

3.7

Décisions administratives et disciplinaires

3.7 DÉCISIONS ADMINISTRATIVES ET DISCIPLINAIRES

Aucune information.

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

NO: CD00-1281

DATE: March 16, 2021

| | |
|--|-----------|
| THE COMMITTEE: Me George R. Hendy | President |
| Mr. BGilles Lacroix, A.V.C., Pl. Fin. | Member |
| Mr. Richard Charette | Member |

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

Plaintiff

v.

CHARLITO HAEL (certificate 137973, BDNI 1468871)

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 clients contemplated in the Complaint herein, as well as any information which might enable their identification, it being understood that this order does not apply to requests for access to information from the Autorité des**

marchés financiers and from the Fonds d'indemnisation des services financiers.

[1] On December 5, 2019, the Disciplinary Committee of the *Chambre de la sécurité financière* (the "**Committee**") rendered judgment (the "**Judgment**") finding the Respondent guilty of all of the counts in the following disciplinary complaint (the "**Complaint**") against the Respondent, which reads as follows, once translated to English¹:

THE AMENDED COMPLAINT

As regards C.A.

1. In Pierrefonds, on or about May 6, 2014, the Respondent granted, unbeknownst to the insurer, a discount on the premium for the medical insurance policy (#AAAAAAA), thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
2. In Pierrefonds, on or about June 6, 2014, the Respondent misappropriated the sum of \$2,892.78, which had been entrusted to him by his client, C.A., for the payment of the premium on policy #AAAAAAA, 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) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
3. In Pierrefonds, on or about June 6, 2014, the Respondent failed to pay the premium for policy #AAAAAAA, thereby creating an absence of coverage for the insured, A.A., during the period November 30, 2014 to March 22, 2015, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
4. In Pierrefonds, on or about November 22, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premium for the medical insurance policy #BBBBBBB, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);
5. In Pierrefonds, on or about November 22, 2015, Respondent misappropriated the sum of \$2,900 which had been entrusted to him by his client, C.A., for the payment

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

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of the premium on policy #BBBBBBBB, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, R.3);

6. In Pierrefonds, on or about November 20, 2015, Respondent did not pay the premium for policy #BBBBBBBB, thereby creating an absence of coverage for the insured, A.A., during the period November 30, 2015 to July 5, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, C. D-9.2, r.3);

As regards M.S.C.

7. In Pierrefonds, on or about June 2, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premiums for medical insurance policies #CCCCCCCC and #DDDDDDDD, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);
8. In Pierrefonds, on or about June 4, 2015, Respondent misappropriated the sum of \$2,200, which had been entrusted to him by his client, M.S.C., for the payment of the premiums on insurance policies #CCCCCCCC and #DDDDDDDD, thereby contravening section 16 the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r. 3);
9. In Pierrefonds, on or about June 4, 2015, Respondent failed to pay the premiums for insurance policies #DDDDDDDD and #EEEEEEEE, thereby creating an absence of coverage for the insured, A.K., during the period July 15, 2015 to October 23, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c V-1.1) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);
10. In Pierrefonds, on or about June 4, 2015, the Respondent failed to pay the premium for policies #CCCCCCCC and #FFFFFFF, thereby creating an absence of coverage for the insured, S.P.S.C., during the period July 15, 2015 to April 21, 2017, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

As regards N.S.

11. In Pierrefonds, on or about July 14, 2015, Respondent granted, unbeknownst to the insurer, a discount on the premium for medical insurance policy #GGGGGGGG, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c D-9.2, r.3);

As regards S.B.

12. In Pierrefonds, on or about July 22, 2015, Respondent granted, unbeknownst to

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the insurer, a discount on the premium for medical insurance policy #HHHHHHHH, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, chapter D-9.2, r.3);

13. In Pierrefonds, on or about July 22, 2015, Respondent appropriated the sum of \$1,250 which had been entrusted to him by his client, S.B., for the payment of the premium for policy #HHHHHHHH, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c.D-9.2, r.3);
14. In Pierrefonds, on or about July 22, 2015 and May 24, 2016, Respondent failed to pay the premiums for policies #HHHHHHHH and #IIIIIIII, thereby creating an absence of coverage between March 26 and September 22, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards D.S.J.

