

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

- and -

IN THE MATTER OF
Alexandra Daigle

REASONS FOR DECISION & ORDER OF THE DIRECTOR OF CONSUMER AFFAIRS

Date of Opportunity to be Heard: 4 May 2018

Date of Decision: 7 May 2018

Date of Reasons for Decision: 5 September 2018

Heard Before

Alaina M. Nicholson
As Acting Director of Consumer Affairs

BACKGROUND

[1] This matter involves a request by Staff (“FCNB Staff”) of the Financial and Consumer Services Commission (FCNB) to the acting Director of Consumer Affairs (“Director”) to review Ms. Alexandra Daigle’s (“Ms. Daigle”) suitability to hold a real estate salesperson’s licence pursuant to section 10(1) of the *Real Estate Agents Act* (the “Act”). FCNB Staff were concerned that her recent termination and allegations of professional misconduct affected her suitability to hold a real estate salesperson’s licence.

[2] FCNB Staff requested that the Director either consider terms and conditions on the licence pursuant to section 10(1.1) of the *Act* or a suspension or cancellation of the licence pursuant to section 10(2) of the *Act*.

10(1.1) The Director may at any time restrict a licence by imposing any terms and conditions that he or she considers appropriate on the licence.

10(2) The Director may suspend or cancel a licence if he or she is of the opinion it is in the public interest to do so.

[3] Ms. Daigle held a real estate salesperson’s licence working for the licensed Agent Gardiner Realty Ltd. (“Gardiner Realty”) since 17 March 2014.

[4] The New Brunswick Real Estate Association (“NBREA”) renewed Ms. Daigle’s membership in their association effective 1 July 2017. This membership requirement is necessary for the Director to continue licensing Ms. Daigle as a real estate salesperson, as it demonstrates she is a member in good standing and has completed the necessary continuing education provided by the NBREA.

[5] The NBREA provided a Notice of Cancellation (“First Notice”) to our office on 10 April 2018. The First Notice, completed by Gardiner Realty, indicated that Ms. Daigle’s membership with the NBREA was cancelled as Gardiner Realty had terminated her relationship with them due to “professional misconduct”. As a result of the First Notice, Ms. Daigle’s licence to work as a salesperson with Gardiner Realty was cancelled.

[6] Ms. Daigle submitted her application, dated 10 April 2018, for a real estate salesperson’s licence to work with Exit Realty Advantage.

[7] The NBREA is responsible for the Realtor Code of Ethics. As a result of the allegations of professional misconduct on the First Notice, FCNB Staff contacted the NBREA on 11 April 2018 to discuss what steps were being taken regarding Ms. Daigle by the NBREA. The Registrar indicated that she had been in contact with a licensed manager at Gardiner Realty and had advised that a mandatory complaint must be filed with the NBREA based on the allegation of professional misconduct in the First Notice.

[8] On the 12 April 2018 a licensed manager for Gardiner Realty provided FCNB Staff with a copy of a termination of contract letter dated 9 April 2018. The letter indicated that Ms. Daigle’s services were no longer required as her contract was being terminated due to a recent serious incident, combined with other incidents during her time with the Agency.

[9] On 13 April 2018 the Registrar of the NBREA provided FCNB Staff with the parameters of the investigation that was to be performed as a result of the mandatory complaint. At this time the Registrar sought advice on anything further that the FCNB Staff would like to see included in the investigation. FCNB Staff provided no further direction, but requested to be provided with a copy of the investigation report when it was finalized.

[10] On 17 April 2018 a revised Notice of Cancellation (“Second Notice”) was provided to FCNB Staff in which a licensed manager with Gardiner Realty indicated that a wording terminology had been revised to be more appropriate to the actions taken in Ms. Daigle’s dismissal. The Second Notice requested that Ms. Daigle’s membership be cancelled due to “Lack of adherence to Gardiner Realty Company code of conduct”.

[11] FCNB Staff received a carbon copy of a letter addressed to Ms. Daigle from the Registrar of the NBREA by way of email attachment on 20 April 2018. The letter indicated that the NBREA was in receipt of the results of the investigation that resulted from the mandatory complaint, and that the matter would not be forwarded to the Complaints Committee. The letter further stated that the information provided in the report indicate a “demonstrated lack of judgement and tendency to take shortcuts” and advised Ms. Daigle to work closely with her manager to ensure she is conducting herself appropriately.

[12] The 20 April 2018 email from the Registrar also included a copy of the investigation report dated 19 April 2018.

[13] On 26 April 2018 FCNB Staff received an email from the Registrar confirming that Ms. Daigle had been provided with a copy of the investigation report via email on the same date.

[14] Given the First Notice and the information provided in the investigation report FCNB Staff still had public interest concerns regarding Ms. Daigle’s suitability to hold a licence, despite the NBREA’s decision not to forward the matter to their Complaints Committee.

[15] Ms. Daigle was advised about FCNB Staff’s concerns regarding her recent termination due to professional misconduct by a letter from FCNB Staff on 27 April 2018. The letter referenced the investigation report and the First Notice. The letter also advised Ms. Daigle of the matters under consideration as related to suitability.

