

3.7

Décisions administratives et disciplinaires

3.7 DÉCISIONS ADMINISTRATIVES ET DISCIPLINAIRES

3.7.1 Autorité

Aucune information.

3.7.2 TMF

Les décisions prononcées par le Tribunal administratif des marchés financiers (anciennement « Bureau de décision et de révision en valeurs mobilières » et « Bureau de décision et de révision ») sont publiées à la section 2.2 du Bulletin.

3.7.3 OAR

Veillez noter que les décisions rapportées ci-dessous peuvent faire l'objet d'un appel, selon les règles qui leur sont applicables.

3.7.3.1 Comité de discipline de la CSF

DISCIPLINARY COMMITTEE
CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUÉBEC

N°: CD00-1262

DATE: 3 avril 2018

THE COMMITTEE: Me George R. Hendy President
 Mr. Antonio Tiberio Member
 Mr. Jean-Michel Bergot Member

MARC-AURÈLE RACICOT, in his capacity as assistant syndic of the *Chambre de la sécurité financière*

Plaintif

v.

MURAD Y. HANNOUSH (certificate 174335, NRD 2064751)

Respondent

DECISION REGARDING GUILT

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

Orders the non-disclosure, non-publication and non-dissemination of the names and surnames of clients whose initials are mentioned in the 12 counts herein, as well as any information which might enable their identification.

[1] On November 21 and 22, 2017, the Disciplinary Committee of the *Chambre de la sécurité financière* (the "**Committee**") met at the offices of the Tribunal administratif du travail, located at 500 René Lévesque West, 18th floor, in Montréal, for the hearing of a disciplinary complaint against the Respondent, which reads as follows, once translated to English:

THE COMPLAINT¹

1. In the Montreal area, during the month of April 2014, the Respondent had his client, E.H., sign a partially blank form entitled "Electronic insurance application declaration and authorization", thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, chapter D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
2. In the Montreal area, during the period from April 2014 to May 2015, the Respondent had his clients, S.L. and V.C., sign blank and/or partially blank forms on several occasions, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D -9.2), section 160 of the *Securities Act* (CQLR, chapter V-1.1), sections 11, 34, 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3) and sections 10 and 14 of the Regulation respecting the Code of ethics in the securities sector (CQLR, chapter D-9.2, r.7.1);
3. In the Montreal area, on or about April 10, 2014, the Respondent prepared a form entitled "Policy change, reinstatement and/or reconsideration of rating application requiring evidence" by inserting a page from another form and falsely suggesting that A.K. had signed said document, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 11 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
4. In the Montreal area, on or about April 10, 2014, the Respondent prepared a form entitled "Policy change, reinstatement and/or reconsideration of rating application requiring evidence" by inserting a page from another form and falsely suggesting that G.K. had signed said document, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2), and sections 11 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
5. In the Montreal area, on or about October 27, 2014, the Respondent had his client, N.T., sign a partially blank form entitled "Personal health

¹ Please note that the only official version of the Disciplinary Complaint is in the French language, as it was filed by Plaintiff.

insurance - pre-authorized chequing (PAC) authorization for Web applications", thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, R.3);

6. In the Montreal area, between the months of November 2014 and April 2015, the Respondent repeatedly provided false information to the insurer on forms entitled "Electronic insurance application and declaration" (French and English versions) and "*Declaration et autorisation relative à la proposition électronique d'assurance de soins de longue durée*" declaring that he had witnessed the signature of the beneficiaries, P.H., E.H., F.H., J.H. and G.H., when they were in fact not present, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, C. D-9.2, r.3);
7. In the Montreal area, approximately during the month of January 2015, the Respondent had his client, S.K., sign a partially blank form entitled "*Formulaire de demande de service de rééquilibrage automatique*", thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 11, 34 and 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);
8. In the Montreal area, approximately during the month of January 2015, the Respondent had his clients, V.S.S. and A.S., sign several blank and/or partially blank forms, thereby contravening section 160 of the *Securities Act* (CQLR, c V-1.1) and sections 10 and 14 of the Regulation respecting the rules of ethics in the securities sector (CQLR, chapter D-9.2, r. 7.1);
9. In the Montreal area, on or about January 10, 2015, the Respondent had his client, S.K., sign a partially blank form entitled "Transfer authorization for non-registered investments", thereby contravening section 160 of the *Securities Act* (CQLR, c V-1.1) and sections 10 and 14 of the Regulation respecting the Code of ethics in the securities sector (CQLR, chapter D-9.2, r.7.1);
10. In the Montreal area, on or about July 22, 2015, the Respondent prepared a form entitled "Transfer authorization for registered investments" by inserting a page from another form and falsely suggesting that G.S. had signed said document, thereby contravening sections 160 of the *Securities Act* (CQLR, c V-1.1), 10, 14 and 16 of the Regulation respecting the Code of ethics in the securities sector (CQLR, c D-9.2, r.7.1);
11. In the Montreal area, during the period November 18 to 24, 2015, the Respondent appropriated the sum of \$1,350 by issuing cheques drawn

on his personal account(s), payable to the order of his client, I.K., which cheques were not honoured because of insufficient funds, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, chapter D-9.2), sections 160 and 160.1 of the *Securities Act* (CQLR, chapter V-1.1), sections 11, 17, 18, 35 of the *Code of ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3) and sections 2, 6, 10 and 14 of the Regulation respecting the Code of ethics in the securities sector (CQLR, c D-9.2 , r.7.1);