15. In Pierrefonds, on or about September 21, 2015, Respondent misappropriated the sum of \$2,218.18, which had been entrusted to him by his client, D.S.J., for the payment of the insurance premiums for policies #JJJJJJJJ and #KKKKKKKK, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D.9.2, r.3);
16. In Pierrefonds, on or about September 21, 2015, Respondent failed to pay the premiums for policies #JJJJJJJJ and #KKKKKKKK, thereby creating an absence of coverage between November 1, 2015 and October 30, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards E.S.

17. In Pierrefonds, on or about February 6, 2016, Respondent granted, unbeknownst to the insurer, a discount on the stipulated premiums regarding medical insurance policies #LLLLLLLL and #MMMMMMMM, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);
18. In Pierrefonds, on or about February 7, 2016, Respondent misappropriated the sum of \$1,100, entrusted to him by his client, E.S., for the payment of the premiums for policies #LLLLLLLL and #MMMMMMMM, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r. 3);
19. In Pierrefonds, on or about February 7, 2016, Respondent failed to pay the premiums for insurance policies #LLLLLLLL and #MMMMMMMM, thereby creating an absence of coverage for the insureds, E.S. and L.S., during the period March

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10 to July 4, 2016, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards K.P.

20. In Pierrefonds, on or about March 16, 2016, Respondent granted, unbeknownst to the insurer, a discount on the premiums for medical insurance policies #NNNNNNNN and #OOOOOOOO, thereby contravening section 36 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);
21. In Pierrefonds, on or about March 16, 2016, Respondent misappropriated the sum of \$3,397.89, which was entrusted to him by his client, K.P., for the payment of the premiums for insurance policies #NNNNNNNN and #OOOOOOOO, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 11, 17 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);
22. In Pierrefonds, on or about March 16, 2016, Respondent failed to pay the premiums for policies #NNNNNNNN and #OOOOOOOO, thereby creating an absence of coverage for the insureds, H.M.P. and C.H.P., during the period May 15, 2016 to May 14, 2017, thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2) and sections 12, 24 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3);

As regards the profession

23. In Pierrefonds, between January 31 and February 17, 2017, Respondent obstructed the work of the Syndic by concealing information, thereby contravening sections 42 and 44 of the *Code of Ethics of the Chambre de la sécurité financière* (CQLR, c. D-9.2, r.3).

[2] On February 10, 2020, the Committee met at the head office of the Chambre de la sécurité financière, located at 2000 McGill College Ave., 12th floor, in Montreal, for the hearing on sanctions pursuant to the Judgment.

[3] Once again, the Plaintiff was represented by Me Mathieu Cardinal, while the Respondent represented himself.

[4] At the request of Me Cardinal, the entire hearing was conducted in English to accommodate the Respondent, and the parties agreed that this decision be drafted in

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English.

[5] Essentially, the Judgment ruled (regarding Counts 1 to 22, which cover seven clients and a total misappropriation of premiums amounting to \$15,965.85) that, during a period of more than two years commencing in May 2014, Respondent was engaged in a scheme whereby he collected premiums for medical insurance policies from seven clients, which payments he kept for himself while not obtaining the promised insurance coverage in a timely manner (if at all), and misappropriating these clients' premium payments, which were obtained on his misrepresentation that they would benefit from a reduction in premium if they dealt through him, thereby creating situations where the persons insured were deprived of the medical insurance coverage promised to them by the Respondent. The Committee also ruled (regarding Count 23) that Respondent obstructed the Syndic's investigation by concealing certain relevant information by altering the content of a document requested by the investigator.

[6] In one case, the ostensibly insured father of one client (C.A.) was admitted to the Jewish General Hospital and incurred more than \$30,000 of uncovered medical expenses because Respondent had failed to pay the premium to Manulife, such that the policy never came into force. These medical expenses were ultimately paid for by the indemnity fund of the Autorité des marchés financiers.

PLAINTIFF'S REPRESENTATIONS

[7] Plaintiff's attorney produced the following three exhibits in evidence:

- a) Exhibit SP-1, an updated version of Respondent's Attestation de droit de pratique showing that Respondent's permit was suspended as of May 5, 2017 and that it has not been reactivated since then;

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- b) Exhibit SP-2, a judgment of the Court of Quebec dated June 19, 2019, from which no appeal was filed, finding Respondent guilty of various statutory offences relating (inter alia) to the infractions described in the Complaint regarding 5 of the 7 clients mentioned in the Complaint;
- c) Exhibit SP-3, an email dated January 17, 2020 from l'Autorité des marchés financiers to Respondent confirming that he was condemned to pay the following fines by the Court of Quebec pursuant to its aforementioned judgment:
 - i. for counts 1 to 6 of the Complaint, fines totalling \$20,000;
 - ii. for counts 7 to 10 of the Complaint, a fine of \$10,000;
 - iii. for counts 12 to 14 of the Complaint, a fine of \$10,000;
 - iv. for counts 15 and 16 of the Complaint, a fine of \$10,000;
 - v. for counts 17 to 19 the Complaint, a fine of \$10,000.

