDACTED] why the mortgage broker would request him to prepare another Agreement of Purchase and Sale if one had already been prepared and signed on April 10, 2012. Ms. [REDACTED] responded that she did not know why two Agreements of Purchase and Sale were prepared.

Mr. Moore referred to Tab 5 (Letter of Direction – Vendor Solicitor – Letter of Direction Agreement). He asked Ms. [REDACTED] if she recalled meeting him (Mr. Moore) in his office to sign this document. Ms. [REDACTED] replied that she did not sign the document in Mr. Moore's office but signed it at the lawyer's office. Ms. [REDACTED] stated that a meeting at Mr. Moore's office occurred in February 2013 only, when she met with Mr. Moore and the owner of the mortgage company to discuss the promissory note and the \$25,000 she was owed. Mr. Moore stated that he would have explained to the witness that a vendor take back was not possible as such an approach would not be permitted by banks. Ms. [REDACTED] disagreed that that aspect had been explained to her.

Mr. Moore asked Ms. [REDACTED] to confirm she had received compensation from the government after the flooding of her home in December 2011 as well as received a settlement resulting from her lawsuit with the lawyer and the Respondent. She confirmed this was the case. Mr. Moore

referred to Tab 10 and asked Ms. [REDACTED] if she had received a cheque for \$5807.66 arising from the sale of her property. Ms. [REDACTED] acknowledged she received this amount, which was the difference between her mortgage payout and the selling price of \$100,000, plus \$3000 for furniture. She denied, as Mr. Moore contended, that he personally delivered the cheque to her.

Mr. Townsend did not re-examine Ms. [REDACTED]. As there were no questions from the Committee, Ms. [REDACTED] was dismissed as witness.

Mr. Moore indicated he would be the only person testifying in his defense. He took the stand and was sworn in by Mr. Townsend.

Mr. Moore stated he was contacted by the mortgage broker on or about May 3, 2012 regarding the real estate transaction of the property owned by Ms. [REDACTED]. The mortgage broker said he had a buyer and a seller and required Mr. Moore to put the deal together as REALTOR®. Mr. Moore stated it would be his first deal with his newly incorporated company, which had a business model based on referrals from mortgage companies, hence the name "Referral Real Estate". He stated he advised both the mortgage broker and Ms. [REDACTED] that a vendor take back was not possible and that he would not include the sale of the furniture in the Agreement of Purchase and Sale.

Mr. Moore said he met with the buyer, M.A. at the property and drew his attention to certain conditions, such as contamination and mold. He stated the buyer, M.A. still wanted to proceed with the sale, despite being aware of these factors. Mr. Moore stated he made it clear to M.A. that the vendor, Ms. [REDACTED], would not be supplying a Property Disclosure Statement and insisted that both she and M.A. agreed the property was being sold "As Is". Mr. Moore stated he did not include "As Is" or any other conditions in the Agreement of Purchase and Sale.

Mr. Moore testified he did not prepare or have anything to do with the first Agreement of Purchase and Sale for the amount of \$100,000, signed on April 10, 2012. He stated the mortgage broker must have completed the first Agreement of Purchase and Sale (\$100,000 dated April 10, 2012) with Mr. Moore's Real Estate Company as Agent, with the knowledge of Ms. [REDACTED].

Mr. Moore said he prepared an Agreement of Purchase and Sale for the amount of \$144,000, which was later replaced with \$145,000, with Ms. [REDACTED]'s knowledge. He stated he placed Ms. [REDACTED]'s initials to acknowledge this change, with her verbal consent, and destroyed the page containing the amount of \$144,000. He stated he provided Ms. [REDACTED] with copies of all documents as attachments to an email (Tab 16).

Mr. Moore testified he did not go to Ms. [REDACTED]'s place of work on April 10 but did so on May 3, 2012 to have her sign the Listing Agreement and Agreement of Purchase and Sale dated May 3, 2012. He said he told Ms. [REDACTED] to talk to her lawyer regarding how the funds were to be distributed.

