

Zacarias Gabriel Sapato
Registration Number: R18636
Toronto, Ontario

HEARING DATE: January 27, 2011

MISCONDUCT: Ont. Reg. 991, ss. 14(1) and 14(3)

PARTICULARS OF THE COMPLAINT:

Under letter dated November 9, 2009, a police officer advised RIBO of the circumstances involving a vehicle that she stopped on October 23, 2009.

The vehicle in question carried a dealer plate number 126DKL. The driver produced a driver's license in a name and an ownership not for the vehicle that was being driven by him at the time as well as an expired binder insurance slip for an auto body shop. The driver stated that he worked for his brother who owns the business.

The officer enquired about the vehicle and was told it belonged to a customer of the auto body shop. The officer advised the driver that she would not allow the vehicle to be moved without receiving confirmation of valid insurance. The officer ran a check of the vehicle registration number and found that it was registered to an insurance company. The officer concluded that the vehicle must have been involved in a serious collision. She questioned the driver who responded that the vehicle had sustained minor front end damage and had been repaired. The officer contacted the insurance company and was advised by an employee that the vehicle had been involved in a serious collision and the client had been paid for the vehicle write off in 2006. She also advised that the vehicle had been sold to a company for demolition and parts. The officer then learned from the driver that the vehicle had been purchased from a used car company by the auto body shop.

The officer then contacted the insurance brokerage that was indicated on the expired liability slip. She was advised that the broker involved on the account would contact her. She received a return call from Zacarias Gabriel Sapato. He confirmed that there was insurance coverage on the vehicle in question. The officer released the driver and the vehicle having issued the appropriate summons to the driver.

On October 26, 2009, the officer contacted Mr. Sapato and requested that he fax her copy of the insurance policy for the auto body shop which he did. She then called the insurer indicated on the policy, and spoke with a representative there with

respect to the policy in effect for the auto body shop. The representative advised that she would look into the matter and call the officer back which she did.

The representative from the insurance company advised that there was no coverage for dealer plate number 126DKL. Their records indicated another dealer plate on file as well as instructions from the broker "no" auto coverage for owned vehicles. The representative told the officer that the client should not have received a "pink slip" for a garage only policy. The representative was asked to provide a written response and indicated she would do so. Under fax dated November 6, 2009, the representative wrote: "the binder of insurance provided to you by the driver was not proof of auto insurance as the coverage was with regard to property and casualty only. The pink slip that was issued was invalid as automobile coverage had not been bound nor do we issue pink slips for garage auto policies." The representative went on to say that after speaking with the brokerage, the insurance company agreed to "hold covered" between September 9, 2009 and November 6, 2009 on Garage Automobile insurance on any dealer plate registered to the owner of the auto body shop but excluded coverage for any owned vehicles. As the vehicle pulled over did not show the owner of the auto body shop as the owner, it was questionable regarding whether or not there was coverage on the vehicle.

On October 29, 2009, the officer called the insurance brokerage and asked to speak with the owner of the firm. The owner spoke with the officer and she advised him that she would be reporting the incident to RIBO. According to the officer, his response was "ok" and he hung up the phone. The officer reported the matter to RIBO and both the individual broker and the principal broker were advised of the matter and the supporting details provided by the officer. In response, RIBO received a written explanation under cover letter from the principal broker of the brokerage that indicated that the "report speaks for itself and we hope that you find (while not perfect) no significant fault in the actions of the brokerage or Mr. Sapato. As a footnote however I would like to add that additional training on garage policies is scheduled." The November 23, 2009 explanation from Zacarias Gabriel Sapato was attached.

According to Mr. Sapato, when asked by the officer to provide proof of insurance, the broker did not include a copy of the Garage Auto application, sending only a copy of the property and casualty application which led the officer to conclude that the auto body shop did not have automobile garage coverage for the dealer plate that was carried on the vehicle that she stopped. However, as it turned out, the auto body shop did not qualify for coverage under the E-clips program that the broker bound coverage under and the insurance company allowed coverage for the period of September 9, 2009 to December 1, 2009 to afford the broker time to place the coverage with another insurer.

