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 2.1.2 du Bulletin.

3.7.3 OAR

Veuillez 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° : CD00-1109

DATE : July 20, 2022

THE COMMITTEE:	M[e] George R. Hendy	President
	Mme Dyan Chevrier, A.V.A., Pl. Fin.	Member
	Mr. Antonio Tiberio	Member

NATHALIE LELIÈVRE, in her capacity of assistant syndic of the Chambre de la sécurité financière

Plaintiff

v.

ZAHIR AHMED FANCY, financial security advisor, group insurance and group annuity plans advisor, and scholarship plan dealer (certificate 111944, NRD 1555821)

Respondent

JUDGMENT REGARDING RESPONDENT'S GUILT

IN ACCORDANCE WITH SECTION 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 clients who are contemplated or involved in the Complaint herein, as well as any information which might enable their identification. However, those orders do not apply to any exchange of information provided for in the *Act respecting the regulation of the financial sector* and in the *Act respecting the distribution of financial products and services*.**

[1] On December 9, 10 and 11, 2019, the Disciplinary Committee (the "**Committee**") held a hearing at the head office of the Chambre de la sécurité financière (the "**Chambre**"), situated at 2000 McGill College Ave., 12th floor, Montréal, regarding a complaint filed against Respondent herein, the translated text of which reads as follows:

WITH RESPECT TO K.P.

1. In Montreal, on or about April 27, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $2,470.16, issued by Services financiers Maxplan Inc. ("**Maxplan**"), which he had received for the purpose of investment on behalf of K.P., thereby contravening section 16 of the *Act respecting the distribution of financial products and services* (CQLR, c. D-9.2, the "**Distribution Act**") and section 4(2) of the *Regulation respecting the pursuit of activities as a representative* (CLRQ, c. D-9.2, r. 10, the "**Regulation**");

2. In Montreal, starting on April 27, 2009, Respondent failed to remit without delay to the insurer the amount of $2,470.16 belonging to K.P. which was remitted to Respondent by Maxplan for such purpose, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the *Code of Ethics of the Chambre de la sécurité financière* (CLRQ, c. D-9.2, r. 3, the "**Code of Ethics**");

3. In Montreal, on or about April 27, 2009, Respondent appropriated the sum of $2,470.16 which had been remitted to him by K.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

4. In Montreal, on or about April 27, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $6,192.74 remitted to him by Maxplan for the purpose of investment on behalf of K.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

5. In Montreal, on or about April 27, 2009, Respondent failed to remit without delay to the insurer the sum of $6,192.74 belonging to K.P. which had been remitted to him for such purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

6. In Montreal, on or about April 27, 2009, Respondent appropriated the sum of $6,192.74 which had been remitted to him by K.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

WITH RESPECT TO PI.P.

7. In Montreal, on or about October 15, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $9,329.75 issued by Maxplan, which he had received for investment on behalf of PI.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

8. In Montreal, starting on October 15, 2009, Respondent failed to remit without delay to the insurer the sum of $9,329.75 belonging to PI.P. which had been remitted to him for such purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

9. In Montreal, on or about October 15 2009, Respondent appropriated the sum of $9,329.75 which had been remitted to him by PI.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

10. In Montreal, on or about November 3, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $7,470.44 issued by Maxplan, which he had received for the purposes of investment on behalf of PI.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

11. In Montreal, on or about November 3, 2009, Respondent failed to remit without delay to the insurer the sum of $7,470.44 belonging to PI.P. which had been remitted to him for such purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

12. In Montreal, on or about November 3, 2009, Respondent appropriated the sum of $7,470.44 which had been remitted to him by PI.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

13. In Montreal, on or about December 9, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $4,309.88 issued by Maxplan, remitted to him for investment on behalf of PI.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

14. In Montreal, starting on December 9, 2009, Respondent failed to remit without delay to the insurer the sum of $4,309.88 belonging to PI.P., which had been remitted to him for such purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

15. In Montreal, on or about December 9, 2009, Respondent appropriated the sum of $4,309.88 which had been remitted to him by PI.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

16. In Montreal, on or about September 22, 2011, Respondent instructed an insurer to change the address of PI.P. to 4252 Ernest Hemingway, without authorization from the client, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

WITH RESPECT TO S.P.

17. In Montreal, on or about November 13, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $5,576.97, issued by Maxplan, which he had received for investment on behalf of S.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

18. In Montreal, starting on November 13, 2009, Respondent failed to remit without delay to the insurer the sum of $5,576.97 belonging to S.P. which had been remitted to him for such purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

19. In Montreal, on or about November 13, 2009, Respondent appropriated the sum of $5,576.97 which had been remitted to him by S.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

20. In Montreal, on or about April 7, 2010, Respondent instructed an insurer to change the address of S.P. to 6700 Côte-des-Neiges, apt. 49, without authorization from the client, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

21. In Montreal, on or about November 29, 2010, Respondent instructed an insurer to again change the address of S.P. to 2207 Maryse-Bastié, St-Laurent, without the authorization of the client, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

WITH RESPECT TO JA.P.

22. In Montreal, on or about November 23, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $4,415.16, issued by Maxplan, which he received for investment on behalf JA.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

23. In Montreal, starting on November 23, 2009, Respondent failed to remit without delay to the insurer the sum of $4,415.18 belonging to JA.P., which had been given to Respondent for this purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

24. In Montreal, on or about November 23, 2009, Respondent appropriated the sum of $4,415.18 which had been remitted to him by JA.P. to invest in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

25. In Montreal, on or about November 23, 2009, Respondent failed to deposit in a separate bank account a cheque in the amount of $5,036.48, issued by Maxplan, which he received for investment on behalf of JA.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

26. In Montreal, starting on November 23, 2009, Respondent failed to remit without delay to the insurer the sum of $5,036.48 belonging to JA.P. which he had received for this purpose from Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

27. In Montreal, on or about November 23, 2009, Respondent appropriated the sum of $5,036.48 which he had received from JA.P. to invest in insurance products, thereby section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

28. In Montreal, on or about September 22, 2011, Respondent instructed an insurer to change the address of JA.P to 4869 Nancy St., Pierrefonds, without authorization from the client, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

WITH RESPECT TO MI.P. AND N.P.

29. In Montreal, on or about December 2, 2009, Respondent failed to deposit in a separate account a cheque in the amount of $6,235.19, issued by Maxplan, which he received for investment on behalf of MI.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

30. In Montreal, starting December 2, 2009, Respondent failed to remit without delay to the insurer the sum of $6,235.19 belonging to MI.P. which had been remitted to him for this purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

31. In Montreal, on or about December 2, 2009, Respondent appropriated the sum of $6,235.19 which had been remitted to him by MI.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

32. In Montreal, on or about December 4, 2009, Respondent failed to deposit in a separate account a cheque in the amount of $6,036.65 issued by Maxplan, which he received for investment on behalf of N.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

33. In Montreal, starting December 4, 2009, Respondent failed to remit without delay to the insurer the sum of $6,036.65 belonging to N.P. which he had received from Maxplan for this purpose, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

34. In Montreal, on or about December 4, 2009, Respondent appropriated the sum of $6,036.65 which he had received from N.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

WITH RESPECT TO PR.P.

35. In Montreal, on or about December 4, 2009, Respondent failed to deposit in a separate account a cheque in the amount of $3,317.45, issued by Maxplan, which he received for investment on behalf of PR.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

36. In Montreal, starting December 4, 2009, Respondent failed to remit without delay to the insurer the sum of $3,317.45 belonging to PR.P. which had been remitted to him for such purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

37. In Montreal, on or about December 4, 2009, Respondent appropriated the sum of $3,317.45 which he had received from PR.P. for investment in insurance products,

thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

38. In Montreal, on or about September 22, 2011, Respondent instructed an insurer to change the address of PR.P. to 4252 Ernest Hemmingway, without authorization from the client, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

WITH RESPECT TO A.J. AND D.P.

39. In Montreal, on or about December 21, 2019, Respondent failed to deposit in a separate account a cheque in the amount of $10,493.32, issued by Maxplan, which he received for investment on behalf of A.J., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

40. In Montreal, starting December 21, 2009, Respondent failed to remit without delay to the insurer the sum of $10,493.92, belonging to A.J., which he had received for this purpose from Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

41. In Montreal, on or about December 21, 2009, Respondent appropriated the sum of $10,493.92, which had been remitted to him by A.J. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

42. In Montreal, on or about January 28, 2010, Respondent failed to deposit in a separate account a cheque in the amount of $3,326.42, issued by Maxplan, which he received for investment on behalf of A.J., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

43. In Montreal, starting January 28, 2010, Respondent failed to remit without delay to the insurer the sum of $3,346.22 belonging to A.J., thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

44. In Montreal, on or about January 28, 2010, Respondent appropriated the sum of $3,346.22 which he had received from A.J. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

45. In Montreal, on or about January 8, 2010, Respondent failed to deposit in a separate account a cheque in the amount of $12,552.29, issued by Maxplan, which he received for investment on behalf of D.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

46. In Montreal, starting on January 8, 2010, Respondent failed to remit without delay to the insurer the sum of $12,552.29 belonging to D.P., thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

47. In Montreal, on or about January 8, 2010, Respondent appropriated the sum of $12,552.29 which he had received from D.P. for investment in insurance products,

thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

48. In Montreal, on or about January 25, 2010, Respondent failed to deposit in a separate account a cheque in the amount of $3,638.96, issued by Maxplan, which he received for investment on behalf of D.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

49. In Montreal, starting on January 25, 2010, Respondent failed to remit without delay to the insurer the amount of $3,638.96, belonging to D.P., thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

50. In Montreal, on or about January 25, 2010, Respondent appropriated the sum of $3,638.96 which he had received from D.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

51. In Montreal, on or about January 28, 2010, Respondent failed to deposit in a separate account a cheque in the amount of $3,492.49, issued by Maxplan, which he received for investment on behalf of D.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

52. In Montreal, starting on January 28, 2010, Respondent failed to remit without delay to the insurer the sum of $3,492.29, which he received from D.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

53. In Montreal, on or about January 28, 2010, Respondent appropriated the sum of $3,492.49 which he had received from D.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

54. In Montreal, on or about April 19, 2010, Respondent instructed an insurer to change the address of D.P. and A.J. to 2207 Maryse-Bastié St-Laurent, without the authorization of the clients, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

55. In Montreal, on or about September 23, 2011, Respondent instructed an insurer to change the address of D.P. and A.J. to 2207 Maryse-Bastié, St-Laurent, without the authorization of the clients, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

WITH RESPECT TO MA.P.

56. In Montreal, on or about November 24, 2010, Respondent failed to deposit in a separate account a cheque in the amount of $5,576.51 issued by Maxplan, which he had received for the purposes of investing on behalf of MA.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

57. In Montreal, starting on November 24, 2010, Respondent failed to remit without delay to the insurer the sum of $5,576.51 belonging to MA. P., which had been

transmitted to him for this purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

58. In Montreal, on or about November 24, 2010, Respondent appropriated the sum of $5,576.51 which had been remitted to him by MA.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics;

59. In Montreal, on or about November 24, 2010, Respondent failed to deposit in a separate account a cheque in the amount of $5,677.14 issued by Maxplan, which he had received for the purpose of investing on behalf of MA.P., thereby contravening section 16 of the Distribution Act and section 4(2) of the Regulation;

60. In Montreal, starting on November 24, 2010, Respondent failed to remit without delay to the insurer the sum of $5,677.14 belonging to MA.P. which had been remitted to him for this purpose by Maxplan, thereby contravening section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics;

61. In Montreal, on or about November 24, 2010, Respondent appropriated the sum of $5,677.14 which had been remitted to him by MA.P. for investment in insurance products, thereby contravening section 16 of the Distribution Act and sections 11,17 and 35 of the Code of Ethics;

WITH RESPECT TO BHAD.P

62. In Montreal, on or about April 20, 2011, Respondent instructed an insurer to change the address of Bhad.P to 4869 rue Nancy, Pierrefonds, without the authorization of the client, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

63. In Montreal, on or about April 14, 2011, Respondent fabricated or allowed the fabrication of a forged letter to the insurer in the name of Bhad.P, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

FALSE ADDRESSES

64. In Montreal, between December 20, 2007 and September 28, 2011, on approximately 41 separate occasions, Respondent gave instructions to an insurer regarding a change of client's address for a new address (namely, 2207 rue Maryse-Bastié, St-Laurent), which he knew did not belong to the client concerned, thereby contravening section 16 of the Distribution Act and sections 34 and 35 of the Code of Ethics;

65. In Montreal, between March 6, 2009 and August 23, 2010, on approximately 23 separate occasions, Respondent gave instructions to an insurer regarding a change of client's address to a new address (namely, 6700 Côte-des-Neiges, apt. 149, Montreal) which he knew did not belong to the client concerned, thereby contravening section 16 of the Distribution Act and sections 34 and 35 of the Code of Ethics;

66. In Montreal, between June 3, 2010 and September 22, 2011, on approximately 32 different occasions, Respondent gave instructions to an insurer regarding a change of client's address to a new address (namely, 4252 Ernest Hemingway) which he knew did not belong to the client concerned, thereby contravening section 16 of the Distribution Act and sections 34 and 35 of the Code of Ethics;

67. In Montreal, between April 2011 and September 2011, on approximately 10 separate occasions, Respondent gave instructions to an insurer regarding a client's change of address to a new address (namely, 4869 rue Nancy, Pierrefonds) which he knew did not correspond to the client concerned, thereby contravening section 16 of the Distribution Act and sections 34 and 35 of the Code of Ethics;

USE OF FALSIFIED OR PHOTOCOPIED SIGNATURES

68. In Montreal, between May 14, 2009 and April 21, 2011, Respondent used or allowed to be used approximately 12 insurance instruction forms on which the client signatures were photocopied or falsified, thereby contravening section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics.

