

IN THE MATTER OF
The Real Estate Agents Act
S.N.B. 2011, c. 215, as amended

- and -

IN THE MATTER OF
Tanya Hannah
And
Maurice Poirier
And
Century 21 Absolute Realty Inc.

REASONS FOR DECISION & ORDER OF THE DIRECTOR OF CONSUMER AFFAIRS

Date of Opportunity to be Heard: 25 August 2017 & 27 October 2017

Date of Decision: 5 February 2018

Date of Reasons for Decision: 5 February 2018

Heard Before

Alaina M. Nicholson
As Acting Director of Consumer Affairs

Counsel

Enrico Scichilone For Tanya Hannah, Maurice Poirier and Century 21 Absolute Realty Inc.

INTRODUCTION

- [1] On or around 26 May 2017 the acting Director of Consumer Affairs (“Director”) for the Financial and Consumer Services Commission (“FCNB”) and FCNB Staff (“Staff”) were made aware by the office of the Public Trustee of the following legal actions involving Tanya Hannah (“Hannah”), Maurice Poirier (“Poirier”), and Century 21 Absolute Realty Inc. (Absolute Realty) (together, the “Licensees”):
- (a) Court file number FDM-08-2016 wherein the Public Trustee was Applicant in a matter under the *Infirm Persons Act*, R.S.N.B. 1973, c. 1-8 and the *Public Trustee Act*, S.N.B 1985, c. P-26.5, which involved a New Brunswick resident (“NB Resident”) who had named Poirier as Attorney and Hannah as Alternate Attorney under a Power of Attorney. Poirier and Hannah, in their capacity as Attorney and Alternate Attorney, were named respondents in this action. (“Public Trustee Act Action”).
 - (b) Court file number MC 326-2017 wherein the NB Resident, as represented by the Public Trustee in its capacity as Committee of the Estate of the NB Resident, was named Plaintiff and Hannah was named Defendant (the “Public Trustee Civil Action”).
- [2] The Director, after reviewing the pleadings and information provided in these two actions, including affidavits filed in relation to these actions, became concerned about Absolute Realty, the real estate company owned by Hannah and Poirier, and Hannah and Poirier’s suitability for licensure under the *Real Estate Agents Act*, RSNB 2011, c.215 (“*Real Estate Agents Act*”). As such, an Opportunity to be Heard was provided to the Licensees.
- [3] The Director is issuing one decision regarding all licensees as the three Licensees collectively submitted a response from one Lawyer retained by the Licensees in this matter. The Director felt this to be appropriate given that Absolute Realty is owned solely by Hannah and Poirier and that dealings with the NB Resident involved both Hannah and Poirier.

BACKGROUND

Public Trustee Act Action

- [4] The Director was advised by staff at the Public Trustee’s office about the Public Trustee Act Action. They advised the Director that an Interim Order was granted effective 16 February 2017 (“Interim Order”), which was confirmed by Final Order on 17 February 2017 (“Final Order”):
- (a) Declaring the NB Resident to be a mentally incompetent person;
 - (b) Appointing the Public Trustee as Committee of the NB Resident’s estate and person;
 - (c) Suspending the authority conferred upon Poirier as Attorney and Hannah as Alternate Attorney under the NB Resident’s Enduring Power of Attorney.

- [5] After reviewing the Public Trustee Act Action and affidavits filed therein, and after Staff spoke with the Public Trustee, the Director became aware that the Public Trustee was asking the court to revoke the NB Resident's Last Will and Testament dated 6 December 2013 ("Will") wherein he appointed Poirier the executor, trustee and sole beneficiary of his estate and Hannah as alternate executor, trustee and beneficiary.
- [6] The Public Trustee Act Action and affidavits filed therein provide the following information regarding the NB Resident's first interactions with the Licensees:
- (a) The NB Resident first met Poirier and Hannah when he was referred to them by his previous solicitor for the purposes of listing and selling his residential property (the "Property");
 - (b) When Poirier and Hannah first met the NB Resident numerous tenants were living at the Property and the Property was a known drug house to squatters in the area;
 - (c) Instead of selling the Property to a third party purchaser Hannah opted to purchase the Property from the NB Resident in exchange for a monthly amount payable to the NB Resident;
 - (d) A lawyer was hired to represent both the NB Resident as vendor and Hannah as the purchaser ("Lawyer") with respect to the purchase and sale of the Property.
- [7] The Public Trustee Act Action and affidavits filed therein provide the following information regarding the agreement that NB Resident entered into with Hannah for the sale of the Property:
- (a) The Lawyer drafted a Memorandum of Agreement dated 11 October 2013 ("MOA") wherein Hannah agreed to purchase the Property from the NB Resident and the NB Resident was to lend a sum of \$100,000 interest free to Hannah in exchange for a Promissory Note ("Note") and in exchange for a Collateral Mortgage in the amount of \$100,000 to be held by the NB Resident against the Property ("Collateral Mortgage");
 - (b) Pursuant to the MOA, the NB Resident agreed to transfer the Property to Hannah at a purchase price of \$238,000 of which the sum of \$138,000 was described as a "renovation credit" to Hannah. The NB Resident was to hold a Collateral Mortgage over the remaining \$100,000;
 - (c) Pursuant to the MOA, Hannah agreed to pay the NB Resident \$1,000 per month starting 1 October 2013. \$670 was to be paid directly for the NB Resident's rent and the remaining \$330 was to be paid to the NB Resident directly each month;
 - (d) Pursuant to the Note, if Hannah defaulted in the performance of any obligation under the Note, then the NB Resident could declare the principal amount owing immediately;
 - (e) Pursuant to the MOA if Hannah sold the Property, the NB Resident would provide a discharge of the Collateral Mortgage upon being paid the balance owing on the Collateral Mortgage;
 - (f) The Lawyer drafted and attended to the transfer of the Property through the execution of the deed dated 17 October 2013 (the "Deed");

- (g) The Statement of Adjustments indicates that as of closing there was “no amount changing hands,” meaning that no amount of money was being immediately paid to the NB Resident;
- (h) The Lawyer drew up and attended to the execution of the Collateral Mortgage and the Promissory noted dated 17 October 2013;
- (i) The Lawyer registered the Deed to Hannah on 18 October 2013. The Deed is registered in the Registry System for the Country of Westmorland as number 33224453;
- (j) The Lawyer did not register the Collateral Mortgage against the Property to secure the NB Resident’s interest in the Property.

[8] The Public Trustee Act Action and affidavits provide the following information regarding the NB Resident’s Power of Attorney (“POA”) and Last Will and Testament (“Will”):

- (a) The Lawyer met with the NB Resident on 6 December 2013 to draft and attend to the execution of the NB Resident’s Enduring Power of Attorney (“POA”) regarding his property and personal care, wherein he appointed Poirier as his Attorney and Hannah as his Alternate Attorney; and
- (b) The Lawyer drafted and attended to the execution of the NB Resident’s Will dated 6 December 2013 wherein he appointed Poirier as sole executor, trustee and beneficiary of his estate. In that same Will, Hannah was named alternate sole executor, trustee and beneficiary.

[9] The Public Trustee Act Action and affidavits provide the following information regarding the Property once it became owned by Hannah:

- (a) On 23 January 2014 the Lawyer converted the Property to land titles. The Lawyer did not at this time register the Collateral Mortgage in favour of the NB Resident against the Property;
- (b) On 24 January 2014 the Lawyer drafted a mortgage for Hannah for the principal sum of \$110,000 in favour of Olympia Trust Company (the “Olympia Mortgage”) and registered it against the Property as a first rank encumbrance on the Property under the land titles system;
- (c) At the request of the Public Trustee through its solicitor on 11 May 2017 the Collateral Mortgage was registered as a second rank encumbrance on the Property in an effort to preserve the NB Resident’s interest. It is registered under number 36970268;
- (d) On 18 May 2017 the Public Trustee was informed by a Solicitor for Olympia Trust Company that Olympia was commencing foreclosure proceedings with respect to the Olympia Mortgage registered as a first charge against the Property and that the property taxes for the Property were in significant arrears; and
- (e) The Public Trustee was informed by the Department of Finance that the Property was assessed at \$169,000 in 2013 and \$190,700 in 2017.