[8] Plaintiff's attorney seeks the permanent striking off the roll of the Respondent for each of the first 22 counts, a temporary striking off the roll of six months for count 23, with the publication of a notice pursuant to article 156 of the *Professional Code*, to be paid for by Respondent, plus a condemnation to pay all other costs.

[9] As regards the aggravating factors justifying the foregoing recommendation, Plaintiff's attorney referred to Respondent's overall dishonest scheme, carried out deliberately and methodically over a period of approximately two years, calculated to benefit himself personally at the expense of his seven clients, whose trust and confidence were abused by the Respondent and who were exposed to the risk of being uninsured after having paid Respondent the requested premiums.

[10] Me Cardinal argued that Respondent's guilty animus was highlighted by the fact

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that he tried to conceal his illegal scheme by providing a misleading altered document in response to a query from the Syndic's investigator (Count 23).

[11] Me Cardinal also argued that the risk of reoccurrence is high, given Respondent's attitude at the hearing regarding guilt, where he apparently did not grasp the seriousness of his conduct, by suggesting that his clients were always covered and that any delays in procuring coverage were due exclusively to his clients' alleged failure to provide relevant information (regarding the arrival dates of the insured persons in Canada) in a timely manner.

[12] Me Cardinal also invoked Respondent's experience at the time of the infractions, as he had been licensed by the Chambre de la sécurité financière since 2000.

[13] For mitigating factors, Me Cardinal referred to the absence of any prior disciplinary record and the substantial fines imposed by the Court of Quebec (SP-2 and SP-3)

[14] Me Cardinal cited the following authorities in support of the sanctions sought by Plaintiff herein:

- a) Section 36 of the *Code of Ethics of the Chambre de la sécurité financière*, which expressly prohibits the representative from granting a rebate on the premium quoted in the policy or agreeing to a mode of payment of the premium other than that specified in the policy
- b) section 16 of the *Act respecting the distribution of financial products and services*, which imposes upon representatives a duty to act with honesty and loyalty in his/her relations with a client
- c) *Pigeon v. Daigneault*, 2003 CanLII 32934 (QC CA)
- d) *Chambre de la sécurité financière v. Boileau*, 2011 CanLII 99535 (QC

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CDCSF)

- e) *Chambre de la sécurité financière v. Deguire*, 2012 CanLII 97204 (QC CDCSF)
- f) *Chambre de la sécurité financière v. Boucher*, 2018 QCCDCSF 51
- g) *Chambre de la sécurité financière v. Frossard*, 2014 CanLII 61319 (QC CDCSF)
- h) *Chambre de la sécurité financière v. Touzani*, 2014 CanLII 13310 (QC CDCSF)
- i) *Chambre de la sécurité financière v. Labonté*, 2012 CanLII 97202 (QC CDCSF)
- j) *Chambre de la sécurité financière v. Savann*, 2012 CanLII 97183 (QC CDCSF)
- k) *Chambre de la sécurité financière v. Poirier*, 2008 CanLII 70058 (QC CDCSF)
- l) *Chambre de la sécurité financière v. Simard*, 2016 QCCDCSF 17
- m) *Chambre de la sécurité financière v. Desgens*, 2006 CanLII 59871 (QC CDCSF)
- n) *Chambre de la sécurité financière v. Alder Jacob*, 2017 QCCDCSF 45
- o) *Chambre de la sécurité financière v. Bernier*, 2013 CanLII 43428 (QC CDCSF).

RESPONDENT'S REPRESENTATIONS

[15] Respondent affirmed that he did not disagree with Plaintiff's recommendations regarding the appropriate sanctions. While accepting responsibility for his actions, he reiterated his prior claims that he had served his clients to the best of his ability and again

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invoked his clients' failure to provide boarding passes as a cause of the absence of timely coverage for the insured.