[2] Respondent did not appear at the hearing, although duly summoned and advised, following the dismissal of his earlier Motion to Postpone said hearing.

[3] Accordingly, the Committee authorized Plaintiff to proceed *ex-parte* against the Respondent.

PLAINTIFF'S EVIDENCE

[4] The Complaint in this case is based on allegations that, during the period from April 2009 to September 2011, Respondent was engaged in a scheme whereby he systematically defrauded more than 10 clients of sums they had entrusted to him for investment in insurance products by appropriating the funds for his own benefit rather than make the mandated investments on their behalf.

[5] His alleged modus operandi was to convince his clients to replace their existing insurance policies with London Life by universal life policies with Industrial Alliance ("**IA**") and promising that the funds from the cash surrender values from the London Life policies would be invested in the allegedly more profitable IA policies, which funds were instead diverted to a non-segregated account belonging to his personal holding company, Fancy Financial Services Inc. ("**Fancy Inc.**").

[6] In doing so, he is alleged to have frequently given false notices of change of his clients' addresses to IA or used photocopied client signatures.

[7] Plaintiff, represented by Me Mathieu Cardinal, commenced her proof by filing Exhibits P-1 to P-88 (inclusive), reference to which will be made below.

[8] During the course of the hearing, Plaintiff filed a USB key (Exhibit P-89) which contained the following recordings:

a) sworn deposition of the Respondent by Plaintiff's investigators, on October 30, 2012;

b) telephone conversation between Plaintiff's investigator and Respondent on December 10, 2014;

c) sworn deposition of H.B. by Plaintiff's investigators on July 4, 2012;

d) interview of JA.P. by Plaintiff's investigator on November 19, 2014;

e) interview of PI.P. by Plaintiff's investigator on December 12, 2014.

[9] Plaintiff also filed Exhibits P-90 to P-94 (inclusive), reference to which will also be made later herein.

[10] Respondent was duly registered with the Autorité des marchés financiers ("**AMF**") from January 2001 until April 2014 and was therefore subject to the jurisdiction of the Chambre at the time of the relevant events (Exhibit P-1).

[11] Respondent conducted his business using a personal holding company, Fancy Inc., incorporated on August 29, 2000, of which he was the sole shareholder and director (Exhibits P-2 and P-79, page 3536). At all relevant times, Respondent resided at 2207 rue Maryse-Bastié, St-Laurent, which also served as the head office of Fancy Inc. (Exhibit P-2, page 9907, and Exhibit P-67, pages 10,105 and 10,106).

[12] Fancy Inc. had an agency agreement with IA concluded on April 11, 2001 (Exhibit P-3). This agreement was terminated by notice dated October 21, 2011, which termination was re-confirmed by letter dated February 17, 2012 during an ongoing investigation into Respondent's activities which had by then apparently revealed the

"presence of fraud, dishonesty and/or serious error on the part of' Fancy Inc. and its representatives" (Exhibit P-5, page 12,538).

[13] In the course of obtaining clients for IA policies, Respondent and Fancy Inc. dealt with IA's managing general agent ("**MGA**"), Maxplan, which had concluded an MGA contract with IA in late December 1998 (Exhibit P-74). Maxplan was owned by Raafat Ibrahim, and its MGA contract was assigned in September 2009 to a Quebec numbered company owned by H.B. (Exhibits P-75 and P-76), who appears to have been associated with him beforehand in Maxplan, having represented herself successively as Vice-President and President of Maxplan from at least February 2009 (Exhibit P-69, page 183).

[14] On September 29, 2000, Respondent signed a sworn declaration on behalf of Fancy Inc. (Exhibit P-4) in which he affirmed that Fancy Inc. "does not intend to receive or collect any amounts on behalf of others in the pursuit of its activities governed by the (Distribution) Act" and that "if, following this declaration, the firm collects or receives amounts on behalf of others in the pursuit of its activities, it undertakes to comply with the provisions of the Act and the regulations enacted thereunder respecting the establishment and maintenance of a separate account".

[15] Neither Maxplan nor Fancy Inc. used separate (i.e. trust) accounts, as required by section 4(2) of the Regulation, to hold and process funds received from clients, as appears from Exhibits P-94A and P-94B, as well as the admission of H.B. during her recorded interview in this case, and as appears from the documentary evidence referred to below regarding the unsegregated business bank account of Fancy Inc. (Exhibits P-4, P-6 and P-77).

Counts 1 to 6 (K.P.)

[16] In late 2008, Respondent persuaded K.P. to terminate his existing insurance policy with London Life and replace it with an universal life policy issued by IA, as appears from the illustration of the IA policy (Exhibit P-7), which refers to a first year deposit of $8,662.90 (Exhibit P-7, page 2/7) and includes copies of two cheques from London Life dated November 19, 2008, in the amounts of $6,192.74 and $2,470.16, payable to K.P.,

representing the cash surrender value of the policy (Exhibit P-7, page 10,605). These cheques were remitted by K.P. to Respondent for investment in the new policy with IA.

[17] The IA policy was issued on January 23, 2009 and delivered to K.P. on February 12, 2009 (Exhibit P-8). The two above-mentioned cheques from London Life were remitted by Respondent to Maxplan on April 23, 2009 (Exhibit P-9) and, after depositing these cheques in its non-segregated account (Exhibit P-9, page 2509), Maxplan issued cheques in the same amounts to Fancy Inc. the following day (Exhibit P-10). Respondent claims that these cheques were in payment of his commission arrangement with Maxplan but was aware that Maxplan never transmitted any funds to IA for deposit in K.P.'s new policy.

[18] These two cheques from Maxplan were deposited in the non-segregated account of Fancy Inc. on April 24, 2009 (Exhibit P-6, page 3558) and the funds were never transferred by Respondent or Fancy Inc. to IA, contrary to Respondent's understanding with K.P.

[19] The statement from IA to K.P. dated January 24, 2010, regarding his universal life policy shows that no funds were deposited in his account during the 12 months ending January 23, 2010 (Exhibit P-12, page 10,624).

[20] On May 15, 2009, K.P. signed a letter to IA (Exhibit P-11), which was prepared for him by Respondent, in which K.P. complained that the funds he had remitted for investment in his IA policy were "misused and not deposited into" his IA policy after Respondent had allegedly remitted said funds to IA's MGA, a reference to H.B. As we will see below, almost identical letters were signed during the next 20 months by other clients of the Respondent (Exhibits P-47, P-51 and P-59), who expressed full confidence in the Respondent and were obviously unaware that their funds had actually ended up in the account of Fancy Inc.

[21] Respondent admitted the above-cited facts regarding Counts 1 to 6 during his recorded interview of December 10, 2014, with Plaintiff's investigators (Exhibit P-89), including his awareness that the funds remitted to him by K.P. for investment in his IA

policy were never transmitted to IA and that he never reimbursed K.P. for the fund transfers which ultimately ended up in the account of Fancy Inc.

[22] The end result of the foregoing operations was that the funds corresponding to the two above-described cheques from London Life ended up in the unsegregated bank account of Fancy Inc. rather than having been remitted to IA for investment on behalf of K.P.

Counts 7 to 16 (Pl.P.)

[23] On May 21, 2009, London Life issued a cheque to Pl.P. in the amount of $9,329.75, which cheque was deposited in Maxplan's account on October 15, 2009 (Exhibit P-14).

[24] On October 13, 2009, Maxplan issued a cheque in the same amount to Fancy Inc. (Exhibit P-15), bearing the notation "IA contract", which was deposited in the account of Fancy Inc. two days later (Exhibit P-6, page 3575).

[25] On June 29, 2009, London Life issued a cheque in the amount of $7,470.44 to Pl.P., which was deposited in Maxplan's account on October 10, 2009 (Exhibit P-16). On October 30, 2009, Maxplan issued a cheque in the same amount to Fancy Inc. (Exhibit P-17), on the back of which is a notation referring to Pl.P., which was deposited in Fancy Inc.'s account on November 3, 2009 (Exhibit P-6, page 3578).

[26] On May 2, 2009, London Life issued another cheque to Pl.P. in the amount of $4,309.88, which was deposited in Maxplan's account on December 7, 2009 (Exhibit P-18). On December 8, 2009, Maxplan issued a cheque in the same amount to Fancy Inc. (Exhibit P- 19), with a notation on the back referring to Pl.P., which was deposited in its account the following day (Exhibit P-6, page 3582).

[27] Plaintiff filed statements from IA to Pl.P. as of January 21, 2014, for five different universal life policies issued between September 13, 2007, and February 24, 2010 (Exhibit P-92).

[28] Respondent admitted in his interview of October 30, 2012 that Pl.P. was his client, that he gave Pl.P.'s three above-mentioned cheques to Maxplan for investment in said

client's policies with IA, that the identical payments he received from Maxplan were ostensibly for payment of his commission (which he described as his "pay cheque") and that neither he nor Fancy Inc. or Maxplan ever remitted any funds to IA on behalf of PI.P.

[29] The end result of the foregoing operations is that PI.P.'s funds were deposited in the non-segregated account of Fancy Inc. and never transmitted to IA, contrary to Respondent's mandate from the client.

[30] In his recorded interview (Exhibit P-89), PI.P. stated that he was persuaded by Respondent to cancel his policies with London Life and invest the proceeds in a new policy with IA, and that he did not know what Respondent did with his funds.

[31] As for Count 16, the evidence clearly demonstrates that on September 22, 2011, Respondent falsely advised IA that PI.P.'s new address was 4252 Ernest Hemingway (Exhibit P-66, page 10,157), which was in fact the residential address of his sister, Parveen Fancy and her husband (Exhibit P-67, page 10160), and that said notification was never authorized by the client, as confirmed by PI.P. in his aforesaid interview (Exhibit P-89).

Counts 17 to 21 (S.P.)

[32] On April 9, 2009, Respondent and his client, S.P., completed a prior notice of replacement of insurance policy form for the replacement of S.P.'s policy with London Life by a universal life policy with IA (Exhibit P-20), said client's residential address being in Pierrefonds at the time (Exhibit P-21, page 10,515).

[33] The illustration for the IA policy refers to an initial deposit of $5,343.67 (Exhibit P-21, page 2/7), which corresponds to the estimated cash surrender value of the London Life policy (Exhibit P-20, page 14,812). The Confirmation of Issue form from IA (Exhibit P-22), signed by Respondent and S.P. on July 12, 2009, refers only to a deposit of $100, with no mention of the above-mentioned projected deposit of $5,343.67 contemplated in the foregoing illustration (Exhibit P-20).

[34] On August 5, 2009, London Life issued a cheque in the amount of $5,576.97

payable to S.P., representing the cash surrender value of the old policy, which cheque was deposited in Maxplan's account on November 13, 2009 (Exhibit P-23).

[35] On November 12, 2009, Maxplan issued a cheque in the same amount to Fancy Inc., with a notation referring to S.P., which was deposited in its non-segregated operating account the next day (Exhibits P-24 and P-6, page 3579).

[36] On November 13, 2009, Respondent and S.P. signed an F10A form which confirmed S.P.'s understanding that the said sum of $5,576.97 would be invested in his IA policy, using a Canadian bond fund offered by IA (Exhibit P-25).

[37] However, on June 1, 2010, they signed another F10A form which referred to investing the same sum of $5,576.97 in a money market fund offered by IA (Exhibit P-26).

