

DISCIPLINARY COMMITTEE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUEBEC

Nº: CD00-1377

DATE: December 10, 2020

THE COMMITTEE:	M ^e George R. Hendy	President
	Mr. Shirtaz Dhanji	Member
	M ^{me} Claudette St-Germain	Member

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Plaintiff

vs.

GREGOR PODGORSKAK, financial security advisor and group insurance and group annuity plans advisor (certificate 127350, NRD 1668621)

Respondent

DECISION REGARDING GUILT AND 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 name of any client or any related person who is contemplated or involved in the Complaint herein, as well as any information which might enable their identification.

[1] On November 26, 2019, the Disciplinary Committee of the *Chambre de la sécurité financière* (the "**Committee**") met at the offices of the *Chambre de la sécurité financière* (the "**Chambre**"), located at 2000 McGill College Ave., 12th floor, in Montréal, for the hearing of a disciplinary complaint (the "**Complaint**") against the Respondent, the amended version of which reads as follows (as translated):

THE COMPLAINT

1. In the region of Montreal, on or about December 22, 2011, Respondent carried out his activities in a dishonest or negligent manner, by attesting that he witnessed the signature of his client, R.G., in a "Loan Agreement" form, thereby contravening article 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);
2. In the region of Montreal, on or about March 26, 2012, Respondent carried out his activities in a dishonest or negligent manner, by attesting that he witnessed the signature of his client, R.G., in a "Loan Agreement" form, thereby contravening article 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3).

[2] At the parties' request, the Committee has drafted this decision in English, as Respondent primarily speaks English.

[3] The Plaintiff was represented at the hearing by M^e Marie-Claude Sarrazin and M^e Alex Vandal-Milette, while Respondent represented himself.

GUILTY PLEA

[4] The Respondent filed a written guilty plea (Exhibit P-2, dated November 21, 2019) regarding the two (2) counts of the Complaint, acknowledging therein the voluntary nature of his guilty plea, his awareness of the consequences thereof and the fact that he had the opportunity to consult an attorney before signing the document.

[5] The Committee accepted Respondent's plea of guilt and declared him guilty of the two (2) counts of the Complaint for having contravened article 35 of the *Code of Ethics of the Chambre de la sécurité financière*.

[6] Following Respondent's guilty plea, the Plaintiff presented the documentary evidence reviewed below detailing the impugned conduct of the Respondent.

PLAINTIFF'S EVIDENCE

[7] The parties filed a signed document entitled "Joint Factual Admissions" (the "**Admissions**", Exhibit SP-7) which sets forth in detail the relevant facts of this case and the commission of the above infractions by the Respondent.

- a) Exhibit P-1 is an Attestation by the Autorité des marchés financiers for the Respondent which establishes that Respondent has been a member of the Chambre since October 1997 and that he held a valid certificate to practise in the Quebec insurance industry from that time until at least the date of the hearing in this case, thereby subjecting him to the jurisdiction of the Committee during the period covered by the Complaint, as corroborated in paragraph 1 of the Admissions;
- b) Respondent had known his client, R.G., since 1998, while he was working for London Life, at which time R.G. decided to cancel an existing insurance policy on his own life (policy A) and instead take out a new policy on his son's life (policy B), the premiums for which were to be paid from the cash value of policy A;
- c) Between August 4, 1999 and August 29, 2004, the cash value from policy A paid the premiums for policy B (Exhibit SP-1 and para. 4 of the Admissions);
- d) Between July 31, 2005 and July 29, 2010, the premiums for policy B remained unpaid and the corresponding indebtedness was treated as an "overdue account", because the cash value of policy A had apparently been exhausted;
- e) On or about December 11, 2011, policy B expired because of the non-payment of the premiums (SP-1, para. 6 of the Admissions);
- f) On January 16, 2012, Respondent prepared an ostensible loan agreement for \$600 dated December 22, 2011 between R.G. and London Life (Exhibit SP-2), which he falsely certified had been signed by R.G., the purpose of said loan agreement being to pay the premiums for policy B and reinstate said policy (para. 8 of the Admissions);
- g) On March 26, 2012, Respondent prepared another loan agreement (for \$5,620) between London Life and R.G. (Exhibit SP-6) which he again falsely

certified had been signed by R.G., the purpose thereof again being to pay the premiums for policy B;

- h) Respondent admitted that he had not actually witnessed the signature of these loan agreements by R.G. (para. 15 of the Admissions) and he further admitted during an interview with the Chambre's investigator (Exhibit SP-5) that he had made no attempt whatsoever to verify the signature of R.G. on these loan agreements (SP-2 and SP-6);
- i) Plaintiff filed the report of Jean Dumont, a handwriting expert, who concluded that the signatures of R.G. on these two loan agreements were not authentic, while confirming that he could not confirm whether R.G.'s signatures on these two documents was made by the Respondent (Exhibits SP-3 and SP-4);
- j) Respondent, who has no prior disciplinary record, has since left London Life and now works on his own and affirms that "*he has amended his practice*" since the occurrence of the infractions.

JOINT RECOMMENDATION REGARDING SANCTION

[8] The parties filed a signed document entitled "Joint Recommendations Regarding the Sanction" which sets forth the following joint recommendations regarding the sanction to be imposed in view of Respondent's guilty plea herein:

- a) for each of counts 1 and 2, a fine of \$7,500;
- b) payment of all applicable costs by the Respondent;
- c) payment of the above fines and costs may be made by consecutive monthly instalments of \$500.