[10] The Public Trustee Act Action and affidavits provide the following information regarding the NB Resident’s living arrangements and well-being after selling the Property to Hannah:

- (a) In October of 2013 Poirier secured a non-smoking apartment for the NB Resident (“First Apartment”). The monthly rent on the First Apartment of \$670 was paid by Absolute Realty from October 2013 until September 2014;
- (b) Sometime on or before 1 September 2014 the NB Resident had to vacate the First Apartment on account of the fact he was smoking in the apartment designated non-smoking;
- (c) Poirier and Hannah indicate they assisted the NB Resident to get to appointments and in his everyday living with household chores and in completing tasks such as groceries;
- (d) On 1 September 2014 Poirier secured a second apartment for the NB Resident (“Second Apartment”). Absolute Realty made monthly rent payments of \$665 from September 2014 to October 2015 for the Second Apartment;
- (e) The NB Resident was admitted to the George Dumont hospital on 2 April 2015 after being brought in to the emergency department by the RCMP;
- (f) A medical report of a Geriatric Psychiatrist dated 2 November 2015 notes that the NB Resident was admitted to the hospital in a state of serious self-neglect and had suffered an illness present for at least 1-2 years. The doctor stated due to his illness the NB Resident suffered cognitive deficit at the executive level which is severe;
- (g) A Social Worker at the Hospital (“Social Worker”) alleges Poirier contacted her on at least 3 occasions between 2 April 2015 and 13 May 2015. When she informed the NB Resident that Poirier was asking about his well-being the NB Resident said he did not understand why Poirier was calling her because Poirier was a stranger to him;
- (h) On 21 August 2015 the Social Worker made an application for Public Trustee Services for the NB Resident;
- (i) A nurse at the Dr. George L. Dumont Hospital University Centre (“Nurse”) alleges having an unpleasant interaction with Poirier during the NB Resident’s stay at the Hospital. The Nurse says Poirier arrived at the Hospital outside of visitation hours and entered through a secured unit after another patient. The Nurse alleged that Poirier did not present himself to the nurses but rather directed himself immediately to the NB Resident and began a conversation with him. The Nurse advised Poirier he could not remove the NB Resident from the premises and advised him the NB Resident did not want to speak to Poirier. Poirier became agitated and the Nurse felt threatened. He threatened to get his Lawyer (the same Lawyer involved in the transactions noted above), and he returned later with the Lawyer. A Psychiatrist on duty then offered an appointment to Poirier to discuss any concerns Poirier had with NB Resident’s care and access to NB Resident but Poirier did not want an appointment and was subsequently asked to leave;
- (j) The NB Resident’s Second Apartment was vacated after he entered the hospital on 2 April 2015; however, it is unclear who cleared out his personal effects or where these items are currently located;
- (k) The landlord at the Second Apartment reports to the Public Trustee that a cheque from Absolute Realty in the amount of \$3,000 for the repair of the Second Apartment after it was

vacated was returned due to insufficient funds. Absolute Realty was late making payment for rent on the Second Apartment on a number of occasions; and

- (l) On 16 February 2016 the NB Resident was declared to be a mentally incompetent person and the Public Trustee was appointed as Committee of his Estate and person on an interim basis. At this time any authority conferred upon Poirier and Hannah as Attorney or Alternate Attorney was suspended. This appointment was confirmed by a final order dated 17 February 2017.

- [11] The Public Trustee advised that they are currently bringing a motion to have the Court revoke the NB Resident's Will and to authorize the Public Trustee to make a Will on his behalf to be approved by the Court. The Public Trustee alleges that the NB Resident was a vulnerable senior when he was placed in a precarious financial situation and became dependent on Poirier and Hannah and that his whole Property transaction and Will were made under suspect circumstances.

Public Trustee Civil Action

- [12] The Public Trustee alleges that Hannah is in breach of the MOA as she has not repaid the loan owing pursuant to the Note to the NB Resident. The pleadings and the affidavit of Chantal M. Landry, Public Trustee dated 26 May 2017, in Public Trustee Civil Action, indicate the following:

- (a) The Public Trustee for the NB Resident by the Committee of his estate has declared the principal amount owing under the Note immediately due and payable in a demand letter addressed to Hannah dated 3 May 2017. A certificate of pending litigation has been registered against the Property; and,
- (b) The Public Trustee, as representative for the NB Resident, is seeking against Hannah the total sum of \$82,320 for breach of the Note and for breach of the MOA as she has failed to repay her loan from the NB Resident.

- [13] In claiming \$82,320 owing on the Note, the Public Trustee credits Hannah for \$16,680 in rent payments paid by Absolute Realty for rent at the First Apartment from 1 October 2013 - 31 August 2014 and the Second Apartment from 1 September 2014 until October 2015.

Director - Opportunity to be Heard

- [14] Following review of the above information, the Director became concerned with the Licensees' conduct as real estate salespersons in the real estate industry and had concerns with respect to their interactions with the NB Resident. The Director had concerns regarding their suitability to continue to be licensed under the *Real Estate Agents Act* and had public interest concerns in allowing them to remain licensed considering their alleged actions in dealing with NB Resident.
- [15] On 30 June 2017 FCNB Staff sent three separate correspondences to each of the Licensees outlining concerns surrounding suitability as a result of professional conduct in dealing with the NB Resident, both in the process of the purchase and sale of his Property, and in the relationship

that they developed after first meeting for this purpose. They were advised that the Director had reviewed the Public Trustee Act and the Public Trustee Civil Action and affidavits filed therein.

- [16] In these correspondences the Licensees were each advised that they would be provided an Opportunity to be Heard in person or in writing. They were asked to contact FCNB within 10 days (by 10 July 2017) and were advised if they did not contact FCNB or respond by 14 July 2017 that the Director would proceed to review suitability based on the information in the Director's possession that had been detailed in the letter.
- [17] The Director's concerns, as set out in the 30 June 2017 correspondence, surrounding Poirier's suitability arose from his professional conduct in dealing with the NB Resident, including his:
- (a) Involvement with Hannah, his significant other, co-director and co-owner of Absolute Realty in the purchase of the NB Resident's Property;
 - (b) Involvement and knowledge of the Collateral Mortgage signed by Hannah to protect the NB Resident's interest in the Property and knowledge of the second mortgage obtained through Olympia Trust Company ("Second Mortgage") registered as a first charge on the Property;
 - (c) Appointment as Attorney under a POA for the NB Resident; and
 - (d) Appointment as sole executor, trustee and beneficiary under the NB Resident's Will.
- [18] Additionally, after a review of the court index and past applications the Director noted concerns that Poirier may have made misstatements in his 2015 and 2016 real estate salesperson applications, as follows:
- (a) Failing to disclose a judgment registered against him and failing to disclose a previous bankruptcy on his 2015 real estate salesperson application; and
 - (b) Failing to disclose the pending legal proceedings involving the Public Trustee and failing to disclose a previous bankruptcy on his 2016 real estate salesperson application.
- [19] Having the above information, the Director had concerns regarding Poirier's integrity in his conduct in the real estate, financial and legal interests of the NB Resident. The Director also had public interest concerns regarding Poirier's licensure. Therefore Poirier was advised that the Director would be reviewing his suitability to maintain a real estate salesperson licence as set out in section 10 of the *Real Estate Agents Act*.
- [20] Poirier was advised in the 30 June 2017 correspondence that he had the right to be heard and the right to provide additional information in person or in writing with respect to the concerns outlined in the correspondence. He was advised that the purpose of the Opportunity to be Heard would be to address the following matters related to his suitability for continued licensure under the *Real Estate Agents Act*:

