

File 2017-010

**DECISION 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 *The Act to Incorporate the New Brunswick Real Estate Association* (the "Act"):

**BETWEEN**

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

-and-

Maurice Poirier and Tanya Hannah  
RESPONDENTS

Date of Hearing: June 18, 2019

Location: 22 Durelle Street, Unit 1, Fredericton, NB

Members of the Discipline Committee: Karl Merrill, Chair  
Mona Payne  
Kevin MacDonald  
Jean LeBlond  
Paul Blanchard, Government Appointee

Appearances: John Townsend, QC, Pink Larkin  
Peter Ashfield, Pink Larkin

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

Between May 2013 and May 2015, both dates inclusive, Maurice Poirier and Tanya Dawn Hannah, members, as defined by *An Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*):

1. Failed to protect the interests of their client;
2. Failed to render skilled and conscientious service to their client; and

3. Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®

All as set out in the complaint of Chantal M. Landry and Suzanne A. McIntyre-Wood dated May 26, 2017, thereby committing various acts of professional misconduct, in violation of Articles 3, 12, and 21 of the REALTOR® Code (effective December 2011 and March 2015), punishable under subsection 23(4) of the *Act*.

The charges, contained in the Notice of Hearing dated May 14, 2019, were entered into the record as Exhibit 1.

Mr. Townsend appeared for the Prosecution.

The Chair noted the absence of the Respondents, Mr. Poirier and Ms. Hannah. Mr. Townsend confirmed precedent when a Discipline Hearing (File 2011-005) proceeded without the attendance of the Respondent. There were no objections from the Committee to continue the hearing in the absence of the Respondents.

Mr. Townsend had no objection to the composition or the jurisdiction of the Committee to hear and determine the complaint central to this hearing.

The Chair explained the distinction between a single hearing and a dual hearing format and stated the intention of the Committee to conduct the hearing in the single hearing format. Mr. Townsend objected to the single hearing format and requested a dual hearing, due to the seriousness of the charges. The Chair confirmed that the Committee would first make a determination of the evidence on the merits and, if necessary, would conduct a second hearing to determine penalty at a later date.

The Committee accepted the following documentary evidence:

- Exhibit 1 – Notice of Hearing
- Exhibit 2 – Book of Relevant Documents

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

- Carolyn T. Cameron, Registrar
- Suzanne A. MacIntyre-Wood, Senior Lawyer, Public Trustee Services, Complainant
- Chantal M. Landry, Public Trustee, Complainant

Witnesses, with the exception of Ms. Cameron, were sequestered until they were called to testify.

### Summary of Witness Testimony

Ms. Carolyn Cameron, Registrar, was the first to testify. At Mr. Townsend's request, she confirmed the following documents and provided descriptions as noted:

- Complaints Committee Decision dated November 9, 2017: Placed file in abeyance due to ongoing court proceedings dealing with same issue.
- Complaints Committee Decision dated May 3, 2018: Referred file to Discipline Committee.
- Proof of NBREA Membership for Tanya Hannah and Maurice Poirier: Signed by C. Cameron.
- Order of the Discipline Committee dated December 17, 2018: Approving substituted service as Respondents could not be served despite all efforts.
- Order of the Discipline Committee Dated April 15, 2018: Approving service of Notice of Hearing (June 18) via Canada Post, to Ms. Hannah's parents.
- Affidavit of Service sworn to May 16, 2019 enclosing Notice of Hearing dated May 14, 2019: Signed by C. Cameron, confirming Notice of Hearing (June 18) was mailed per Order of April 15, 2019.
- Complaint of the Public Trustee dated May 16, 2017, with attachments.
- Response of Maurice Poirier dated June 30, 2017.
- Supplement to the Public Trustee's complaint dated July 13, 2017.
- Response of Maurice Poirier and Tanya Hannah dated September 1, 2017.
- Decision of the Financial and Consumer Services Commission dated February 5, 2018.