[9] As regards the aggravating factors, Plaintiff invokes the objective gravity of Respondent's misconduct (falsely attesting that he witnessed his client's signatures and failing to take any steps to verify the authenticity of same), which conduct strikes at the core values of the profession, taints the public image of the profession, the fact that such

infractions occurred on two separate occasions and the Respondent's years of experience (13) at the time of the infractions.

[10] As for the attenuating factors, Plaintiff refers to the fact that Respondent had no prior disciplinary record, that he pleaded guilty and that he affirms having corrected his ways of doing business, thereby reducing the risk of recidivism.

[11] Plaintiff referred the Committee to the following jurisprudential precedents, which set forth the applicable principles in cases of this kind and/or imposed sanctions consistent with the joint recommendations herein in cases involving similar facts:

- a) *St-Laurent vs. Ordre professionnel des médecins*, 1998 D.D.O.P 271
- b) *Pigeon vs. Daigneault*, 2003 R.J.Q. 1090
- c) *Lemire vs. Médecins*, 2004 QCTP 59
- d) *Royer vs. Rioux, ès qualités de syndic*, J.E. 2004-1486
- e) *Chambre de la sécurité financière vs. St-Onge*, 2019 QCCDCSF 12
- f) *Chbeir vs. Médecins (Ordre professionnel des)*, 2017 QCTP 4
- g) *Chan vs. Médecins (Ordre professionnel des)*, 2014 QCTP 5
- h) *R. vs. Anthony-Cook*, [2016] 2 SCR 204
- i) *Notaires (Ordre professionnel des) vs. Marcotte*, 2019 QCTP 78
- j) *Pharmaciens (Ordre professionnel des) vs. Vincent*, 2019 QCTP 116
- k) *Infirmières et infirmiers auxiliaires (Ordre professionnel des) vs. Ungureanu*, 2014 QCTP 20
- l) *Chambre de la sécurité financière vs. Goyette*, 2017 QCCDCSF 36
- m) *Chambre de la sécurité financière vs. Sakovich*, 2017 QCCDCSF 67
- n) *Chambre de la sécurité financière vs. Simard*, 2018 QCCDCSF 44
- o) *Chambre de la sécurité financière vs. Breault*, 2015 QCCDCSF 20
- p) *Chambre de la sécurité financière vs. Tchassom*, 2016 QCCDCSF 8
- q) *Chambre de la sécurité financière vs. Bodin*, 2017 QCCDCSF 23

- r) *Chambre de la sécurité financière vs. Lefebvre*, 2018 QCCDCSF 21
- s) *Chambre de la sécurité financière vs. Freedin*, 2015 QCCDCSF 64
- t) *Chambre de la sécurité financière vs. Nantel*, 2015 QCCDCSF 18
- u) *Chambre de la sécurité financière vs. Mongrain*, 2016 CanLII 30448 (QC CDCSF)
- v) *Chambre de la sécurité financière vs. Beauvais*, 2018 QCCDCSF 6
- w) *Chambre de la sécurité financière vs. Caron*, 2018 QCCDCSF 33
- x) *Vernacchia vs. Médecins (Ordre professionnel des)*, 2013 QCTP 46
- y) *Mercier vs. Médecins (Ordre professionnel des)*, 2012 QCTP 89

ANALYSIS AND REASONS

[12] The Committee agrees with the joint recommendations of the parties for the following reasons:

- a) The conduct of the Respondent calls for the imposition of serious sanctions, given the nature of the infractions, the repeated nature thereof and his years of experience;
- b) However, the sanctions must be tempered by the fact that Respondent had no prior disciplinary record and has promised to amend his ways, thereby reducing the risk of recidivism;
- c) The joint recommendations regarding the sanctions to impose upon Respondent appear to be consistent with the jurisprudence in similar cases.

[13] Considering the foregoing and, after reviewing the relevant facts and aforesaid aggravating and attenuating factors, the Committee is of the view that the sanctions described in paragraph 8 hereof are 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.

[14] As regards costs, as no reasons have been given which would justify an exception to the general rule, the Respondent will also be condemned to pay costs applicable 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 name of any client or related person who is contemplated or involved in the Complaint herein, as well as any information which might enable their identification;

TAKES ACT of Respondent's guilty plea herein;

DECLARES Respondent guilty under Counts 1 and 2 of the Complaint for having contravened article 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r. 3);

CONDEMNS the Respondent to pay a fine of \$7,500 for each of Counts 1 and 2 of the Complaint;

CONDEMNS the Respondent to pay all costs, including the registration fees, pursuant to article 151 of the *Professional Code* (CQLR, c. C-26), all of the foregoing amounts to be paid by way of consecutive monthly instalments of \$500.

(S) M^e George R. Hendy

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

(S) Shirtaz Dhanji

Mr. Shirtaz Dhanji
Member of the Disciplinary Committee

(S) Claudette St-Germain

M^{me} Claudette St-Germain
Member of the Disciplinary Committee

M^e Marie-Claude Sarrazin
M^e Alex Vandal-Milette
SARRAZIN PLOURDE SA
Attorneys for Plaintiff

Respondent represented himself"

Date of hearing: November 26, 2019

TRUE COPY OF THE ORIGINAL SIGNED