Mr. Moore stated the mortgage broker involved had a substance abuse problem and went missing. Mr. Moore said at this point the deal was dead. He said Ms. [REDACTED] came to his office and together they called the mortgage company. He said Ms. [REDACTED] was adamant the deal needed to be completed and everyone needed to know exactly what was happening. He referred

to the document in Tab 5 (Letter of Direction – Vendor Solicitor – Letter of Direction Agreement). He stated he supplied Ms. [REDACTED] with this document which was provided by the mortgage company during this meeting. He stated he hand wrote the date in the document, but did not notice that the typed year of 2011 was incorrect. He stated Ms. [REDACTED] signed this document in his office and he faxed the signed document to the lawyer’s office. He stated Ms. [REDACTED] did not sign the document in the lawyer’s office as she had testified during the May 17, 2016 hearing or during this current hearing. Mr. Moore said his testimony during the May 17, 2016 hearing on this issue “blew up” the Complainant’s case against the lawyer and she subsequently filed a complaint with NBREA to discredit him (Mr. Moore).

Mr. Moore suggested Ms. [REDACTED] went after anyone she could, attempting to get her money, and the reason she went after him was because he had liability insurance, as did the lawyer involved. Mr. Moore stated he was asked to testify at the May 17, 2016 hearing by the Respondent, the lawyer involved in the transaction. Mr. Moore stated he did not lie under oath and his testimony presented evidence that was problematic to the Complainant’s case and for this reason, she filed a complaint against him.

Mr. Moore said he has not been trading in real estate for the past two years and he is not a current member of the Association, nor does he hold an active real estate license. Mr. Townsend noted that under the *Act*, the Association still had jurisdiction to discipline former members for actions undertaken while they were members.

Mr. Townsend commenced his cross examination of Mr. Moore.

Mr. Townsend asked Mr. Moore to refer to Tab 7. He noted Ms. [REDACTED]’s signature and Mr. Moore confirmed he signed as witness. Mr. Townsend asked Mr. Moore if he was aware of the business relationship between the mortgage broker and the buyer, M.A. Mr. Moore responded that he was, that it was his understanding they had purchased properties together before. Mr. Moore said that Ms. [REDACTED] knew about this business relationship and she told him about it. Mr. Townsend asked Mr. Moore if he thought that anything was wrong with them having such a relationship. Mr. Moore replied no, that it was common, especially with commercial deals. Mr. Townsend asked Mr. Moore if he would agree that he, as REALTOR®, had a fiduciary obligation to both sides of the dual agency transaction. Mr. Moore concurred.

Mr. Townsend confirmed the referral nature of Mr. Moore’s company’s business model and that the mortgage broker brought this deal to him and Mr. Moore paid referral fees.

Mr. Townsend referred Mr. Moore to Tab 6 - Agreement to Purchase and Sale for \$145,000. Mr. Moore confirmed he changed the amount from \$144,000 with Ms. [REDACTED]’s permission.

Mr. Townsend referred to Tab 15- Agreement to Purchase and Sale for \$100,000. Mr. Moore stated this agreement was done one month before he was involved in the transaction and that it was not prepared by him. Mr. Townsend noted the buyer as MA and also Mr. Moore’s client. Mr. Moore stated he had not met MA at this point.

Mr. Townsend referred to Tab 5. He asked Mr. Moore if he could explain where the money would come from to pay the \$59,807.50 mortgage fee noted. Mr. Moore said he assumed that

came out of the disbursements. He said this had nothing to do with him, that it was between Ms. [REDACTED], the mortgage company and the lawyer and was done outside his expertise. He agreed that Ms. [REDACTED] was his client.

Mr. Townsend referred to page 2 of Tab 5 and noted a loan amount listed for \$145,000. He said there was an Agreement to Purchase and Sale for \$145,000 and Mr. Moore concurred. Mr. Townsend asked Mr. Moore, if in his experience, would one get 100 percent financing. Mr. Moore said no.