The second witness was Suzanne A. MacIntyre-Wood, Senior Lawyer, Public Trustee Services. She confirmed her signature on a complaint she registered with NBREA against the Respondents, dated May 26, 2017. Ms. MacIntyre-Wood also identified another document which she described as a follow-up to the original complaint, submitted after Ms. MacIntyre-Wood received a copy of the Respondents' response from Ms. Cameron. Ms. MacIntyre-Wood stated the Respondents' response contained two documents not previously disclosed to the Public Trustee.

The third witness was Chantal Landry, Public Trustee and the Director of Family Law Services for the New Brunswick Legal Aid Services Commission. She described the Public Trustee as an organization, funded by the province of New Brunswick, that protects the personal and financial

interests of elderly individuals who have been declared incompetent by a court. She stated the Public Trustee becomes a Committee of that individual when no other person is able, suitable or willing to do so. Ms. Landry identified her signature on the original complaint filed with NBREA as a result of concerns regarding Mr. Poirier's and Ms. Hannah's relationship with their client, Mr. G.

Ms. Landry identified an Affidavit dated May 26, 2017 as having her signature. Her testimony focused on confirming various points contained in this Affidavit.

### **Submissions**

Mr. Townsend stated the complaint concerned a serious matter involving an extremely vulnerable gentleman being taken advantage of by two REALTORS®. He noted the first charge involved Article 3: Failed to protect the interest of their client. Mr. Townsend submitted there is no dispute that Ms. Hannah and Mr. Poirier represented Mr. G.; that they did not protect his interests; that they were obviously acting in a conflict of interest and that they were looking out for themselves.

Mr. Townsend noted the second charge involved Article 12: Failed to render skilled and conscientious service to their client. Mr. Townsend said it was beyond dispute that Mr. G. was the Respondents' client and, also beyond dispute, that the Respondents failed to render skilled and conscientious service.

Mr. Townsend submitted that the third charge, Article 21: Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®, was also beyond dispute. The Respondents' actions were not how REALTORS® act, how they are supposed to act, nor how any reasonable person would expect REALTORS® to act.

Mr. Townsend drew the Committee's attention to the last tab of Exhibit 2 which contained a decision of the Financial and Consumer Services Commission (FCNB) dated February 5, 2018. Mr. Townsend noted that while the Committee must base their decision on the evidence heard, he wished to draw attention to the FCNB decision, which was the result of a parallel proceeding with respect to the licensing of Ms. Hannah and Mr. Poirier as real estate salespeople. He noted the Respondents were refused real estate licenses as the result of this decision. He stated, while the Director (FCNB) was considering a different issue (licensing), the facts contained in the decision may be of use to the Committee when rendering their decision.

Mr. Townsend referred to Exhibit 2, Tab 10 - a copy of the Response to the Complaint, submitted by legal counsel on behalf of the Respondents, which the Committee reviewed in preparation for this hearing. This document indicated that the Respondents were aware of the Complaint and that they, through their lawyer, provided a Response for the Complaints Committee's consideration. The matter was held in abeyance until other proceedings were resolved. During this period of time, the Respondents left the province and were not available to be served, despite various attempts to do so through the services of document servers and private investigators. He stated

this was the first time in his experience when it was required to obtain an order from the Chair to dispense with service.

Mr. Townsend noted both the Response to the Complaint and the Submission to FCNB, prepared by the Respondents' legal counsel, presented the argument that the issue was a private matter. Mr. Townsend referred to paragraphs 101 and 102 of the FCNB decision where the Director did not accept this assurance. Mr. Townsend concurred with the Director and stated that when one is a REALTOR® engaged by client who has signed a listing agreement, one cannot just remove all obligations and declare the relationship a private matter. He said the Respondents took advantage of a vulnerable person for their own gain, got a piece of property for no money and walked away with at least \$110,000.

