

DISCIPLINARY COMMITTEE
CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUEBEC

N°: CD00-1359

DATE: 13 septembre 2019

THE COMMITTEE: M ^e George R. Hendy	President
Mr. Sylvain Jutras, A.V.C., Pl. Fin.	Member
Mr. Jacques Denis, A.V.A., Pl. Fin.	Member

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Plaintiff

v.

FAROKH NIKKHOO (certificate 200339, NRD 2953201)

Respondent

DECISION REGARDING SANCTION

IN ACCORDANCE WITH ARTICLE 142 OF THE *PROFESSIONAL CODE*, THE COMMITTEE RENDERS THE FOLLOWING ORDER:

- **Orders the non-disclosure, non-publication and non-release of the names of any client who is contemplated or involved in the disciplinary complaint herein, as well as any information which might enable his or her identification.**

[1] On September 9th, 2019, the Disciplinary Committee of the *Chambre de la sécurité financière* (the “**Committee**”) met at the head office of the *Chambre de la sécurité financière*, located at 2000 McGill College Avenue, 12th floor, in Montréal, for a hearing to determine the appropriate sanction following a decision of the Committee dated June 30, 2019, which found the Respondent guilty of having borrowed \$5,000 from a client, in contravention of section 18 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r. 3).

[2] At the Respondent’s request, the Committee drafted this decision in English, as Respondent speaks English, but not French.

[3] The Plaintiff was represented at the hearing by M^e Sabrina Landry-Bergeron, while the Respondent represented himself.

PLAINTIFF'S REPRESENTATIONS

[4] On behalf of the Syndic, M^e Landry-Bergeron recommended a temporary striking off the roll for one month, to be served from the date Respondent is registered once again to practise with the Autorité des marchés financiers (AMF) or any other competent authority, as well as a condemnation to the costs of publication of the notice of the decision pursuant to section 151 of the *Professional Code*, and all other applicable costs.

[5] As regards the aggravating factors, Plaintiff invokes the objective gravity of Respondent's misconduct (creating a conflict of interest by borrowing \$5,000 from a client), which is clearly prohibited by industry rules, and compromised his independence and objectivity.

[6] As for the attenuating factors, Plaintiff refers to the fact that Respondent was not motivated by dishonesty or bad faith in committing this isolated act, that his client was reimbursed and withdrew his complaint against the Respondent, that Respondent had

no prior disciplinary record, admitted the relevant facts and suffered considerable stress from the disciplinary process.

[7] Plaintiff referred the Committee to the following precedents, which imposed sentences consistent with that sought herein by Plaintiff in cases involving similar facts:

- a) *Chambre de la sécurité financière v. Huot*, 2005 CanLII 59611 (QC CDCSF) (CD00-0562, April 26, 2005);
- b) *Chambre de la sécurité financière v. Dominique*, 2007 CanLII 90470 (QC CDCSF) (CD00-0665, May 8, 2007);
- c) *Chambre de la sécurité financière v. Letourneau*, 2012 CanLII 97211 (QC CDCSF) (CD00-0906, May 16, 2013);
- d) *Chambre de la sécurité financière v. Di Salvo*, 2013 CanLII 77930 (QC CDCSF) (CD00-0970, November 26, 2013);
- e) *Chambre de la sécurité financière v. Pop*, 2016 QCCDCSF 51 (CD00-1151, December 6, 2016);
- f) *Chambre de la sécurité financière v. Kendall*, 2017 CanLII 66027 (QC CDCSF) (CD00-1203, September 22, 2017).

RESPONDENT'S REPRESENTATIONS

[8] Respondent informed the Committee that he recently decided not to renew his permit to practise because of the uncertainty regarding these proceedings and his desire to reflect upon his future.

[9] He reiterated his previously-stated position that he never realized that he was breaching ethical rules by accepting a loan from his friend and client, despite the training courses he followed to obtain his licence.

[10] However, he ultimately accepted Plaintiff's recommendation for a temporary striking off the roll for a duration of one month, recognizing that he would serve such a sentence if he ever decided to return to the financial industry.

ANALYSIS AND REASONS

[11] The Committee adopts the Plaintiff's recommendation of a temporary striking off the roll for one month, because the Respondent's clear breach of ethical rules regarding conflict of interest calls for the imposition of an exemplary sanction in accordance with the precedents established by the above-cited jurisprudence.

[12] Considering the foregoing, and after reviewing the relevant facts and aforesaid aggravating and attenuating factors, the Committee is of the view that a temporary striking off the roll for one month is just and appropriate, adapted to the infractions alleged in the Complaint herein, in conformity with the foregoing jurisprudential precedents and respectful of the principles of exemplarity and deterrence which must guide the Committee in the exercise of its discretion.

[13] As regards costs, no reasons have been given which would justify an exception to the general rule, so the Respondent will therefore also be condemned to pay the applicable costs pursuant to section 151 of the *Professional Code*.

FOR THESE REASONS, the Disciplinary Committee:

REITERATES the order of non-disclosure, non-publication and non-release of the names of any client who is contemplated or involved in the disciplinary complaint herein, as well as any information which might enable his or her identification;

CONDEMNS the Respondent to a temporary striking off the roll for one month, starting from the date on which Respondent is registered once again to practise with the Autorité des marchés financiers or any other competent authority, at which date

Respondent will also be obliged to pay the costs of publication of the notice of this decision pursuant to article 156 of the *Professional Code* (CQLR, c. C-26);

ORDERS the Secretary of the Committee to publish, at Respondent's expense, a notice of the present decision in a newspaper circulating in the place where Respondent has his professional domicile or where he has exercised or may exercise his profession, in conformity with article 156 (5) of the *Professional Code* (CQLR, c. C-26), the whole at the date on which Respondent is registered once again to practise with the Autorité des marchés financiers or any other competent authority;

CONDEMNS the Respondent to pay all costs, including the registration fees, pursuant to article 151 of the *Professional Code* (CQLR, c. C-26).

(s) George R. Hendy

M^e George R. Hendy
President of the Disciplinary Committee

(s) Sylvain Jutras

Mr. Sylvain Jutras, A.V.C., Pl. Fin.
Member of the Disciplinary Committee

(s) Jacques Denis

Mr. Jacques Denis, A.V.A., Pl. Fin.
Member of the Disciplinary Committee

M^e Sabrina Landry-Bergeron
TERRIEN COUTURE S.E.N.C.R.L.
Attorneys for the Plaintiff

Respondent represented himself

Date of hearing : September 9, 2019

TRUE COPY OF THE SIGNED ORIGINAL