Mr. Townsend asked Mr. Moore if the noted \$8192.50 was his cut. Mr. Moore replied that was 5% plus HST of \$145,000. Mr. Townsend stated according to this document, Ms. [REDACTED] was selling the property for only \$102,000. Mr. Townsend confirmed Mr. Moore was getting his commission based on the \$145,000, but Ms. [REDACTED] was getting \$102,000. Mr. Moore confirmed he was still representing Ms. [REDACTED] at this point. Mr. Townsend ask Mr. Moore if he understood he had a duty to represent Ms. [REDACTED] as a client. Mr. Moore replied yes. Mr. Townsend noted on page 2 of Tab 5, \$25,000 of the \$102,000 to be paid to Ms. [REDACTED] was labeled "VTB (Second Mortgage) to Ms. [REDACTED] (using first name). He asked Mr. Moore if he ever advised Ms. [REDACTED] of the perils of such an arrangement. Mr. Moore replied he did discuss it with her but did not put it in writing. He said he told her to talk to her lawyer.

Mr. Townsend referred to Tab 12 (Listing Agreement for \$139,000, dated May 3, 2012). He asked Mr. Moore if he had signed this document as witness to Ms. [REDACTED]'s signature. Mr. Moore confirmed he had signed as witness. Mr. Townsend asked Mr. Moore if he had also signed as witness on Tab 11 (Listing Agreement for \$149,000, dated May 3, 2012). Mr. Moore confirmed he had signed as witness while in her office, not in Zealand as noted. Mr. Townsend asked why the Listing Agreements were for different amounts, yet signed on the same day. Mr. Moore responded that he prepared the information as much as he could on his computer using the list price of \$139,000. He said he then went to the property in Zealand and filled out the second Listing Agreement for \$149,000 because he received instructions from the mortgage broker telling him to use the list price of \$149000. He said he never thought to go back and change the list price on the other form and did not change the location of signing.

A Committee member asked Mr. Moore which listing agreement was submitted to get the list price of \$149,000 property on the MLS® System and if Mr. Moore had Ms. [REDACTED] sign both listing agreements on May 3, 2012. Mr. Moore responded he submitted everything to the Fredericton Board and that he had Ms. [REDACTED] sign both documents (Tab 11 and Tab 12). He said they were all part of the same paperwork signed at once and he did not change the listing price of \$139,000 to \$149,000 on one of the forms.

A Committee member asked how the mortgage broker knew his company name before it was registered. Mr. Moore replied that he and the mortgage broker were acquainted with each other before this deal, having offices in close proximity.

A Committee Member asked Mr. Moore who let people into Ms. [REDACTED]'s house before the transaction closed. Mr. Moore replied he did not let them in and could not remember who did. He understood Ms. [REDACTED] had agreed to it.

A Committee Member referred to Tab 5 and asked if Mr. Moore wrote up this Letter of Direction. Mr. Moore replied that the document was provided by the mortgage company and was sent to his office for Ms. [REDACTED] to sign. He stated after she signed, he sent it to the lawyer.

A Committee Member noted Mr. Moore testified that he had signed his client's initials to change amounts. Mr. Moore responded yes. The Member asked Mr. Moore how his client told him to place her initials on the Agreement to Purchase and Sale. Mr. Moore stated she wanted the sale done as quickly as possible and instructed him verbally. He said he emailed her the changes. He said he had no email confirmation and he did not note on the document that she had given him permission. Mr. Moore said he realizes now the importance of making sure paperwork is above reproach and to trust no one. The Member asked Mr. Moore if 'trust no one' was what he had learned from this experience. He replied 'you think you are doing the right thing but when money is involved, people do crazy things'.

A Committee Member asked Mr. Moore if told Ms. [REDACTED] that she did not need her own lawyer. He replied that he never told her she did not need her own lawyer. He stated he felt privileged to work with the lawyer involved.

A Committee Member asked Mr. Moore if he provided written disclosure that he paid referral fees to mortgage companies. He stated he did not but Ms. [REDACTED] was aware of referral fees paid as they were included in the closing documents from the transaction, which she would have received.

A Committee Member asked Mr. Moore if the buyer, M.A. signed a document confirming he knew the house had issues. Mr. Moore replied that he had not, the discussion was verbal only. He stated he told the buyer that Ms. [REDACTED] would not be signing a Property Disclosure Statement, protecting her, and the buyer understood the property was sold 'as is, where is'. The Member asked how not signing a Property Disclosure Statement protected Ms. [REDACTED]. Mr. Moore replied that she could miss something on the statement or there may be something she was not aware of and by not signing, she could avoid a potential law suit. The Member asked if the buyer was aware that the purpose of the Property Disclosure Statement was to protect him as the buyer. Mr. Moore replied 'absolutely'.