12. In the Montreal area, between approximately December 21, 2015 and February 8, 2016, the Respondent made to his client, L.S., false, incomplete and potentially misleading statements or representations regarding the investment performance and/or the value of the account of the latter, thereby contravening sections 7, 10 and 14 of the Regulation respecting the Code of ethics in the securities sector (CQLR, chapter D-9.2, r.7.1).

[2] The Plaintiff was represented by Me Nathalie Vuille, while the Respondent represented himself and filed a plea of not guilty.

THE PROOF

I. Introduction

[3] The Plaintiff called his first witness, Mr. I.K., Respondent's client, who testified regarding Count #11, followed by Ms. Jeanne Daigneault, investigator at the office of the syndic of the *Chambre de la sécurité financière* (the "**Chamber**"), who testified regarding all of the Counts in the Complaint. The Respondent then testified briefly in his defence.

[4] The Complaint concerns events that occurred while the Respondent was acting as a representative of Sun Life Financial for insurance of persons and group savings plan products, until his termination on February 8, 2016, following which Sun Life Financial sent information to the Chamber that led to the investigation in this matter.

[5] Among the exhibits filed by the Plaintiff is the audio recording (P-2) of an interview which lasted approximately four hours on March 1, 2017, between Ms. Daigneault, her colleague and the Respondent, during which the facts regarding each of the above- mentioned counts were reviewed and discussed, Respondent having had the opportunity to present his version of the facts regarding same.

[6] A summary table prepared by the Plaintiff summarizing the relevant facts and exhibits, as well as the Respondent's version on each of the 12 counts, was produced as Exhibit P-64.

II. Plaintiff's proof

Count #1

[7] Ms. Daigneault indicated that, in April 2014, the Respondent had his client (E.H.) sign in Montréal a partially blank form entitled "Electronic insurance application declaration and authorization" and that he subsequently entered additional information therein, which is corroborated by the fact that, on page 2 of this form (P-10, page 000623 of the Plaintiff's book of exhibits), the policy number, the date of the signature of the proposer and the date of the Respondent's signature (April 2, 2014) are inscribed in ink colours different from the rest of the text.

[8] During the above-mentioned interview held on March 1, 2017 (the "**Interview**"), the Respondent acknowledged that he completed and had the client sign said form and left in blank the policy number on pages 1 and 2 and the date of the electronic application (bottom right corner of page 2) and then added the missing information in blue ink.

Count #2

[9] This concerns a series of documents (Exhibits P-11 to 14, and P-16 to 25) concerning two other clients of Respondent (S.L. and V.C.).

[10] Ms. Daigneault indicated that a form entitled "*Proposition électronique d'assurance-Déclaration et autorisation*" (of which different copies were produced as Exhibits P-11, P-13 and P-14) appears to have been signed in April 2014 before the insertion of handwriting for the policy number and the date, as the client's signature on the three copies is identical, but not the writing for the policy number.

[11] In addition, Ms. Daigneault testified that a comparison of Exhibits P-13 and P-14 (pages 000437 and 000451) shows that they bear the identical signature of the client, but different contract numbers and the same date (April 20, 2014), which is inscribed in a different manner, thus permitting a conclusion that the Respondent used a single document signed in blank by the client to create two separate insurance policies.

[12] The Respondent admitted at the Interview that he added the contract numbers after the client (S.L.) had signed the document.

[13] Ms. Daigneault then testified that the signature of the same client (S.L.) in May 2015 in forms entitled "Declaration of smoking status" is identical in Exhibits P-16 and P-17, which were used for different policies, the Respondent having admitted during the Interview that he had the client sign the blank form and that he probably then made a copy of one of the two forms and completed them thereafter, as confirmed by the fact that the other information in blue ink in these forms is different.

[14] In the same manner, the two "Order ticket" forms (P-18, pages 000461 and 000462), signed in April 2015, bear the identical signature of the client (S.L.), but the other information in these forms is different, in particular, the investment instructions and the date. The Respondent admitted during the Interview that he had the said blank

form signed by the client, then made a copy and completed both copies for different purposes.