Mr. Townsend quoted from Paragraph 157 of the FCNB decision which he stated was an appropriate summary of what happened:

*"The Licensees (Respondents) befriended a vulnerable senior with an admitted drug problem and what doctors reported was limited capacity. They struck a deal with him that was one sided and completely self-serving. They received a significant renovation credit, of which they barely utilized. They failed to prove any evidence of significant work done to the property to make it saleable. They provided no credible evidence to demonstrate they provided him with the cash difference between his rent and the \$1000 owing monthly. In the end it appears they also financially benefited from the additional mortgage they obtained on the property."*

In closing, Mr. Townsend stated the evidence is clear and overwhelming that the Respondents, Tanya Hannah and Maurice Poirier breached the articles noted in the charges, specifically Articles 3, 12, and 21.

## **Findings**

The Committee considered the following facts from Ms. Landry's Affidavit, copies of official documents contained in Exhibit 2 and witness testimony:

- Mr. G. inherited residential property from his parents.
- Mr. G. has never worked and was receiving disability pension.
- Mr. G's financial and personal affairs were administered by his common-law spouse, Ms. SV., until April 2013 when she passed away.
- Mr. G. contacted the Respondents, Maurice Poirier and Tanya Hannah of Century 21 Absolute Realty Inc. to sell his house.

- Mr. G. signed a one-year listing agreement with Century 21 Absolute Realty Inc. represented by Mr. Poirier on May 13, 2013 with an asking price of \$324,900.
- On October 11, 2013, Mr. G. and Tanya Hannah signed a Memo of Agreement regarding Mr. G. selling the property to Ms. Hannah for an agreed purchase price of \$238,000. Of the purchase price, Ms. Hannah received a renovation credit of \$138,000 and Mr. G. held a Collateral Mortgage for \$100,000. Ms. Hannah was to pay this Collateral Mortgage with the following terms: no interest payable on the mortgage, monthly payments of \$1000 comprised of \$670 paid directly to landlord for an apartment for Mr. G. and \$330 paid directly to Mr. G. This Memo of Agreement was prepared by lawyer J.H.
- A Collateral Mortgage for \$100,000 was signed by Ms. Hannah on October 17, 2013 and prepared by lawyer J.H. This mortgage was never registered.
- On October 17, 2013, Ms. Hannah signed a Promissory Note regarding the Collateral Mortgage of \$100,000 and terms of the payments as outlined in the Memo of Agreement dated October 11, 2013. This Promissory Note was prepared by lawyer J.H.
- The deed for the property was transferred from Mr. G. to Ms. Hannah and registered on October 18, 2013.
- Mr. Poirier and Ms. Hannah moved Mr. G. to an apartment on or around October 1, 2013. Century 21 Absolute Realty Inc. (Directors Tanya Hannah and Maurice Poirier) paid rent for Mr. G's apartment, \$670 monthly during the period October 1, 2013 to August 31, 2014.
- On December 6, 2013, Mr. G. appointed Mr. Poirier as his Power of Attorney with Ms. Hannah as alternate Power of Attorney. This document was prepared by lawyer J.H.
- On December 6, 2013, Mr. G. signed a Last Will and Testament naming Mr. Poirier as the Executor and Trustee and Ms. Hannah as replacement Trustee. In this will, Mr. Poirier was named sole beneficiary. Alternatively, Ms. Hannah was to be sole beneficiary. The will was prepared by lawyer J.H.
- Mr. Poirier secured another apartment for Mr. G. commencing September 1, 2014 for which Century 21 Absolute Realty Inc. paid rent of \$665 monthly during the period September 1, 2014 to October 2015.
- On January 27, 2014, Ms. Hannah received a mortgage on the property for \$110,000 from Olympia Trust Company. This mortgage was registered by lawyer J.H.
- On April 2, 2015, Mr. G. was admitted to the Psychiatric Unit of the George Dumont Hospital.