A Committee Member noted Mr. Moore had stated he told his client that, if there was going to be a vendor take back deal, Mr. Moore could not be involved and they should consult with their lawyer. Mr. Moore said he was not qualified to provide advice on the specifics of a vendor take back deal. He stated Ms. [REDACTED] and the mortgage broker had many communications which he was not included or copied. Mr. Moore suggested the beginning of the transaction was a secret deal between the mortgage broker and Ms. [REDACTED]. He said they needed a REALTOR® after the first agreement was not accepted by the bank. The Member asked Mr. Moore, when he saw the original Agreement to Purchase and Sale for the price of \$100,000 and vendor hold back aspect, what, in his opinion was the problem with the bank - why would the deal not be accepted by the bank. Mr. Moore replied that it would be like the bank was funding the down payment. The Member stated Mr. Moore continued to represent Ms. [REDACTED] in this deal which did include the vendor take back. Mr. Moore said he could only do what he could do legally and that there are lots of deals behind the scenes, with whatever lawyers agree to do. He admitted vendor take back deals were not allowed in residential transactions. The Member noted Mr. Moore

continued to be involved, despite knowing this.

A Committee Member asked Mr. Moore when he was originally licensed. Mr. Moore confirmed he was originally licensed in 2002 or 2003 and became a broker of his own company in 2012, working alone.

A Committee Member referred again to Tab 5. The Member asked Mr. Moore for confirmation that the mortgage company wrote up the Letter of Direction which he had Ms. [REDACTED] sign. He stated that Ms. [REDACTED] had to give her lawyer direction on what got paid to whom. The Member noted it was the lawyer's duty to identify these details. Mr. Moore stated the lawyers had to be told who got paid, what is to be done. He said the mortgage company would not provide the funds unless a Letter of Direction was provided. He said the lawyer said he needed to know what was to be done. Mr. Moore confirmed that the mortgage company typed out the Letter of Direction and provided it to him for Ms. [REDACTED] to sign. The Member asked him what his thoughts were when he saw the mortgage broker fee of almost \$60,000. Mr. Moore replied he assumed that the mortgage broker fee was going to the buyer to use towards renovations on the home. The Member asked if Mr. Moore felt that was ok. He replied that there was absolutely nothing illegal about that and it was Ms. [REDACTED] decision to sign the document and that all he did was facilitate her getting the deal done. He said he provided direction on what he could do, and whatever happened with the lawyers was outside of him. He stated there were aspects of the deal he was not aware of, citing as example the Agreement to Purchase and Sale for the price of \$100,000.

A Member asked Mr. Moore if he thought it was appropriate to place someone else's initials on a legal document. He replied that he did so with the best of intentions, as a favour. He stated he was never educated by NBREA that this was a problem, it never came up. Mr. Moore said he did not think he was doing anything nefarious at the time, nor did he think he did so now. He said he had gone through much scrutiny over this deal because of the lies that were told of him.

Regarding the Agreement to Purchase and Sale for the price of \$145,000, a Member asked Mr. Moore if he replaced the first page to change the price from \$144,000 to \$145,000. He said it was on his computer so he changed the price and printed it off. The Member stated, procedurally, REALTORS® are not allowed to change anything on a contract, an amendment is required. When asked why Mr. Moore did not do an amendment, he replied that everything was in a rush and the buyer did not have a computer. Mr. Moore said he thought this was the best way to get this done quickly.

Mr. Moore confirmed a property appraisal was completed but did not have a copy of the appraisal. He stated he did see a copy of the appraisal. Mr. Townsend suggested the appraisal was for the original agreement to purchase at \$100,000. Mr. Moore stated the appraisal would have had to be at least at \$149,900 in order for the funding to be approved.

In his closing statement, Mr. Townsend said to reach a decision, the Committee did not have to determine who was telling the truth. He advised the Committee to focus on the charges and the articles of the REALTOR® Code of Ethics noted. He submitted that the testimony of Ms. [REDACTED] should be preferred over that of Mr. Moore.

