



# Complaint 2023-040

NBREA v. Elizabeth Fearon

A Discipline Decision produced by the Discipline Committee of the New Brunswick Real Estate Association in accordance with "*An Act to Incorporate the New Brunswick Real Estate Association*". This decision is published and distributed by the Office of the Registrar under the direction of the Discipline Committee of the NBREA.

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## Recitals

### DECISION OF THE DISCIPLINE COMMITTEE WITH RESPECT TO A JOINT SUBMISSION

In the matter of a Discipline Committee Hearing held pursuant to Section 23(1) of  
*The New Brunswick Real Estate Association Act* (the “Act”):

#### BETWEEN

The New Brunswick Real Estate Association (the “Association”)

#### -and-

Elizabeth Fearon (the “Respondent”)

Date of Hearing: September 10<sup>th</sup>, 2024, 9:30am

Place of Hearing: Microsoft Teams, Virtual.

Members of Committee: Karl Merrill, Chair  
Jeff Sherwood  
Chris Drysdale  
Fanny Bodart  
Michèle Morin, Government Appointee

Appearances: Dominic Caron, Counsel for the Association  
Sue Duguay, Student-At-Law for the Association

The Chair noted persons attending the hearing:

Present: Mr. Merrill, Mr. Sherwood, Mr. Drysdale, Mrs. Bodart, Mrs. Morin, Mr. Caron,  
Ms. Duguay, Mrs. Fearon, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee  
Legal Counsel) and Mrs. Christine McLaughlin (Court Reporter).

## Executive Summary

- [1] This Complaint concerns the business activities of a REALTOR<sup>®</sup> who, while managing properties for her clients, failed to provide them with a written service agreement for her services, failed to remit rents and damage deposits to them after collection, and continually misled them about the rents she collected from their tenants.
- [2] Prior to the hearing date, Mrs. Fearon and Mr. Caron mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Mrs. Fearon admitted guilt to the charges laid against her on behalf of the Association which amounted to four (4) counts of professional misconduct under the REALTOR<sup>®</sup> Code of Ethics. The Committee accepted her admission of guilt and, in accordance with the joint submission, ordered that:
1. The Respondent pay a \$3000 fine;
  2. The Respondent pay \$1000 in costs to the Association;
  3. The Respondent be suspended from the Association for a period of three (3) months from the date of the decision;
  4. The Decision be published with the Respondent's name; and
  5. A Notice be published to the Profession.

## Introduction

- [4] This Complaint stems from the actions of the Respondent and her collection of rent monies owed to the Complainants and a deposit for the Rentalsman from two properties in the Moncton area. The Respondent had represented the Complainants in a transaction in early 2022 and was subsequently entrusted with the management of other properties they owned.
- [5] The Complainants allege that, in the transition from buyer's agent to property manager, the Respondent failed to obtain or provide a written service agreement and began representing her clients as their property manager. In this role, the Respondent collected rent monies from the Complainants' tenants as per their email and text-based agreements. Over the course of the provision of her services, she collected \$7,780 in rent and damage deposits from the tenants that was not remitted to the landlords and remained as an outstanding balance.
- [6] While collecting these amounts, the Respondent retained these funds for months and continually misled the Complainants by indicating that the tenants in the various managed properties had not been making their required payments.
- [7] The Association's position is that Mrs. Fearon's failure to protect and promote the interests of her clients, failure to ensure that the service agreements with her clients were clear and in writing, failure to render skilled and conscientious services, and engagement in conduct that was disgraceful, unprofessional or unbecoming, constitute violations of the REALTOR® Code of Ethics and acts of professional misconduct.

[8] The Complaint was submitted to the Office of the Registrar primarily to ascertain if it met the threshold required for a finding of professional misconduct for Real Estate Professionals within the province of New Brunswick. The Complaint and all information presented as evidence supporting the Complainants' Claims were presented to the Respondent, who was provided until June 2<sup>nd</sup>, 2023, to respond. The exchange of information ensued with a response from the Respondent on June 12<sup>th</sup>, 2023, a response from the Complainants on June 27<sup>th</sup>, 2023, a response from the Respondent on July 31<sup>st</sup>, 2023, and a final response from the Complainants on August 2<sup>nd</sup>, 2023.