ANALYSIS AND REASONS

[16] There is no doubt in this case that the Respondent wilfully committed some of the most serious contraventions of the applicable ethical rules incumbent upon a representative by engaging in a dishonest scheme whereby he duped his clients into believing he was obtaining a premium rebate for them and then pocketed part or all of the premiums and not obtaining any of promised coverage or less coverage than he had promised.

[17] In doing so, he contravened his fundamental duties of honesty, integrity and probity, betrayed his clients' trust and exposed the persons ostensibly insured to the risk of no insurance coverage during their stay in Canada.

[18] During a period of two years, Respondent thereby misappropriated almost \$16,000 of his clients' funds by pocketing sums that were supposed to have been used to pay the premiums for the insurance coverage he had promised, and he exposed one ostensibly insured person to uncovered medical expenses in excess of \$30,000.

[19] The jurisprudence relevant to premeditated and unauthorized premium rebate or discount schemes accompanied by the repeated and systematic misappropriation of clients' premium payments and failure to provide the promised insurance coverage clearly supports the imposition of the ultimate sanction, permanent striking off the roll.

[20] As for the obstruction of a statutory investigation, the imposition of a temporary striking off the roll of six months is clearly within the guidelines established by the above-cited jurisprudence.

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[21] 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 described in the Complaint, 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.

[22] For these reasons, the Committee will impose upon Respondent the sanctions recommended by Plaintiff, as described in paragraph 8 above.

[23] As regards costs, no reason has been given which would justify an exception to the general rule that Respondent be obliged to pay all costs applicable pursuant to article 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 clients contemplated in the Complaint herein, as well as any information which might enable their identification, it being understood that this order does not apply to requests for access to information from the Autorité des marchés financiers and from the Fonds d'indemnisation des services financiers;

CONDEMNNS the Respondent to the following sanctions:

- a) as regards Counts 1 to 22 inclusive, a permanent striking off the roll;
- b) as regards Count 23, a temporary striking off the rol of six months;

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

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Respondent has his professional domicile or where he has exercised or may exercise his profession, in conformity with article 156 of the *Professional Code* (CQLR, c. C-26);

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

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

(s) BGilles Lacroix
Mr. BGilles Lacroix, A.V.C., Pl. Fin.
Member of the Disciplinary Committee

(s) Richard Charette
Mr. Richard Charette
Member of the Disciplinary Committee

Me Mathieu Cardinal
CDNP AVOCATS INC.
Attorney for the Plaintiff

Respondent was self-represented

Date of the hearing: February 10, 2020.

TRUE COPY OF THE ORIGINAL SIGNED

3.7.3.2 Comité de discipline de la ChAD

COMITÉ DE DISCIPLINE

CHAMBRE DE L'ASSURANCE DE DOMMAGES

CANADA
PROVINCE DE QUÉBEC

No: 2020-07-02(C)

DATE : Le 19 mars 2021

| | |
|--|-----------|
| LE COMITÉ : Me Patrick de Niverville, avocat | Président |
| Mme Anne-Marie Hurteau, courtier en assurance de dommages | Membre |
| Mme Nathalie Boyer, courtier en assurance de dommages | Membre |

Me MARIE-JOSÉE BELHUMEUR, ès qualités de syndic de la Chambre de l'assurance de
dommages

Partie plaignante

c.

ZAKARIA BOUHAYAT, courtier en assurance de dommages des particuliers

Partie intimée

DÉCISION SUR CULPABILITÉ

**ORDONNANCE DE NON-PUBLICATION, DE NON-DIFFUSION ET
DE NON-DIVULGATION DU NOM DES ASSURÉS DONT IL EST QUESTION
DANS LA PLAINTÉ, DANS LA PREUVE TESTIMONIALE ET DANS LA PREUVE
DOCUMENTAIRE À L'ÉGARD DE TOUT RENSEIGNEMENT ET INFORMATION
PERMETTANT DE LES IDENTIFIER ET CE, AFIN DE PROTÉGER LEUR VIE
PRIVÉE, LE TOUT CONFORMÉMENT À L'ARTICLE 142
DU CODE DES PROFESSIONS**

[1] Le 18 février 2021, le Comité de discipline de la Chambre de l'assurance de
dommages se réunissait pour procéder à l'audition de la plainte numéro 2020-07-02(C)
par visioconférence ;