- (a) Details surrounding his involvement in the purchase of the Property by Hannah;
 - (b) Details surrounding Poirier's appointment as Attorney under the NB Resident's POA;
 - (c) Details surrounding the change to the NB Resident's Will;
 - (d) Details surrounding Poirier's interactions with hospital personnel after the NB Resident was admitted to hospital;
 - (e) Details surrounding any renovations/improvements made to the Property pursuant to the renovation credit; and
 - (f) Misstatements on the licensing applications.
- [21] The Director's concerns, as set out in the 30 June 2017 correspondence, surrounding Hannah's suitability arose from Hannah's professional conduct in dealing with the NB Resident, including her:
- (a) Decision to personally purchase the NB Resident's Property rather than list and sell the Property;
 - (b) Involvement and knowledge of the Collateral Mortgage Agreement and Note taken against the Property and the Second Mortgage registered as a first charge on the Property;
 - (c) Appointment as Alternate Attorney under a POA for the NB Resident; and
 - (d) Appointment in the NB Resident's Will as sole alternate trustee, executor and beneficiary.
- [22] Additionally, the Director had concerns that Hannah may have made misstatements on her 2016 real estate salesperson application on 25 August 2016 when she did not disclose pending legal proceedings involving the Public Trustee.
- [23] Having the above information, the Director had concerns regarding Hannah's conduct in the real estate, financial and legal interests of the NB Resident. The Director also had public interest concerns regarding Hannah's licensure. Therefore, Hannah was advised the Director would be reviewing suitability to maintain a real estate salesperson licence through an Opportunity to be Heard pursuant to section 10 of the *Real Estate Agents Act*.
- [24] Hannah was advised in the 30 June 2017 correspondence that she had the right to be heard and the right to provide additional information in person or in writing with respect to the concerns outlined in the correspondence. She was advised the purpose of the Opportunity to be Heard would be to address the following matters related to her suitability for continued licensure under the *Real Estate Agents Act*:
- (a) Details surrounding her purchase of the NB Resident's Property;
 - (b) Details surrounding the Collateral Mortgage and Note against the Property;
 - (c) Details surrounding her appointment as Alternate Attorney under the NB Resident's POA;
 - (d) Details surrounding the change to the NB Resident's Will;
 - (e) Details surrounding Hannah's interactions with hospital personnel after the NB Resident was admitted;

- (f) Details surrounding the renovations/improvements made to the Property; and
 - (g) Her misstatement on her 2016 licensing application.
- [25] The Director's concerns surrounding the suitability of Absolute Realty and Poirier and Hannah, two of its salespersons and co-owners, were presented to Absolute Realty's licensed manager, Ms. Denise Gallant, and Hannah and Poirier as co-owners, in correspondence 30 June 2017.
- [26] The Director had concerns regarding Poirier and Hannah's ability to continue to be licensed as real estate salespersons and the suitability for Absolute Realty (a corporation owned by them) to continue to be licensed under the *Real Estate Agents Act*.
- [27] The Director's concerns as set out in the 30 June 2017 correspondence regarding the Absolute Realty's conduct in dealing with the NB Resident are as follows:
- (a) Its involvement, along with Poirier and Hannah (Co-Directors and co-owners of the Company) in the purchase of the NB Resident's Property; and
 - (b) Its involvement in making payments for rent for the NB Resident, which came from the Absolute Realty bank account.
- [28] After receiving the Public Trustee complaint, and upon review of the licence file, the Director had concerns that Absolute Realty may have made misstatements in its real estate agent licence application on 25 August 2016 when Absolute Realty did not disclose pending legal proceedings against any of the Partners, Officers or Directors of the firm.
- [29] The Director had concerns regarding Absolute Realty's conduct in the real estate, financial and legal interests of the NB Resident and advised suitability to maintain a real estate agents licence would be assessed. The Director also advised there were public interest concerns in Absolute Realty's continued licensure. Therefore, Absolute Realty was advised there would be an Opportunity to be Heard pursuant to section 10 of the *Real Estate Agents Act*.
- [30] Absolute Realty was advised in the 30 June 2017 correspondence that it had the right to be heard and the right to provide additional information in person or in writing with respect to the concerns noted above. Absolute Realty was told the purpose of the Opportunity to be Heard would be to address the following matters related to Absolute Realty's suitability for continued licensure under the *Real Estate Agents Act*:
- (a) The details surrounding the Absolute Realty's involvement in the purchase of the Property;
 - (b) As licensed manager for Absolute Realty, Ms. Denise Gallant's knowledge regarding the purchase of the Property and any interactions that took place between Poirier, Hannah and the NB Resident; and
 - (c) The misstatement on the Absolute Realty's licensing application.

Response on behalf of Poirier, Hannah and Absolute Realty

- [31] On 12 July 2017, two days prior to the deadline in which to contact FCNB regarding the Opportunity to be Heard, FCNB Staff was contacted by counsel to advise that he had been retained by all three Licensees (“Licensees’ Counsel”).
- [32] The Licensees then provided direction that authorized the release of their personal information to Licensees Counsel on 13 July 2017.
- [33] Staff provided all information they had regarding the Opportunity to be Heard to Licensees Counsel on 18 July 2017 and requested a response within 10 business days, by 1 August 2017.
- [34] On 28 July 2017 Staff spoke with Licensees Counsel who requested an extension to provide response to the Opportunity to be Heard. An extension was granted until 25 August 2017.
- [35] Licensees’ Counsel also requested that the Opportunity to be Heard be completed *via* written submissions and the Director agreed this was acceptable.
- [36] On 25 August 2017 in response to the Opportunity to be Heard, Licensee’s Counsel provided a 14 page written response attaching 67 pages of supplementary documents on behalf of the Absolute Realty, Poirier and Hannah (the “Collective Response”).

(a) Involvement of Absolute Realty, Poirier and Hannah in listing/purchase Property

- [37] With respect to the involvement of the Licensees in the listing and/or purchase of the Property, the Collective Response provides the following information:
- (a) In 2013 the NB Resident wanted to sell his Property that was occupied by himself and non-paying tenants and got a referred to the Licensees by his lawyer at the time;
 - (b) The NB Resident advised the Licensees that he wanted to list the Property for \$324,900;
 - (c) Poirier advised the NB Resident that the asking price of \$324,900 was too high for the Property and that if it were priced in that regard it would not sell;
 - (d) The NB Resident insisted on listing the Property for \$324,900. Poirier agreed to list the Property in this regard and on 13 May 2013 a listing agreement was executed as between the NB Resident and Absolute Realty;
 - (e) The listing agreement was in effect from 13 May 2013 to 30 June 2014 (13.5 months), and listed the Property for \$324,900;
 - (f) The Property needed to undergo extensive renovations prior to it being listed on the market; however, the NB Resident could not afford the renovations;
 - (g) Prior to any sale all tenants would have to be removed from the Property. Poirier states he made unsuccessful attempts with the assistance of the Royal Canadian Mounted Police (RCMP) to remove the tenants from the Property;

- (h) The NB Resident was desperate to sell the Property as he felt intimidated by the tenants. The only way to permanently evict the tenants from the Property was to have it immediately sold but that would be hard with the Property in the condition it was in and with the stigma associated with the house;
- (i) Poirier and Hannah say that in September 2013 the NB Resident requested Poirier and Hannah purchase his Property;
- (j) Poirier and Hannah determined that Hannah would purchase and would take title of the Property as Poirier was undergoing divorce proceedings and could not buy or sell any real property until all of his assets and liabilities were agreed upon between him and his estranged spouse;
- (k) The NB Resident advised Poirier and Hannah that he did not want a large sum of money deposited in his bank account as he was fearful that the “government” would take his money or that the previous tenants would steal from him and therefore requested the purchase price be paid to him in monthly installments;
- (l) Poirier and Hannah made arrangements to secure the First Apartment for the NB Resident in a secure, non-smoking building;
- (m) Poirier and Hannah assisted the NB Resident in moving into the First Apartment on or about 12 October 2013 and brought him household items and groceries; and
- (n) On 13 October 2013 the MOA was executed between the NB Resident (“Vendor”) and Hannah (“Purchaser”).

[38] The Collective Response outlined that MOA provided a purchase price of \$238,000 and also provided for the following:

- (a) The Property shall be sold by the Vendor to the Purchaser;
- (b) The Vendor shall give the Purchaser a credit of \$138,000 for the renovations;
- (c) The Vendor shall hold a Collateral Mortgage against the Property in the amount of \$100,000;
- (d) No interest shall be payable on the Collateral Mortgage; and
- (e) The Purchaser shall pay the Vendor at a rate of \$1,000 per month commencing on 1 October, 2013, without interest to be disbursed as follows:
 - The sum of \$670 shall be paid directly by the Purchaser as monthly rent to the NB Resident’s First Apartment; and
 - The sum of \$330 payable monthly directly to the Vendor by the Purchaser.