[15] Exhibits P-19 and P-20 are carbon copies of the same form (Investment Application), signed in January 2015, which should be identical. However, the Sun Life Financial copy (P-19) contains the investment instructions (section 6, page 2 of P-19), but not the Respondent's copy (P-20, section 6, page 2), which leads to the conclusion that the Respondent added the investment instructions after the clients' signature (S.L. and V.C.), all of which was confirmed by the Respondent at the Interview.

[16] Similarly, Exhibits P-21 and P-22 are carbon copies of the same form ("*Formulaire de renseignements sur le client*"), one for Sun Life Financial (P-21) and the other for the Advisor (the Respondent, P-22), signed in January 2015. However, the Sun Life Financial form indicates a five to nine-year investment horizon (P-21, page 2, section 4), while the same section in the Respondent's copy says nothing about the subject. The Respondent admitted at the Interview that he had the client (S.L.) sign the form, without indicating the investment horizon, a note in this regard having been added later by him in Exhibit P-21.

[17] Lastly, Ms. Daigneault testified with respect to the "Transfer authorization for registered investments" form, the three file copies of which (P-23 to P-25) bear an identical signature of the client (S.L.), at the last page of each of these exhibits. However, the first version (P-23) is typewritten on the first page, but does not indicate the date of the signature (January 6, 2015) on page 3, the second (P-24) is completed by hand for the same account number with a signature date (January 6, 2015) and the third version (P-25) is for a different account number, with a date of signature of April 25, 2014.

[18] The Respondent explained at the Interview that he completed page 1 of the form, leaving pages 2 and 3 blank, having asked the client (S.L.) to sign the form in this state, and that he then made a photocopy of one of the three versions to make a final version for each of the two accounts mentioned above.

[19] The client (S.L.) confirmed to Ms. Daigneault that the Respondent often made him sign documents in blank and that he trusted him.

Counts #3 and #4

[20] At the beginning of the hearing, Plaintiff's attorney made a verbal motion to replace the initials "A.K." and "G.K." in Counts 3 and 4 of the Complaint with the initials "F.K.", which latter initials correspond to the person who subscribed to the two insurance policies (P-26 and P-27). The Respondent did not object to this amendment request, which was granted forthwith.

[21] In these two counts, the Respondent is accused of having created forms entitled "Policy change, reinstatement and/or reconsideration of rating application of evidence" in April 2014 (P-26 for Count #3 and P-27 for Count #4), by inserting a page from

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another form and by falsely suggesting that F.K. had signed these documents. The two policies are subscribed by F.K., but insure different people (A.K. and G.K.).

[22] Ms. Daigneault testified that page 25 of Exhibit P-26, which bears the signature of F.K., is not original, as is page 27. As for Exhibit P-27, the signature of F.K. on page 25 is identical to the signature on page 25 of Exhibit P-26.

[23] She added that, during the Interview, the Respondent indicated that he probably made a photocopy of page 25 (after F.K. signed it) and inserted it in the form. The Respondent also indicated to her during the Interview that he saw nothing wrong with photocopying a signature page or reusing a document previously signed in blank by a client, that the important thing was that the transaction be done correctly, in the interests of the client and that, if these documents were not in compliance with the applicable rules, Sun Life Financial should have indicated to him any corrective action to be taken.

Count #5

[24] This count relates to a "Personal Health Insurance" form signed by the client (N.T.) dated October 27, 2014. The two copies of this form (P-28 and 29) appear to contain identical signatures, but the date is written differently, indicating that the date has been inserted after the signatures. In addition, there is no entry in Section 4 of Exhibit P-28 (information concerning the Advisor), while the same section of Exhibit P-29 is completed.

[25] The Respondent indicated during the Interview that he likely had the document first signed by the client and subsequently entered the date and his advisor information and that he probably sent the first version to Sun Life Financial, which then returned it because the document was incomplete, after which the Respondent would have completed it and returned it to Sun Life Financial.

Count #6

[26] This concerns a series of insurance application forms (in English and French, Exhibits P-30 to P-35) signed by the client (T.C.) between November 2014 and April 2015, to insure various members of her family (F.H., G.H. and J.H.), where the Respondent falsely claimed to have been present at the signing by each of the insured persons, since they were admittedly not present at the time of this attestation by the Respondent.

[27] Ms. Daigneault testified that, on page 2 of these forms, the insured (F.H, G.H. or J.H.) was required to sign in the section "Proposed insured" or "*Personne à assurer*". In each case, there is a so-called signature of the insured person in block letters.

[28] The Respondent made the following attestation in each of these forms (in the section entitled "Advisor's declaration" / "*Déclaration du conseiller*"): "I confirm I saw every person sign this form" or (in the French form, P -33) "*Je confirme avoir vu chaque personne signer le présent formulaire.*"

[29] When questioned by Ms. Daigneault, each of the insured confirmed to her that the "signature" on these forms was not their own and that they were not present when these forms were signed, as corroborated by the written exchanges between Ms. Daigneault and said insured persons (P-37 to P-42 inclusive) and by a comparison of the verified signatures of those insured (P-36) with the block letter signatures contained in Exhibits P-30 to 35 inclusive.

