

**DISCIPLINARY COMMITTEE**  
**CHAMBRE DE LA SÉCURITÉ FINANCIÈRE**

CANADA  
PROVINCE OF QUEBEC  
N° : CD00-1359

DATE : June 30, 2019

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<b>THE COMMITTEE :</b>	M <sup>e</sup> George R. Hendy	President
	Mr. Sylvain Jutras, A.V.C., Pl. Fin.	Member
	Mr. Jacques Denis, A.V.A., Pl. Fin.	Member

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**SYNDIC OF THE CHAMBRE DE LA SÉCURITÉ FINANCIÈRE**

Plaintiff

v.

**FAROKH NIKKHOO** (certificate 200339, NRD 2953201)

Respondent

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**DECISION REGARDING GUILT**

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**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 May 30, 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, 12<sup>th</sup> floor, in Montreal, for the

hearing of a disciplinary complaint (the "**Complaint**") against the Respondent, which reads as follows:

### **THE COMPLAINT**

1. « À Montréal, le ou vers le 6 mars 2017, l'intimé a emprunté de son client R.C. une somme de cinq mille dollars (5 000 \$), contrevenant ainsi à l'article 18 du Code de déontologie de la Chambre de la sécurité financière. »

" In Montreal, on or about March 6, 2017, the Respondent borrowed the sum of \$5,000 from his client, R.C., thereby contravening section 18 of the Code of ethics of the Chambre de la sécurité financière." (Our translation)

[2] The Plaintiff was represented at the hearing by M<sup>e</sup> Julie Piché, while the Respondent represented himself and requested that our decision be drafted in English.

### **LIST OF ADMISSIONS**

[3] The parties filed a List of Admissions (filed as Exhibit P-8) signed by Respondent on May 24, 2019, in which the Respondent made (*inter alia*) the following admissions:

- a) on March 6, 2017, Respondent accepted an offer from his personal friend and client, M.R.C. (the person described as "R.C." in the above Complaint), to whom he had recently sold an insurance policy, to make a loan of \$5,000 to Respondent, which sum Respondent reimbursed to M.R.C. on August 25, 2017;
- b) in July 2017, Respondent tendered his resignation to his employer, Investors Group, which was accepted by the latter, effective September 1, 2017;
- c) Respondent received the disclosure of evidence herein from the Plaintiff on March 14, 2019 and agreed to the filing of Exhibits P-1, P-2, P-3, P-4, P-5, P-6 and P-7 at the hearing of this case;

- d) Respondent acknowledged having had the ability to consult and obtain legal advice before signing the said List of Admissions, which he made voluntarily and without promise or threat of any kind.

[4] Following the filing of said List of Admissions, M<sup>e</sup> Piché presented the documentary evidence (exhibits P-1 to P-7 inclusively), setting forth in detail the impugned conduct of the Respondent.

### **PLAINTIFF'S EVIDENCE**

[5] Exhibit P-1, the "*Attestation de droit de pratique*" of the Respondent, shows that, during the relevant period (March 6, 2017 to September 1, 2017), Respondent was authorized by the Autorité des marchés financiers ("AMF") to sell various insurance products and mutual funds in association with I.G. Insurance Services Inc. and Investors Group Financial Services Inc. (hereinafter collectively referred to as "**Investors Group**").

[6] Exhibit P-2 is comprised (in part) of a letter from Investors Group dated September 14, 2017, confirming that Respondent's employment with Investors Group ended effective September 1, 2017, following an investigation regarding (*inter alia*) Respondent's failure to respect the firm's internal rules regarding conflict of interest, following his default to reimburse, at the agreed time, a personal loan of \$5,000 made to him by his client, M.R.C. M<sup>e</sup> Piché added that Respondent had given his client a cheque for \$5,000, postdated to late May 2017, which was not honoured by his bank when presented for payment by the client, Respondent having taken the position that the client presented his cheque for payment without forewarning him, as had allegedly been agreed by the parties.