[39] The Collective Response outlines that on 17 October 2013 Hannah executed the Note in favour of the NB Resident for the principal amount of \$100,000 to be paid in accordance with the MOA and secured by the Collateral Mortgage.

[40] Hannah says she was never made aware of the fact that she had executed a Collateral Mortgage in favour of the NB Resident as this was never explained to her by the Lawyer who represented both parties in the transaction.

- [41] Hannah says she only learned that the Lawyer, acting for both the NB Resident and Hannah in the transaction, failed to register the Collateral Mortgage as an encumbrance against the Property in March of 2016.
- [42] Hannah says the Lawyer failed to properly inform her of the documents she signed so that she could fully appreciate their effect and that the Lawyer failed to take the necessary measures to protect the clients' - including the NB Resident's – interest to ensure he had independent legal advice with respect to the transaction.
- [43] After acquiring the Property, Poirier and Hannah undertook the necessary steps to deal with the tenants who were still unlawfully occupying the Property by having someone change the locks to the house.
- [44] Poirier and Hannah say they undertook extensive cleaning and renovations at the Property to improve its condition in accordance with the renovation credit. They provided a list of monies spent on what they considered renovations to support their claim.
- [45] Poirier and Hannah listed the Property on 21 October 2014 for \$249,900 (“Initial Listing”).
- [46] A revised listing (“Revised Listing”) for the Property was filed at an unknown date for \$299,000.
- [47] In December 2014 Poirier and Hannah had an appraisal done by Maritech Appraisal & Inspection Ltd, where the Property was appraised at \$248,000.
- [48] A further revised listing (“Further Revised Listing”) for the Property was allegedly executed after this appraisal but at an unknown date for \$279,900.
- [49] Hannah received one offer for the Property in February 2015. The prospective purchaser offered and Hannah agreed to the purchase price of \$240,000. The prospective buyer later withdrew the offer.

(b) Relationship between the NB Resident and Poirier and Hannah

- [50] In the Collective Response, Poirier and Hannah say they drove the NB Resident to various appointments and assisted him with errands around Moncton.
- [51] Hannah says she also attended at the NB Resident's First Apartment on a regular basis to clean and ensure that his living environment was adequate.

- [52] Poirier and Hannah say they did not have any knowledge of the NB Resident's financial situation including his bank accounts, pension funds and never accessed any of these accounts. They say the NB Resident was taking care of his own finances, including payments of utility bills and filling of income taxes.
- [53] Poirier and Hannah say the NB Resident was evicted from the First Apartment in August of 2014, after complaints of him smoking in the non-smoking premises. They had to pay an additional month's rent due to the condition of the bathroom. They assisted him in finding the Second Apartment. They state that their relationship with him began to become strained at that time.
- [54] Poirier and Hannah say they continued to bring groceries and water to the NB Resident at the Second Apartment and noticed people staying with him in the apartment and stated at this time his demeanor towards them changed.
- [55] Poirier and Hannah say they contacted the NB Resident's family doctor in March of 2015 as they were concerned about significant changes in his demeanor and they were concerned he was doing drugs again.
- [56] Poirier and Hannah say the NB Resident blamed them for not being able to obtain medication from his family doctor and did not want to have any contact with Poirier or Hannah.
- [57] On or about 2 April 2015 the NB Resident was brought to the emergency room of the Dr. George L Dumont University Hospital ("Hospital") by the RCMP. The same day Poirier was contacted by the Hospital staff and was asked to attend to the emergency room during which time he was questioned about the NB Resident's state of health. Poirier states in the Collective Response that he was denied access to him and to information regarding his medical condition at this time.
- [58] Poirier says that on one other occasion he attended at the behest of the Hospital staff to answer to questions about the NB Resident's medical information but was again denied access and visitation with the NB Resident.
- [59] Poirier says that on one occasion the NB Resident called Poirier directly and asked him to bring him cigarettes to the hospital. Upon arriving at the Hospital Poirier saw the NB Resident and walked towards him, however a Nurse and Hospital staff intervened and prevented Poirier with having contact with the NB Resident. At this point Poirier says he became frustrated and called the Lawyer who had drafted the NB Resident's Power of Attorney document. The Hospital still refused Poirier's request to meet with the NB Resident.
- [60] Poirier says he was given the opportunity to have a meeting with the Social Worker with the Hospital at which Poirier attended, accompanied by the Lawyer who drafted the POA. Poirier

alleges that the Lawyer attended in her capacity as solicitor for the NB Resident and produced the original POA executed by the NB Resident.

- [61] Poirier and Hannah indicate in the Collective Response that they have been refused access to the NB Resident by the Hospital staff since the NB Resident has entered the Hospital.

(c) Payments made to cover rent for the NB Resident from Absolute Realty company account

- [62] Hannah says beginning 1 October 2013 she began making payments to the NB Resident in the amount of \$ 1,000 per month as per the terms of the MOA (with a portion paid directly towards his monthly rent and the remainder to be paid to the NB Resident).

- [63] The rental payments were made through the Absolute Realty company bank account as Poirier and Hannah never took any salary out of the business and utilized the Absolute Realty company account to pay personal expenses on the advice of their accountant.

- [64] Hannah says she continued to make payments to the NB Resident's rent until it was determined in late 2015 that the NB Resident was not going to be released from Hospital to live on his own.

- [65] Hannah says she attempted to make payments monthly directly to the NB Resident after he entered the Hospital but was refused access to and information from the NB Resident for such purpose.

(d) Details in relation to the NB Resident's Last Will and Testament and Power of Attorney

- [66] Poirier and Hannah state in the Collective Response that they never had any previous discussions with the NB Resident in relation to his POA or his Will and were only informed by the Lawyer who drafted the documents, after the documents were executed, that they were named as the NB Resident's Attorney under the POA and named as trustees, executors and beneficiary's under the Will.

(e) Details in relation to misstatements on applications

- [67] Poirier says that he filed for bankruptcy over 25 years ago and was under the impression that since 7 years (full discharge period) had elapsed he was no long the status of bankrupt and therefore did not have to report.

[68] With respect to the concerns that Poirier failed to disclose two judgments against him, one for \$548.15 registered 1 June 2010 (“First Judgment”) and one for \$25,955 (“Second Judgement”) registered 27 March 2014, Poirier advises that the First Judgment was withdrawn a number of years ago and as such is irrelevant and that he was unaware of the Second Judgment until July 2015, indicating that he did not know the judgment existed when he completed an application in 2014. He submits that a Withdrawal of Judgment was filed with the Land Titles office on 8 July 2015 prior to completing the Licence in 2015 and therefore there were no unsatisfied judgments registered against him at the time he submitted the 2015 application.

[69] Poirier and Hannah state in the Collective Response that at the time they filled out their applications on 25 August 2016 there was no pending legal proceeding against them personally but rather they were named in actions as parties only as they were appointed in their capacity as the NB Resident’s Power of Attorney. In this regard, they did not feel it necessary to disclose those proceedings.

(f) As to the overall allegations

[70] Poirier, Hannah and Absolute Realty’s Collective Response to the Director’s concerns was that their dealings as licensees under the *Real Estate Agents Act* were limited to the initial listing of the Property for the NB Resident and that the transaction that transpired after this listing, namely the sale of the Property, was a private transaction which does not fall within the purview of the Director.

[71] Poirier, Hannah and Absolute Realty also state that in their capacity as licensees under the Act they were not paid any commission in relation to the purchase of the Property by Hannah therefore re-enforcing the fact that Absolute Realty had no involvement whatsoever in the sale of the Property to Hannah.

[72] Hannah also states that she was never made aware of the fact that she had executed the Collateral Mortgage in favour of the NB Resident and that when she obtained the Olympia Mortgage it was to cover the costs of the remaining renovations to be completed on the Property as well as to assist in the payments to the NB Resident in accordance with the MOA.