[9] The Complaints Committee reviewed the evidence presented by the Complainants and the Respondent on December 18<sup>th</sup>, 2023, and rendered a decision on March 4<sup>th</sup>, 2024, to forward the matter to the Discipline Committee pursuant to subsection 21(3)(a) of the *Act*.

[10] In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Mrs. Fearon was a member of the New Brunswick Real Estate Association at or during the time of the alleged offence.

[11] The Respondent was provided with a list of the panel members in advance of the hearing and was given a reasonable amount of time to object to the composition of the Discipline Committee. No such objections were received.

## **Jurisdiction**

[12] Trading in real estate in New Brunswick is co-regulated by the Association. The Association has the power to regulate, discipline and control persons practicing the profession of trade in real estate in the Province under subsections 5(a) and 6(a) of the *Act*.

In accordance with the *Real Estate Agents Act*, RSNB 2011, c. 215, “trading” in real estate includes, “*a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and an offer or attempt to list real estate for the purpose of such a disposition or transaction, and an act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, but does not include a listing service operated by or for an organized real estate board in a community, and the verb “trade” has a corresponding meaning*”

[13] As a result, the actions of collecting rent and finding tenants in relation to a lease of property fall within the regulated practice of trading in real estate and are subject to the jurisdiction of the Association. Therefore, the actions of the Respondent which form the basis of the counts of professional misconduct in this matter are within the jurisdiction of the Discipline Committee. This jurisdiction was not challenged by the Respondent at the hearing.

[14] Under subsection 23(1)(a) of the *Act*, the Discipline Committee shall, when so directed by the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association. On March 4<sup>th</sup>, 2024, the Complaints Committee rendered its decision in Complaint matter 2023-040 ordering the Discipline Committee to commence such a proceeding.

[15] The Discipline Committee exists in legislation as an administrative legal body and is therefore not bound by the same rules of court as a court of law, and as such, may admit evidence that might not otherwise be deemed admissible in other courts. Where the Discipline Committee is not bound by the *New Brunswick Rules of Court*, they are bound

by the *Complaint and Discipline Procedures Manual* as approved by the Board of Directors of the New Brunswick Real Estate Association.

## Legal Test

[16] The standard of proof required in a hearing before the Discipline Committee refers to the level of proof that must be met for the Discipline Committee to find a member guilty of an alleged offence. That level of proof, or threshold, is the civil standard of a “balance of probabilities” which is 51% or higher (i.e., is it more likely than not that the Respondent is guilty of one or more of the alleged offences).

[17] The Association has the onus of proving the allegations against the Respondent, on a balance of probabilities, through documentation, submission and testimony given under oath or affirmation.

[18] In the case of the Discipline Committee, it may find a member guilty of professional misconduct or to be incompetent. Pursuant to subsections 23(2) and 23(3) of the *Act*, a finding of professional misconduct or incompetence must meet the following criteria:

1. A member may be found guilty of professional misconduct if:
  - a. the member has been convicted of an offence which, in the opinion of the Committee, is relevant to the member’s suitability to trade in real estate; or
  - b. the member has been guilty, in the opinion of the Committee, of professional misconduct.
  
2. A member may be found to be incompetent if:



- a. the member has displayed in carrying out the member's professional responsibilities a lack of knowledge, skill, or judgement, or disregard for the welfare of the public of such a nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in trading in real estate; or
- b. the member is suffering from a physical, or mental condition or disorder of such a nature or extent as to render the member unfit to engage in trading in real estate.

[19] Where the parties have presented the Committee with a joint submission and the Respondent has admitted guilt on the charge contained in the notice of hearing, the Committee has a duty to consider the joint submission.