The broker stated to RIBO that "appropriate procedures were followed in placing the insurance coverage for the auto body shop. It appears the complaint filed to RIBO

was due to some unfortunate misunderstandings arising in part from conflicting information provided to the officer by various parties and my inadvertently neglecting to fax her one of the relevant documents.”

Mr. Sapato had provided the auto body shop with a liability slip to carry that applied to a dealer plate and to allow them to test drive their customer’s vehicles. The RIBO investigator canvassed the insurance company via e-mail dated February 11, 2010 to see if the action of the broker was appropriate when providing the liability slip. A response was received from a representative from the insurance company on February 26, 2010. Her information stated: “a temporary liability slip can only be provided if the broker has bound that portion of the risk with the insurance company.

A liability slip for excluding owned auto is only provided if there is a service place. As Mr. Sapato did not bind coverage, he was not authorized to send out a temporary liability slip.” The broker had stated on the application that the auto body shop was a repair garage only. When the officer pulled the vehicle over, the vehicle carried a dealer plate. According to the insurance company “a dealer plate is used for those that are engaged in the business of selling vehicles used or new and would have to be used on an including owned auto basis which was not the case for the risk.”

In the officer’s recollection of events, she stated that her “only interest was to ensure that there was insurance coverage for this client’s vehicle.” Mr. Sapato stated “yes of course” when asked this question by the officer. In his letter to RIBO received January 14, 2010, Mr. Sapato stated: “I did not confirm that there is insurance on the specific vehicle but that the auto body shop had coverage/insurance for non-owned auto (clients vehicles under the auto body shop care can be test driven).” However, Mr. Sapato did not know if this vehicle was owned by the auto body shop or was a vehicle belonging to a customer.

Mr. Sapato is a registered insurance broker holding an unrestricted license. It would also appear that Mr. Sapato is selling commercial insurance and should be aware as to whether or not it is appropriate to supply his client with liability slips.

DISCIPLINE COMMITTEE’S DISPOSITION:

The Committee received representations from Counsel for RIBO, including the filing of an Affidavit of Service dated August 31, 2010, and after consideration thereof, finds that Zacarias Gabriel J. Sapato was properly served with the Notice of Hearing and Direction and that it is properly seized of this matter.

The Committee heard the evidence of the investigating officer who originally contacted RIBO with her findings and concerns regarding false “pink slips” and uninsured vehicles, and the representative from the insurance company who discussed the type of policy and coverage in place for the auto body shop, for whom

Mr. Sapato acted as insurance broker. The Committee found all witnesses to be credible and forthcoming.

Based upon the testimony and 16 exhibits entered into evidence through these witnesses, the Committee accepts the evidence proffered that Mr. Sapato told the police officer that an auto policy was in force where there was no such policy in force. As well, an auto policy binder was issued when no policy was in force and he had no binding authority. Accordingly, the allegations contained in the Direction have been proven and finds that Zacarias Gabriel J. Sapato is guilty of misconduct as alleged therein. The Committee therefore ordered:

- (a) That the Certificate of Registration of Zacarias Gabriel J. Sapato is hereby suspended for six (6) months effective immediately.
- (b) That upon reinstatement of the license of Zacarias Gabriel J. Sapato that a recommendation be made to the Qualification and Registration Committee that his license be changed to "X" Acting Under Supervision (Discipline Order) and that they not consider any application to remove the restriction for not less than five (5) years.
- (c) That a recommendation be made to the Qualification and Registration Committee that if Zacarias Gabriel J. Sapato does apply to have his license changed back to an "Unrestricted" license then he must take the IBAO Advanced Broker Technical and Management courses and pass the RIBO Unrestricted Technical and Management exams.