[38] On or about April 24, 2010, IA deposited a cheque from Fancy Inc. dated November 13, 2009, in the amount of $5,576.97, referring to S.P. and his new IA policy for his child, Kr.P., which was returned n.s.f. (Exhibits P-27, P-28, at page 10,532, and P-6, page 3598). Respondent explained during his interview of October 30, 2012, that this cheque, which was remitted to IA in April 2010, was intended to be a loan by him (or Fancy Inc.) to "help" Maxplan, despite the fact the account of Fancy Inc. had insufficient funds to honour it.

[39] On June 2, 2010, Maxplan issued a cheque in the same amount, payable to IA and also referring to S.P.'s new policy with IA (Exhibit P-29), said cheque having been received by IA and credited to the account of S.P. as of June 7, 2010 (Exhibit P-30).

[40] Curiously, on June 8, 2010, Respondent wrote to IA requesting a "maximum withdrawal" of funds from S.P.'s account (Exhibit P-31), IA having complied with this request by sending S.P. a cheque in the amount of $5,738.81 on June 15, 2010, said cheque having been sent to 6700 Côte-des-Neiges, apt. 149, Montreal, the commercial premises leased by Respondent's sister, because of a notice of change of address given two months before by Respondent to IA, as alleged in Count 20.

[41] It is not clear whether this cheque was ever remitted to S.P. by Respondent, who admitted during his sworn interview of October 30, 2012, that S.P. was still trying to recover his money from IA. Nevertheless, it is clear from the evidence that Respondent used the funds he received from Maxplan on November 13, 2009, for his own purposes (Exhibit P-6, page 3579) and that it was Maxplan (not the Respondent) who remitted the sum of $5,576.97 to IA more than nine months after Respondent received the funds from S.P. for investment with IA.

[42] The investment instruction forms signed by S.P. and Respondent (Exhibits P-25 and P-26) dated November 13, 2009, and June 1, 2010 have identical signatures of S.P. on the corresponding pages, which are the subject of Count 68 of the Complaint (Exhibit P-68A contains the same F10A forms as Exhibits P-25 and P-26).

[43] As regard Counts 20 and 21, Exhibit P-36 (page 10,577) establishes that Respondent sent the following notices of change of address for S.P., citing new addresses which did not correspond to S.P.'s residential address:

a) on April 7, 2010, to 6700 Côte-des-Neiges, apt. 149, Montreal, corresponding to the commercial premises operated by Respondent's sister (Exhibits P-36, page 10,578 and P-85);

b) on November 29, 2010, to 2207 rue Maryse-Bastié, Ville St-Laurent, Respondent's home address (Exhibit P-36, page 10,579), as confirmed by the real estate tax roll filed as Exhibit P-67 (page 10,105).

Counts 22 to 28 (JA.P.)

[44] On August 23, 2009, Respondent and his client, JA.P., who declared his residential address was in the City of Montreal, completed a prior notice of replacement of insurance policy form regarding the replacement of a London Life policy by a universal life insurance policy with IA (Exhibit P-37), on the second page of which appears a note that the cash surrender value of $5,036 from the London Life policy was to be deposited in the IA policy.

[45] This understanding was confirmed in the illustration of the IA policy prepared for JA.P. by Respondent (Exhibit P-38, page 2/7) and the issuance of the IA policy was confirmed effective October 1, 2009 and delivered to the client on October 22, 2009 (Exhibit P-39).

[46] On July 7, 2009, London Life issued two cheques payable to JA.P. in the amounts of $4,415.18 and $5,036.48 which were deposited in Maxplan's non-segregated account on November 19, 2009 (Exhibit P-40).

[47] On November 20, 2009, Maxplan issued cheques in the same amounts to Fancy Inc., both of which bore notations referring to JA.P., which were deposited in Fancy Inc.'s non-segregated account on November 23, 2009 (Exhibit P-6, page 3579, and Exhibit P-41).

[48] Respondent admitted during his interview of October 30, 2012, that these funds never made their way to IA, as had been promised to the client, as confirmed by IA's statements to the client (Exhibit P-43) and that neither he nor Fancy Inc. or Maxplan ever refunded the client.

[49] The first of the foregoing annual statements (Exhibit P-43, page 10,666) was sent to the client's correct home address (as confirmed in his life insurance application, Exhibit P-38, page 10,646), while the next one (October 1, 2011) was sent to 4869 Nancy Street, Pierrefonds (Exhibit P-43, page 10,670).

[50] Respondent sent a notice of change of address on behalf of JA.P. (regarding 4869 Nancy Street, Pierrefonds) on September 22, 2011, as confirmed by Exhibit P-44 (page 10,678), which address was the home of Darshna Patel, an assistant employed by the Respondent (Exhibit P-67, page 10,172), subsequent to which the annual report from IA to JA.P. for October 2011 was forwarded to said new address (Exhibit P-43, page 10,670), although the report for October 2012 was sent to JA.P.'s original address (Exhibit P-43, page 10,673).

[51] During his recorded interview, JA.P. confirmed having entrusted the aforesaid funds from London Life to Respondent for investment with IA, that said investment was

never made and that he has no idea what happened to said funds.

Counts 29 to 38 (MI.P, N.P. and PR.P.)

[52] N.P., an electronics assembler, the husband of MI.P. and brother of PR.P. (the client involved in Counts 35 to 38), was called by Plaintiff to testify regarding these counts.

[53] N.P. first met Respondent in the 1990s, when they were neighbours. He, and eventually, other members of his extended family, subscribed to various London Life products through Respondent, starting in March 2000.

[54] N.P. testified that, at some point in 2008, Respondent met with him, his wife and two other couples to discuss a change of insurance policies from London Life to IA, on the basis of Respondent's affirmation that they could earn more revenue under their policies by investing the cash surrender value thereof in IA's insurance products.

[55] Accordingly, MI.P. and N.P. terminated their policies with London Life and received cheques from London Life (representing the cash surrender values of these policies) in the amounts of $6,235.19 and $6,036.65, dated July 23, 2009 and June 16, 2009 respectively, which they remitted to Respondent's wife, subsequent to which they were deposited in Maxplan's account on December 1, 2009 (Exhibit P-45).

[56] On December 2, 2009, Maxplan issued cheques in the same amounts to Fancy Inc., which were deposited in its non-segregated account on the same day (Exhibit P-6, page 3582 and Exhibit P-46).

[57] N.P. testified that he was present when a London Life cheque in the amount of $3,317.45 (Exhibit P-49) payable to PR.P. (his brother, who was also induced by Respondent to replace his London Life policy with one issued by IA), was remitted to Respondent's wife. This cheque was similarly deposited by Maxplan in its account on December 1, 2009 (Exhibit P-49), followed by a cheque in the same amount from Maxplan to Fancy Inc. the next day (Exhibit P-50), which was deposited in the non-segregated account of Fancy Inc. the same day (Exhibit P-6, page 3582).

[58] N.P. said that he and his brother were living in the same apartment building when

the above-mentioned cheques were remitted to Respondent's wife, but that he and his brother moved out of their apartments in January 2010, to their new homes in Pierrefonds, the addresses of which appear in Exhibits P-48 and P-52.

[59] N.P. testified that his brother never lived at 4252 Ernest Hemingway (referenced in Count 38) and that he was totally unfamiliar with said address.

[60] N.P. learned that the three London Life cheques issued to him, his wife and brother had not been remitted to IA after his brother (PR.P.), whose wife and son also had policies with IA, realized sometime in 2012 that the cash surrender value of his London Life policy did not correspond to the value of his own policy with IA. This news prompted N.P. to check his own IA policy statements and he realized that his funds from the London Life policy had never been deposited in his IA policy.

[61] N.P. said that he, his wife and the same two other couples met with Respondent at his office on Cohen St., in St-Laurent, where Respondent alleged that a lady working with him (presumably H.B.) was responsible for the fact that the clients' funds had not been transmitted to IA and that he would sue her to get the money back and reimburse the clients when she (H.B.) paid him. Respondent asked N.P. and fellow clients to be patient in the meantime.

[62] Respondent prepared identical letters to IA for signature by N.P. and his wife, dated February 22, 2010, which he would ostensibly deliver to IA (Exhibit P-47). A similar letter was signed by PR.P. (Exhibit P-51).

[63] As in the case of K.P. (Exhibit P-11), these letters placed all the blame on H.B. for the non-delivery of the London Life funds to IA and absolved Respondent of all responsibility, while entrusting him with the task of recovering the missing funds. Respondent did not leave a copy of these two letters with N.P. or his wife.

[64] In 2016, Respondent met with N.P. and PR.P. and gave them each a cheque for $1,000, promising to make further payments of $1,000 every two months, which never materialized.

[65] N.P. concluded his testimony by stating that neither he nor his wife ever received additional reimbursement of their funds and that they were never compensated for their losses. The statements which N.P., MI.P. and PR.P. received from IA confirm that the funds they received from London Life were never deposited in their IA accounts (Exhibits P-48 and P-52).

[66] Respondent corroborated the material aspects of N.P.'s testimony during his above-mentioned interviews (Exhibit P-89).

Counts 39 to 55 (A.J. and D.P.)

[67] A.J., who is married to D.P. and has lived with him and their children in Dollard-Des Ormeaux ("**DDO**") since approximately 2001, was called as a witness by Plaintiff to testify regarding these counts.

[68] A.J. was referred to Respondent by her nephew in the late 1990s, when she was looking for an insurance broker.

[69] By 2009, A.J. and her husband had subscribed to five different policies with London Life through Respondent; one for each of them, their two children and one for mortgage insurance.

[70] In the summer of 2009, Respondent met with A.J. and D.P. at their home in DDO and recommended that they switch their policies to IA, ostensibly because IA had a "better product". Respondent persuasively told them that he was recommending this transition to all his clients. The plan he recommended was to terminate all the policies with London Life and invest the proceeds from the cash surrender values in the new policies with IA.

[71] A.J. and D.P. accordingly terminated their policies with London Life and completed applications for replacement policies with IA, as partially corroborated by the application forms completed by them in late August 2009 (Exhibit P-83).

[72] Respondent asked A.J. and D.P. to notify him when the cheques from London Life arrived and not to endorse them until he arrived at their home, which is what occurred, Respondent having then been accompanied by his wife.

[73] The evidence adduced by Plaintiff establishes that the following cheques issued by London Life to A.J. and/or D.P. were deposited in the non-segregated account of Maxplan and followed by cheques from Maxplan in the identical amounts payable to Fancy Inc., deposited in latter's non-segregated account on the dates indicated below:

a) cheque from London Life dated November 17, 2009, payable to A.J., in the amount of $10,493.32 (Exhibit P-53), deposited on December 18, 2009, by Maxplan, which then issued a cheque in the same amount to Fancy Inc. on the same date (Exhibit P-56, page 3662), deposited on December 21, 2009 (Exhibits P-56, page 3662, and P-6, page 3583);

b) cheque from London Life dated November 17, 2009, payable to A.J., in the amount of $3,346.22 (Exhibit P-55, page 14,300), deposited on January 27, 2010 by Maxplan (Exhibit P-55, page 14,301), which then issued a cheque in the same amount to Fancy Inc. on the same date (Exhibit P-56, page 3670), which was deposited on January 29, 2010 (Exhibits P-56, page 3670, and P-6, page 3588);

c) cheque from London Life dated November 17, 2009, payable to D.P., in the amount of $12,552.29 (Exhibit P-55, page 14,304), deposited on January 6, 2010 by Maxplan (Exhibit P-55, page 14,305), which then issued a cheque in the same amount to Fancy Inc. on the following day (Exhibit P-56, page 3663), which was deposited on January 8, 2010 (Exhibits P-56, page 3663, and P-6, page 3586);

d) cheque from London Life dated November 17, 2009, payable to D.P., in the amount of $3,638.96 (Exhibit P-55, page 14,302), deposited on January 21, 2010 by Maxplan (Exhibit P-55, page 14,303), which then issued a cheque in the same amount to Fancy Inc. on the dame date (Exhibit P-56, page 3668), which was deposited on January 27, 2010 (Exhibits P-56, page 3668 and P-6, page 3588);

e) cheque from London Life dated November 17, 2009, payable to D.P., in the

amount of $3,492.49 (Exhibit P-55, page 14,300), deposited on January 27, 2010 by Maxplan (Exhibit P-55, page 14,301), which then issued a cheque in the same amount to Fancy Inc. on the same date (Exhibit P-56, page 3669), which was deposited on January 29, 2010 (Exhibits P-56, page 3669, and P-6, page 3588).

[74] A.J. testified that by 2013 or 2014, she and D.P. realized that none of the funds received from the five above-described cheques from London Life had been deposited with IA and that Respondent was evasive when asked to explain, eventually blaming H.B. for the non-transmittal of their funds to IA. On one occasion, Respondent told A.J. that he was being sued and that she should not talk to anyone who called about him.

