NEW BRUNSWICK
ENERGY & UTILITIES BOARD

COMMISSION DE L'ÉNERGIE ET DES SERVICES PUBLICS
NOUVEAU-BRUNSWICK

PROVINCE OF NEW BRUNSWICK
NEW BRUNSWICK ENERGY AND UTILITIES BOARD
IN THE MATTER OF *THE REAL ESTATE AGENTS ACT*, S.N.B. 2011, C 215, *THE MORTGAGE BROKERS ACT,* S.N.B. 2014, C 41, -AND- *THE SECURITIES ACT*, S.N.B. 2004, C S-5.5

Matter: MS-001-2021

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

John Albert McKellar and 668054 N.B. LTD.

Respondents.

DECISION AND ORDER

PANEL:	Christopher J. Stewart, Chairperson
	Kenneth McCullogh, K.C., Member
	Michael Pickup, Member
DATE OF HEARING:	October 21, 2025
WRITTEN REASONS:	August 28, 2026
APPEARANCES:	Mark McElman for the Applicant
	No one appeared for the Respondents

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1 Introduction

[1] On April 1, 2025, the Board's predecessor, the Financial and Consumer Services Tribunal issued a decision wherein the Respondent, John Albert McKellar ("Mr. McKellar") was found to have contravened certain provisions of the *Real Estate Agents Act*. In addition, Mr. McKellar and his operating company, 668054 N.B. Ltd., were both found to have contravened certain provisions and the *Securities Act*.

[2] Specifically, the Tribunal ruled that:

1. In contravention of section 2 of the *Real Estate Agents Act*, Mr. McKellar held himself out as trading in real estate as an agent without holding a valid and subsisting licence.
2. In contravention of paragraph 35(a) of the *Real Estate Agents Act*, Mr. McKellar collected or attempted to collect a commission or remuneration for services rendered in connection with a trade in real estate without being licenced as an agent at the time of rendering the services and that Mr. McKellar collected remuneration for, inter alia, these activities.
3. In contravention of subsection 71(1) of the *Securities Act*, Mr. McKellar traded in a security on his own account or on behalf of another person where the trade would be a distribution of a security without a prospectus or exemption therefrom.
4. In contravention of subsection 71(1) of the *Securities Act*, 668054 N.B. Ltd. traded in a security on its own account or on behalf of another person where the trade would be a distribution of a security without a prospectus or exemption therefrom.

[3] As described by Mark McElman, counsel for the Financial and Consumer Services Commission (the "Commission") in his Statement of Position, Mr. McKellar essentially acted as an unlicensed real estate agent in relation to the sale of two properties in New Brunswick, collecting $6000 in commissions from these activities. Commission counsel characterized Mr. McKellar's involvement in these transactions as "chaotic" and that they proceeded, among other things, without the benefit of online marketing systems. Mr. McKellar had previously been a licensed real estate agent and, as a result, Commission counsel asserted that Mr. McKellar ought to have been fully aware of the requirement to obtain a licence and that his disregard of the licensing requirement was not only illegal, but willful.

[4] Further, in the course of these transactions, Mr. McKellar met Robert Burke, an elderly gentleman and friend of the owner of one of the properties being sold and solicited him to advance investment funds to McKellar's operating company and Co-Respondent,

668054 N.B. Ltd. Mr. Burke provided a total amount of $30.936.00 under three different instruments.

[5] Unfortunately, Mr. Burke died in November 2023 as a result of a bicycle accident and the money he provided McKellar and his company was never repaid.

[6] The April 1, 2025, decision and the hearing that preceded it related solely to the merits of the alleged violations and did not address the sanction to be imposed for the violations. The Tribunal directed that a separate hearing be held to hear the parties' positions regarding what, if any, sanction should be imposed for the violations.

2 Sanction Hearing

[7] Given the legislative amendments which abolished the Tribunal and passed its jurisdiction to the Board, the conduct of the Sanction Hearing was assumed by the Board and a hearing was scheduled for October 21, 2025. The public Sanction Hearing proceeded in the Board's hearing room as scheduled. Neither Mr. McKellar nor 668054 N.B. Ltd. responded in any fashion. They did not file any evidence, file a Statement of Position, nor did they appear or make any submissions.

