

2017-018

**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 -

Barkley Bauer  
RESPONDENT

Date of Hearing: June 13, 2018, 10:00 am

Place of Hearing: NBREA Boardroom, Fredericton

Members of Committee: Jacques Piché, Chair  
Mona Payne, via Teleconference  
Kevin MacDonald  
Karl Merrill, via Teleconference  
Paul Blanchard, Government Appointee

Appearances: John Townsend, QC, Counsel for the Association  
Kelly Vanbuskirk, Counsel for Mr. Bauer

The Chair noted persons attending the hearing:

Present: Mr. Townsend, Ms. Carolyn Cameron (Registrar) and Ms. Jill Melles  
(Court Reporter), Mr. Piché, Mr. MacDonald and Mr. Blanchard.

Via Teleconference: Mr. Bauer, Mr. Vanbuskirk, Ms. Payne and Mr. Merrill.

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

Between April 5, 2017, and October 13, 2017, both dates inclusive, Barkley Bauer, a member, as defined by *The Act to Incorporate the New Brunswick Real Estate Association*, Chap. 115, S.N.B., 1994 (the *Act*):

1. Failed to protect the interests of his client;
2. Failed to render skilled and conscientious service to his client; and
3. Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.

All as set out in the complaint of Jennifer Young dated September 12, 2017, thereby committing various acts of professional misconduct, in violation of Articles 3, 12, and 21 of the REALTOR® Code (effective January 1, 2008), punishable under subsection 23(4) of the *Act*.

The charges were contained in the Notice of Penalty Hearing dated June 4, 2018 (file 2017-018), which was entered into the record as Exhibit #1.

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

Mr. Vanbuskirk, on behalf of the Respondent Mr. Bauer, confirmed Mr. Bauer wished to proceed to the penalty hearing stage, without a hearing on the merits of the charges.

#### **Submissions:**

Mr. Townsend stated, as the result of pre-hearing consultations, he and Mr. Vanbuskirk, on behalf of the Respondent, had agreed to make a joint submission, which also included a Statement of Agreed Facts.

The Registrar recorded the Joint Submission (titled 'Agreement') dated June 12, 2018 as Exhibit #2 and the Statement of Agreed Facts also dated June 12, 2018 as Exhibit #3.

Mr. Townsend submitted a fourth document which he explained was a corrected Verification of Membership required as a date was incorrect on the Verification of Membership document provided in the Statement of Agreed Facts (1) Exhibit #3. This fourth document was recorded as Verification of Membership Exhibit #4.

Mr. Townsend stated joint submissions should be accepted by Discipline Committees or Court unless it can be demonstrated that the proposal is unreasonable or contrary to public interest. He explained a joint submission is not intended to take decision making power away from the

Discipline Committee. He said a joint submission demonstrates a high degree of cooperation between the parties as they work in a responsible, reasonable and good faith effort to resolve issues. He reiterated the Discipline Committee retains the discretion to reject the terms of the joint submission, but only if the terms are unreasonable or contrary to public interest.

Mr. Townsend stated Mr. Bauer was willing to admit to the substance of the complaint and had accepted the proposed fine of \$1000 and hearing costs of \$1000, both to be paid by August 13, 2018.

In response to a question posed by a Panel member, Mr. Townsend explained figures for the fine and hearing costs were determined by considering the degree of cooperation from the Respondent and the spectrum of the seriousness of the breach, in light of the maximum penalty of \$5000 as determined by the *Act*, Section 23(4)(d).

Mr. Townsend recommended the Discipline Committee accept the joint submission as presented.

Mr. Vanbuskirk concurred with Mr. Townsend's summary of the law regarding joint submissions. He stated when reasonable agreement has been reached between a regulatory body and the respondent, the Discipline Panel should take the agreement seriously.

On behalf of Mr. Bauer, Mr. Vanbuskirk clarified a couple of issues. He noted Mr. Bauer was licensed as a real estate broker in Ontario from 1989 to October 2003 prior to becoming licensed in New Brunswick October, 2003.

Mr. Vanbuskirk stated his client took the matter (central to the hearing) very seriously and this is why he agreed to undertake the joint submission. Mr. Bauer wished to proceed, despite the error regarding the date of his reinstatement in 2017, as he appreciated a correction was made.

Mr. Vanbuskirk noted there is no evidence that Bridgewater Bank suffered any financial loss as the result of Mr. Bauer's actions but Mr. Bauer acknowledges he could have handled the situation differently and is cognisant of his responsibilities as a REALTOR®. Mr. Vanbuskirk stated Mr. Bauer had a long career as a REALTOR® and he accepts responsibility for the communication breakdown and has learned from this experience.

In closing, Mr. Vanbuskirk requested that the Panel accept the joint submission.

### **Findings:**

The Committee considered the facts as set out in the Agreed Statement Facts jointly submitted by the parties. Recognition was given to the Respondent's willingness to accept responsibility for the substance of the complaint that he breached Article 21 of the Realtor Code as alleged in the Notice of Penalty Hearing dated June 4, 2018.

The Committee finds that the Joint Submission is reasonable and hereby orders the following, pursuant to s. 23(4) of the *Act*:

1. The Committee accepts the Joint Submission of the parties dated June 12, 2018, including all terms and conditions contained therein. Mr. Bauer is directed to pay a fine of \$1000 and a cost assessment of \$1000 on or before August 13, 2018, 11:30 pm.
2. Should the noted fine and cost assessment not be received by the deadline indicated, membership in the Association will automatically be suspended. Future membership with the Association will not be considered unless both the fine and cost assessment are paid in full to Association by Mr. Bauer. Reinstatement of membership will be subject to Association policies, including an absence time limit of two years, reinstatement fees and mandatory course requirements.
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 21st day of June, 2018.



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Jacques Piché, Chair, on behalf of the Committee  
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