[2] Le syndic était alors représenté par Me Valérie Déziel et, de son côté, l'intimé était
absent et non représenté ;

I. La plainte

[3] L'intimé fait l'objet d'une plainte comportant quatre (4) chefs d'accusation, soit :

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1. À Montréal, entre les ou vers les 8 et 17 mai 2019, a négligé ses devoirs professionnels reliés à l'exercice de ses activités et/ou a fait défaut d'agir en conseiller consciencieux, en omettant de faire les démarches nécessaires pour procurer à l'assurée A.J.C. une protection d'assurance automobile compte tenu de la résiliation du contrat d'assurance automobile no 500309290 émis par Assurance Economical et en omettant de communiquer avec le directeur des opérations de Courtiersnet relativement aux démarches à faire en lien avec la résiliation dudit contrat d'assurance, en contravention avec les articles 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);
2. À Montréal, le ou vers le 15 mai 2019, a fait une déclaration inexacte au conjoint de l'assurée, E.R., en confirmant que le contrat d'assurance automobile no 500309290 émis par Assurance Economical était en vigueur alors que le risque était à découvert depuis le 8 mai 2019 (sic), en contravention avec les articles 15, 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);
3. À Montréal, entre les ou vers les 8 mai et 8 juin 2019, a fait défaut de rendre compte du mandat confié par l'assurée A.J.C., en omettant de lui transmettre un avis de fin de mandat après avoir été informé de la résiliation du contrat d'assurance automobile no 500309290 émis par Assurance Economical, en contravention avec les articles 26, 37(1) et 37(4) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5);
4. À Montréal, entre les ou vers les 19 mars et 23 mai 2019, a négligé ses devoirs professionnels reliés à l'exercice de ses activités dans le dossier de l'assurée A.J.C., en n'ayant pas une tenue de dossier à laquelle on est en droit de s'attendre d'un professionnel, en omettant d'y noter avec exactitude, notamment, les communications téléphoniques, les courriels pertinents, les conseils donnés, les décisions prises et les instructions reçues, en contravention avec les articles 85 à 88 de la Loi sur la distribution de produits et services financiers (RLRQ, c. D-9.2), les articles 9 et 37(1) du *Code de déontologie des représentants en assurance de dommages* (RLRQ c. D-9.2, r.5) et les articles 12 et 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome* (RLRQ c. D-9.2, r.2).

[4] Malgré que l'intimé fut convoqué en bonne et due forme pour l'audition sur culpabilité, celui-ci était absent et non représenté par avocat, dans les circonstances, le Comité a autorisé la partie plaignante à procéder par défaut, le tout suivant l'article 144 du *Code des professions* (RLRQ, c. C-26) ;

II. Les faits

[5] Essentiellement, la preuve administrée a permis d'établir les faits ci-après décrits ;

[6] Alors que Monsieur E.R. tentait d'obtenir de l'assurance automobile pour sa conjointe (A.J.C.), il a connu plusieurs difficultés et embûches en raison de la négligence de l'intimé ;

[7] Premièrement, l'intimé n'a pas effectué les démarches nécessaires et essentielles pour obtenir une couverture d'assurance pour ses clients, ce faisant, ceux-ci ont été à découvert durant environ neuf (9) jours (chef 1) ;

[8] Ensuite, l'intimé a faussement prétendu qu'un contrat d'assurance était en vigueur (chef 2) ;

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[9] À vrai dire, le contrat d'assurance avait été annulé en raison de l'ineptie de l'intimé de mettre en place un système de prélèvements bancaires, malgré l'envoi par les clients de plusieurs spécimens de chèque et de nombreux téléphones à ce dernier ;

[10] Mais il y a plus, l'intimé n'a jamais informé les assurés de la fin de son mandat malgré qu'il ait été informé de la résiliation du contrat d'assurance automobile (chef 3) ;

[11] Finalement, l'intimé n'avait pas une tenue de dossier conforme à la réglementation en vigueur (chef 4) ;

[12] Cela dit, la preuve testimoniale et documentaire a démontré que les assurés ont été, à toute fin pratique, laissés à eux-mêmes et, n'eut été leurs nombreuses démarches auprès de l'intimé, la situation aurait été encore plus catastrophique ;

III. L'argumentation

[13] Me Déziel, au nom de la partie plaignante, après avoir résumé les faits à l'origine de la présente plainte, plaide essentiellement que :