[8] Rule 11.9 of the Board's *Rules of Procedure* deals with the ability of a hearing panel to continue with a hearing in the event of the non-appearance of a party. It reads as follows:

> If a *Notice of Hearing* has been duly served on a party or any other person required to be served and the party or other person does not attend the hearing, the hearing may proceed in his or her absence. The party or person is entitled to notice of any subsequent step in the proceeding.

[9] Rule 11.1 requires that the Registrar serve the Notice of Hearing on the parties to a proceeding but does not set out how that service is to be effected.

[10] In this case, after an unsuccessful attempt to serve the Respondents personally, the Registrar elected to serve the Notice of Sanction Hearing via email which was an acceptable means of service according to Rules 3.4(3) and 3.4(7). The Registrar's affidavit of service setting out the particulars of service was admitted into evidence at the Sanction Hearing and marked as Exhibit No. 3.

[11] Proof of service of the Respondents having been entered into evidence, the Board decided to proceed with the hearing in the absence of the Respondents, having found that they had been duly served.

3 Position of the Commission

[12] At the Sanction Hearing, Mr. McElman did not lead any additional evidence and relied on the evidentiary record from the earlier hearing on the merits which was, in its entirety, marked as Exhibit No. 4 in this proceeding.

[13] Mr. McElman submitted there were three main issues for the Sanction Hearing:

1. Should the Respondents be subject to the requested market bans under the *Real Estate Agents Act* and the *Securities Act*?
2. Should the Respondents be ordered to disgorge the amounts obtained in contravention of the legislation?
3. Should the Respondents pay administrative penalties under the legislation?

[14] For the Respondent, McKellar, because of his violations of the *Real Estate Agents Act*, the Commission sought an Order pursuant to subsections 43.7(1) and 43.71(1) that he cease conducting regulated activities, that he disgorge the $6,000 in commission collected and pay an administrative penalty in the amount of $4,000.

[15] For both Respondents, McKellar and 668054 N.B. Ltd. because their violations of the *Securities Act*, the Commission sought an Order pursuant to subsections 184(1) and 186(1) that they permanently, or for such time as the Board determines appropriate, cease all regulated trading activities, cease trading; Permanently, or such a time period as the Board decides, no securities law exemptions can apply to McKellar; that they disgorge the $30,936 in payments collected and pay an administrative penalty in the amount of $50,000.

[16] The Commission cited two cases in support of its position on the appropriate sanctions in the within case: *Re: James A. MacCallum*, 2013 NBSECE 3 (“MacCallum”) and Re: *Limelight Capital Management Ltd.* 2007 NBSECE 2 (“Limelight”).

[17] In *MacCallum*, orders issued by the then Securities Commission were made in the context of a settlement agreement, suggesting that the orders were the result of compromise. The individual and corporate respondents were permanently denied all exemptions (except for their own accounts); the individual respondent was prohibited from being a director or officer of any issuer, registrant or mutual fund manager; disgorgement in the amount for $1,775,000 was ordered; and as the individual and corporate respondents were both found to have violated the same provisions under the *Securities Ac*t, the individual and corporation were jointly and severally liable for an administrative penalty totalling $60,000.

[18] In *Limelight*, none of the Limelight respondents testified, nor did they present any evidence. The then Securities Commission found that there was blatant disregard for securities law and that it was important to send a strong message that fraudulent behaviour would not be tolerated. The respondents there engaged in 50 illegal distributions involving 40 New Brunswick investors with $78,739.99 fraudulently taken and the Commission ordered administrative penalties totalling $350,000 and $10,000 in hearing fees.

4 Seriousness of the Improper Activity

[19] In this case, the breaches of the *Real Estate Agents Act* were serious. The Board accepts the characterization of McKellar's involvement in the real property transactions as chaotic and were done without the benefit of access to online marketing only available to licensed agents. The Board finds that, as a previously licensed real estate agent familiar with the legislation, McKellar knew licensing was required and his actions constitute a willful and deliberate violation of the statutory requirements. McKellar's actions were not out of ignorance or unfamiliarity with the rules, but a deliberate flaunting of them.

[20] The breaches of the *Securities Act* are more serious. The Board agrees with the Commission's characterization of McKellar insinuating himself into the life of a stranger, an elderly man of modest means, in order to solicit significant investments which were never repaid. The effect on Mr. Burke's lifestyle was serious; he was victimized by the Respondents' actions.