[20] In the decision of *R. v. Anthony*<sup>1</sup>, the Supreme Court adopted a high standard for rejecting joint submissions explaining that, "*rejection [of a joint submission] denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.*" In the context of administrative law, the Committee must decide whether the mutual agreement with regard to sanctions is appropriate, reasonable and fitting, consistent with the range of sanctions imposed in similar circumstances and that the agreement is not contrary to the public

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<sup>1</sup> *R. v. Anthony-Cook*, 2016 SCC 43 at para 34.

interest.<sup>2</sup> The Committee must approach the joint submission from a position of restraint but may refuse a joint submission should be it so unreasonable as to bring the administration of justice into disrepute or otherwise be contrary to the public interest.

## Issue

[21] The issue in this Complaint matter is whether the Committee accepts the joint submission of the parties.

## Charges

[22] Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charge against Mrs. Fearon:

*Between October 1<sup>st</sup>, 2022, and May 12<sup>th</sup>, 2023, both dates inclusive, Elizabeth Fearon, being a member, as defined by An Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):*

- 1. Failed to promote the interests of her clients;*
- 2. Failed to ensure that the service agreement with the clients was clear, understandable and in writing;*
- 3. Failed to render skilled and conscientious service;*

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<sup>2</sup> *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII) at para 28.

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

*All as set out in the Complaint dated May 12<sup>th</sup>, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Article 3, 5, 12 and 21 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and ss. 23(5) of the Act.*

## **Background and Evidence**

[23] The Complainants in this matter purchased a multi-unit residential property through the services of the Respondent in February of 2022, then a second property in September of the same year. Following the purchase of the properties, the Complainants retained the services of the Respondent to manage them. As part of her duties, the Respondent was asked to deal with the general maintenance of the properties, as well as collecting rent from the tenants to remit to the landlords.

[24] This business relationship was conducted by text conversations in the absence of a written service agreement.

[25] In October of 2022, issues began with the rent collection from the tenants of the properties managed by the Respondent. On several occasions, rent was being collected, but it was late in reaching the Complainants. In these instances, the Respondent had indicated that the tenants had agreements with her as to how to handle the late and partial payments. In all instances, the Respondent informed the Complainants that she had the situation under control and was dealing with it.

- [26] The compounding issue of late and partial payments came to a head in March of 2023 when the Complainants initiated the preparation of eviction notices to their tenants for non-payment of rent, in violation of their Residential Lease. Prior to doing so, they inquired with the Respondent about the outstanding rent payments one last time. The Respondent informed the Complainants that she had “*chased*” a particular tenant for payment.
- [27] On March 25<sup>th</sup>, 2023, the Respondent texted the Complainants asking them to please stop texting the tenant who the Complainants believed had been deficient in rental payments. The Complainants responded to the Respondent indicating that they had every right to contact their own tenants, and that they had discovered that the tenants had in fact been paying their rent and provided the Complainants with screen shots of their successful e-transfers being deposited via Interac e-transfer to the Respondent’s email address. A similar situation was identified for the second tenant of the same property, who the Complainants believed had been deficient in rental payments as well.
- [28] The Respondent’s explanation was that the error in rent collection was caused by a change in her debit card, the fact that she held three different accounts, and that the error lay with the financial institution she banked with. According to the Respondent, her financial institution had another individual with her name banking with them, which caused the confusion. The Respondent did not provide any evidence from her financial institution to the Committee to support these claims.
- [29] On April 18<sup>th</sup>, 2023, the Complainants contacted the Respondent asking if there was any update on the timeline for receiving their rent payments. The Respondent indicated that her financial institution was investigating the matter and that the insurers at the bank were

waiting for final approval before disbursing the outstanding amounts. The Respondent did not provide any evidence to support these claims.

[30] In total, the Respondent collected \$7,780 that was never given to her clients: \$2,880 in rent from Tenant 1#, \$3,300 in rent from Tenant #2, and \$1,600 as a damage deposit from Tenant #3. The damage deposit was supposed to have been deposited to the Residential Tenancies Tribunal as per text conversations between the Respondent and the Complainants; however, it was never deposited.