[75] On another occasion, Respondent asked A.J. to sign a prepared letter which contained (among other things) an acknowledgement by A.J. that she was aware of the change of her address to 2207 Maryse-Bastié, but she refused to sign the letter because its content was not truthful.

[76] Respondent promised to sue H.B. and eventually indemnify A.J. and D.P., but he never reimbursed them any portion of the funds they had entrusted to him.

[77] When shown certain notes from Respondent's files (Exhibit P-82, pages 8443 and 8444), indicating that the residential address of her husband and son was at 2207 rue Maryse-Bastié, St-Laurent, A.J. denied that either had ever lived there, adding that she and her family had continuously resided at their home in DDO since 2001 and that neither she nor her husband had ever authorized any change of address.

[78] Furthermore, several investment statements from IA in 2010 and 2011 regarding two of the accounts for A.J. and her husband were addressed to 2207 Maryse-Bastié, St-Laurent (Exhibit P-82, pages 8447, 8451, 8455, and 8479, and Exhibit P-93).

[79] Exhibit P-66 (page 10,100) shows that on April 19, 2010 and September 23, 2011, Respondent notified IA that the address of A.J. and D.P. had changed to 2207 Maryse-Bastié, St-Laurent.

[80] As in the case of his other clients, Respondent admitted during his interview of October 30, 2012, that he gave the above-mentioned London Life cheques to Maxplan, in exchange for cheques in the same amounts payable to Fancy Inc., which were deposited in its non-segregated account, while paying nothing to IA or reimbursing the clients.

Counts 56 to 61 (MA.P.)

[81] MA.P. was called by Plaintiff to testify regarding these counts.

[82] MA.P. is a machine operator who has known Respondent for about 25 years, both being members of the same temple, where Respondent advertised his services.

[83] Respondent first sold MA.P. a policy with Prudential of America in 1996, and later sold him policies from London Life.

[84] On August 25, 2010, London Life issued two cheques payable to MA.P. in the amounts of $5,576.51 and $5,677.14, which were deposited in Maxplan's non-segregated account on November 12, 2010 (Exhibit P-57).

[85] On November 12, 2010, Maxplan issued two cheques in the same amounts to Fancy Inc., the front sides of which bore notations referring to MA.P., these two cheques having been replaced on November 23, 2010 by cheques in the same amounts (with no reference to MA.P. on the front side), which were deposited in the non-segregated account of Fancy Inc. on November 24, 2010 (Exhibits P-58 and P-6, page 3624).

[86] MA.P. testified that Respondent told him that the London Life cheques endorsed by him would be remitted to IA, which never happened.

[87] On January 31, 2011, Respondent presented MA.P. with a letter he had prepared for his signature (Exhibit P-59), the text of which is very similar to those mentioned above signed by K.P., MI.P., N.P., and PR.P. (Exhibits P-11, P-47 and P-51).

[88] Once again, Respondent confirmed in his telephone call of December 10, 2014, with Plaintiff's investigator that the funds from London Life payable to MA.P. were

supposed to be remitted to IA, but that this did not happen and that he did not reimburse MA.P.

Counts 62 and 63 (Bhad.P.)

[89] On April 18, 2011, Respondent sent a written notice to IA advising that the address of his client, Bhad.P., had changed to 4869 rue Nancy, Pierrefonds, Québec (Exhibit P-62, page 9332). As indicated above, this new address corresponded to the personal residence of Respondent's assistant, Darshna Patel.

[90] Bhad.P. testified at the hearing that he never authorized Respondent to send such a notice, the result of which was that subsequent policy statements from IA intended for Bhad.P. in 2011 and 2012 were sent to the home of Respondent's employee (Exhibit P-65). His testimony is consistent with the written statement he signed on September 27, 2012 (Exhibit P-84, page 5085).

[91] Bhad.P. also testified that Respondent's secretary asked him on several occasions to sign pages in blank in the presence of Respondent, ostensibly to avoid unnecessary repeat visits to his office.

[92] When shown a handwritten letter to IA dated April 14, 2011 (Exhibit P-63), Bhad.P. acknowledged his signature in the lower left-hand corner of the page, but he swore he had never seen the text above his signature, which again informed IA of Bhad.P.'s ostensible change of address to 4869 rue Nancy.

[93] Respondent was questioned under oath on October 30, 2012, about this change of address and admitted having sent the change of address notice for Bhad.P. to IA, claiming that Bhad.P., like many other of his clients, asked to have their monthly statements from IA sent to third party addresses, ostensibly to "maintain confidentiality" because, by that time, the client was aware that his funds from London Life had not been remitted to IA and he wanted Respondent to handle all ongoing matters regarding IA while Respondent was ostensibly trying to recuperate said client's funds.

[94] When confronted with Bhad.P.'s denial (Exhibit P-84) that he ever authorized a

change of address to 4869 rue Nancy, Respondent blamed his client for providing an incorrect address which happened to be that of Darshna Patel, Respondent's aforesaid employee.

Counts 64 to 67 (False Addresses)

[95] Between December 20, 2007 and September 28, 2011, Respondent notified IA on 41 different occasions (involving 38 different clients) of a change of address for his said clients which falsely advised that the clients' new address was at 2207 Maryse Bastié, St-Laurent (Exhibit P-66, pages 10,100 to 10,102), although this address instead corresponded to his personal residence (Exhibit P-67, pages 10,105 and 10,106), as admitted by the Respondent during his interview of October 30, 2012.

[96] These false notices do not include those for S.P., A.J. or D.P., which are covered by Counts 21, 54 and 55 above, or for the members of Respondent's family which also appear in said pages of Exhibit P-66.

[97] Between March 6, 2009 and August 23, 2010, Respondent notified IA on at least 23 different occasions of a change of address for his clients which falsely advised that the clients' new address was at 6700 Côte-des-Neiges, apt. 149, Montreal (Exhibit P-66, page 10,109), although this address corresponded to commercial premises leased during that period by Respondent's sister, Parveen Fancy (Exhibit P-85), who filed for bankruptcy on November 10, 2010.

[98] Written corroboration for Respondent's involvement for one of these clients (J.T.) is found in Exhibit P-86, an email from Respondent to IA dated April 1, 2009.

[99] Between June 3, 2010, to September 22, 2011, Respondent notified IA on 32 different occasions (involving 31 different clients) of a change of address for his said clients, falsely advising that the clients' new address was at 4252 Ernest Hemingway, St-Laurent (Exhibit P-66, page 10,157), although said property was owned jointly by his sister, Parveen Fancy, and her husband (Exhibit P-67, pages 10,160 and 10,161).

[100] These false notices exclude that sent by Respondent on September 22, 2011,

regarding PI.P. (Count 16).

[101] Between April 20 and September 22, 2011, Respondent notified IA on 10 different occasions (involving an equal number of clients) of a change of address for his said clients, falsely advising that the clients' new address was at 4869 rue Nancy, Pierrefonds, although this address corresponded to the home of his employee, Darshna Patel (Exhibit P-67, pages 10,167 to 10,172).

[102] Respondent admitted sending all these notifications (relating to Counts 64 to 67) during his interview of October 30, 2012.

Count 68 (Use of forged or photocopied signatures)

[103] Plaintiff called Mme Yolande Gervais, an expert in handwriting analysis (Exhibit P-90A), who was declared qualified by the Committee to testify in that regard with respect to this count.

[104] Mme Gervais analyzed the client signatures which appear in the documents filed as Exhibits P-68 and P-68A, which are reproduced in comparative fashion in her report (Exhibit P-90), searching for identical signatures. None of the clients involved in Exhibit P-68 are concerned by the other counts of the Complaint herein.

[105] Based on the well-known principle that no two different signatures by the same person can be exactly identical, Mme Gervais was able to compare the signatures of the client in each group of following documents (insurance forms prepared and submitted to IA by Respondent) and conclude that, in each case, Respondent had used photocopied signatures to complete at least one of the following forms:

a) for D.P., two F10A Investment/Withdrawal Request forms ("**F10A forms**") dated May 12 and 14, 2009 (Exhibit P-68, Tab A, pages 10,821 to 10,826);

b) for HE.P., two F10A forms dated January 26 and April 15, 2011 (Exhibit P-68, Tab B, pages 10,827 to 10,832);

c) for HA.P., two F10A forms dated August 2, 2010 and April 1, 2011 (Exhibit

P-68, Tab C, pages 10,833 to 10,838);

d) for R.P., two F10A forms dated August 21, 2009 and September 10, 2010 (Exhibit P-68, Tab D, pages 10,839 to 10,844);

e) for HAR.P., three F10A forms dated July 24, 2009, April 23, 2010 and April 21, 2011 (Exhibit P-68, Tab E, pages 10,845 to 10,853);

f) for P.P., three F10A forms dated July 24, 2009, April 22, 2010 and April 21, 2011 (Exhibit P-68, Tab F, pages 10,854 to 10,862);

g) for M.P., two F10A forms dated May 29 and December 17, 2009 (Exhibit P-68, Tab G, pages 10,863 to 10,867);

h) for S.P., two F10A forms dated May 12, 2009 and December 23, 2010 (Exhibit P-68, Tab H, pages 10,868 to 10,873);

i) for K.P., two F10A forms dated November 13, 2009 and January 6, 2010 (Exhibit P-68A, same as Exhibits P-25 and P-26).

[106] When questioned during his interview of October 30, 2012, regarding Exhibits P-25 and P-26 (Exhibit P-68A), Respondent denied photocopying S.P.'s signature, but was unable to explain why the signatures of S.P. therein were apparently identical and therefore photocopied.

[107] During his two above-mentioned recorded interviews (Exhibit P-89), Respondent made the following relevant assertions and admissions:

a) he received the above-described cheques from London Life payable to his clients, K.P., PI.P., S.P., JA.P., MI.P., N.P., PR.P., A.J., D.P. and MA.P., with the understanding that these funds were to be remitted to IA for investment in their new policies;

b) instead of remitting the cheques directly to IA, Respondent instead gave them to Maxplan, who deposited them in its non-segregated account and

issued cheques for identical amounts to Fancy Inc., which deposited them in its own non-segregated account and used said funds for its own purposes;

c) he considered these payments from Maxplan to Fancy Inc. as his "pay cheque", alleging that he had made an arrangement with Raafat Ibrahim to be paid an additional override commission (140%, rather than 120%) retroactively for past years, starting in 2009, as recounted by him in his letter to Plaintiff dated August 8, 2014;

d) thus, according to Respondent, the cheques from Maxplan were in payment of this additional 20% override commission, and it was by mere "coincidence" that the amounts he was paid by Maxplan were identical to the amounts of his clients' cheques from London Life;

e) however, he was unable to provide any accounting records to corroborate his claim that the above-described cheques he received from Maxplan were in payment of an override commission of any kind, despite having been requested to do by Plaintiff's investigator (Exhibit P-88, page 13,251).

f) he expected that Maxplan would send payments to IA equal to the funds his clients had received from London Life in cancelling their policies with said insurer;

g) because of his constant access to IA's website for client files, he was aware of the fact that Maxplan did not make any such payments to IA (except in the case of S.P.) on behalf of his clients, and he never reimbursed said clients for their losses;

h) he prepared the letters produced as Exhibits P-11, P-47, P-51 and P-59 for signature by K.P., MI.P, N.P., PR.P. and MA.P. during the period May 15, 2009 to January 31, 2011;

i) he admitted responsibility for the change of address notices sent to IA

regarding his clients, and claimed that the choice of new addresses (the home and commercial premises of his sister, his home and that of his employee) represented the "wish" of each of the many clients involved, adding that many clients did so to "maintain confidentiality" while trying to recover their misplaced funds;

j) he signed the F10A forms bearing the photocopied signatures of S.P. (P-25 and P-26).

[108] During her recorded interview, H.B. gave the following relevant testimony:

a) Maxplan did not have a separate or trust account to process clients' funds, all such transactions having been done using its business operating account at the Royal Bank;

b) she was instructed by her uncle to deposit cheques from Respondent's clients in Maxplan's account and immediately replace them in each case by a cheque from Maxplan to Fancy Inc. in the same amount;

c) she understood and expected that Respondent would send the clients' funds on to IA for investment on their behalf;

d) she did not realize at first that the London Life cheques brought to her by Respondent represented cash surrender values for terminated policies;

e) by December 2010, she became aware of the fact that Respondent was using photocopied signatures of some of his clients on insurance application forms, which provoked her to inform Respondent that she would no longer accept London Life cheques from him.

