



Complaint 2023-034

NBREA v. Sonia Blanchette

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-

Sonia Blanchette (the “Respondent”)

Date of Hearing: December 3, 2024

Place of Hearing: Microsoft Teams, Virtual.

Members of Committee: Karl Merrill, Chair
Jeff Sherwood
Shannon Auffrey
Melissa Doucet
Andrea Stierle-MacNeill, Government Appointee

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

Sonia Blanchette, Respondent
Virginia Gillmore, Counsel for the Respondent

The Chair noted persons attending the hearing:

Present: Mr. Merrill, Mr. Sherwood, Ms. Shannon Auffrey, Ms. Doucet, Mrs. Stierle-MacNeill, Mr. Caron, Ms. Duguay, Mrs. Blanchette, Ms. Gillmore, Mr. Mitchell McLean (Registrar), Mrs. Brittany Trafford (Committee Legal Counsel) and Mrs. Christine McLauchlan (Court Reporter).

Executive Summary

- [1] This Complaint concerns the activities of a REALTOR[®] occurring during the course of a transaction in which the Respondent had dual representation of the Seller and the Buyer. The Complaint alleges that the Respondent assisted the Buyer in misrepresenting the actual purchase price of a property to facilitate a cashback incentive for the Buyer following the closing of the purchase agreement.
- [2] Prior to the hearing date, the Respondent, the Respondent's Counsel and Mr. Caron mutually agreed to present a joint submission to the Committee.
- [3] Under the joint submission, Mrs. Blanchette 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[®] Code of Ethics. The Committee accepted her admission of guilt and, in accordance with the joint submission, ordered that:
1. The Respondent be suspended for one week;
 2. The Respondent pay a \$3500 fine to the Association;
 3. The Respondent pay \$1500 in costs to the Association;
 4. The Respondent take a REALTOR[®] Code of Ethics course;
 5. The Respondent take and pass a training session respecting mortgage fraud;
 6. The Respondent take and pass a learning comprehension assessment;
 7. The Decision be published including the name of the Member; and
 8. A Notice be published to the Profession.

Introduction

- [4] This Complaint concerns allegations that the Respondent, while representing the Seller and Buyer, participated in misrepresenting the actual purchase price of a property. The Complaint alleges that the sale indicated a sale price \$20,000 higher than the actual price of the property and that the Respondent assisted with a process whereby the Seller paid the Buyer back the excess amount of \$20,000 after the closing.
- [5] The Association's position is that the Respondent's conduct constitutes breaches of the REALTOR® Code of Ethics and professional misconduct for: the failure to protect and promote the interests of her clients; the failure to consult outside professional advice, and the failure to render skilled and conscientious service; and engagement in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.
- [6] The Complaint was submitted to the Office of the Registrar primarily to ascertain if the Complaint 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 Complainant's claims were presented to the Respondent, who was provided until May 23, 2023, to respond. The exchange of information ensued with a response from the Respondent on or about May 31, 2023, a response from the Complainant on or about June 20, 2023, a response from the Counsel for the Respondent on or about July 19, 2023, a response from the Complainant on or about August 8, 2023, a further response from the Counsel for the Respondent on or about September 28, 2023, a response from the Complainant on or about October 24, 2023, and a final response from the Counsel for the Respondent on or about November 14, 2023.

- [7] The Complaints Committee reviewed the evidence presented by the Complainant and the Respondent on March 22, 2024, and rendered a Decision on May 9, 2024, to forward the matter to the Discipline Committee pursuant to subsection 21(3)(a) of the *Act*.
- [8] In preparation for the hearing commenced before the Discipline Committee, the Registrar confirmed that Mrs. Blanchette was a member of the New Brunswick Real Estate Association at or during the time of the alleged offence.
- [9] 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 Committee. No such objections were received.

Jurisdiction

- [10] 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 May 9, 2024, the Complaints Committee rendered its Decision in Complaint matter 2023-034 ordering the Discipline Committee to commence such a proceeding.
- [11] 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

[12] 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).

[13] 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.

[14] In the case of the Discipline Committee, it may find a member guilty of professional misconduct and/or incompetency. 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.

[15] 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.

[16] In the Decision of *R. v. Anthony*,¹ 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 interest.² The Committee must approach the joint submission from a position of restraint

¹ *R. v. Anthony-Cook*, 2016 SCC 43 at para 34.

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

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

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

Charges

[18] Mr. Dominic Caron, representing the Association as the appointed prosecutor, presented the following charges against Mrs. Blanchette:

Between February 15th, 2021 and May 3rd, 2023, both dates inclusive, Sonia Blanchette being a member, as defined by The Act to Incorporate the New Brunswick Real Estate Association, Chap. 115, S.N.B., 1994 (the Act):

- (i) Failed to protect and promote the interests of her clients;*
- (ii) Failed to consult outside professional advice;*
- (iii) Failed to render skilled and conscientious service; and*
- (iv) Engaged in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.*

All as set out in the Complaint dated April 26th, 2023, thereby allegedly committing acts of professional misconduct, in violation of, inter alia, Articles 3, 10, 12, and 21 of the REALTOR® Code of Ethics and punishable under ss. 23(4) and 23(5) of the Act.