[7] Exhibit P-3 contains the following documents:

- a) an email from the client to Investors Group dated August 8, 2017, confirming the loan of \$5,000 he made to Respondent (allegedly at the latter's request "to solve personal problems"), which Respondent promised to repay by the end of March 2017, Respondent having ultimately remitted a cheque in the amount of \$5,500 to his client (on or about May 20, 2017) which the client alleges was not honoured upon presentation by Respondent's banker, said amount having remained unpaid as of the date of M.R.C.'s said letter;
- b) two further emails from M.R.C. to Investors Group dated August 19<sup>th</sup> and 22<sup>nd</sup>, 2017, complaining that he had still not been repaid by the Respondent and threatening to file a complaint with the AMF if the loan was not repaid promptly;
- c) a final email from M.R.C. to Investors Group and Respondent dated August 26, 2017, confirming that he had received a certified cheque for \$5,000 from Respondent in settlement of the abovementioned loan, which concluded with his expression of gratitude to Respondent "for the precious helpful and advices during these years and remove my complain" (*sic*).

[8] Exhibit P-4 is a copy of M.R.C.'s bank statement evidencing that a cheque (#116) for \$5,000 was debited from his account on March 6, 2017.

[9] Exhibit P-5 contains three documents establishing that M.R.C. was a client of Respondent from at least December 22, 2016 to March 31, 2017, the first of which contains (at page 000190) a signed attestation by Respondent to M.R.C. that he fully understands and agrees to adhere "to the Investors Group Conflict of Interest Policies".

[10] Exhibit P-6 contains (i) an email from Respondent to Investors Group dated August 25, 2017, confirming that he had delivered a certified cheque in the amount of \$5,000 to M.R.C. on that date and that he had accepted the loan from his client because of a misunderstanding on his part (*i.e.* Respondent thought it was not a conflict to borrow from a client who was also a personal friend), (ii) a copy of Respondent's certified cheque for \$5,000, payable to M.R.C. and dated August 25, 2017, with the notation "return the borrowed money" and (iii) a letter agreement between Respondent and M.R.C. dated August 28, 2017, wherein the client confirms having received Respondent's certified cheque for \$5,000 and that "he has no more complain" (*sic*).

[11] Exhibit P-7 is a DVD recording of an interview of Respondent, conducted on January 9, 2019, by an investigator of the Chambre de la sécurité financière, in which Respondent admits borrowing \$5,000 from M.R.C., repaying said loan with his certified cheque and having admitted to his "Regime Director" that said loan was "a conflict of interest" when first confronted about it.

[12] Respondent admitted that he understood and agreed with the foregoing factual presentation by M<sup>e</sup> Piché.

### **RESPONDENT'S EVIDENCE**

[13] Respondent then testified to make the following assertions:

- a) he knew M.R.C. as a former work colleague and approached him as a potential client after joining Investors Group;
- b) after selling an insurance product to M.R.C. and arranging a \$25,000 investment loan for him, Respondent accepted M.R.C.'s offer to "help" him with a loan of \$5,000, in respect of which Respondent gave M.R.C. a cheque

- postdated to May 20, 2017, with the alleged understanding that the client would warn Respondent before attempting to cash it;
- c) however, M.R.C. then deposited the cheque without forewarning Respondent, and it was dishonoured by the latter's bank for lack of sufficient funds;
  - d) the client met with Respondent in July 2017 and reiterated his request for payment, but Respondent was unable to do so at that time;
  - e) on August 8 or 9, 2017, Respondent was approached by his superior, Boaz Levy, who informed him that the loan constituted a conflict of interest pursuant to the conflict rules of Investors Group, which assertion Respondent said surprised him, because he thought said rules (which he claims to have never received from his employer) did not forbid a loan from a personal friend who also happened to be a client;
  - f) Respondent was then advised by Mr. Levy to repay the loan, but there was a delay in doing so, allegedly attributable to the question as to whether the repayment should include interest and because Respondent was awaiting advice from his employer's compliance department;
  - g) Respondent claims that his employer never asked him to resign and that he did so only because he chose to sell damage insurance for another firm.