ANALYSIS AND REASONS

[109] The relevant statutory provisions cited in the Complaint read as follows:

a) **Act respecting the distribution of financial products and services**

16. All representatives are bound to act with honesty and loyalty in their dealings with clients.

They must act with competence and professional integrity.

b) **Regulation respecting the pursuit of activities as a representative**

4. During the period of validity of his certificate, a representative must comply with the following conditions governing the pursuit of activities:

(1) (…);

(2) he must forthwith deposit in a separate account held by him as an independent representative or by the firm or independent partnership on whose behalf he acts, as the case may be, all amounts collected or received on behalf of another person in the pursuit of his activities.

c) **Code of ethics of the Chambre de la sécurité financière**

11. A representative must practice with integrity.

17. A representative may not appropriate, for personal purposes, sums of money entrusted to him or securities belonging to his clients or to any other individual and of which he has custody.

33. A representative must not fail to pay an insurer, upon request or within the prescribed time, the sums of money that he has collected on its behalf.

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

35. A representative must not practice dishonestly or negligently.

[110] The foregoing uncontradicted documentary evidence, which is corroborated either by Respondent or the client witnesses who testified at the hearing or participated in recorded interviews (Exhibit P-89), clearly established the following as regard each of Counts 1 to 15, 17 to 19, 22 to 27, 29 to 37, 39 to 53 and 56 to 61:

a) Respondent persuaded his client to cancel his/her policy with London Life and invest the cash surrender value thereof in a new policy with IA;

b) the cheque for the said cash surrender value from London Life to the client was remitted to Respondent for investment in the new IA policy;

c) unbeknownst to the client, Respondent remitted the London Life cheque to Maxplan, who deposited it in its unsegregated bank account and then issued Respondent a cheque in the same amount payable to Fancy Inc., who then deposited said cheque in its own unsegregated bank account and used the corresponding funds for its own purposes, instead of transmitting it to IA for investment on behalf of the client;

d) neither Maxplan nor Respondent (or Fancy Inc.) ever remitted any amounts corresponding to these cheques to IA, pursuant to the client's instructions, or reimbursed the client in respect of said amounts.

[111] Respondent claimed that the cheques he received from Maxplan were in payment of a special commission agreement he had negotiated with Maxplan, and that it was a "coincidence" that the cheques he received from Maxplan were for the identical amounts of the corresponding cheques from London Life.

[112] Respondent claimed during his recorded interviews and in his letter to Plaintiff dated August 8, 2014 (Exhibit P-88) that he had negotiated an override commission agreement of 140% with Maxplan, but the override distribution form Maxplan signed with IA on July 4, 2001, indicated that Respondent was only entitled to an override commission of 120% (Exhibit P-78). Respondent was requested by Plaintiff to provide "all documentation and all accounting demonstrating that the cheques forwarded by Maxplan were related to commissions owed" to him (Exhibit P-88, page 13,251), but failed to ever do so.

[113] H.B. testified in her recorded interview that because Respondent could not directly deposit his clients' cheques in the margin account operated by Fancy Inc., an arrangement was made (between Raafat Ibrahim and Respondent) whereby the cheques were first deposited in Maxplan's non-segregated account and replaced by cheques for the identical amounts payable to Fancy Inc.

[114] H.B. understood that the clients' funds represented by the cheques from Maxplan to Fancy Inc. were to be forwarded by the latter to IA for investment in clients' accounts.

[115] Furthermore, if the above cheques issued by Maxplan to Fancy Inc. were in payment of some sort of commission, as alleged by Respondent, it would have been unnecessary for Maxplan to make handwritten notations of the clients' names on many of the cheques (Exhibits P-17, P-19, P-24, P-41 and P-58), and it strains credulity that the override commission in each case was exactly equal to the amount of the corresponding cheque from London Life.

[116] In addition, several other cheques (Exhibits P-15, P-46, P-50, P-54 and P-56) had notations on them which were deliberately obscured, raising the possibility that they too originally bore references to clients' names.

[117] The fact that Maxplan's cheques bore such notations is much more consistent with H.B.'s testimony that the corresponding funds were to be remitted to IA for investment purposes than Respondent's claim that they were in payment of retroactively owed override commissions.

[118] Finally, whatever override commission agreement may have existed between Maxplan and Respondent or Fancy Inc., Respondent was not entitled to pay himself such a commission from the funds his clients gave him for the specific purposes of investing with IA. Any such override commission, if truly owing, should have been paid to Respondent by Maxplan out of any commission payments received by it from IA after the clients' funds had been invested with IA.

[119] Respondent represented to his clients (and later Plaintiff) that H.B. (of Maxplan) was alone responsible for the failure to remit the clients' funds from London Life to IA, as appears from the almost identical letters he had his clients (K.P., N.P., MI.P., PR.P. and MA.P.) sign during the period May 15, 2009 to January 31, 2011 (Exhibits P-11, P-47, P-51 and P-59).

[120] If we are to believe this questionable claim, it means that Respondent was aware from at least May 15, 2009 (Exhibit P-17, K.P. being the first of the clients prejudiced by Respondent's conduct herein) that Maxplan was allegedly breaching an undertaking to remit his clients' funds from London Life to IA, but that Respondent persisted in inducing

his other clients to cancel their policies with London Life and remit their funds to Maxplan, knowing that the latter would not remit said funds to IA, while continuing to request and receive cheques for identical amounts from Maxplan, which Respondent then deposited in his company's account, while remitting nothing to IA or ever reimbursing his clients.

[121] At the same time, Respondent provided false change of address instructions to IA regarding his clients on approximately 100 occasions during the period December 2007 to September 2011 (Counts 16, 20, 21, 28, 38, 54, 55, 62 and 64 to 67), which had the effect of directing periodic investment statements from IA intended for the clients concerned to premises corresponding to the homes and/or business premises of Respondent, his sister and his employee, all without the knowledge or authorization of said clients.

[122] Respondent's claim that these changes of address were done in accordance with the client's "wish" in each case in order to "maintain confidentiality" is not credible and was contradicted by each of the concerned clients who testified at the hearing or were interviewed by the syndic's investigators. It is not logical that clients would agree to have their monthly statements from IA sent to the homes or business address of Respondent, his sister and his employee, and thereby deprive them of timely information regarding the status of their investments with IA.

[123] In the case of A.J., Respondent apparently prepared a letter for her signature which falsely alleged that she had authorized such a change of address, again demonstrating his dishonest practices.

[124] In the case of Bhad. P. (Count 62), when Respondent was confronted with said client's denial that he had ever authorized a change of address, Respondent spontaneously amended his version to affirm that his client must have given an incorrect address, which defies credulity. How could Bhad.P. have possibly cited 4869 Nancy as his address, which happened to be the residential address of Respondent's employee?

[125] In view of the foregoing, the Committee accords no credibility to the Respondent's explanations for his above-described conduct. Respondent's foregoing conduct was not

one of a representative acting in good faith and in the interests of his clients, but instead resembled a fraudulent enterprise, carried out by Respondent with premeditated deceit and intention to misappropriate his clients' funds, while keeping them in the dark as to the status of their investments.

[126] In the case of S.P. (Count 19), whether or not said client received and cashed IA's cheque dated June 15, 2010 in the amount of $5,738.81 (Exhibit P-32, page 10,575), the fact remains that Respondent deposited S.P.'s funds ($5,576.97, Exhibit P-24) in his corporate bank account on November 13, 2009 and used the proceeds thereof for the ongoing expenses of himself and/or his holding company (as confirmed by the relevant entries in Exhibit P-6, page 3579), and the fact that Respondent's cheque to IA regarding S.P., Exhibits P-27 and P-28, was returned n.s.f. in April 2010, which conduct constitutes appropriation, even if said client was reimbursed several months later by Respondent or Maxplan.

[127] As for Count 63, the evidence is clear that Bhad.P. was induced to sign his name at the bottom of blank pages, and that one of these pages was then used to compose a letter to IA falsely informing it that the client had a new address corresponding to the personal residence of Respondent's employee.

[128] As for Count 68, the uncontradicted evidence (Exhibit P-90) is again clear that Respondent used photocopied signatures on at least 12 occasions during the period May 14, 2009 to April 21, 2011.

[129] Although Respondent denied ever using photocopied signatures during his interview on October 30, 2012, when he was shown three identical signatures of S.P. which appear in Exhibit P-26 (the same as in Exhibit P-68A), he could not provide any explanation.

[130] In view of the foregoing, the Committee declares the Respondent guilty of all counts of the Complaint, as follows:

a) as regard Counts 1, 4, 7, 10, 13, 17, 22, 25, 29, 32, 35, 39, 42, 45, 48, 51, 56 and 59, for having contravened sections 16 of the Distribution Act and

4(2) of the Regulation, the Committee declaring a conditional suspension of proceedings regarding the former provision;

b) as regard Counts 2, 5, 8, 11, 14, 18, 23, 26, 30, 33, 36, 40, 43, 46, 49, 52, 57 and 60, for having contravened sections 16 of the Distribution Act and 11, 33 and 35 of the Code of Ethics, the Committee declaring a conditional suspension of proceedings regarding section 16 of the Distribution Act and sections 11 and 33 of the Code of Ethics;

c) as regard Counts 3, 6, 9, 12, 15, 19, 24, 27, 31, 34, 37, 41, 44, 47, 50, 53, 58 and 61, for having contravened sections 16 of the Distribution Act and 11, 17 and 35 of the Code of Ethics, the Committee declaring a conditional suspension of proceedings regarding section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

d) as regard Counts 16, 20, 21, 28, 38, 54, 55, 62, 63 and 68, for having contravened sections 16 of the Distribution Act and 11 and 35 of the Code of Ethics, the Committee declaring a conditional suspension of proceedings regarding section 16 of the Distribution Act and section 11 of the Code of Ethics.

e) as regard Counts 64, 65, 66 and 67, for having contravened sections 16 of the Distribution Act and 34 and 35 of the Code of Ethics, with a conditional suspension of proceedings regarding section 16 of the Distribution Act and section 34 of the Code of Ethics.

FOR THESE REASONS, the Committee:

DECLARES Respondent guilty of the 68 counts of the Complaint as follows:

a) as regard Counts 1, 4, 7, 10, 13, 17, 22, 25, 29, 32, 35, 39, 42, 45, 48, 51, 56 and 59, for having contravened section 16 of the Distribution Act and section 4(2) of the Regulation, while ordering the conditional suspension of proceedings as regard section 16 of the Distribution Act;

b) as regard Counts 2, 5, 8, 11, 14, 18, 23, 26, 30, 33, 36, 40, 43, 46, 49, 52, 57 and 60, for having contravened section 16 of the Distribution Act and sections 11, 33 and 35 of the Code of Ethics, while ordering the conditional suspension of proceedings as regard section 16 of the Distribution Act and sections 11 and 33 of the Code of Ethics;

c) as regard Counts 3, 6, 9, 12, 15, 19, 24, 27, 31, 34, 37, 41, 44, 47, 50, 53, 58 and 61 for having contravened section 16 of the Distribution Act and sections 11, 17 and 35 of the Code of Ethics, while ordering the conditional suspension of proceedings as regard section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics;

d) as regard Counts 16, 20, 21, 28, 38, 54, 55, 62, 63 and 68, for having contravened section 16 of the Distribution Act and sections 11 and 35 of the Code of Ethics, while ordering the conditional suspension of proceedings as regard section 16 of the Distribution Act and section 11 of the Code of Ethics;

e) as regard Counts 64, 65, 66 and 67, for having contravened section 16 of the Distribution Act and sections 34 and 35 of the Code of Ethics, while ordering the conditional suspension of proceedings as regard section 16 of the Distribution Act and section 34 of the Code of Ethics;

REQUESTS the Secretary of the Committee to convoke the parties to a hearing on the sanctions to be imposed upon Respondent as described above.

(S) Me George R. Hendy

Me George R. Hendy
President of the Disciplinary Committee

(S) Dyan Chevrier

Mme Dyan Chevrier, A.V.A., Pl. Fin.
Member of the Disciplinary Committee

(S) Antonio Tiberio

Mr. Antonio Tiberio
Member of the Disciplinary Committee

Me Mathieu Cardinal
CDNP AVOCATS INC.
Attorneys for Plaintiff

Respondent is self-represented, but was absent from the hearing

Dates of hearing: December 9, 10 and 11, 2019

TRUE COPY OF THE ORIGINAL SIGNED

COMITÉ DE DISCIPLINE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE DE QUÉBEC

N° : CD00-1455

DATE : 26 juillet 2022

LE COMITÉ: M^e George R. Hendy — Président
M. Gaétan Tremblay, Pl. Fin — Membre
M. François Faucher, Pl. Fin — Membre

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Partie plaignante

c.