[73] At the time the Collective Response was filed Poirier and Hannah were noted by their lawyer to be in the process of filing new licence applications to move to work with Remax Quality Real Estate with the intent to continue to trade in real estate.

Information Received after Collective Response and Clarification sought by the Director

[74] On 30 August 2017 (5 days after submitting the Collective Response) FCNB received a new application from Poirier and Hannah to be licensed with Remax Quality Real Estate.

[75] On 31 August 2017, Poirier and Hannah’s licence with Absolute Realty expired.

[76] On 5 October 2017 the Director sought clarification and asked for further information on items outlined in the Collective Response, namely:

1. Receipts and supporting documentation with respect to expenditures for renovations and improvements to the Property;
2. Proof of payments paid directly to the NB Resident in excess of rent since the MOA was executed on 13 October 2013; and
3. Details of attempts made by Poirier and Hannah to remove tenants from the Property.

[77] On 27 October 2017 the Licensees' Counsel provided a response on behalf of the Licensees ("Supplemental Response"). Attached to the Supplemental Response was over 198 pages of the supplementary documentation included handwritten notes, expenses, receipts, bank statements etc.

[78] In response to the Director's request for supporting documentation with respect to expenditures for renovations and improvements to the Property, the Licensees' Counsel provided a number of handwritten notes from Hannah regarding rents paid for the NB Resident and receipts allegedly regarding various improvements, receipts for payment of utility bills for the NB Resident at the Second Apartment and bank statements referencing payments made for rent on the First and Second Apartment.

[79] In response to the Director's request for proof of payments paid directly to the NB Resident in excess of rent since the MOA was executed, Licensees' Counsel provided evidence of 1 payment made in April 2015 in an amount of \$330 by way of a written receipt with a general ledger entry referencing the same payment,. No evidence was provided to substantiate any other payments made to the NB Resident from 2013- 2017.

[80] The Director requested through the Licensees' Counsel that the Licensees provide details and evidence of attempts to remove the tenants from the Property in a correspondence dated 5 October 2017. The Licensees' Counsel advised in response on 27 October 2017 that his clients contacted the RCMP on at least two occasions to assist with removal of tenants but did not provide any evidence of the same. He offered to have his clients contact the police to attempt to provide evidence if necessary.

THE COMMISSION'S MANDATE AND APPLICABLE LAW

[81] The *Financial and Consumer Services Act*, in Paragraph 2(a) provides that the purpose of the Act is to '*enable the Commission to provide regulatory services that protect public interest and enhance public confidence in the regulated sectors...*'

[82] The *Financial and Consumer Services Act*, in Paragraph 12(2)(b) provides that the Commission shall administer the financial and consumer services legislation, which as per subsection 1(q) includes the *Real Estate Agents Act*.

[83] Subsection 10(1) of the *Real Estate Agents Act* states as follows:

10(1) On receipt of an application for a licence and on payment of the prescribed fee, if the Director is satisfied that the applicant is suitable to be licensed and that the issuing of the proposed licence is not objectionable for any reason, the Director may issue to the applicant a licence authorizing the holder during the term of the licence to carry on the business of an agent or act as a manager or salesperson within the Province, but if, after due investigation made by the Director, the Director is, for any reason, of the opinion that the applicant should not be granted a licence, the Director may refuse a licence to the applicant.

[84] The Act provides that the Director, prior to making a decision on cancelling, suspending or imposing terms and conditions on a licence must provide the applicant with an Opportunity to be Heard:

10(1.3) The Director shall not refuse an application for a licence or impose terms and conditions on the licence without giving the applicant or licensee an opportunity to be heard.

[85] Consumer protection is a fundamental consideration and a key part of the Commission's mandate. It is a key responsibility of the Director, as the gatekeeper to the industry, to determine suitability of an applicant or a licensee prior to allowing that person to operate in the industry.

THE PROCESS OF DETERMINING SUITABILITY

[86] Subsection 10(1) of the *Real Estate Agents Act* requires that the Director to be satisfied that the applicant is suitable prior to granting them the license.

[87] The Director's review of a licence application covers a number of aspects, and each have a significant bearing on a candidate's suitability to hold a salesperson's licence and operate in the real estate sector. Three fundamental criteria are used to assess whether an individual is or remains suitable for licensing:

- (a) Proficiency
- (b) Integrity
- (c) Solvency

[88] Proficiency in the industry is a key requirement of an individual to have in order to be licensed in a regulated industry. Consumers need to be comfortable that the licensed salesperson is proficient in the field, including the statutory requirements and ethical standards when acting

for the public. An applicant must meet any applicable education and experience requirements, and any continuing education requirements with an understanding of the rules that govern their industry. Proficiency in the context of real estate is the completion of the appropriate NBREA education courses which is demonstrated in a salesperson's continued membership in the NBREA, which is verified before a licence is issued by the Director.

- [89] Integrity is an essential character for a salesperson in order for consumers to have confidence in the industry. Consumers need to know that their real estate salesperson will be honest and act with integrity when acting on their behalf in what may be one of the largest financial transactions in their life. An applicant's ability to respond truthfully and not be misleading in their answers on their application is a significant factor in determining their integrity and therefore their suitability to operate in the industry. Additionally, persons working in the industry should be acting ethically and openly, providing disclosure when there are apparent or perceived conflicts of interest.
- [90] Solvency of persons working in a regulated industry that deals directly with financial matters is an important consideration when assessing an applicant on their suitability to represent consumers in the purchasing or selling of real property. An individual that is insolvent or has a history of bankruptcy may not be suitable for a licence. The questions posed on the application form with respect to solvency are the minimum measure used by the Director in determining solvency suitability of an applicant.
- [91] Another determination that the Director must make under Subsection 10(1) is that the issuing of a proposed licence "is not objectionable for any reason". While this provides wide latitude, in this situation it is viewed from the perspective of consumer protection. If a licence is issued or continued does it leave consumers exposed to harm or exploitation?
- [92] In considering whether to issue a licence the Director also evaluates whether it is in the public interest. Subsection 10(2) of the *Real Estate Agents Act* allows the Director to suspend or cancel a licence if he or she is of the opinion it is in the public interest to do so. One aspect of public interest is public protection. The Director must consider minimizing and mitigating the risks to the public stemming from the practice of licensing individuals to practice under the regulated areas.
- [93] In assessing whether issuing a licence is in the public interest, the Director will evaluate the nature and seriousness of the allegations that led to the Opportunity to be Heard. The Director will weigh the information presented in conjunction with the allegations and will look to the behaviour and the conduct of the Licensee at the time of the alleged objectionable incident or behaviour and after the alleged incident or behaviour.
- [94] The Director is mindful that there must be a balance between two important considerations: One being the underlying rationale of the legislation, to protect the public interest and enhance

public confidence in the Real Estate Industry; while the other is the consideration of the professional and financial consequences to the applicant of a decision to revoke (or to not grant) a licence.

ANALYSIS AND DECISION OF DIRECTOR

(a) The Licensees' professional relationship with the NB Resident

- [95] The NB Resident first met Hannah and Poirier through their roles as real estate salespeople with Absolute Realty for the purpose of selling the Property. The NB Resident, a senior whom Doctors noted would have exhibited failing capacity, particularly in executive functioning, looked to Hannah and Poirier for professional advice in selling the Property, his only substantial asset.
- [96] Hannah and Poirier admit that NB Resident was in a precarious position in that he was living at the Property he wanted to sell but did not know how to properly evict unwanted and unpaying tenants and prepare the Property for sale. They indicate in the Collective Response that they were aware that they were dealing with a vulnerable person.
- [97] Absolute Realty, Poirier and Hannah submit that their interactions with the NB Resident were a private matter and that anything that transpired past the listing of the Property stage, including the purchase of the Property, should not be reviewable by the Director. This statement is contradicted by the fact that at the time Hannah purchased the Property, there was a listing agreement in place between the NB Resident and Absolute of which Hannah and Poirier were co-owners. In addition, all rental payments made on behalf of the NB Resident were paid through the Absolute Realty account.
- [98] There was no evidence presented to substantiate the claim that the relationship of real estate salesperson and client was terminated.
- [99] This was not merely a private matter between individuals that met by chance, but was a relationship formed and only made possible by the fact that the Licensees were licensed under the *Real Estate Agents Act*. There was no evidence presented to suggest that the NB Resident understood there to be a change in relationship as between the Licensees and himself as client and that the Licensees were no longer acting as his real estate salespersons.
- [100] In a Third Party Defence filed by the Lawyer on 27 September 2017 in the Public Trustee Civil Action (“Lawyers Third Party Defence”) and provided in follow up submissions by Licensees Counsel in October 2017, the Lawyer states that “In August 2013 the Plaintiff, NB Resident, was referred by his realtor, Maurice Poirier, to Third Party [Lawyer] with respect to the sale of the Plaintiff’s property.” The Lawyer, with full faculties and capacity, saw Poirier and NB Resident to be involved in a realtor/client relationship.