- On August 21, 2015, a social worker at the hospital made application to the Public Trustee to intervene on behalf of Mr. G. to assume control of Mr. G.'s affairs.
- On September 15, 2015 Mr. Poirier attempted to meet with Mr. G and to take him out of the Psychiatric Unit. When nursing staff intervened, Mr. G. informed them he did not want to meet with Mr. Poirier. Mr. Poirier left and returned a short time later with a woman, who he identified as his lawyer. Mr. Poirier was not allowed further contact with Mr. G. and both he and his lawyer were asked to leave the premises.
- An interim court order appointing the Public Trustee as Committee of the person and estate of Mr. G. was issued on February 16, 2016 and was made permanent on February 17, 2017.
- An interim court order declared Mr. G. an incompetent person, as defined by the *Infirm Persons Act* (R.S.N.B. 1973, c. I-8), on February 16, 2016 and was made permanent on February 17, 2017.
- The authority of Mr. Poirier as Power of Attorney and Ms. Hannah as alternate was suspended with the interim order of February 16, 2016 and terminated February 17, 2017.
- There is no indication that Mr. G. received money from Ms. Hannah as outlined in the Memo of Agreement and Promissory Note, signed by Ms. Hannah. Rent payments were supplied by Century 21 Absolute Real Estate Inc. for a total amount of \$16,680.00.
- The Collateral Mortgage for \$100,000 was registered by the Public Trustee on May 11, 2017. This mortgage was ranked as a second charge after the Olympia Trust mortgage.
- Olympia Trust Company commenced foreclosure proceedings on the property May 2017 as the result of Ms. Hannah's default of payment on the mortgage. Ms. Landry confirmed the property sold at auction for \$120,000 which covered the Olympia Trust mortgage and a portion of overdue property taxes (approximately \$20,000). Nothing remained to cover the Collateral Mortgage.
- Maurice Poirier and Tanya Hannah were found not suitable to be licensed under the Real Estate Agents Act as real estate salespersons, in accordance with the Decision of the Financial and Consumer Services Commission dated February 5, 2018.

The Committee accepted the evidence of witnesses MacIntyre-Wood and Landry, who were both acting in official capacity with the Public Trustee Services and recognized the efforts required by the Public Trustee to protect the financial well-being of Mr. G.

The Committee considered Exhibit 2 and reviewed Ms. Landry's Affidavit sworn May 26, 2017 with attachments, including but not limited to, the Power of Attorney, the Last Will and Testament, the Collateral Mortgage, and the Certificate of Registered Ownership.

After considering all of the evidence and the submissions provided, the Committee determines that Maurice Poirier and Tanya Hannah are guilty of the charges contained in the Notice of Hearing, which constitute professional misconduct.

The Committee accepts the testimony of witnesses as evidence that Mr. Poirier and Ms. Hannah acted in an egregious manner in their dealings with a vulnerable client, thereby violating Articles 3, 12 and 21 of the REALTOR® Code.

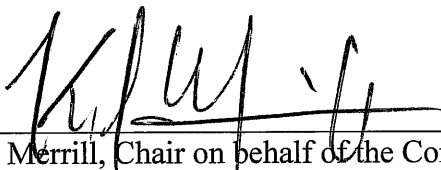
Service of this decision may be effected on Maurice Poirier by sending a copy by courier to Maurice Poirier c/o John and Bonnie MacLeod at 100 Echo Drive, Moncton, New Brunswick E1C 3H8. John and Bonnie MacLeod are Tanya Hannah's parents.

Service of this decision may be effected on Tanya Hannah by sending a copy by courier to Tanya Hannah c/o John and Bonnie MacLeod at 100 Echo Drive, Moncton, New Brunswick E1C 3H8. John and Bonnie MacLeod are Tanya Hannah's parents.

In accordance with s. 25(1) of the Act, Mr. Poirier and/or Ms. Hannah may appeal this decision within thirty (30) days from the date of the decision. Given the deemed service outlined in the previous two paragraphs, the Committee consents to allow for the filing of an appeal within 40 days of the date of the decision.

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).

DATED this <sup>3<sup>rd</sup></sup> day of July 2019

  
Karl Merrill, Chair on behalf of the Committee