BRYAN BOISSEL-BISSONNETTE, conseiller en sécurité financière (numéro de certificat 174617)

Partie intimée

DÉCISION SUR SANCTION

CONFORMÉMENT À L'ARTICLE 142 DU *CODE DES PROFESSIONS*, LE COMITÉ A PRONONCÉ L'ORDONNANCE SUIVANTE :

> **la non-divulgation, la non-publication et la non-diffusion du nom et prénom du consommateur impliqué à la plainte disciplinaire et de tous renseignements à la preuve qui pourrait permettre de l' identifier, étant entendu que la présente ordonnance ne s'applique pas aux échanges d'information prévus à la *Loi sur l'encadrement du secteur financier* et la *Loi sur la distribution de produits et services financiers*.**

[1] Le 16 décembre 2021, le comité de discipline de la Chambre de la sécurité financière (le « comité ») a déclaré M. Bryan Boissel-Bissonnette coupable de l'unique chef d'infraction, soit :

> À Longueuil, le ou vers le 21 mars 2019, l'intimé n'a pas exercé ses activités avec compétence et professionnalisme en recommandant à J.H. de souscrire à la police d'assurance invalidité N0 […] à émission simplifiée alors que le 7 janvier 2019 l'intimé avait inscrit dans la proposition d'assurance N0 […] que cette assurée avait connu un arrêt de travail du 6 mars 2017 au 12 juin 2017, contrevenant ainsi aux articles 16 de la *Loi sur la distribution de produits et services financiers* et 15 du *Code de déontologie de Chambre de la sécurité financière*.

APERÇU

[2] M. Boissel-Bissonnette doit être sanctionné pour avoir contrevenu à l'article 15 du *Code de déontologie de la Chambre de la sécurité financière*, en n'ayant pas exercé ses activités avec compétence et professionnalisme lorsqu'il a recommandé le produit Humania à J.H, alors qu'il aurait dû savoir qu'elle avait eu un arrêt de travail en 2017, cette information étant à son dossier client.

[3] Lors de l'audition sur sanction tenue le 5 avril dernier, les parties ont présenté une recommandation commune sur sanction, soit l'imposition d'une amende de 5 000 $ en regard de l'unique chef d'infraction.

[4] Pour ce qui est de la condamnation de M. Boissel-Bissonnette au paiement des déboursés, la position respective des parties diffère. Le plaignant recommande la condamnation au paiement total des déboursés alors que l'intimé suggère la condamnation à la moitié d'entre eux.

QUESTIONS EN LITIGE

[5] Le comité doit déterminer si la recommandation commune des parties déconsidère l'administration de la justice ou si elle est contraire à l'intérêt public. Il doit de plus

déterminer le pourcentage des déboursés auquel M. Boissel-Bissonnette doit être condamné.

REPRÉSENTATIONS DES PARTIES

[6] Le plaignant a d'abord mentionné que la sanction suggérée par les parties est conforme aux précédents jurisprudentiels en semblable matière.

[7] Comme facteurs objectifs, le plaignant a mentionné :

- la protection du public;
- la gravité objective de l'infraction;
- l'infraction qui est au cœur de l'exercice de la profession et qui porte atteinte à l'image de celle-ci.

[8] Comme facteurs subjectifs liés à M. Boissel-Bissonnette, le plaignant a mentionné l'âge du représentant (36 ans), le fait qu'il est toujours actif dans l'industrie, son expérience professionnelle (soit plus d'une dizaine d'années), ce qui aurait dû le prémunir contre la commission d'une telle infraction. De même, M. Boissel-Bissonnette n'a exprimé aucun repentir et ne semble pas reconnaître sa faute. Le plaignant a également fait référence à un antécédent disciplinaire[1], de même qu'à un antécédent administratif[2]. Enfin, bien qu'il s'agisse d'un facteur neutre, M. Boissel-Bissonnette a collaboré à l'enquête du syndic.

[9] Quant aux facteurs subjectifs liés à l'infraction, le plaignant a mentionné :

- Aucune malhonnêteté de la part de M. Boissel-Bissonnette; il s'agit plutôt d'un

[1] Pièce SP-1.
[2] Pièce SP-2.

défaut d'agir avec compétence et professionnalisme[3];

- Une seule consommatrice est impliquée, qui n'a subi aucun préjudice puisque les primes payées lui ont été remboursées lorsque la police d'assurance a été annulée;
- Il s'agit d'une faute isolée.

[10] Le plaignant a référé à la jurisprudence déposée par la partie intimée, en ajoutant celle-ci :

- *Chambre de la sécurité financière* c. Couture, 2014 CanLII 46614 (QC CDCSF).

[11] Le plaignant soumet que la recommandation commune soumise par les parties respecte la fourchette des sanctions imposées par la jurisprudence pour des cas semblables et qu'elle ne déconsidère pas l'administration de la justice ni n'est contraire à l'intérêt public.

[12] M. Boissel-Bissonnette a fait part au Comité qu'il s'agit d'un incident isolé, résultant d'une situation exceptionnelle. Il aurait dû remettre en question les réponses données par sa cliente lors de la souscription de la police d'assurance, ce qu'il n'a pas fait. Il ne s'agit toutefois pas d'une négligence de la part de l'intimé, mais plutôt de la consommatrice.

[13] Comme facteurs atténuants, M. Boissel-Bissonnette a ajouté que le risque de récidive est faible, en raison des faits très particuliers du présent cas. Il a insisté sur sa collaboration à l'enquête menée par le syndic et a ajouté qu'il ne peut lui être reproché de ne pas avoir reconnu sa culpabilité.

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[3] *Chambre de la sécurité financière* c. *Boissel-Bissonnette*, 2021 QCCDCSF 79, décision sur culpabilité, par. 30.

[14] Concernant l'antécédent disciplinaire et celui administratif, M. Boissel-Bissonnette a mentionné qu'il s'agit d'événements datant de plus de dix ans, qui plus est, au début de sa carrière.

[15] Également, le dépôt de la présente plainte disciplinaire et le processus qui a suivi sont des éléments qui, selon lui, sont suffisamment dissuasifs, rendant ainsi le risque de récidive quasiment nul.

[16] Il a enfin référé à ces décisions à l'appui de la recommandation commune des parties :

- *Pigeon* c. *Daigneault*, 2003 CanLII 32934 (QC CA);
- *Chambre de la sécurité financière* c. *Kabeya*, 2020 QCCDCSF 27;
- *Chambre de la sécurité financière* c. *Derkson*, 2015 QCCDCSF 32;
- *Chambre de la sécurité financière* c. *Abadi*, 2020 QCCDCSF 24;
- *Chambre de la sécurité financière* c. *Bazelais*, 2022 QCCDCSF 5;
- *Chambre de la sécurité financière* c. *Dorval*, 2021 QCCDCSF 6;
- *Chambre de la sécurité financière* c. *Haché*, 2010 CanLII 99862 (QC CDCSF);
- *Chambre de la sécurité financière* c. *Latreille*, 2013 CanLII 43427 (QC CDCSF);
- *Chambre de la sécurité financière* c. *Legros*, 2020 QCCDCSF 52;
- *Chambre de la sécurité financière* c. *Mantha*, 2006 CanLII 59853 (QC CDCSF);
- *Chambre de la sécurité financière* c. *Simard*, 2018 QCCDCSF 44.

[17] En ce qui a trait à la question des déboursés, M. Boissel-Bissonnette a plaidé que, puisque le comité a suspendu conditionnellement les procédures en regard de l'article 16 de la *Loi sur la distribution de produits et services financiers* et qu'il a inscrit « l'intimé devant être sanctionné uniquement en vertu de l'article 15 du *Code de déontologie de la*

Chambre de la sécurité financière »[4], imposer l'entièreté des déboursés irait à l'encontre de la volonté du comité. Il s'appuie notamment sur la décision *Kabeya*, ci-haut citée.

[18] En réplique à ce dernier argument, le plaignant affirme que l'interprétation donnée de la décision *Kabeya* par l'autre partie est erronée et que M. Boissel-Bissonnette a été reconnu coupable sous les deux dispositions de rattachement, contrairement à l'intimé Kabeya qui a été acquitté sous l'une d'entre elles. Selon lui, le comité devrait donc condamner, M. Boissel-Bissonnette au paiement de l'ensemble des déboursés.

ANALYSE ET MOTIFS

[19] Lorsque des parties, représentées par des procureurs d'expérience, présentent des recommandations communes au comité, ce dernier ne doit pas s'interroger sur la sévérité ou la clémence de la sanction proposée. Il doit y donner suite, sauf s'il juge qu'elle est contraire à l'intérêt public ou qu'elle déconsidère l'administration de la justice.

[20] Pour les raisons ci-après, le comité donnera suite à la recommandation commune présentée par les parties et condamnera M. Boissel-Bissonnette au paiement d'une amende de 5 000 $.

[21] La gravité objective de l'infraction reprochée est indéniable. L'infraction commise est au cœur de l'exercice de la profession et porte atteinte à l'image de celle-ci.

[22] M. Boissel-Bissonnette n'aurait pas dû recommander la police d'assurance invalidité à émission simplifiée Humania à J.H., alors que l'arrêt de travail de celle-ci la rendait inéligible pour cette couverture. Il se devait de vérifier son dossier client avant la rencontre avec J.H. et incidemment avant la soumission de cette police à l'assureur.

[4] Préc., note 3, conclusion de la décision sur culpabilité.

[23] Le comité considère pertinents les facteurs énoncés par les parties, notamment l'expérience professionnelle de M. Boissel-Bissonnette (plus de dix ans), aucun préjudice n'a été subi par J.H. puisque les primes d'assurance lui ont été remboursées, l'antécédent disciplinaire de M. Boissel-Bissonnette.

[24] Considérant ce qui précède, après révision des éléments, tant objectifs que subjectifs, atténuants qu'aggravants qui lui ont été présentés, le comité est d'avis que l'imposition de la sanction recommandée par les parties constitue une sanction juste et appropriée, adaptée à l'infraction pour laquelle M. Boissel-Bissonnette a été trouvé coupable, ainsi que respectueuse des principes d'exemplarité et de dissuasion dont il ne peut faire abstraction.

[25] Le comité entérinera donc la représentation commune sur sanction des parties et imposera à M. Boissel-Bissonnette le paiement d'une amende de 5 000 $.

[26] En ce qui a trait au paiement des déboursés, la position des parties diffère. Pour les raisons ci-après exposées, le comité condamnera M. Boissel-Bissonnette au paiement complet de ceux-ci.

[27] M. Boissel-Bissonnette prétend qu'il doit être condamné au paiement de la moitié des déboursés, puisque le comité a prononcé la suspension conditionnelle des procédures quant à l'article 16 de la *Loi sur la distribution de produits et services financiers* et a ajouté qu'il devait être sanctionné uniquement en regard de l'article 15 du *Code de déontologie de la Chambre de la sécurité financière*. Il s'appuie notamment sur la décision *Kabeya*.

[28] Comme mentionné dans la décision *Kabeya*, « la condamnation aux déboursés se faisant habituellement en proportion du nombre de manquements pour lesquels un

intimé est trouvé coupable »[5]. Or, M. Boissel-Bissonnette n'a été acquitté d'aucune des dispositions de rattachement invoquées au soutien du chef d'infraction contenu à la plainte disciplinaire.

[29] Il a en effet été reconnu coupable d'avoir contrevenu autant à l'article 16 de la *Loi sur la distribution de produits et services financiers* qu'à l'article 15 du *Code de déontologie de la Chambre de la sécurité financière*, contrairement à l'intimé Kabeya qui avait été acquitté de l'une des dispositions de rattachement invoquée au soutien du chef d'infraction contenu à la plainte disciplinaire.

[30] La suspension conditionnelle ordonnée dans la décision sur culpabilité respecte les enseignements de la Cour suprême dans l'arrêt *Kienapple*[6], dont l'application a été maintes fois répétée par les tribunaux supérieurs, dont le Tribunal des professions[7].

[31] Qui plus est, sur la question des déboursés, le Tribunal des professions dans la décision *Guillot*[8], affirme ce qui suit :

> « [53] Vu qu'une suspension conditionnelle des procédures aurait dû être prononcée sur le chef prévu à l'article 2.04 du *Code de déontologie*, et non un acquittement, il n'est plus de motif justifiant de diviser les déboursés entre les parties, et l'intimé devra en conséquence assumer tous les déboursés, […] ».