- [101] Based on the information provided, I do not accept the Licensees' assertion that this was a private matter. In fact, this claim itself goes to the lack of proficiency of Hannah and Poirier to be real estate salespersons and heightens my concern that they were potentially unaware or unconcerned of the serious conflict they created in arranging for Hannah to purchase the Property.
- [102] It was in their capacity as real estate salespersons and in this fiduciary role that the relationship between the NB Resident and the Licensees was struck, and it is with this view that I review all subsequent dealings between these three individuals and the corporate entity as going to their suitability to be licensed under the *Real Estate Agents Act*.
- [103] Poirier and Hannah state that NB Resident first insisted that he list the Property for far more than it was worth, and that they performed their obligation in accordance with their client's instructions and listed the property for \$324,900. This listing agreement was signed for a period in excess of a year. Within that time frame Hannah purchased the Property.
- [104] The Licensees had no obligation to list the Property for NB Resident, particularly for over a year, if he was being unreasonable about the value of the Property. However, once they listed the Property, they did have an obligation to the NB Resident as a client to treat him fairly.
- [105] After watching the Property garner no interest on the market they could have had another conversation with the NB Resident about relisting the Property for a more reasonable price. They also could have canvassed other options like offering a "renovation credit" to another party who might have been interested in purchasing the Property.
- [106] Poirier and Hannah alleged that they attempted to help the NB Resident evict unwanted and unpaying tenants in order to sell the Property, but they provided no proof of the same when additional information was requested, other than to say they believed they enlisted the RCMP on at least two occasions and could enquire of police if necessary. They allege when they were unsuccessful and when the Property could not be sold otherwise, the NB Resident pleaded that Poirier and Hannah purchase the Property from him. In the practice of trading in real estate I believe it is quite common for a vendor to become anxious about the sale of their property, but it is very uncommon for a licensee under the *Real Estate Agents Act* to offer to purchase the property to relieve them of the burden.
- [107] Based on the information provided by the Public Trustee, and after considering the Collective Response and Supplemental Response, I do not believe that Poirier, Hannah or Absolute Realty fulfilled their professional obligations to the NB Resident in listing his Property and in acting as his real estate salespersons.
- [108] These Licensees had a duty to assist the NB Resident in selling his Property for a reasonable amount, and if they could not do that on account of his unreasonable expectations of what the

Property was worth, then they should have refused to enter into a professional relationship or cancelled the listing agreement. I find both Hannah and Poirier's dealings with the NB Resident in this regard, coupled with their continued involvement with the NB Resident and the purchase of the Property, show they lack proficiency of the reasonable real estate salesperson and lack of integrity expected of those in the real estate profession.

- [109] Hannah and Poirier were able to preclude unwanted tenants from the Property quite easily after Hannah purchased the Property by simply installing new locks on the Property.

(b) The purchase of the property

- [110] Poirier and Hannah say that purchasing NB Resident's Property was an effort they undertook to help the NB Resident that they didn't originally anticipate. However, the NB Resident sought, at Poirier's referral, assistance of a lawyer in August 2013, well before the alleged contemplated sale to Hannah, when the NB Resident would have had no prospective purchaser at that point. There would be no need to consult with a lawyer as there was no purchaser for the Property at that time. I find it questionable that the NB Resident would have been directed for legal advice by Poirier at this time.

- [111] The Lawyers Third Party Defence states that towards the end of September 2013 the Lawyer spoke with the NB Resident again: "The Plaintiff expressed to [Lawyer] his unequivocal intention to sell the property to the defendant in the following terms." What follows is a complicated description of a transaction whereby Hannah received a renovation credit and the NB Resident is granted the Collateral Mortgage securing a first lien on the property with a Promissory Note and interest free monthly payments. Given the doctors outline of capacity on the NB Resident's admission to the hospital, which they stated was present for years preceding, I believe it unlikely that the NB Resident would have presented with "unequivocal intention," to sell in a manner that was as complicated as that which was structured under the MOA. I believe it was more likely that there was substantial involvement and coaching from another party outlining the specifics of the transaction. Based on the information provided by the Public Trustee, and considering the response of the Licensees, I do not believe that this transaction was one which was crafted by NB Resident but rather was crafted by the Licensees.

- [112] The Lawyers Third Party Defence notes that the NB Resident was desperate to sell his Property, asking her to purchase it and stating he was willing to "walk away" from the Property. Poirier and Hannah iterated the same sentiments. These three individuals acknowledge that the NB Resident was in a precarious position and suffered various health issues. However, knowing this they still allowed and facilitated him selling the Property for far less than it was worth. This is all after the Licensees listed the property for far more than it was worth. There is no evidence provided that Poirier or Hannah tried to direct the NB Resident to other services; and it is clear from the documentation that they did not insist he obtain independent representation either

from real estate or legal professionals. I believe this shows again a clear lack of proficiency and integrity on the part of the Licensees.

- [113] Through the MOA, and in purchasing the Property in the manner in which she did, Hannah made the NB Resident dependent on her for his essential and basic requirements in life. She arranged and agreed to purchase the Property for \$100,000, a price much less than its appraised value (and \$224,900 less than the price that the Licensees state the NB Resident “insisted” the property be listed at in May of 2013), with a renovation credit due to her and with the agreement to pay NB Resident a monthly allotment (interest free) for rent and other items, akin to an allowance, rather than pay him the entire amount on closing.
- [114] Hannah should have reasonably foreseen that her purchasing of the Property in this manner would place her in a conflict. A reasonably proficient real estate salesperson in this situation would have noted the conflict and would have not acted in this manner. I find her failure to acknowledge this conflict shows a lack of proficiency and a lack of integrity such that I would have concerns should she continue to be licensed.
- [115] The fact that Hannah fails to take responsibility for any of her actions also provides me with great concern that her continued licensure would not be in the public interest. I have concerns that Hannah, having not recognized her wrongdoing or the conflict that arose in this transaction, could act in a similar manner and without her clients best interests again in the future.
- [116] Poirier was also in a conflict in that he assisted Hannah in fulfilling part of the terms of the MOA by acquiring apartments for NB Resident, one of which he should have been aware was unsuitable to NB Resident’s needs, on account of the fact that he was a smoker and the premises was non-smoking.
- [117] I also find that both Poirier and Hannah placed the NB Resident in an untenable position in that they moved him out of his Property and into an apartment on 1 October 2013 making it very hard, if not impossible, for him to disagree to the terms under the MOA and the Promissory note which were signed 13 days later, on 13 October 2013, when the Property was sold to Hannah. I find Poirier and Hannah lacked both proficiency and integrity in this regard.
- [118] At the time of the Opportunity to be Heard, Hannah had been licensed and working for 5 ½ years in the real estate industry and Poirier had been licensed and working for approximately 13 years. This was not a case of inexperienced salesperson’s needing guidance, but rather of seasoned real estate salespeople who should have known their professional obligations and should have realized that what they were doing in listing and then purchasing the Property for far less than it was worth – and in a manner leaving a vulnerable client depending on them for all financial needs – was in blatant conflict and financially deceitful.