### **PLAINTIFF'S REPRESENTATIONS**

[14] M<sup>e</sup> Piché argued that the evidence clearly established that Respondent had borrowed \$5,000 from his client (M.R.C.), that there was no need for Plaintiff to prove

bad faith and that Respondent's alleged ignorance of the law regarding conflict of interest was irrelevant and not a ground of defence.

[15] Plaintiff referred the Committee to the following decisions, in support of her foregoing arguments:

a) *Chambre de la sécurité financière c. Torabizadeh*, 2010 CanLII 58 (QC CDCSF) (CD00-0747)

- The Comité found a representative who had (*inter alia*) borrowed \$700,000 from one client and a made a series of loans totalling \$483,000 from another client guilty of having thereby created a situation of conflict of interest and having failed to safeguard his independence, which he knew or should have known was in contravention of section 18 of the *Code of ethics of the Chambre de la sécurité financière* (the "**Code of Ethics**").

b) *Fontaine c. Champagne et al.*, 2016 QCCQ 3787

- The Court of Quebec found a representative who made a series of four loans to his client through his insurance firm guilty of contravening section 18 of the Code of Ethics despite his claim he was unaware that such loans were contrary to the Code of Ethics, and that the client in question received the loan, not because she was a client but because she was a friend of the family, and despite the fact that the funds advanced were used for personal rather than business reasons. The Court of Quebec, sitting in appeal from a judgment of a Comité of the Chambre de la sécurité financière

convicting the representative, held that (i) *mens rea* was not a required element of the infraction, that the complainant only had to prove that the infraction was committed, not that the representative knew it was an offence to do so, (ii) it was not a defence to argue that the loan was made to the client because of an alleged bond of friendship, (iii) the conflict rules exist to protect the public and must therefore be broadly interpreted and strictly applied and (iv) there is a clear conflict of interest and a loss of independence created when a representative lends money to or borrows money from a client.

c) *Chambre de la sécurité financière c. Langlais*, 2017 QCCDCSF 37

- The representative in this case had borrowed a total of \$390,000, either personally or through his company, from four of his clients and was found guilty of having thereby created a conflict of interest and failed to maintain his independence, in contravention (*inter alia*) of section 18 of the Code of Ethics.

d) *Chambre de la sécurité financière c. Daigle*, 2018 QCCDCSF 86

- The representative in this case was found guilty under section 18 of the Code of Ethics for transferring the ownership of an insurance policy from his client (his mother) to himself and becoming the sole beneficiary thereof, the Comité having underlined the strict liability nature of the infraction and the fact that a conflict of interest involving a friend or relative is even more problematic than a conflict involving an arms length client because of the increased vulnerability of the client in such circumstances.



**ANALYSIS AND REASONS**

[16] Section 18 of the *Code of ethics of the Chambre de la sécurité financière* reads as follows:

" A representative must, in the practice of his profession, always remain independent and avoid any conflict of interest ".

[17] There is no doubt whatsoever here that the Respondent borrowed the sum of \$5,000 from his client, thereby contravening section 18 of the Code of Ethics.

[18] As appears from the above-cited jurisprudence, his culpability is not avoided because of his ignorance or misinterpretation of his employer's conflict rules (whether or not he ever read them) or the code of conduct imposed by law, or by the fact that his client later withdrew his complaint (exhibits P-3, page 000081, and P-6, page 000084).

[19] The mere fact of concluding the loan agreement compromised Respondent's independence and created an obvious conflict of interest between himself and his client.

**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 Complaint herein, as well as any information which might enable his or her identification;

**DECLARES** Respondent guilty of the infraction described in the Complaint herein pursuant to article 18 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r. 3);

**CONVENES** the parties to a hearing regarding sanction to be arranged by the secretary of the Disciplinary Committee.

(S) Me George R. Hendy

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M<sup>e</sup> George R. Hendy  
President of the Disciplinary Committee

(S) Sylvain Jutras

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

(S) Jacques Denis

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

M<sup>e</sup> Julie Piché  
TERRIEN COUTURE S.E.N.C.R.L.  
Attorneys for the Plaintiff

Respondent represented himself

Date of hearing: May 30, 2019

**TRUE COPY OF THE SIGNED ORIGINAL**