[30] At the Interview, the Respondent claimed that either the client (T.C.) or her nephew (M.H.) would have inscribed the signatures of the insured in block letters (P-30, P-31, P-34 and P-35) and that, in the case P-32 and P-33, the Respondent argued that it was probably the insured (G.H.) who wrote his name in block letters. He added that he had never read the text of the "Advisor's Declaration"/" *Déclaration du conseiller*" section and that he had nonetheless acted in good faith, all of the information in the forms being true.

Counts #7 and #9

[31] Ms. Daigneault testified that, in January 2015, the Respondent had a form entitled "*Formulaire de demande de service de rééquilibrage automatique*" (P-43) signed by the client (S.K.) in blank, without recording the date and the investment instructions, which was admitted by the Respondent during the Interview (Count #7).

[32] She added that the Respondent had another form (entitled "Transfer authorization for non-registered Investments") signed at the same time by the same client (P-44) with no investment instructions for the institution receiving the funds (section B, page 2), and that this information was subsequently added by the Respondent before he sent the form to Sun Life Financial (P-45), all of which was admitted by the Respondent during the Interview (Count #9).

Count #8

[33] This concerns several forms that the Respondent had signed (during the month of January 2015), in blank or partially in blank, by his clients (V.S.S and A.S.).

[34] Ms. Daigneault testified, firstly, that the Respondent had the original of a form entitled "Transfer Authorization for registered investments" signed by A.S. in January 2015 without any investment instructions (P-46, page 2, section B). The Respondent acknowledged at the Interview that he completed and had this form signed by the client, without any investment instructions.

[35] Next, she referred the Committee to Exhibits P-47 and P-48, carbon copies of the same document ("*Formulaire de renseignements sur le client*") signed by the client (V.S.S.) in January 2015. Ms. Daigneault pointed out that, although these documents should be identical, after the client had signed the advisor's copy (P-48), information was subsequently added to Exhibit P-47 (copy of Sun Life Financial), including the contract number, a reference to the registered nature of account, the investment

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horizon, the investment objectives, the investment knowledge and an indication that a limited authorization was noted on file.

[36] The Respondent acknowledged at the Interview that he added all of the above information after the client had signed the form (P-48).

[37] With respect to the form entitled "Transfer authorization for registered investments" (P-49 and P-50), Ms. Daigneault testified that information was added by the Respondent after the client (V.S.S.) had signed it in January 2015 (see the third page of P-50, page 000505), concerning the addition of the letter K to the account number and the investment instructions, to be compared with the corresponding spaces left in blank on the third page of P-49).

[38] The Respondent admitted at the Interview that it was possible that he had the client sign the form partially in blank and that he subsequently added the investment instructions.

[39] With respect to the "Investment Application" form (P-51 and 52), Ms. Daigneault testified that the Respondent had the form signed by the client (V.S.S.) in January 2015, partially in blank (see section 6 on page 2 of P-52) and that the missing information was added later (section 6, on page 2 of P-51, the carbon copy of Sun Life Financial).

[40] During the Interview, the Respondent essentially admitted having added the information described above following the signature by the client.

[41] With respect to the carbon copies of the form entitled "*Demande de placement*" (P-53 and P-54), Ms. Daigneault stated that the Respondent had this document signed partially in blank by the client (V.S.S.) in January 2015 (see section 6, on page 2 of P-54), and that he later added the account number and the investment instructions (page 2 of P-53), which was admitted by the Respondent at the Interview.

[42] Finally, Ms. Daigneault filed the two carbon copies of the form entitled "*Formulaire de renseignements sur le client (Bien connaître son client (BCC))*" (P-55 and P-56), and demonstrated that the client (V.S.S.) signed the Advisor's copy (P-56) partially blank in January 2015, and that information regarding the contract number, the nature of the account (registered) and the existence of a limited authorization regarding the file were subsequently added (see the top part of page 1 of P-55, the copy of Sun Life Financial), all of which was acknowledged by the Respondent at the Interview.

Count #10

[43] This is a form entitled "Transfer authorization for registered investments" (P-57) signed on July 22, 2015 by the client, G.S., where (according to Ms. Daigneault) page 3 did not appear to be the original, as the date (on page 3, next to the client's signature) was written in blue ink. During the Interview, the Respondent indicated that it was possible that page 3 was an added copy and that he had added the date in blue ink.

Count #11

[44] I.K. testified that he has known the Respondent since 2015 and that he purchased a Sun Life Financial insurance policy through him.

[45] During the approximate period of November 8 to 24, 2015, the Respondent asked I.K. to cash four cheques totaling \$1,350 (the "**Cheques**"), which were drawn on the Respondent's personal accounts for the following amounts: \$225, \$450, \$475 and \$200 (P-58).