[119] The fact that Hannah points the blame at the Lawyer for failing to adequately explain a Collateral Mortgage to her also gives me concern. Hannah is failing to take accountability for her actions and is alleging to have little understanding of basic mortgage principles, which most individuals in her industry should appreciate. This causes me to question both her integrity in failing to accept any blame, and her proficiency in failing to understand her industry. Hannah knew that as a part of the MOA the NB Resident had provided her with a private mortgage over the Property. As someone operating in real estate, she should have realized when obtaining the Olympia Mortgage that there should have been another first rank encumbrance on the Property.

[120] Absolute Realty was owned by Hannah and Poirier. They employed a manager who was expected to monitor Hannah and Poirier as real estate salespersons. In this case, I do not believe the manager was able to do an adequate job overseeing Hannah and Poirier, who were her employers as co-owners of Absolute Realty. Absolute Realty failed to proficiently manage its real estate salespersons.

[121] While no traditional “commissions” were provided to Hannah and Poirier, it can be said that they obtained a substantial benefit from the Property deal. They agreed to pay monthly installments to NB Resident in the amount of \$1,000 up to \$100,000 for the Property which was assessed by Service New Brunswick at time of sale for \$169,000. The Property is currently assessed at \$197,700. Hannah and Poirier bought the Property for a significantly reduced price based on its property appraisal. They obtained an interest free mortgage and a significant renovation credit, with no funds changing hands at the time the MOA was executed. To say that they did not financially benefit from this transaction is misleading. Hannah and Poirier failed to demonstrate making cash payments to the NB Resident. They have not paid rent on NB Residents behalf since October 2015. They have failed to pay the NB Resident in accordance with the MOA. In addition, they obtained another mortgage for \$110,000, of which they were unable to demonstrate they used any significant portion on renovations. The Property has since been sold under mortgage sale, which would indicate payments were not made as required on that mortgage; therefore they have gained financially in that transaction as well. Notwithstanding their position that they did not benefit financially as they did not accept any commissions, it is clear that they gained substantially from the transaction, to the NB Resident’s detriment: He lost his home, his only asset, and was provided with nothing more than a year and half’s rent.

(c) Renovation Credit

[122] Poirier and Hannah allege that they were required to put much time, effort and money into remediating the Property in order to sell it, and that they did this utilizing the “renovation

credit". They claim that due to this, they really did not benefit from the property deal. I cannot agree with this assertion for reasons I will detail below.

- [123] While Hannah and Poirier allege that they did not benefit from the Purchase of the Property because they incurred substantial costs and utilized the "renovation credit" to do necessary improvements to the Property, a thorough review of the receipts and documentation submitted by Hannah and Poirier does reasonably support the utilization of a renovation credit of \$138,000.
- [124] After the initial Collective Response provided by the Licensees for the written Opportunity to be Heard, the Director requested that the Licensees provide supplemental information including receipts to show monies allegedly spent to support the renovation credit. A list of renovations and receipts were provided as part of the Supplemental Response. However, many of the receipts provided have no bearing on the renovation credit and cannot support the renovation credit of \$138,000.
- [125] A total of \$48,540.83 in alleged renovation expenses were submitted with some sort of supporting documentation (other than a handwritten note). Of this amount alleged in renovation expenditures, only \$34,472.27 could be substantiated by third party support by way of invoices etc. and in some cases the documentation was lacking in that it failed to outline the address and date for which the services were provided.
- [126] Of the \$48,540.83 in alleged renovation expenses reviewed, only \$28,796.39 of those would reasonably be considered to meet the definition of renovation credit under section 118.04 of the *Income Tax Act*. Of this amount, \$26,300 relates to one item that appears to be paid by Poirier in cash and to which there is no receipt.
- [127] We do not consider mortgage payments by Hannah on the Property or payments for the First Apartment or Second Apartment or the monthly payments of approximately \$300 allegedly paid to NB Resident to be expenses in relation to the renovation credit as submitted. These were separate items under the MOA.
- [128] It is concerning that approximately \$57,000 of the documentation submitted to support the \$138,000 renovation credit relates to expenditures incurred on behalf of the NB Resident for his renting costs. These costs have no association to renovations of the Property and more importantly, the rental costs were part of the Note repayment terms, which goes to support the notion that they are completely separate from the renovation credit.
- [129] Hannah and Poirier submitted handwritten accounts of \$37,400 claiming for mortgage payments on the Property to Olympia Trust, and claim these as renovation expenses. We do not consider these expenses to be legitimate renovation expenses. Mortgage payments on the Property are not considered renovation expenditure and have zero correlation to the renovation

credit received at the time of purchase. In addition, the NB Resident did not have a mortgage on the Property at the time of sale and therefore it could not be argued that these were costs incurred by Poirier and Hannah that would have otherwise been incurred by the NB Resident had the Property not been sold.

- [130] Hannah and Poirier submitted receipts for insurance on the Property in an amount of approximately \$3,000 yearly for three years for an insurance policy which would provide coverage of up to \$300,000 on the Property. The Property was never worth \$300,000 and I find it odd that Hannah and Poirier should seek coverage for an amount that was well over the \$100,000 they alleged the Property was worth. We do not consider these insurance expenses to be legitimate renovation expenses.
- [131] Hannah and Poirier submitted written reference to payments for snow removal and landscaping at the Property. We do not consider these expenses to be legitimate renovation expenses but rather everyday operational costs.
- [132] Hannah and Poirier submitted receipts for \$4,208.14 in oil delivery to be included in the renovation credit expenses. We do not consider the expenses in relation to the heating costs for general day to day operations of the Property to be expenses in relation to the renovation credit.
- [133] Hannah and Poirier submitted receipts for "Jays light trucking," for unexplained expenses in an amount of \$150. We do not consider these expenses in relation to the renovations for which the renovation credit was claimed.
- [134] Hannah and Poirier submitted a cheque made payable to Service New Brunswick in relation to the Property closing in the amount of \$1,265. We do not consider these expenses to be legitimate renovation expenses.
- [135] Hannah and Poirier submitted an invoice from Home Hardware and Kent's for renovation materials. The invoice is dated 4 October 2013. Hannah was not in possession of the Property at this date. We do not consider these expenses to be legitimate renovation expenses.
- [136] Hannah and Poirier submitted handwritten reference to payments of approximately \$2,400 for sewer and water payments. These are not legitimate renovation expenses but rather day to day operational costs.
- [137] The appraisal report dated 2 December 2014 by Mari-Tech Appraisal and Inspection Ltd. does not indicate any specific or significant improvements made the Property, but rather refers to the Property as being well maintained over the years.

- [138] I have not been provided with sufficient evidence that Hannah, Poirier or Absolute Realty expended \$138,000 in renovations that demonstrate the renovation credit the NB Resident provided in the sale of the Property was fair and reasonable. I find that Hannah and Poirier at a maximum expended \$37,000 on renovations to the Property. Even that amount is speculative given the poor accounting and paperwork. This leaves \$101,000 unaccounted for in expenses/renovations. I find that Hannah and Poirier took extreme financial advantage of NB Resident when they purchased the Property from him at the discount of \$138,000. Advantage was further taken when they obtained a private mortgage from the NB Resident for \$100,000 for which they have ceased making payments. If they had made the mortgage payments to the NB Resident and had been able to sell the Property after it was transferred to Hannah, they would have benefited to the tune of \$101,000 (\$238,000 purchase/sale price, minus \$100,000 private mortgage by NB Resident, minus the \$37,000 in questionable renovations). In addition, Hannah financially benefited from the funds she received from the Olympia Trust mortgage, wherein the majority of the funds advanced to her were not paid back, before the Property went up for mortgage sale.
- [139] Based on the documentation, I do not believe it was ever the intention of Hannah and Poirier to put substantial renovation efforts into the Property, but rather their intent was to perform minimal renovations to sell the Property to make a profit. The NB Resident, their client, clearly didn't appreciate the worth of his only asset as is evident in his actions: In one breath he insisted the Property be listed for far more than its worth, while in another breath sold it for far less than its worth. Hannah and Poirier's willingness to enter into an agreement with him when he was most vulnerable, in the manner they did, shows incredible lack of proficiency and egregious lack of integrity.
- [140] The whole dealing itself also reflects poor oversight on the part of Absolute Realty. The reasonable real estate agent would not have allowed its salespeople to continue with the purchase from a client with whom there was a current listing, particularly a client who - based on the information provided by medical professionals - was clearly lacking in capacity and decision making ability. A reasonable agent would also not have allowed the property transaction to transpire in the manner in which it did.
- [141] I have public interest concerns in all of the Licensees' continued licensure. None of the Licensees took any ownership for their poor judgment in the listing and purchase of the Property or in any of their dealings with the NB Resident. This provides great concern regarding their continued ability to interact with potential clients in a fair and reasonable manner.