[16] Ms. Daigle was advised through the letter that she would be given an opportunity to provide any additional information or rationale to aid the Director in reviewing her suitability. She was advised this was her opportunity to be heard by the Director before a decision was made on her suitability for continued licensure. She was advised that she could request an oral or written opportunity to be heard and that she had the right to counsel, and she was provided with disclosure of all information before the Director regarding her suitability.

[17] Ms. Daigle was advised that the date for the opportunity to be heard was set for 2:00 pm on 4 May 2018 at the FCNB’s office in Fredericton. Ms. Daigle was advised that the attendance of a licensed manager with Exit Realty Advantage was also requested.

[18] Ms. Daigle confirmed her attendance, along with a licensed manager, on 27 April 2018.

[19] Prior to the opportunity to be heard, on 4 May 2018 FCNB Staff disclosed to Ms. Daigle by letter sent through email that FCNB Staff were also in possession of her termination of contract letter from Gardiner Realty.

[20] The right to have an opportunity to be heard is in accordance with sections 10(1.3) and (2.1) of the Act. These sections are as follows:

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.

10(2.1) The Director shall not suspend or cancel a licence without giving the licensee an opportunity to be heard.

[21] Ms. Daigle met with the Director on 4 May 2018. Also in attendance were Robyn Gallant, Compliance Officer for Consumer Affairs and Philip Duplisea, licensed Manager for Exit Realty Advantage. Ms. Daigle was not represented by counsel.

[22] Ms. Daigle confirmed at the opportunity to be heard that she had all the documents relied upon by FCNB Staff as listed in FCNB letter of 27 April 2018 and subsequent letter of 4 May 2018.

[23] At the opportunity to be heard, FCNB Staff provided a summary of their concerns and the basis for them. Ms. Daigle spoke and provided an explanation for each of the concerns outlined in the investigation report. In addition, she responded to the Director's questions. Neither Ms. Daigle nor her Manager provided any additional documentation.

THE FACTS

[24] Paragraph 15(1)(d) of the Act requires an Agent to notify the Director, in writing and without delay, if the Agent has terminated a salesperson because of misconduct or an allegation of misconduct. The written notification must include details of the relevant circumstances. This notification was received through Gardiner Realty's First Notice sent to the Director via the NBREA.

[25] After reviewing the information submitted by FCNB Staff and the explanation and statements from Ms. Daigle, I find the following as facts:

- a) The Investigation Report outlined four issues that Gardiner Realty had during Ms. Daigle's tenure with their Agency:
 - a. Utilizing a colleague's marketing materials without consent – Ms. Daigle utilized a detailed marketing document that another salesperson had prepared and had paid for graphics design work. The document included testimonials from clients, tips on how to prepare to sell a home, a checklist, and information marketing the agent to a perspective client. Ms. Daigle used the basic formatting of the document and adjusted it with her own testimonials and photographs, but otherwise, it was found to be identical.
 - b. Adding a client's initials to a document - The client's signature from another document was cut and scotch taped onto an "Agreement of Purchase and Sale Schedule D". At the time of the incident, Ms. Daigle was not able to get the client's signature electronically.

- c. Complaints of lack of attention to details and rushed work – In November 2015 another salesperson had complained of very poorly completed forms and clauses on purchase and sale documents.
 - d. A broken lock/door incident - Ms. Daigle was showing a house to a client in Hoyt. Upon leaving the house, Ms. Daigle noticed she had locked her cell phone inside and had no way of getting back into the lockbox. She tried contacting the listing salesperson but they were not able to help her get into the house until the following day. Ms. Daigle made the decision to break the lock on the door, in order to get inside to retrieve her phone. This resulted in the door being broken.
- b) During the opportunity to be heard Ms. Daigle provided the following additional background information and a rationale for the four issues, that was not included in the investigation report:
- a. In regards to the marketing brochure materials copied from a colleague, Ms. Daigle admitted that she had used materials belonging to another salesperson. After speaking with her licensed manager about the issue she recognized that she should not have used the materials without consent. In discussing this matter, Ms. Daigle demonstrated remorse for her conduct.
 - b. In regards to the incident where she had added a client's signature to a form, Ms. Daigle explained that this incident happened several years ago before electronic signatures were available. She was representing a client on the listing of their property. Her client was military personnel. Upon preparing the listing for the MLS system she discovered that her client had failed to sign a form. Ms. Daigle contacted her client via email and he advised that he was unable to sign the document as he was performing field operations. He requested in the email that she place his signature on the document. Ms. Daigle and her manager indicated that issues like this are no longer a factor due to electronic signature capabilities.
 - c. Ms. Daigle's first language is French. She indicated she has only learned English in the last 8 years. When starting her career in real estate she struggled with writing in English and often needed assistance completing clauses and details in contracts. She indicated that the language barrier was the reason behind the issue with her lack of attention to detail and work that appeared rushed or incomplete. With experience, time and the assistance of a manager, Ms. Daigle believes that she continues to improve in this regard.
 - d. Ms. Daigle advised that the lock and small part of the door was broken on a vacant bank repossessed home, after she accidentally locked her phone inside. Ms. Daigle recognized that although she had panicked, as it was dusk and she was in a rural setting with a stranger, that it had not been the best way to resolve the situation. The door was replaced by Ms. Daigle.