[31] When the Complaint was received by the Office of the Registrar in May 2023, the Complainants had yet to be paid the amounts owed.

[32] After the Complaint had been referred to a Discipline Committee hearing but before it was heard, on June 10<sup>th</sup>, 2024, the Complainants confirmed that the Respondent had paid them the total amounts due and had apologized to them. However, the Complaint cannot be withdrawn once submitted.

[33] At the hearing, Counsel for the Association submitted that it had reached a resolution with the Respondent and would be making a joint submission. As part of the joint submission, the Respondent admitted to the charges laid against her by the Association.

[34] As part of the discipline file prepared by the Registrar and provided to the parties and to the Committee, the Committee reviewed the Complaint, and the subsequent response between the Complainants and Respondent inclusive of the documentary evidence provided. The Committee also reviewed the Notice of Hearing, and the decision of the Complaints Committee.

## Findings and Reasons

[35] Having regard for the evidence and for the submissions made and the law in relation to joint submissions, the Committee accepts the joint submission. Though this matter raises serious concerns, the Committee accepts that the joint submission is not so unreasonable as to bring the administration of justice into disrepute or to be contrary to the public interest. Further, the acceptance of the joint submission is consistent with matters heard by prior Committees.

## Decision

[36] The Committee accepts the joint submission of the parties in that the parties agree that the actions of Mrs. Fearon constitute professional misconduct and finds that the Respondent is guilty of professional misconduct pursuant to section 23(2)(b) of the *Act*.

[37] Further, the Committee makes the following non-binding recommendations:

- a. Mrs. Fearon is encouraged to ensure that sufficient written service agreements are in place when she is conducting property management services with her clients.
- b. Mrs. Fearon is encouraged to become familiar with the requirements of the *Residential Tenancies Act* should she continue to conduct business as a property manager within the scope of tenant and landlord relations.
- c. Mrs. Fearon is encouraged to conduct and maintain proper accounting of funds collected from tenants in the course of her property management operations and that said funds and accounting are transparent with her clients, in accordance with the prescribed written service agreements in place.

- d. Mrs. Fearon is further encouraged to have adequate insurance policies in place to cover her specific business operations that lie outside of the Errors & Omissions and General Liability insurance coverage provided through her membership in the New Brunswick Real Estate Association.

## Order

[38] In light of the above and in accordance with the joint submissions of the parties, we hereby order the following pursuant to subsections 23(4)(d), 23(4)(f) and 23(4)(g) of the *Act* for Mrs. Fearon:

1. Mrs. Fearon is ordered to pay a fine of \$3,000 CAD to the Association and is further directed to pay costs to the Association in the amount of \$1,000 CAD as reimbursement for costs incurred in the prosecution of this Complaint matter.
2. Mrs. Fearon is suspended for a period of three months from the date of this decision.
3. Mrs. Fearon is further ordered to pay the total amount of the fine and hearing costs (\$4,000 CAD) within three months of the date of this decision. If payment is not made within three months, Mrs. Fearon shall not be eligible for reinstatement with the Association until such time that the fine and hearing costs are paid.
4. Pursuant to subsection 23(4)(f) of the *Act*, we direct the Registrar to publish this decision with the Respondent's name.
5. Pursuant to subsection 23(4)(f) of the *Act*, we further order the Registrar to distribute a summary of this decision including a website link to the decision to all members of the Association by way of electronic dispatch (Notice to the Profession).

[39] In accordance with subsection 25(1) of the *Act*, the Respondent may appeal this decision within thirty (30) days from the date of the decision by application to the Court of King's Bench of New Brunswick.

Dated at Fredericton, New Brunswick, this 11<sup>th</sup> day of December, 2024.

//Original Signed by Committee Chair//

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Karl Merrill  
on behalf of the Discipline Committee,  
Complaint 2023-040