- Le syndic s'est déchargé de son fardeau de preuve ;
- C'est ainsi que l'intimé n'a fait aucune réelle démarche pour obtenir une nouvelle couverture d'assurance suite à la résiliation de la première police d'assurance (chef 1) ;
- De plus, l'intimé a fait une déclaration inexacte au conjoint (E.R.) de l'assurée (A.J.C.) alors que les clients sont à découvert d'assurance (chef 2) ;
- Par ailleurs, il a fait défaut de rendre compte à ses clients et n'envoie aucune lettre de fin de mandat (chef 3) ;
- Finalement, de l'aveu même de l'intimé à l'enquêtrice du Bureau du syndic, l'intimé ne prend pas de notes et se fie uniquement à l'enregistrement des conversations téléphoniques (chef 4) ;
- Bref, à l'exception de quelques notes, sa tenue de dossier est incomplète ;

[14] Cela étant établi, la procureure du syndic demande au Comité de discipline de reconnaître l'intimé coupable des quatre (4) chefs d'accusation de la plainte ;

IV. Analyse et décision

[15] Le Comité considère que le syndic s'est déchargé de son fardeau de preuve¹ ;

[16] En effet, la preuve testimoniale et documentaire² démontre de manière

¹ *Bisson c. Lapointe*, 2016 QCCA 1078 (CanLII), par. 66 à 68 ;

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prépondérante, pour ne pas dire sans l'ombre d'un doute, que l'intimé a agi de façon négligente et qu'il n'a pas fourni les services que les assurés étaient en droit de recevoir d'un professionnel ;

[17] Cela dit, par ses faits et gestes, l'intimé :

- A négligé ses devoirs professionnels reliés à l'exercice de ses activités et a fait défaut d'agir en conseiller consciencieux en omettant de faire les démarches nécessaires pour procurer à ses clients une couverture d'assurance (chef 1) ;
- A fait une déclaration inexacte au conjoint de l'assuré afin de couvrir son incapacité à obtenir une couverture d'assurance (chef 2) ;
- A fait défaut de rendre compte de son mandat et d'y mettre fin selon les règles (chef 3) ;
- Finalement, sa tenue de dossier était pour le moins négligente vu son omission d'y noter avec précision ses communications avec les assurés (chef 4) ;
- En conséquence, l'intimé sera reconnu coupable de toutes et chacune des infractions reprochées aux chefs 1 à 4 de la plainte.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

DÉCLARE l'intimé coupable des chefs 1 à 4 et plus particulièrement comme suit :

- Chef 1:** pour avoir contrevenu à l'article 37(1) du *Code de déontologie des représentants en assurance de dommages* (RLRQ, c. D-9.2, r.5)
- Chef 2:** pour avoir contrevenu à l'article à l'article 15 du *Code de déontologie des représentants en assurance de dommages* (RLRQ, c. D-9.2, r.5)
- Chef 3:** pour avoir contrevenu à l'article à l'article 37(4)) du *Code de déontologie des représentants en assurance de dommages* (RLRQ, c. D-9.2, r.5)
- Chef 4:** pour avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome* (RLRQ, c. C-9.2, r.2)

² Pièces P-1 à P-19 ;

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PRONONCE un arrêt conditionnel des procédures à l'encontre des autres dispositions législatives et réglementaires alléguées au soutien des chefs 1 à 4 de la plainte ;

PRONONCE une ordonnance de non-publication, de non-diffusion et de non-divulgation du nom des assurés dont il est question dans la plainte, dans la preuve testimoniale et dans la preuve documentaire à l'égard de tout renseignement et information permettant de les identifier et ce, afin de protéger leur vie privée, le tout conformément à l'article 142 du *Code des professions* ;

DEMANDE à la secrétaire du Comité de discipline de convoquer les parties pour l'audition sur sanction ;

LE TOUT, frais à suivre.

Me Patrick de Niverville, avocat
Président

Mme Anne-Marie Hurteau, courtier en
assurance de dommages
Membre

Mme Nathalie Boyer, courtier en assurance
de dommages
Membre

Me Valérie Déziel
Procureur de la partie plaignante

M. Zakaria Bouhayat (absent et non représenté)
Partie intimée

Date d'audience : 18 février 2021 (visioconférence)

3.7.3.3 OCRCVM

Aucune information.

3.7.3.4 Bourse de Montréal Inc.

Aucune information.