[46] I.K. testified that he deposited the Cheques in his personal account at a Royal Bank of Canada and immediately withdrew the equivalent amounts in cash (except for the cheque in the amount of \$475, of which only \$100 was withdrawn in cash by I.K.), and that he then remitted these funds to the Respondent, who was waiting for him outside his bank.

[47] I.K. affirms and the documentary evidence (P-58 and P-59) confirms that the Cheques were subsequently returned by the Respondent's bank (CIBC) because of insufficient funds in the relevant account(s).

[48] I.K. then complained to Sun Life Financial, which reimbursed him the sum of \$1,350. Although he admitted receiving payments between \$25 and \$50 from the Respondent on three or four occasions, I.K. denied (under cross-examination by the Respondent) that he had received a total of \$2,000 from the Respondent in repayment of the above amounts.

[49] Ms. Daigneault testified that the Respondent admitted at the Interview that he had asked I.K. to cash the Cheques because of financial difficulties he was experiencing at the time, that he knew there was not enough money in his bank account to cover the Cheques when he issued them, but that he claimed to have eventually repaid I.K.

Count #12

[50] The Respondent is charged in this count with making false, incomplete and potentially misleading statements or representations regarding the investment performance and/or the value of the account of his client, L.S.

[51] The Plaintiff's evidence is based on exchanges of correspondence between the Respondent and L.S., who refused to respond to Ms. Daigneault's attempts to contact him to confirm his verbal account of the relevant facts.

[52] However, the correspondence filed by the Plaintiff contains the following statements by Respondent and L.S.:

- a) in his email of April 25, 2016 to Sun Life Financial, L.S. claims that he *"repeatedly asked him (the Respondent) to change my portfolio to a no risk no interest bearing instrument"* (P-60, page 000043);
- b) in his email of November 5, 2015 (P-60, page 000043), the Respondent reassured L.S. in the following terms regarding the outcome of his account: *"Whether it's: 220 or 222 or 224 that we started with... You have my word for at least: 225K for You...Don't You Worry"*;
- c) this statement was in response to L.S.'s email of the same day (P-60, page 000045), who complained as follows with respect to the Respondent's actions: *"I believe we started at 224 I will check tonite I'm quite disappointed that you didn't do what I asked you to do which was to get me out of equities and into the money market."*;
- d) on February 24, 2015, the Respondent wrote to L.S. (P-60, page 000047) to summarize the investments in his account and to reassure him as follows: *"Had You chosen to be slightly more Aggressive, You would have Averaged: 12 to 15%...But: Safer is Better for You...Almost :For Sure: it won't go: Lower the Principal"*;
- e) on January 14, 2016, L.S. wrote to the Respondent (P-60, page 000059) to confirm what he claimed to be an agreement he made with the Respondent regarding this account: *"Hi, Murad. I just want to get your confirmation that on the last day of February 2016, you will guarantee me that if my RRSP is not at 222,000 that you will reimburse me difference between the 222,000 and whatever the cash value of my RRSP is."*;
- f) the day after, the Respondent replied (P-60, page 000053) as follows: *"Bonjour...Agree... Yes..Till: Feb. 29th...Thanks..."*;
- g) on December 21, 2015, the Respondent signed a similar recognition (P-60, page 000066) which reads as follows: *"This memo is to assure you and to guarantee you that your Principal Amount of: (no amount is inserted) is protected and that I shall be good for you for any loss that may happen (which is the difference between 222 and the lessor amount, e.g. If it drops to 200,000, Murad owes me 22,000."*;
- h) contemporaneously, the Respondent issued two cheques drawn on his personal account, each for the amount of \$2,500, which were payable to L.S. on January 15, 2016 and on February 29, 2016 (P-63).

[53] The Respondent chose not to cross-examine Ms. Daigneault about her testimony regarding Counts #1 to #12.

III. Respondent's proof

[54] The Respondent explained his conduct with respect to Counts #1 to #10 by saying that he was working under the close supervision of his superiors at Sun Life Financial, due to problems he had experienced with his previous employer (the Royal Bank of Canada), and that his superiors never told him that he had behaved illegally in the conduct of his relations with his clients, including those concerning Counts #1 to 10.

[55] He explained his behaviour concerning Counts #1 to 10 by a desire to save time for his clients, most of whom were his friends (e.g. by having them sign incomplete forms, which he completed later, Counts #1 to #10, or by allowing a client to sign for other persons, Count #6), and that his clients were satisfied with his services.

[56] In summary, with respect to Counts #1 to 10, the Respondent did not contradict Plaintiff's proof, and he did not renounce what he said at the Interview, as recounted by Ms. Daigneault.

[57] With respect to Count #11, the Respondent maintained his claim that he had reimbursed his client (I.K.), but he did not contest the other facts cited above in this regard.

[58] As for Count #12, the Respondent saw nothing wrong with his behavior, adding that his client (L.S.) was not supposed to cash the two cheques he had given him (P-63).