5 Past Conduct

[21] There is no evidence of, and the Commission acknowledges that neither Respondent has a record of previous past conduct that falls within the jurisdiction of the Commission, or the Board.

6 Recognition of the Seriousness of the Improper Activity and Risk to Customers

[22] Neither Respondent appears to have acknowledged the seriousness of their improper activity, particularly the treatment of and consequences for Mr. Burke. Neither Respondent bothered to appear at the Sanctions Hearing, repaid any of the amounts involved or demonstrated any remorse for their actions. Both have enriched themselves in the course of their improper activities.

[23] This is not a case of a mere technical violation where a customer's assets were never directly at risk as a result. Quite the contrary, the Respondents' actions were deliberate and the customers, especially Mr. Burke, suffered direct and serious financial consequences.

7 Deterrence and Education

[24] The Board accepts Mr. McElman's position that specific deterrence is an important factor in both the violations under the *Real Estate Agents Act* and the *Securities Act*. Mr. McKellar and the corporate Respondent he controls must be deterred from the possibility of similar actions in the future. In addition to their disregard of this process, both have demonstrated a disregard for regulatory limitations and the protection of the public they are designed to provide.

[25] Especially under the *Securities Act*, general deterrence is also a relevant consideration as illegal distributions, such as the ones which occurred in this case, are a common risk to investors in the Province.

8 Mitigating factors

[26] The Board finds there are simply no mitigating factors present, let alone proven, in this case.

9 Disposition

[27] In short, considering the facts of this case, the authorities cited and the sanctioning considerations outlined above, the Board largely accepts that the sanctions as sought by Commission counsel in his submissions as warranted in this circumstance. The only exception is that the Board will impose a $30,000 administrative penalty for the *Securities Act* violations rather than the $50,000 sought by the Commission. While the actions of the Respondent were wholly improper and the effect on Mr. Burke was significant, the dollar value of the advances were relatively modest, the misconduct was limited to a single individual over a relatively finite period of time. Not to underestimate the gravity of the Respondents' misconduct, but the Board considers an administrative penalty of $50,000 would be appropriate in a more egregious circumstance.

Accordingly, the Board orders:

a. pursuant to paragraph 43.7(1)(c) of the *Real Estate Agents Act*, that Mr. McKellar immediately cease conducting all regulated activities under the *Real Estate Agents Act*;

b. pursuant to paragraph 43.7(1)(i) of the *Real Estate Agents Act*, that Mr. McKellar disgorge to the Commission $6000.00 obtained as a result of his non-compliance with the *Real Estate Agents Act*, as described herein;

c. pursuant to subsection 43.71(1) of the *Real Estate Agents Act*, that Mr. McKellar pay to the Commission an administrative penalty in the amount $4000.00;

d. pursuant to subparagraph 184(1)(c)(i) of the *Securities Act*, that Mr. McKellar and 668054 N.B. Ltd. cease trading in securities, except that each may trade in and for their own account at a registered securities dealer;

e. pursuant to paragraph 184(1)(d) of the *Securities Act*, that any exemptions in contained in New Brunswick securities law do not apply to Mr. McKellar and 668054 N.B. Ltd. permanently, except that each may trade in and for their own account at a registered securities dealer,

f. pursuant to paragraph 184(1)(p) of the *Securities Act*, that McKellar and 668054 N.B. Ltd. disgorge to the Commission, on a joint and several basis, $30,936.00 obtained as a result of their non-compliance with the *Securities Act*; and

g. pursuant to subsection 186(1) of the *Securities Act* that Mr. McKellar and 668054 N.B. Ltd. pay to the Commission, on a joint and several basis, an administrative penalty in an amount of $30,000.

[28] In addition, to provide notice in accordance with certain statutory provisions of various securities legislation throughout Canada similar to subsection 184.1(2) of the *Securities Act*, the Board hereby notifies Mr. McKellar and 668054 N.B. Ltd. that the Orders made in this decision pursuant to subparagraph 184(1)(c)(i) and paragraph 184(1)(d) of the *Securities Act*, may form the basis of parallel orders in other jurisdictions in Canada, including orders that arise automatically by operation of local law, and without further notice.

Dated at Saint John, New Brunswick, this 28th day of August, 2026.

Christopher J. Stewart
Chairperson

Kenneth McCullogh
Member

Michael Pickup
Member