

2016-017

**DECISION OF HEARING PANEL
OF THE DISCIPLINE COMMITTEE WITH RESPECT TO PENALTY**

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 Penalty Hearing: January 29, 2018

Place of Penalty Hearing: NBREA Boardroom, 22 Durelle St., Fredericton, NB
also via Teleconference

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

UPON the following charges, contained in the Notice of Hearing (Exhibit 1), 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*.

The hearing commenced at 10:00 am. A panel member, Charlene Savoie, excused herself from the hearing.

The Chair, Mr. Sherwood, noted that Section 22(4) of the *Act* addresses the circumstance of a member of the Discipline Committee unable to continue participating in the hearing: “Where the Committee commences a hearing and not more than two members become unable to act, the remaining members may complete the hearing and shall have the same authority as the full committee”. He stated the hearing would continue.

This penalty hearing was convened to determine sanctions resulting from a hearing on merit held October 5, 2017, during which the Panel determined Richard Moore guilty of professional misconduct, as defined in the charges contained in the Notice of Hearing (Exhibit 1). A copy of their decision, dated November 10, 2017, was marked and accepted as Exhibit 4.

Mr. Townsend presented on behalf of the Association. He provided the Panel with a binder for reference during the penalty hearing. This binder entitled “Penalty Hearing of the Discipline Committee” was marked and accepted as Exhibit 5.

It was noted that Mr. Moore, the Respondent, was not present. Mr. Townsend referred to Exhibit 5, Tab 1, a copy of an Affidavit of Service signed by Gregory Roger Jones which confirmed that Mr. Moore was served the Notice of Penalty Hearing (issued by the Registrar January 8, 2018) on January 9, 2018. Mr. Townsend directed the Panel to Exhibit 5, Tab 2, a copy of an email sent to the Registrar by Mr. Moore in which he indicated he would not be attending the penalty hearing.

As there were no objections from the Panel members to continuing the hearing in the absence of Mr. Moore, Mr. Townsend proceeded with his submission.

Mr. Townsend asked the Panel to refer to Exhibit 4, Decision of Hearing Panel of the Discipline Committee with Respect to Finding of Fact (File 2016-017). He provided a brief overview of the circumstances which lead to charges against Mr. Moore and the Panel’s subsequent finding of guilt as outlined in their decision dated November 10, 2017 (Exhibit 4).

Mr. Townsend noted the Complainant did not receive money she was owed and was harmed by the actions of Mr. Moore and his business associates – the mortgage broker and the purchaser. He stated the sloppiness of the transaction underscored that the objective was to extract money from the mortgage funding the purchase and sale. Mr. Townsend stated evidence pointed to mortgage fraud and Mr. Moore must have known this was the case and should have advised the Complainant not to enter into such an agreement. Mr. Moore owed a duty to the Complainant to ensure her interests were protected. Mr. Townsend stated the manipulation of data and false

documents benefited Mr. Moore and his business partners and amounted to illegal and criminal behavior.

Mr. Townsend submitted this file presented as one of the most serious cases the Association has dealt within the last several years. He referred the Panel to Exhibit 5 which contained a number of prior Discipline Committee decisions regarding egregious conduct. He submitted, while these sample decisions dealt with very serious issues, the present case involved a degree of mortgage fraud that is more serious in that parties involved deliberately targeted a vulnerable member of the public and used a concentrated pattern of conduct to extract money for their own personal benefit.

Mr. Townsend recommended the maximum fine under the *Act*, defined in Section 23(4)(d), \$5000.00 and a cost assessment of \$20,000.00 (Section 23(4)(g)).

Mr. Townsend suggested that the Panel consider Section 23(5) of the *Act* and recommend to the Director of the Financial and Consumer Services Commission that the following restrictions be imposed, should Mr. Moore wish to obtain a real estate license in the future:

1. Engage in the sale of real estate only under the personal supervision and direction of another member.
2. Accept periodic inspections of the books, accounts, records and work in connection with real estate practice.
3. Provide monthly reports to the Registrar detailing all transactions and commissions earned.
4. Respond to requests for more information as deemed appropriate by the Registrar.

By imposing the suggested penalties, Mr. Townsend submitted that the Discipline Committee would be sending the strongest possible message to the industry that the Association will not tolerate the type of conduct demonstrated in this case.

Upon deliberation, the Panel hereby orders as follows, pursuant to Section 23(4) of the *Act*:

1. Respondent Richard Moore shall pay to the Association the sum of \$5000 as a penalty for the preceding violations as determined by decision dated November 10, 2017 (Exhibit 4). Payment in full must be received at the Association office within sixty (60) days of the signing date of this decision. Future membership with NBREA will not be considered unless this penalty is paid in full to NBREA by Mr. Moore. Reinstatement of his membership will also be subject to Association policies, including an absence time limit of two years, reinstatement fees and mandatory course requirements.
2. Respondent Richard Moore shall pay to the Association the sum of \$20,000 as cost assessment for expenses incurred by the Association during the prosecution of the preceding violations as determined by decision dated November 10, 2017 (Exhibit 4).

Payment in full must be received at the Association office within sixty (60) days of the signing date of this decision. Future membership with NBREA will not be considered unless this cost assessment is paid in full to NBREA by Mr. Moore. Reinstatement of his membership will also be subject to Association policies, including an absence time limit of two years, reinstatement fees and mandatory course requirements.

3. Pursuant to Section 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 Section 23(5) of the *Act*, the Panel recommends to the Director of the Financial and Consumer Services Commission that, should Richard Moore apply to be licensed to trade in real estate, the following terms, conditions and limitations be imposed:

1. Mr. Moore must be a member of good standing of NBREA, pursuant to Section 18(1), having paid all penalty and cost assessment fees as stated above.
2. Mr. Moore never be eligible to hold a manager`s license.
3. Mr. Moore be able to trade in real estate only under the personal supervision and direction of a licensed manager.
4. Mr. Moore accept periodic inspections of the books, accounts, records and work in connection with his real estate practice.
5. Mr. Moore provide monthly reports to the Registrar detailing all transactions and commissions earned.
6. Mr. Moore respond to requests for more information as deemed appropriate by the Registrar.

As defined in Section 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 14th day of February, 2018.



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