PLAINTIFF'S REPRESENTATIONS

[59] Plaintiff's attorney referred the Committee to the relevant provisions of the following legislation and regulations:

a) ***Code of ethics of the Chambre de la sécurité financière:***

11: A representative must act with integrity.

17: A representative may not appropriate, for personal purposes, sums of money entrusted to him or securities belonging to his clients.

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

34: A representative must give insurers the information that it is common practice for him to provide.

35: A representative must not practise dishonestly or negligently.

b) ***Regulation respecting the rules of ethics in the securities sector:***

2: A representative shall show loyalty towards his client whose interests shall be of the utmost priority when he makes a trade on his behalf.

6: A client's capital shall remain his exclusive property and a representative shall only use it for trades authorized by the client.

10: A representative's methods of soliciting and conducting business shall inspire respect and confidence from the public.

14: A representative's professional activities shall be conducted responsibly, with respect, integrity and skill.

c) **Securities Act:**

160: All persons registered as dealers, advisors or representatives are required to deal fairly, honestly, loyally and in good faith with their clients.

160.1: In their dealings with clients and in the execution of the mandates entrusted to them by their clients, all persons registered as dealers, advisors or representatives are required to act with all the care that may be expected of a knowledgeable professional acting in the same circumstances.

d) **Act respecting the distribution of financial products and services ("ADFPS"):**

16: All representatives are bound to act with honesty and loyalty in their dealings with clients. They must act with competence and professional integrity.

[60] Me Vuille argued that the Respondent admitted his guilt on each of the counts, with the exception of his claim that he reimbursed I.K. for the Cheques (Count #11).

[61] She argued that ethical obligations must be interpreted broadly in order to respect the primary objective of protecting the public and to maintain public confidence in the securities and insurance markets.

[62] In her view, the use of prior client signatures to create new client forms is a form of forgery that taints the integrity, probity and professionalism of the representative.

[63] She added that the Respondent did not take his ethical obligations seriously, that he showed a serious lack of judgment and that it was irrelevant for Respondent to argue

that he ignored the rules of ethics or that other advisors routinely committed similar breaches.

[64] In support of her arguments, she cited the following relevant jurisprudence:

- a) **R. v. Wholesale Travel Group Inc.** ((1991) 3 S.C.R. 154, at pages 161 to 163)

Contrary to the rules applicable in criminal offences, "the requirement of *mens rea* does not exist in regulatory offences". Disciplinary fault is to be assessed "according to an objective standard, regardless of the subjective state of mind of the respondent."

- b) **Tremblay v. Dionne** (2006 QCCA 1441, at paras. 42 and 43)

"The organizational laws of professional orders are laws of public order ... which must be interpreted by placing the interests of the public over private interests ... such laws and regulations take precedence over the provisions of a contract or rule or administrative practice and must receive a broad application ... the ethical standards are not intended to protect the (professional), but rather the public."

- c) **Chambre de la sécurité financière v. Hanahem** (CD00-0811, November 30, 2010)

"The use of photocopies of signatures to create new documents constitutes a lack of competence and professionalism, as well as a lack of honesty and loyalty towards the client."

- d) **Chambre de la sécurité financière v. Goyette** (CD00-1162, March 3, 2017)

The disciplinary committee found an advisor guilty of lack of honesty, loyalty, competence and professionalism (Article 16, ADFPS) because he had a partially incomplete document signed by his client, then completed it later, despite the fact that he took the trouble to confirm with the client afterwards.

- e) **Chambre de la sécurité financière v. Houle** (CD00-0938, April 19, 2003)

The disciplinary committee held that the use of a photocopy of a client's signature to complete a section of a form constitutes falsification and simulation, contrary to section 16 ADFPS,

- f) ***Chambre de la sécurité financière v. Rioux*** (CD00-0455, July 17, 2003)

The disciplinary committee ruled that the practice of having the client sign a blank form and then fill it out in the absence of the latter "is not acceptable" and contravenes section 16 ADFPS.

- g) ***Chambre de la sécurité financière v. Côté*** (CD00-0841, April 7, 2011)

"Although the degree of misconduct may differ from one case to another, it is an improper practice to have one or more documents signed in blank by clients."

- h) ***Chambre de la sécurité financière v. Belle*** (CD00-1039, April 23, 2014, at paras. 41 to 44)

The fact of transmitting to a client for his signature blank insurance forms constitutes a fault that goes "to the heart of the exercise of the profession", is "of undeniable gravity" and "undermines the image of the profession".

- i) ***Chambre de la sécurité financière v. Ronco*** (CD00-0987, March 20, 2014, at paras. 33 to 35)

The fact of having multiple blank documents signed by one's client is an offence that "goes to the heart of the profession and discredits it ... the respondent who does so exposes clients to the risk of prejudice. The signature of documents in blank is an unhealthy practice, in particular, because it jeopardizes the protection of the public."