Mr. Townsend quoted from the charges contained in the Notice of Hearing, Exhibit 1: “failed to protect and promote the interests of his client [REDACTED], and failed to provide to his client [REDACTED], skilled and conscientious service in conformity with standards of competence which are reasonably expected from a REALTOR®”. He submitted that it was clear the purpose of the transaction was to put almost \$60,000 in the pocket of the mortgage broker. He stated, as a business partner of the mortgage broker, Mr. Moore breached his fiduciary duties owed to both Ms. [REDACTED] and M.A., the buyer. He stated Service NB documents show that this property went to mortgage sale not long after this deal was done. He suggested there were dealings done to inflate the value of the property for mortgage purposes in order to take back almost \$60,000 to the mortgage broker. He stated the deal did not result in financial benefit to Ms. [REDACTED], a victim of a deal which Mr. Moore could have prevented if he had acted appropriately. Mr. Townsend said this was a ‘smelly’ deal, with the buyer also being a business partner of the mortgage broker, who had a ‘colourful background’. He concluded Mr. Moore received approximately \$8000 in commission, based on an inflated price, and the mortgage broker received approximately \$60,000. He said this is a transaction that should not have happened, and would not have happened if Mr. Moore had correctly performed his job. Mr. Townsend stated, his job and the Discipline Committee’s job is to represent the public interest. He submitted that Ms. [REDACTED], as a member of the public, was harmed by a former member of this Association and he should be discipline accordingly.

Mr. Moore disagreed with Mr. Townsend’s closing statements. He said Ms. [REDACTED] would have lost the property or continued to own a contaminated home if the transaction had not occurred. Mr. Moore said the mortgage broker wanted the property to flip it and Ms. [REDACTED] agreed. He stated they placed Mr. Moore’s company on the April 10, 2012 Agreement of Purchase and Sale without Mr. Moore’s knowledge or involvement. Mr. Moore stated Ms. [REDACTED] lied throughout her testimony and was successful in her lawsuit. He felt she and the mortgage broker arranged the deal before Mr. Moore’s involvement. He stated it was common for lawyers to do things after the fact, after REALTORS® do their job.

Mr. Moore said his commission was \$3000, not \$8000 and said he has spent more than that to defend his actions in this case. He said no one could find fault in what he did as he could only do what he was legally allowed to do. He stated he changed the purchase price of \$144,000 to \$145,000 with the best of intentions, with the knowledge of Ms. [REDACTED]. He stated he did not create the deal or the mess. He contended that Ms. [REDACTED] was egregious in that she filed complaints, lied under oath and filed lawsuits. Mr. Moore stated he did not think he breached any fiduciary duty and that he had gone above and beyond to do as he was legally entitled.

The Chair noted that both parties would receive the Committee’s written decision within a reasonable time period and adjourned the Hearing at 1:30 pm.

Findings:

The Committee reached the following findings of fact:

- The credibility of Witness Ms. [REDACTED] had no bearing on their decision.
- The documents contained in Exhibit 2 were sufficient to prove that Mr. Moore ought to have known and to have advised his client, Ms. [REDACTED], not to enter into this transaction.
- Mr. Moore ought to have known and did not appreciate the gravity of placing his client's initials on an agreement that he knew to be false and, at the very least, without any authorization in writing from his client.
- It was obvious that Mr. Moore failed to disclose all the facts and to protect the interests of his client.
- Mr. Moore, or any REALTOR®, should have been aware that something was amiss when the Vendor expected to receive \$100,000, but other Purchase and Sale Agreements showed the purchase price to be as high as \$145,000.00.

The Committee concluded that the Respondent did not admit to his responsibilities, did not learn from this incident and lacked credibility. They felt numerous signs existed to indicate to Mr. Moore that both he and his clients should have avoided this transaction. The testimony of the witness, Ms. [REDACTED], had no bearing on the Committee's opinion of the extent or severity of Mr. Moore's actions.

After considering all of the evidence and the submissions of the parties, the Committee determined that Richard Moore is guilty of professional misconduct as stated in the charges contained in the Notice of Hearing.

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

Dated at Fredericton, New Brunswick, this 10th day of November, 2017.



Jeff Sherwood

Chairman, on behalf of the Discipline Committee, File 2016-017