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Citation: *Director of Consumer Affairs, Re*, 2017 NBFCST 3

PROVINCE OF NEW BRUNSWICK  
FINANCIAL AND CONSUMER SERVICES TRIBUNAL

Date: 2017-07-27  
Docket: CA-001-2017

IN THE MATTER OF THE *REAL ESTATE AGENTS ACT*, S.N.B. 2011, c. 215

-and-

IN THE MATTER OF AN APPLICATION BY THE DIRECTOR OF CONSUMER AFFAIRS

-and-

IN THE MATTER OF AB and GERALD DAVID WEBSTER

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**ORDER**

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Restriction on publication: This Order has been anonymized to comply with the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6.

**WHEREAS:**

1. On May 3, 2017, the Director of Consumer Affairs filed an application seeking an Order pursuant to subsection 31(8) of the *Real Estate Agents Act* [the *Act*] that \$5,000 from a \$40,000 bond given by Gerald Webster and declared forfeited by the Director of Consumer Affairs pursuant to subsection 31(2) of the *Act* be paid over to AB;
2. The Tribunal received into evidence the following Affidavits in support of the application:
  - a) The Affidavit of AB sworn on March 30, 2017,
  - b) The Affidavit of Suzanne Bonnell-Burley sworn on April 21, 2017,
  - c) The Supplemental Affidavit of AB sworn on April 28, 2017,
  - d) The Affidavit of Alaina Nicholson sworn on June 29, 2017;

3. The Tribunal also received into evidence the bond provided by Mr. Webster;
4. The Tribunal received written submissions from the Director of Consumer Affairs and heard oral submissions from counsel for the Director of Consumer Affairs at the July 27, 2017 hearing;
5. Gerald Webster and Mr. AB did not attend the July 27, 2017 hearing;
6. The Tribunal had jurisdiction to proceed with the hearing in Mr. Webster and Mr. AB's absence pursuant to subsection 14(4) of Local Rule 15-501 *Proceedings before the Tribunal* as Mr. Webster and Mr. AB were properly served with the application materials and the Notice of Hearing such that they had adequate notice of the application and the hearing for the following reasons:
  - a) The Notice of Application and four Affidavits mentioned in paragraph two above were hand-delivered to Mr. Webster as set out in the Affidavits of Service of Brian Maude sworn May 18, 2017 and July 24, 2017;
  - b) The Notice of Application and four Affidavits mentioned in paragraph two above were hand-delivered to Mr. AB as set out in the Affidavits of Service of Brian Maude sworn May 16, 2017 and July 24, 2017;
  - c) Hand delivery of documents to a person is an accepted means of service pursuant to subsection 5(1) of Local Rule 15-501 *Proceedings before the Tribunal*;
  - d) The Tribunal's Notice of Hearing was sent to Mr. Webster's residence by courier and accepted at his residence on June 23, 2017 as set out in the Affidavit of Service of Christine Bernard, which is an accepted means of service pursuant to subsection 5(1) of Local Rule 15-501 *Proceedings before the Tribunal*;
  - e) The Tribunal's Notice of Hearing was sent to Mr. AB by e-mail on June 23, 2017 as set out in the Affidavit of Service of Christine Bernard. Mr. AB acknowledged receipt of the Notice of Hearing. This is an accepted means of service pursuant to subsection 5(1) of Local Rule 15-501 *Proceedings before the Tribunal*;
7. The Court of Queen's Bench issued an oral judgment on April 24, 2017 finding that Mr. Webster's actions constituted fraud or a misappropriation of funds without legal justification and awarded Mr. AB \$5,000 plus costs of \$100;

**IT IS HEREBY ORDERED THAT:**

8. Pursuant to subsection 31(8) of the *Real Estate Agents Act*, Mr. AB shall be paid \$5,100 from the bond given by Gerald Webster and declared forfeited by the Director of Consumer Affairs; and

9. There shall be no costs awarded to the parties in this proceeding.

**DATED** at the City of Saint John this 27<sup>th</sup> day of July, 2017.

*Judith Keating, Q.C.*

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Judith Keating, Q.C. Tribunal  
Chair

*Raoul Boudreau*

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Raoul Boudreau, Tribunal  
Member

*Gerry Legere*

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Gerry Legere, Tribunal Member