- j) ***Chambre de la sécurité financière c. Pana*** (CD00-0956, June 20, 2013)

In a case where the respondent failed to repay money borrowed from two of his clients, the disciplinary committee found he had thereby contravened section 18 of the *Code of ethics of the Chambre de la sécurité financière*.

The disciplinary committee cited with approval the following excerpts from the *Létourneau* decision (CD00-0906, August 30, 2012), discussed below:

(38) "Therefore, according to the generally accepted definition of "appropriation" in matters of professional law, by failing to repay sums owing to his client on the due date, the respondent thereby illegally appropriated the sums belonging to the client.

(39) According to the jurisprudence developed by disciplinary boards and committees, the Professions Tribunal and superior courts, the offence of appropriation of funds must be interpreted broadly and liberally and does not require proof of dishonest intent (unless the count indicates this).

(40) This line of jurisprudence is essentially based on the lack of authorization of the client and does not require, as in criminal law, proof of "*mens rea*."

- k) ***Chambre de la sécurité financière v. Robillard*** (CD00-1188, March 13, 2017, at para. 22)

The respondent in this case failed to repay at maturity the outstanding balance (\$15,000) of a loan he had made from a client.

The disciplinary committee held that "the generally accepted definition of appropriation in disciplinary law holds that the offence of appropriation of funds is akin to the possession of property belonging to a client on a temporary basis, without his authorization, even where the Respondent has the intention of reimbursing the client."

- l) ***Chambre de la sécurité financière v. Létourneau*** (CD00-0906, August 30, 2012)

This decision, referred to in paragraph 64(j) above, concerned a representative who had failed to repay at the maturity date a personal loan he had made from a client. The disciplinary committee found him guilty of appropriation.

- m) ***Chambre de la sécurité financière v. Grignon*** (CD00-0625, July 24, 2007)

This is a case where the respondent appropriated (for his personal benefit) a cash sum of \$15,000 which had been given to him by a

client for investment, the respondent having subsequently issued three cheques in repayment of this amount, which were refused due to insufficient funds.

The disciplinary committee concluded that the respondent knew or should have known that the account on which the cheques were drawn did not contain sufficient funds to honour them, and it declared him guilty.

- n) ***Chambre de la sécurité financière v. Nemeth*** (CD00-1035, June 4, 2015)

The respondent was found guilty of making incomplete or misleading representations to his clients as to the consequences of subscribing to a new life insurance policy in replacement of existing policies.

- o) ***Chambre de la sécurité financière v. Murad Hannoush*** (CD00-1127, April 20, 2016)

This decision dealt with a different complaint (involving 11 counts) against the Respondent herein, for acts which occurred in August 2013, relating to the alleged fabrication of false documents (copying and pasting the signatures of various clients), falsely asserting that he had witnessed the signatures of his clients and having falsely attested to the identity of his clients. The Respondent admitted having committed the alleged infractions, stating, however, that he had been unaware that, in so doing, he was violating his ethical obligations.

The disciplinary committee declared him guilty under the 11 counts.

RESPONDENT'S REPRESENTATIONS

[65] The Respondent attempted to justify his behavior with respect to the first 10 counts by reiterating that his clients had fully approved of his conduct, that they were not prejudiced and that they were completely satisfied with his services.

[66] As regards the nsf Cheques to I.K. (Count #11), he reiterated his uncorroborated claim that he had ultimately reimbursed this client.

[67] As for Count #12, Respondent admitted having assured the client that he would not lose money.

ANALYSIS AND REASONS

[68] This case concerns the following categories of offences alleged against the Respondent:

- a) having his clients sign partially blank forms and completing them later (Count #1, P-10; Count #2, P-10 and P- 19 to P-22; Count #5, P-28 and P-29; Count #7, P-43; Count #9, P-44 and P-45; Count #8, P-46 to P-56);
- b) using the client's signature on a document to create another document (Count #2, P-13 to P-18 and P-23 to P-25; Counts #3 and #4, P-26 and P-27; Count #10, P-57);
- c) falsely claiming to have witnessed the signatures appearing on insurance forms (Count #6, P-30 to P-35);
- d) having appropriated a client's money (Count #11, P-58 and P-59);
- e) having made false, incomplete, and potentially misleading statements and representations as to the investment performance and/or the value of a client's account (Count #12, P-60 and P-61).

[69] As explained above, Respondent has admitted having committed the alleged acts with respect to Counts #1 to 10, and the preponderance of the above-mentioned evidence relating to these counts also leads us to this conclusion.

[70] With respect to Count #11, the Respondent admitted that he knew that did not have sufficient funds in the account(s) on which he drew the four cheques when he gave them to his client (I.K.) for deposit by the latter. This is sufficient to constitute a contravention of the various provisions invoked in Count #11, as well as the appropriation of his client's funds, even if he had subsequently reimbursed them, which the Committee doubts, in view of the preponderance of the evidence. Such conduct is clearly in contravention of the legislative provisions cited in Count #11.