Background and Evidence

[19] This Complaint was made by an individual who contacted the Respondent to list their property for sale in early 2021. After discussing the market analysis of the property, the Respondent listed the Complainant's home for sale at \$172,900. After a year on the market, the Complainant urged the Respondent to lower the price to \$144,900. Shortly after lowering the purchase price as requested by the Complainant, the Respondent notified the Complainant that she had a buyer interested in purchasing the property for \$130,000. However, the offer was accompanied by an informal agreement with a condition that the Buyer would receive a cashback incentive of \$20,000 following the closing outside of the agreement of purchase and sale. This meant that the Buyer, who was also represented by the Respondent, would purchase the property for \$150,000 if the Complainant was willing to remit \$20,000 back to the Buyer on closing. The Complainant alleges that the Respondent urged him to accept this offer, and although thinking the situation was odd, the Complainant obliged.

[20] The Respondent admitted that she had a "gut feeling" that she should contact her Broker about the offer and the cashback requirement, but she did not do so. The Respondent's written response to the Complaint denies any fraudulent conduct.

[21] After the property closed and funds were exchanged, the Respondent contacted the Complainant to arrange for the payment of the cash back amount. The Complainant alleges that the Respondent never informed him of the concept of Dual Agency and that it was after the payment that he began to think that the Respondent was representing the Buyer.

[22] The Complainant obtained a certified cheque in the Buyer's name which he delivered to the Respondent. The Complainant advised the Respondent that he felt uncomfortable about the agreement and the cashback requirement. The Complainant also questioned the Respondent on why he was charged a 5% commission on the selling price of \$150,000 when the home had only sold for \$130,000. The Complainant requested the Respondent provide him with the difference in the commission prior to him handing over the cheque for \$20,000. The Respondent provided the Complainant with a cheque in the amount of \$1,150.

[23] The Complainant alleged that the Respondent misled him throughout the transaction and acted both unethically and unprofessionally while selling his property.

[24] At the hearing, Counsel for the Association submitted that it had come to a resolution with the Respondent and her Counsel and was making a joint submission. The Respondent admitted to wrongdoing and submitted that she has learned from her mistakes. As part of the joint submission, the Respondent admitted to the charges laid against her by the Association.

[25] Counsel for the Association submitted at the hearing that the major allegation in the Complaint related to the misrepresentation of the actual purchase price and cashback arrangement with the Buyer, commonly referred to as a "daylight loan". The charges against the Respondent are for professional misconduct relating to the misrepresentation.

[26] 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 responses between the Complainant and the Respondent. The Committee also reviewed the Notice of Hearing, and the Decision of the Complaints Committee.

Findings and Reasons

[27] Having regard for the evidence and for the submissions made, the Committee accepts the joint submission. It is the finding of the Committee that the joint submission is appropriate, reasonable, and in accordance with the public interest. Further, the acceptance of the joint submission is consistent with matters heard by prior Committees.

Decision

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

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

- a. The Respondent is encouraged to seek the advice and guidance of professionals outside of the transaction, such as a lawyer, manager or other agent, where circumstances warrant or there are concerns raised.

Order

[30] 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)(b), 23(4)(d), 23(4)(f), 23(4)(g) and 23(4)(h)(i) of the *Act* for Mrs. Blanchette:

1. Mrs. Blanchette's membership with the Association will be suspended for one week as of the date of the receipt of this Order.
2. Mrs. Blanchette is ordered to pay a fine of \$3,500 CAD to the Association and is further directed to pay costs to the Association in the amount of \$1,500 CAD as partial reimbursement for costs incurred in the prosecution of this complaint matter.
3. Mrs. Blanchette is further ordered to pay the total amount of the fine and hearing costs (\$5,000 CAD) within 30 days of the date of receipt of this decision. If payment is not received by the prescribed deadline, the Registrar shall suspend the member until such time that payment is made. The member will be subject to a reinstatement fee upon reinstatement in the event of a suspension.
4. Mrs. Blanchette is ordered to take and successfully pass the REALTOR[®] Code of Ethics Course as delivered online by the Canadian Real Estate Association. Upon completion of the course, the Respondent must furnish the Registrar with a copy of the course completion certificate on or before the 1st day of July, 2025. If a course completion certificate is not received by the prescribed deadline, the member will be suspended as a member of the Association until such time that a certificate of completion is furnished to the Registrar. The member will be subject to a reinstatement fee upon reinstatement in the event of a suspension.

5. Mrs. Blanchette is directed to attend a three (3) hour Training Session delivered by the Director of Education of the Association and reviewed by the Registrar to cover the elements of mortgage fraud to include, but not limited to:
 - a. An overview of Mortgage Fraud;
 - b. Common types of Mortgage fraud:
 - i. Fraud for Profit,
 - ii. Fraud for Commission,
 - iii. Fraud for Shelter, and
 - iv. Straw Buyers;
 - c. the dangers of engaging in and being a party to daylight loans.
6. The Respondent must pass a learning comprehension assessment as Directed by the Director of Education following the completion of the Training Session. The training session must be completed by the 1st of July, 2025. If a session completion confirmation is not received by the prescribed deadline, the member will be suspended as a member of the Association until such time that a session completion confirmation is furnished to the Registrar. The member will be subject to a reinstatement fee upon reinstatement in the event of a suspension.
7. Pursuant to s. 23(4) of the Act, the Registrar will publish this decision with names, to include, but not limited to, the Association's website and CanLII.
8. Pursuant to s. 23(4) of the Act, the Registrar will publish 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).

[31] 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 28th day of January 2025.

//Original Signed by Committee Chair//

Karl Merrill, Chair
on behalf of the Discipline Committee,
Complaint 2023-034