FCNB'S MANDATE

[26] The *Financial and Consumer Services Act*, in Section 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..”.

[27] The *Financial and Consumer Services Act*, in Section 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*.

[28] Prior to suspending, cancelling or imposing terms and conditions on a licensee under the *Act*, the Director must consider the appropriateness of any action taken. In making this determination it is necessary to consider the mandate of the FCNB and whether or not the Respondent is suitable to hold a licence and that the issuance of a licence is not objectionable for *any* reason.

[29] Consumer protection is a fundamental consideration and a key purpose of the FCNB's mandate. It is a key responsibility of the Director, as the gatekeeper to the real estate industry, to determine suitability of an applicant or a licensee and allow that person to operate in this sector.

THE PROCESS OF DETERMINING SUITABILITY

[30] Section 10(1) of the *Act* requires that "*the Director is satisfied that the applicant is suitable to be licensed*". The review of suitability covers a number of aspects including education, qualifications, financial stability and integrity. These all have a significant bearing on a candidate's suitability to hold a salesperson's licence and operate in the real estate sector.

[31] Integrity is an essential character for a real estate 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. The past conduct of an applicant for a real estate salesperson's licence is a significant factor in determining their future behaviour, their integrity and therefore their suitability to operate in the industry.

[32] Another determination that the Director must make under Section 10(1) is that the issuing of a proposed licence "*is not objectionable for any reason*". While this provides wide latitude, in this situation the Director is focussed on consumer protection: if a licence is issued or continued does it leave consumers exposed to harm or exploitation?

ANALYSIS

[33] Ms. Daigle has four years' experience working in the real estate industry with no history of complaints through the NBREA's compliant and discipline process.

[34] 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 alleged to be substandard or lacking, it does not lend confidence to how the salesperson will conduct business on behalf of others.

[35] 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. Ms. Daigle admitted she did paste a client's signature on a form, although she advised that she did have the client's consent via email. This behaviour impacted the Director's view regarding her suitability to hold a licence. These circumstances warranted a regulatory review.

[36] What the Director has to determine is whether Ms. Daigle's conduct was so objectionable that she should not be allowed to operate in the real estate sector at all, or whether she can conduct herself in a suitable manner with terms and conditions.

[37] Ms. Daigle and her licensed manager both reiterated that she recognizes the severity of her actions. Ms. Daigle provided the Director with her rationale and with further details surrounding each incident which shed more light on what appeared to be serious allegations. She cooperated with the Director and was forthcoming with information. Also, her licensed manager has supported her in this process and supports her continued work in the real estate industry.

[38] Ms. Daigle demonstrated remorse and regret for each incident, which was a positive reflection on her character.

[39] Based on the information received by the Director, I am comfortable that Ms. Daigle's past conduct does not indicate that Ms. Daigle is not qualified to work in the real estate industry.

[40] After careful consideration of the allegations and Ms. Daigle's explanations, along with her previous licensing activity, with no history of complaints or disciplinary actions taken by the NBREA, I am of the opinion that she can conduct herself in a suitable manner. I find that her licence should be continued with the appropriate terms and conditions. The placement of specific terms and conditions on her licence are intended to provide training, guidance and coaching to address the concerns identified in the First Notice and the investigation by NBREA. The Act requires Ms. Daigle to comply with any terms and conditions imposed.

[41] The Act provides that:

'10(1.1) The Director may at any time restrict a licence by imposing any terms and conditions that he or she considers appropriate on the licence.'

10(1.2) 'A licensee shall comply with the terms and conditions imposed by the Director on the licence'.

DECISION

[42] I have concluded that Ms. Daigle's licence be approved with the following terms and conditions:

- Alexandra Daigle be placed under supervision by Exit Realty Advantage for the remainder of the period of her licence;
- Supervision will continue for a period of 12 months under any subsequent licence issued;
- Supervision will consist of, at a minimum, any contract, agreement or other binding document relating to any real estate transaction be reviewed and approved by a licensed manager before a commitment is made by Ms. Daigle or any party to the transaction;
- Exit Realty Advantage may place any other supervisory conditions that they consider appropriate on Ms. Daigle and will advise the Director of Consumer Affairs;
- Ms. Daigle is required to take and pass an approved Ethics course as offered by the NBREA and proof of completion is to be provided to the Director of Consumer Affairs; and

- The Exit Realty Advantage must maintain a record documenting any complaints or infractions filed against Ms. Daigle and the response/action to address the complaint or infraction. A summary of any complaint(s) and/or infractions, and response(s) must be filed quarterly with the Director of Consumer Affairs.

If satisfactory progress has been made and at least six months of supervision have passed on a subsequent licence, an application can be made to have the terms and conditions reviewed by the Director of Consumer Affairs.

DATED at Fredericton, New Brunswick this 5th day of September 2018.

Original decision signed by Alaina M. Nicholson

Alaina M. Nicholson
Director, Consumer Affairs
Financial and Consumer Services Commission