[71] With respect to Count #12, the Respondent could not reasonably assure his client (L.S.) that he would not lose money with his investments. This is in flagrant contradiction with his obligations under sections 7, 10 and 14 of the Regulation respecting the Code of ethics in the securities sectors.

[72] Creating a falsified document, falsely declaring that he witnessed clients sign documents in his presence and signing partially blank contractual documents and forms to complete them later, appropriating a client's funds and misleading a client by false and misleading statements and representations all go to the heart of an advisor's activities and undermine the image of the advisor and the profession.

[73] The public must not only be protected but must also be made to believe that it is protected. Honesty and probity are essential qualities that every representative and advisor must possess.

[74] In acting as he did, the Respondent failed in his duties to his profession, his clients and to his insurers who must be able to rely on the accuracy of the information that advisors and representatives transmit to them.

[75] The Respondent, who had been practising for at least seven years (P-1) at the time of the relevant events, cannot legitimately claim to be unaware of his ethical obligations, since it has always been his basic duty to be aware of and respect them.

[76] Consequently, considering the facts and jurisprudence cited above, the Respondent will be convicted as follows under each of the 12 counts contained in the Complaint herein:

- a) as regards Counts 1, 2, 3, 4, 5, 6 and 7, for having contravened article 16 ADFPS but, in view of the principle prohibiting multiple convictions for the same conduct, the Committee will order a conditional stay of proceedings regarding the other legal provisions cited in the Complaint regarding these counts;
- b) as regards Counts 8, 9 and 10, for having contravened article 160 of the *Securities Act* and, for the same reason as cited in the preceding subparagraph, the Committee will order a conditional stay of proceedings regarding the other legal provisions cited in the Complaint for these counts;
- c) as regards Count 11, for having contravened article 17 of the *Code of Ethics of the Chambre de la sécurité financière*, with a corresponding conditional stay of proceedings regarding the other legal provisions cited in this count;
- d) as regards Count 12, for having contravened article 14 of the *Code of Ethics of the securities sector*, with a corresponding conditional stay of proceedings regarding the other legal provisions cited in this count.

FOR THESE REASONS, the Disciplinary Committee:

REITERATES the order of non-disclosure, non-publication and non-dissemination of the names and surnames of the clients whose initials are mentioned in the 12 counts above, as well as any information which might enable their identification;

DECLARES the Respondent guilty under Counts 1, 2, 3, 4, 5, 6 and 7 of the Complaint pursuant to article 16 of the ADFPS;

ORDERS a conditional stay of proceedings regarding Counts 1, 2, 3, 4, 5, 6 and 7 as relates to articles 11, 34 and 35 of the *Code of Ethics of the Chambre de la sécurité financière*, article 160 of the *Securities Act* and articles 10 and 14 of the *Code of Ethics of the securities sector*;

DECLARES the Respondent guilty under Counts 8, 9 and 10 of the Complaint, pursuant to article 160 of the *Securities Act*;

ORDERS a conditional stay of proceedings regarding Counts 8, 9 and 10 of the Complaint, as relates to articles 10, 14 and 16 of the *Code of Ethics of the securities sector* and article 16 ADFPS;

DECLARES the Respondent guilty under Count 11 of the Complaint, pursuant to article 17 of the *Code of Ethics of the Chambre de la sécurité financière*;

ORDERS a conditional stay of proceedings regarding Count 11 of the Complaint, as relates to article 16 ADFPS, articles 160 and 160.1 of the *Securities Act*, articles 11, 18 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* and articles 2, 6, 10 and 14 of the *Code of Ethics of the securities sector*;

DECLARES the Respondent guilty under Count 12 of the Complaint, pursuant to article 14 of the *Code of Ethics of the securities sector*;

ORDERS a conditional stay of proceedings regarding Count 12, as relates to articles 7 and 10 of the *Code of Ethics of the securities sector*;

CONVENES the parties, with the assistance of the Secretary of the Disciplinary Committee, to a hearing on sanctions.

(s) George R. Hendy
Me George R. Hendy
President of the Committee

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(s) Antonio Tiberio
M. Antonio Tiberio
Member of the Committee

(s) Jean-Michel Bergot
M. Jean-Michel Bergot
Member of the Committee

Me Nathalie Vuille
Pouliot, Caron, Prevost, Bélisle, Galarneau, S.E.N.C.
Attorney for the Plaintiff

The Respondent is self-represented

Dates of the hearing: November 21 and 22, 2017

COPY IN ACCORDANCE WITH THE SIGNED ORIGINAL

3.7.3.2 Comité de discipline de la ChAD

Aucune information.

3.7.3.3 OCRCVM

Aucune information.

3.7.3.4 Bourse de Montréal Inc.

Aucune information.