

2018-002

**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 -**

**Bryan Hardy  
RESPONDENT**

**Date of Hearing:** October 10, 2018, 10:30 am

**Place of Hearing:** NBREA Boardroom, Fredericton

**Members of Committee:** Karl Merrill, Chair  
Mona Payne  
Kevin MacDonald  
Jean LeBlond  
Marc Richard, Government Appointee

**Appearances:** John Townsend, QC, Counsel for the Association  
Bryan Hardy, Respondent

**The Chair noted persons attending the hearing:**

**Present:** Mr. Townsend, Ms. Carolyn Cameron (Registrar) and Ms. Peggy Blackwell (Court Reporter), Mr. Merrill, and Mr. Richard.

**Via Teleconference:** Mr. Hardy, Mr. Andre Malenfant (Respondent’s Manager), Ms. Payne, Mr. MacDonald and Mr. LeBlond.

The Chair read the charges, directly quoted from Notice of Penalty Hearing, submitted by John Townsend, Counsel for the Association:

Between November 9, 2017, and December 15, 2017, both dates inclusive, Bryan Hardy, being a member, as defined by *The Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*):

Did not deal fairly with all parties to a transaction by making written and verbal personal insults to a client.

All as set out in the complaint of \_\_\_\_\_ received January 25, 2018, thereby committing an act of professional misconduct, in violation of Article 3 of the REALTOR® Code (effective March 2015), and punishable under subsections 23(4) and 23(5) of the *Act*.

The charges were contained in the Notice of Penalty Hearing dated September 27, 2018 (file 2018-002), entered into the record as Exhibit #1.

All parties acknowledged the jurisdiction of the Committee to hold the hearing.

Mr. Hardy, the Respondent, confirmed his choice to proceed to the penalty hearing stage without a hearing on the merits of the charges.

Mr. Townsend submitted a document entitled 'Book of Relevant Documents' which he indicated was received by the Respondent and his Manager prior to the hearing. The Registrar recorded the 'Book of Relevant Documents' as Exhibit #2.

### **Submissions:**

Mr. Townsend stated the matter central to this hearing involved a member of the Association (Mr. Hardy) making unprofessional and rude comments to clients. He referred to Exhibit #2, Tab 1 which is a copy of the Complaint, and directed the Panel's attention to page 2 where the Complainants described Mr. Hardy's reaction to the Complainant's using another REALTOR® to purchase a house. Mr. Townsend noted their claim is supported by a text message Mr. Hardy sent to the Complainants, found on page 8 of Tab 1.

Mr. Townsend said the Complainants also noted that Mr. Hardy was extremely rude to the REALTOR® who acted on their behalf in purchasing a home and that he had demanded she pay him a finder's fee.

Mr. Townsend referred to Tab 3, Mr. Hardy's response and stated he found Mr. Hardy's response troubling in that it appeared Mr. Hardy did not appreciate the seriousness of his actions (the verbal abuse of his clients and his unprofessionalism).

Mr. Townsend noted a precedent has been established by the Discipline Committee. He outlined NBREA vs Mitchell (2011-006) which involved similar circumstances and charges addressed in Mr. Hardy's hearing. He said the decision from this past hearing should be persuasive in determining appropriate penalty and costs today. He stated Mr. Mitchell chose a full hearing on the merits of the charges, which resulted in higher costs, and he did not demonstrate any remorse. Mr. Mitchell was required to pay a penalty of \$1500 and a cost assessment of \$3000.

Mr. Townsend submitted the Panel should consider the fact that Mr. Hardy had admitted to the substance of the charges and had chosen a penalty hearing, which provided cost savings. Mr. Townsend recommended the Panel impose on Mr. Hardy a fine of \$1000 and a cost assessment of \$1000. He stated he had discussions with the Respondent and his manager, Mr. Malenfant, prior to the hearing and informed them of this recommendation.

Mr. Hardy confirmed he concurred with this recommendation.

In response to a question posed by a Panel member, Mr. Hardy stated that, when he wrote his response to the complaint, he was feeling hurt by the Complainants' actions and responded accordingly. Mr. Hardy said he has remorse and regret for his actions and has learned from this experience.

### **Findings:**

The Committee considered the facts as presented during the hearing. Recognition was given to the Respondent's willingness to accept responsibility for the substance of the complaint and his remorse for his behavior resulting in the charge of breaching Article 3 of the REALTOR® Code (effective March 2015).

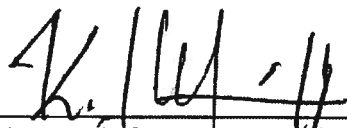
The Committee hereby orders the following, pursuant to s. 23(4) of the Act:

1. Respondent Bryan Hardy 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 payment 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 Bryan Hardy shall pay to the Association the sum of \$1000 towards costs incurred by the Association during the prosecution of the preceding violation within 30 days of the date of this decision. Should the cost assessment 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](http://www.nbrea.ca).

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 <sup>17<sup>th</sup></sup> day of October, 2018.

A handwritten signature in black ink, appearing to read 'K. Merrill', written over a horizontal line.

Karl Merrill, Chair, on behalf of the Committee  
File 2018-002