(d) Inconsistencies and other items that provide cause for concern

- [142] I have concerns regarding many inconsistencies in the information provided and the lack of evidence to substantiate monthly payments Hannah and Poirier allege they made to the NB Resident.
- [143] Hannah and Poirier began acting in a capacity akin to an Attorney under a POA in October 2013 when they began paying his rent and giving him a monthly allowance, well before the NB Resident affected the POA. In doing so they stripped the NB Resident of independence, making him dependant on them fully to pay his rent and to give him the remaining \$330 from the \$1000 monthly.
- [144] Poirier told Hospital staff that the NB Resident had entire control over his finances and bills prior to entering the Hospital but we see that this was not the case from supplemental documentation submitted by Licensee's Counsel on 27 October 2017. In that package of documents it is clear that NB Resident's utility bills at the Second Apartment was being paid by Poirier and Hannah.
- [145] Hannah and Poirier allege they fulfilled their obligation to provide \$1,000 per month to NB Resident. Other than reference to one handwritten receipt and ledger entry for payment in April of 2015 for an amount of \$330, there is no proof of a monthly amount ever paid to NB Resident directly. The Public Trustee has sought payment for amounts owing under the MOA in the amount of \$83,320 under the Public Trustee Civil Action. This amount was calculated by taking the original amount owing of \$100,000 and subtracting from that amount the rent paid from October 2013 to October 2015. In essence, Hannah and Poirier purchased the Property which was worth \$238,000 from the NB Resident for \$16,680.
- [146] I also have remaining concerns regarding inconsistencies in information provided on the licensing applications submitted in the past by all of the Licensees.
- [147] I have concerns with respect to Poirier's 2015 and 2016 application for licensure.
- [148] Poirier failed to disclose a judgment on his 2015 application for a licence. Poirier claims he was unaware of the judgment until he went to sell his home nearly a year after he would have filled out his 2015 licence application. With respect to the assertion by Poirier that he was unaware of a judgement against him for \$25,955 until he went to sell his home nearly a year after filling out his application for licensure in 2015, I find this assertion to be untenable. Poirier would to have been served notice of the proceedings in which the other party obtained the judgment. At the very least, Poirier would have known that there was a proceeding in which another party was seeking damages against him.
- [149] Additionally, a review of the New Brunswick Court Index indicates that Poirier filed a "Form 17 Small Claims – Notice of Appeal by Application," dated 1 April 2014 demonstrating he was

clearly aware of the judgment obtained just weeks before this appeal of the judgment was launched.

[150] I have concerns that Poirier failed to disclose a bankruptcy on his 2015 and 2016 licence application. Poirier says that he filed for bankruptcy over 25 years ago and was under the impression that since 7 years (full discharge period) had elapsed he was no longer the status of bankrupt and therefore did not have to report. The question on the “Application for Licence” under the *NB Real Estate Agents Act* does not ask whether one is a discharged bankrupt or whether there are currently ongoing bankruptcy proceedings but rather reads clearly as follows:

“Have you EVER:
g. Been subject to bankruptcy proceedings.”

[151] Poirier’s application had a material misstatement. Thoroughness and attention to detail are important attributes for a salesperson undertaking a financially significant transaction on behalf of a client. Clients are relying on the salesperson to see that details are looked after and that agreements and contracts are properly and accurately completed. When these attributes are missing from the salesperson’s work on his own application, it does not lend confidence to how he will conduct business on behalf of others.

[152] Honesty and integrity are essential characteristics for those working in the real estate industry. Consumers need to have confidence that the professionals they deal with and whose services they pay for will behave in a proper and ethical manner. The application question clearly asks whether the applicant was ever “been subject to bankruptcy proceedings.” While there is no evidence that Poirier meant to intentionally mislead the Director when completing his application, his omission of the prior bankruptcy, was not truthful and impacts the Director’s view on his suitability to hold a licence.

[153] Both Poirier and Hannah submit that they did not disclose that they were named parties in the Public Trustee Act Action in their licence application as they believed that since they were being named in their capacity as POA that it was not relevant. Both Poirier and Hannah knew that the public trustee was making serious allegations about their conduct in relation to an individual who had been a client of theirs in their capacity as real estate salespeople and they specifically disputed these allegations. This was not a case where they had to be named as a formality. The whole case centred on removing them as POA as they were alleged to have exploited an older and incapacitated individual whom at one point had been a client. I find their failure to disclose purposeful and underhanded.

[154] The Public Trustee Civil Action seeks the remainder of the amounts owing to NB Resident under the Note. The Public Trustee Civil Action indicates that these amounts have not yet been paid to NB Resident. It is my understanding that Hannah defaulted on making payments on the Property such that the Olympia Mortgage went into default and the Property was sold,

information obtained from the Public Trustee. I was also made aware through information obtained through the Public Trustee that prior to sale taxes on the Property were in significant arrears. This information provides me grave concern about the solvency of Poirier and Hannah such that I have concerns with their licensure.

- [155] I have substantial concerns that were I to licence Poirier and Hannah again that they may use their position as licensed real estate salespeople to again benefit financially to the detriment of their potential clients. The fact that they have taken absolutely zero responsibility for their actions goes to show how unaware they are of the untenable and precarious position in which they placed an NB Resident who is now left with nothing to his name, or perhaps completely aware and simply unwilling to admit to the deception they knowingly committed.
- [156] In reviewing this matter I have taken great care to weigh the information provided both by the Public Trustee and by the Licensees, and to weigh the consequences to the NB Resident, the public and to the Licensees in considering whether to grant a licence. I do not see how there is any way I can be satisfied that the Licensees are suitable to be licensed given their conduct in this matter.
- [157] In looking at all the information that has been obtained and provided in regards to this complaint, what one can see is nothing short of outrageous, and egregious advantage was taken of this NB Resident. The Licensees 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. They also benefited when the first mortgage was not registered. They have taken complete financial advantage of this NB Resident. As far as dealing with suitability to deal in real estate, the loss that this NB Resident suffered, in conjunction with the substantial amount of money they benefited from in this deal cannot be ignored. They met the NB Resident as a referral to sell his Property, his only asset, and his only benefit was a year and half of rent and his only asset is gone.

ORDER

- [158] With respect to Hannah I am of the opinion that she is not suitable to be licensed under the *Real Estate Agents Act* as a real estate salesperson and in that regard am denying any licensure in this industry in the public interest for reasons I have detailed above in accordance with subsection 10(1) of the *Real Estate Agents Act*.

[159] With respect to Poirier I am of the opinion that he is not suitable to be licensed under the *Real Estate Agents Act* as a real estate salesperson and in that regard am denying any licensure in this industry in the public interest for the reasons detailed above and in accordance with subsection 10(1) of the *Real Estate Agents Act*.

[160] With respect to Absolute Realty I am of the opinion that the Agency, as owned by Poirier and Hannah, is not suitable to be licensed under the *Real Estate Agents Act* as a real estate agent and in that regard am denying any licensure in this industry in the public interest for the reasons detailed above and in accordance with subsection 10(1) of the *Real Estate Agents Act*.

[161] Pursuant to subsection 10(5) of the Act, neither Hannah nor Poirier is entitled to apply for a new licence under the *Real Estate Agents Act* for a period of one year from the date of this decision.

Dated this 5th day of February 2018.



Alaina Nicholson
Acting Director of Consumer Affairs
Financial and Consumer Services Commission
Suite 200, 225 King Street
Fredericton, New Brunswick E3B 1E1
Tel: 866-933-2222
Fax: 506-658-3059