[32] De cette façon, le comité ne voit aucune raison dans le présent cas justifiant l'imposition de seulement le paiement de la moitié des déboursés. Ainsi, il condamnera

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[5] *Chambre de la sécurité financière* c. *Kabeya*, 2020 QCCDCSF 27, par. 85.
[6] *Kienapple* c. *R.*, 1974 CanLII 14 (CSC), [1975] 1 RCS 729.
[7] *Kenny* c. *Dentistes (Corporation professionnelle des)*, [1993] D.D.C.P. 214 (T.P.); *Administrateurs agréés (Ordre professionnel des)* c. *L'Écuyer*, 2005 QCTP 38; *Lapointe* c. *Chen*, 2019 QCCA 1400; *Deschamps* c. *Gabriel*, 2012 QCCQ 7874; *Lessard* c. *Castiglia*, 2007 QCCQ 11359; *Bégin* c. *Comptables en management accrédités*, 2008 QCTP 195; *Psychologues (Ordre professionnel des)* c. *Vallières*, 2018 QCTP 121; *Courchesne* c. *Médecins (Ordre professionnel des)*, 2019 QCTP 53.
[8] *Ingénieurs (Ordre professionnel des)* c. *Guillot*, 2006 QCTP 112.

l'intimé au paiement de l'ensemble de ces frais, en conformité avec les dispositions de l'article 151 du *Code des professions*.

PAR CES MOTIFS, le comité de discipline :

CONDAMNE l'intimé au paiement d'une amende de 5 000 $ sous l'unique chef d'infraction contenu à la plainte disciplinaire;

CONDAMNE l'intimé au paiement des déboursés conformément aux dispositions de l'article 151 du *Code des professions* (RLRQ, c. C-26);

PERMET la notification de la présente décision à l'intimé par moyen technologique conformément à l'article 133 du *Code de procédure civile* (RLRQ, c. C-25.01), à savoir par courrier électronique.

(S) M^e^ George R. Hendy

M^e^ George R. Hendy
Président du comité de discipline

(S) Gaétan Tremblay

M. Gaétan Tremblay, Pl. Fin.
Membre du comité de discipline

(S) François Faucher

M. François Faucher, Pl. Fin
Membre du comité de discipline

M^e^ Marie-Christine Bourget
THERRIEN COUTURE JOLICOEUR
Procureurs de la partie plaignante

M^e^ Maurice Charbonneau
TRIVIUM AVOCATS INC.
Procureurs de la partie intimée

Date d'audience : 5 avril 2022

COPIE CONFORME À L'ORIGINAL SIGNÉ

COMITÉ DE DISCIPLINE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

C A N A D A
PROVINCE DE QUÉBEC

N° : CD00-1466

DATE : 26 juillet 2022

LE COMITÉ : M^e^ Marco Gaggino — Président
M. Robert Chamberland, A.V.A. — Membre
M. Trong Cuong Ha — Membre

SYNDIC DE LA CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Partie plaignante

c.

NILS LAVOIX, conseiller en sécurité financière (certificat numéro 227714)

Partie intimée

DÉCISION SUR SANCTION

CONFORMÉMENT À L'ARTICLE 142 DU *CODE DES PROFESSIONS*, LE COMITÉ A PRONONCÉ, LORS DE L'AUDIENCE, L'ORDONNANCE SUIVANTE :

- **Non-divulgation, non-diffusion et non-publication des noms et prénoms des consommateurs impliqués dans la plainte disciplinaire, ainsi que de toute information se trouvant dans la preuve qui permettrait de les identifier. Toutefois, il est entendu que la présente ordonnance ne s'applique pas aux échanges d'information prévus à la *Loi sur l'encadrement du secteur financier* et à la *Loi sur la distribution de produits et services financiers*.**

[1] Le Comité de discipline de la Chambre de la sécurité financière (le « Comité ») procède sur sanction suite à sa décision du 17 février 2022 reconnaissant M. Lavoix

coupable de l'unique chef d'infraction contenu à la plainte disciplinaire[1] portée contre lui.

[2] Dans cette décision, le Comité conclut que M. Lavoix n'a pas agi avec professionnalisme et compétence et a fait preuve de négligence en faisant émettre trois propositions d'assurance contenant des informations inexactes et sans avoir obtenu la signature et le consentement de la personne assurée[2].

[3] Lors de l'audience sur sanction, les parties ne présentent pas de preuve additionnelle, outre le témoignage de M. Lavoix. Celui-ci déclare comprendre la portée de la décision sur culpabilité et l'importance de prendre les moyens nécessaires afin d'agir en tout temps avec professionnalisme et compétence.

[4] Les parties formulent par ailleurs une recommandation commune sur la sanction devant être imposée à M. Lavoix, soit une amende de 2 000 $ en plus du paiement des déboursés; cette recommandation est le fruit de négociations entre les procureurs.

QUESTION EN LITIGE

[5] La question en litige est la suivante :

- Est-ce que la recommandation commune sur sanction déconsidère l'administration de la justice ou est contraire à l'intérêt public ?

ANALYSE

[6] Le Comité considère que la recommandation commune des parties ne déconsidère pas l'administration de la justice ni n'est contraire à l'intérêt public dans les circonstances.

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[1] En annexe de la présente décision.
[2] M. Lavoix a été reconnu coupable sous les articles 16 de la *Loi sur la distribution de produits financiers,* RLRQ, c. D-9.2 et 35 du *Code de déontologie de la Chambre de la sécurité financière,* RLRQ, c. D-9.2, r. 3. Un arrêt conditionnel des procédures a été prononcé en ce qui a trait à l'article 35 du *Code de déontologie de la Chambre de la sécurité financière.*

[7] La sanction disciplinaire ne vise pas à punir le professionnel, mais plutôt à assurer la protection du public. Ainsi, la sanction vise la dissuasion du professionnel de récidiver et l'exemplarité à l'égard des autres membres de la profession, tout en tenant compte du droit du professionnel visé d'exercer sa profession. La sanction doit être proportionnelle à la gravité du manquement et être individualisée, en ce qu'elle doit correspondre aux circonstances propres à la situation.

[8] Lorsqu'il y a des recommandations communes et que les parties sont représentées par des avocats d'expérience, le rôle du Comité consiste à déterminer si ces recommandations déconsidèrent l'administration de la justice ou sont contraires à l'intérêt public; il n'a pas à se questionner sur la sévérité ou la clémence de la sanction recommandée[3].

[9] Dans le présent cas, la sanction recommandée n'a pas pour effet de déconsidérer l'administration de la justice et ne va pas à l'encontre de l'intérêt public; le Comité considère que cette sanction est raisonnable, et ce, dans la perspective première de la protection du public.

[10] Par ailleurs, cette sanction se situe à l'intérieur des paramètres dégagés par la jurisprudence et tient compte de l'ensemble des facteurs objectifs et subjectifs propres au dossier, soit :

- L'infraction commise a une gravité objective certaine :
    - Le consentement de l'assuré et la justesse des informations contenues dans la documentation amenant à l'émission d'une police d'assurance sont des exigences fondamentales qui visent la

[3] *R.* c. *Anthony-Cook*, 2016 CSC 43 (CanLII), [2016] 2 RCS 204.

protection du public. Dans son rôle, le représentant doit veiller à ce que ces exigences soient correctement remplies; cette obligation est au cœur de la profession;

- M. Lavoix a peu d'expérience au moment des faits et est en début de carrière;
- Il n'a pas d'antécédents disciplinaires;
- Il a collaboré à l'enquête du syndic;
- Un seul consommateur est touché par les manquements de M. Lavoix et il n'en a retiré aucun bénéfice personnel;
- M. Lavoix déclare accepter entièrement la décision sur culpabilité et avoir modifié sa méthode de travail en conséquence;
- Bien que ses gestes constituent un manque de rigueur important, M. Lavoix a agi avec honnêteté.

[11] Le Comité est donc d'avis que la protection du public est préservée par l'imposition de la sanction recommandée par les parties, laquelle rejoint les critères de dissuasion et d'exemplarité.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

CONDAMNE l'intimé au paiement d'une amende de 2 000 $ sous l'unique chef de la plainte disciplinaire;

CONDAMNE l'intimé au paiement des déboursés conformément à l'article 151 du *Code des professions* (RLRQ, c. C-26);

PERMET la notification de la présente décision à l'intimé par moyen technologique conformément à l'article 133 du *Code de procédure civile* (RLRQ., c. C-25.01), soit par courrier électronique.

(S) Me Marco Gaggino

Me Marco Gaggino
Président du comité de discipline

(S) Robert Chamberland

M. Robert Chamberland, A.V.A.
Membre du comité de discipline

(S) Trong Cuong Ha

M. Trong Cuong Ha
Membre du comité de discipline

Me Nathalie Vuille
POULIOT PRÉVOST GALARNEAU, s.e.n.c.
Procureure de la partie plaignante

Me Patrick J. Delisle
DELISLE MATHIEU
Procureur de la partie intimée

Date d'audience : 8 juillet 2022

COPIE CONFORME À L'ORIGINAL SIGNÉ

ANNEXE

« À Québec, vers le 28 octobre 2019, l'intimé n'a pas agi avec professionnalisme et compétence en soumettant et en faisant émettre les propositions numéros HAC***, OAC*** et AEC*** lesquelles contenaient des informations incomplètes et inexactes et sans avoir obtenu le consentement de E.P., contrevenant ainsi aux articles 35 du *Code de déontologie de la Chambre de la sécurité financière* et 16 de la *Loi sur la distribution de produits et services financiers.* »

3.7.3.2 Comité de discipline de la ChAD

COMITÉ DE DISCIPLINE

CHAMBRE DE L'ASSURANCE DE DOMMAGES

CANADA
PROVINCE DE QUÉBEC

N° : 2021-11-05(C)

DATE : 19 juillet 2022

LE COMITÉ :	M^e^ Daniel M. Fabien, avocat	Vice-président
	M. Philippe Jones, courtier en assurance de dommages	Membre
	M. Antoine El-Hage, courtier en assurance de dommages	Membre

---

M^E^ MARIE-JOSÉE BELHUMEUR, ès qualités de syndic de la Chambre de l'assurance de dommages

Partie plaignante

c.

MAKAN SALIMI, courtier en assurance de dommages (4A)

Partie intimée

DÉCISION SUR CULPABILITÉ ET SANCTION

ORDONNANCE DE NON-DIVULGATION, NON-PUBLICATION ET NON-DIFFUSION DES NOMS DES ASSURÉS VISÉS PAR LES PLAINTES ET DES RENSEIGNEMENTS PERMETTANT DE LES IDENTIFIER, EN VERTU DE L'ARTICLE 142 DU *CODE DES PROFESSIONS*.

I. L'audition disciplinaire

[1] Le 16 mai 2022, le Comité de discipline de la Chambre de l'assurance de dommages (le « Comité ») procède par visioconférence Zoom afin de disposer de la plainte portée contre l'intimé dans le présent dossier.

[2] L'intimé est présent lors de l'instruction et il est représenté par M^e^ Cynthia Brunet.

[3] M^e^ Valérie Déziel représente le syndic M^e^ Marie-Josée Belhumeur.

[4] Les procureures des parties déposent une entente intervenue le 16 mai 2022 qui dispose d'une plainte modifiée par l'enregistrement d'un plaidoyer de culpabilité et une recommandation conjointe sur sanction pour considération par le Comité.

II. Le plaidoyer de culpabilité de l'intimé

[5] Questionné par le vice-président du Comité sur son plaidoyer de culpabilité, l'intimé confirme qu'il plaide coupable aux sept chefs d'accusation de la plainte modifiée.

[6] Séance tenante, le Comité prend acte du plaidoyer de culpabilité de l'intimé et le déclare coupable des infractions reprochées.

III. Les déclarations de culpabilité

[7] La plainte modifiée fait les reproches suivants à l'intimé :

1. Les ou vers les 4 et 5 mai 2020, relativement aux contrats d'assurance nos F11014, D11014 et R11014 souscrits auprès de l'intermédiaire April Canada inc., a fait défaut de respecter le secret des renseignements personnels ou de nature confidentielle obtenus, en divulguant à H.A., des informations sur l'assurée G.K. inc., ayant omis de vérifier son identité, en contravention avec les articles 23 et 24 du *Code de déontologie des représentants en assurance de dommages*;

2. Entre les ou vers les 4 et 6 mai 2020, relativement aux contrats d'assurance nos F11014, D11014 et R11014 souscrits par l'intermédiaire de April Canada inc., a exercé ses activités de manière négligente et/ou n'a pas agi en conseiller consciencieux, en omettant d'expliquer lesdits contrats d'assurance au nouvel actionnaire de l'assurée G.K. inc., en contravention avec les articles 37(1) et 37(6) du *Code de déontologie des représentants en assurance de dommages*;

3. Entre les ou vers les 4 et 6 mai 2020, relativement aux contrats d'assurance nos F11014, D11014 et R11014 souscrits auprès de l'intermédiaire April Canada inc., a omis d'informer l'assureur du changement d'actionnaire de l'assurée G.K. inc., en contravention les articles 29 et 37(1) du *Code de déontologie des représentants en assurance de dommages*;

4. Le ou vers le 11 mai 2020, a exercé ses activités de manière négligente en transmettant à l'assurée G.K. inc. des informations inexactes et non vérifiées quant à la prise d'effet de la résiliation des contrats d'assurance nos F11014, D11014 et R11014 souscrits auprès de l'intermédiaire April Canada inc., en

contravention avec les articles 9, 15, 37(1) et 37(7) du *Code de déontologie des représentants en assurance de dommages;*

5. Entre les ou vers les 6 mai et 4 juillet 2020, a exercé ses activités de manière négligente et/ou a n'a pas agi en conseiller consciencieux, en omettant de transmettre à Primaco les avenants de résiliation des contrats d'assurance nos F11014, D11014 et R11014 souscrits auprès de l'intermédiaire April Canada inc., en contravention avec les articles 37(1) et 37 (6) du *Code de déontologie des représentants en assurance de dommages*;

6. Entre les ou vers les 13 juillet et 18 novembre 2020, a exercé ses activités de manière négligente et/ou a manqué de transparence, en omettant de remettre à l'assurée G.K. inc. les crédits en lien avec la résiliation des contrats d'assurance nos F11014, D11014 et R11014 souscrits auprès de l'intermédiaire April Canada inc., en contravention avec les articles 25, 37(1) et 37(4) du *Code de déontologie des représentants en assurance de dommages*;

7. Entre les ou vers les 15 février et 20 novembre 2020, a exercé ses activités de manière négligente quant à sa tenue de dossier de l'assurée G.K. inc., notamment en omettant de noter adéquatement la rencontre tenue avec son représentant, sa teneur, les conseils et explications donnés, les instructions reçues de l'assurée et les décisions prises, en contravention avec les articles 85 à 88 de la Loi sur la distribution de produits et services financiers, 9 et 37(1) du *Code de déontologie des représentants en assurance de dommages* et 12 et 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome.*

[8] Sur le chef 1, l'intimé est déclaré coupable d'avoir enfreint l'article 23 du *Code de déontologie des représentants en assurance de dommages*, qui stipule :

> Art. 23. Le représentant en assurance de dommages doit respecter le secret de tous renseignements personnels qu'il obtient sur un client et les utiliser aux fins pour lesquelles il les obtient, à moins qu'une disposition d'une loi ou d'une ordonnance d'un tribunal compétent ne le relève de cette obligation.

[9] Quant au chef 2, l'intimé est déclaré coupable d'avoir contrevenu à l'article 37(6º) du *Code de déontologie des représentants en assurance de dommages,* soit :

> Art. 37. Constitue un manquement à la déontologie, le fait pour le représentant en assurance de dommages d'agir à l'encontre de l'honneur et de la dignité de la profession, notamment:
>
> 6° de faire défaut d'agir en conseiller consciencieux en omettant d'éclairer les clients sur leurs droits et obligations et en ne leur donnant pas tous les renseignements nécessaires ou utiles;

[10] Sur le chef 3, l'intimé est déclaré coupable d'avoir enfreint l'article 29 du *Code de déontologie des représentants en assurance de dommages,* soit :

> Art. 29. Le représentant en assurance de dommages doit donner à l'assureur les renseignements qu'il est d'usage de lui fournir.

[11] Relativement au chef 4, l'intimé est déclaré coupable d'avoir contrevenu à l'article 15 du *Code de déontologie des représentants en assurance de dommages* :

> Art. 15. Nul représentant ne peut faire, par quelque moyen que ce soit, des représentations fausses, trompeuses ou susceptibles d'induire en erreur.

[12] Quant au chef 5, l'intimé est déclaré coupable d'avoir contrevenu à l'article 37(1°) du *Code de déontologie des représentants en assurance de dommages,* soit :

> Art. 37. Constitue un manquement à la déontologie, le fait pour le représentant en assurance de dommages d'agir à l'encontre de l'honneur et de la dignité de la profession, notamment:
>
> 1° d'exercer ses activités de façon malhonnête ou négligente;

[13] Sur le chef 6, l'intimé est déclaré coupable d'avoir enfreint l'article 25 du *Code de déontologie des représentants en assurance de dommages,* soit :

> Art. 25. Le représentant en assurance de dommages doit exécuter avec transparence le mandat qu'il a accepté.

[14] Et finalement, sur le chef 7, l'intimé est déclaré coupable d'avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome*, soit :

> Art. 21. Les dossiers clients qu'un cabinet, un représentant autonome ou une société autonome inscrit dans la discipline de l'assurance de dommages doit tenir sur chacun de ses clients dans l'exercice de ses activités doivent contenir les mentions suivantes:
>
> 1° son nom;
>
> 2° le montant, l'objet et la nature de la couverture d'assurance;
>
> 3° le numéro de police et les dates de l'émission du contrat et de la signature de la proposition, le cas échéant;
>
> 4° le mode de paiement et la date de paiement du contrat d'assurance;
>
> 5° la liste d'évaluation des biens de l'assuré transmise par celui-ci, le cas échéant.

> Tout autre renseignement ou document découlant des produits vendus ou des services rendus recueillis auprès du client doit également y être inscrit ou déposé.

[15] Un arrêt des procédures est ordonné sur les autres dispositions réglementaires invoquées au soutien des chefs d'accusation.

IV. Les facteurs atténuants et aggravants

[16] Dans l'établissement de la recommandation conjointe, les parties ont pris en considération les facteurs atténuants suivants :

- le plaidoyer de culpabilité de l'intimé;
- l'absence d'antécédent disciplinaire;
- l'absence de mauvaise foi;
- le fait que l'intimé n'a retiré aucun bénéfice des gestes posés;
- le caractère isolé des infractions (une seule cliente visée);
- le bonne collaboration de l'intimé avec le syndic et le processus disciplinaire.

[17] Sans prendre en considération le principe de la globalité de la sanction, les parties sont d'avis que les sanctions suivantes sont appropriées dans les circonstances :

- Chef 1 : une amende de 3 000 $;
- Chef 2 : une amende de 2 500 $;
- Chef 3 : une amende de 2 500 $;
- Chef 4 : une amende de 2 000 $;
- Chef 5 : une amende de 2 000 $;
- Chef 6 : une amende de 2 000 $;
- Chef 7 : une amende de 2 000 $.

[18] Soit une amende totale de 16 000 $ qui est considérée comme accablante par les parties.

[19] Par conséquent, en tenant compte du principe de la globalité, les procureures nous suggèrent d'imposer la sanction globale suivante à l'intimé :

- Chef 1 : une amende de 2 000$;
- Chef 2 : une réprimande;
- Chef 3 : une réprimande;
- Chef 4 : une amende de 2 000 $;
- Chef 5 : une amende de 2 000 $;
- Chef 6 : une réprimande;

- Chef 7 : une amende de 2 000 $.

[20] Soit une amende globale de 8 000 $.

[21] Les procureures des parties nous soumettent que cette recommandation conjointe au Comité est juste, raisonnable et individualisée au cas de l'intimé.

[22] Selon les procureures, la sanction tient également compte de l'autorité des précédents, de la parité des sanctions et de l'exemplarité positive. Bref, elle remplit chacun des objectifs de la sanction en droit disciplinaire.

[23] Les procureures des parties nous soumettent également les décisions suivantes afin d'appuyer la recommandation conjointe, à savoir :

- *ChAD* c. *Dupuis*, 2021 CanLII, 140384, 29 novembre 2021 (QC CDCHAD);
- *ChAD* c. *Abdelouaheb Chouiter*, 2018, CanLII, 55203, 29 mai 2021 (QC CDCHAD);
- *ChAD* c. *Gingras*, 2018, CanLII, 110961, 3 octobre 2018 (QC CDCHAD);
- *ChAD* c. *Girard*, 2018, CanLII, 2136, 9 janvier 2018 (QC CDCHAD);
- *ChAD* c. *Dion*, 2017, CanLII, 78644, 6 novembre 2017 (QC CDCHAD);
- *ChAD* c. *Tran-Ngoc*, 2017, CanLII, 78645, 9 novembre 2017 (QC CDCHAD);
- *ChAD* c. *Bouhayat*, 2022, CanLII, 6231, 13 janvier 2022 (QC CDCHAD);
- *ChAD* c. *Bourassa*, 2021, CanLII, 20817, 12 mars 2021 (QC CDCHAD);
- *ChAD* c. *Ciambrone*, 2006, CanLII, 53726, 30 janvier 2006 (QC CDCHAD);
- *ChAD* c. *Belzile*, 2014, CanLII, 30258, 27 mai 2014 (QC CDCHAD);
- *ChAD* c. *Cloutier*, 2002, CanLII, 53306, 18 janvier 2002 (QC CDCHAD);
- *ChAD* c. *Lacelle*, 2012, CanLII, 64436, 27 août 2012 (QC CDCHAD);
- *ChAD* c. *Sultanian*, 2020, CanLII, 141359, 19 mars 2021 (QC CDCHAD).

V. Analyse et décision

A) Les facteurs objectifs et subjectifs

[24] Quant aux facteurs atténuants et aggravants, nous partageons entièrement l'exposé de la partie plaignante à ce sujet.

[25] Récemment, la Cour suprême a revisité le principe de la proportionnalité de la peine l'affaire *R*. c. *Bissonnette*[1].

[26] Il convient ici de citer certains passages clés importants de cet arrêt important :

[1] 2022 CSC 23 (CanLII);

> [50] Cependant, la détermination de la peine doit en toutes circonstances être guidée par le principe cardinal de la proportionnalité. La peine doit être suffisamment sévère pour dénoncer l'infraction, sans excéder « ce qui est juste et approprié compte tenu de la culpabilité morale du délinquant et de la gravité de l'infraction » (*R.* c. *Nasogaluak*, 2010 CSC 6, [2010] 1 R.C.S. 206, par. 42; voir aussi *R.* c. *Ipeelee*, 2012 CSC 13, [2012] 1 R.C.S. 433, par. 37). La proportionnalité des peines est considérée comme un facteur essentiel au maintien de la confiance du public dans l'équité et la rationalité du système de justice pénal et criminel. L'application de ce principe permet d'assurer au public que le contrevenant mérite la punition qui lui a été infligée (*Renvoi relatif à la Motor Vehicle Act* (C.-B.), 1985 CanLII 81 (CSC), [1985] 2 R.C.S. 486, p. 533, la juge Wilson, motifs concordants).
>
> [51] Ainsi, « on ne peut infliger à une personne une peine totalement disproportionnée à la seule fin de dissuader ses concitoyens de désobéir à la loi » (*Nur*, par. 45). De même, le juge Vauclair affirme avec justesse que « la recherche de l'exemplarité au détriment des éléments de preuve qui démontrent le mérite des objectifs de réhabilitation est incompatible avec le principe d'individualisation » (*Lacelle Belec* c. *R.*, 2019 QCCA 711, par. 30 (CanLII), citant *R.* c. *Paré*, 2011 QCCA 2047, par. 48 (CanLII), le juge Doyon). La proportionnalité joue un rôle restrictif et, en ce sens, elle est garante d'une peine qui est individualisée, juste et appropriée.
>
> [52] Le principe de la proportionnalité est si fondamental qu'il possède une dimension constitutionnelle consacrée à l'art. 12 de la *Charte*, lequel interdit l'infliction d'une peine exagérément disproportionnée au point de ne pas être compatible avec la dignité humaine (*Nasogaluak*, par. 41; *Ipeelee*, par. 36). En tant que principe de détermination de la peine, le principe de proportionnalité ne bénéficie toutefois d'aucune protection constitutionnelle en tant que tel, n'étant pas reconnu comme un principe de justice fondamentale visé à l'art. 7 de la Charte (*R.* c. *Malmo-Levine*, 2003 CSC 74, [2003] 3 R.C.S. 571, par. 160; *R.* c. *Safarzadeh-Markhali*, 2016 CSC 14, [2016] 1 R.C.S. 180, par. 71).
>
> (nos soulignements)

[27] Ainsi donc, pour être individualisée, juste et appropriée, la sanction doit être proportionnelle à la gravité des infractions et au degré de responsabilité du professionnel.

B) La recommandation conjointe

[28] Dès 2014, le Tribunal des professions souligne l'importance et l'utilité des suggestions communes dans l'affaire *Ungureanu*[2] :

> [21] Les ententes entre les parties constituent en effet un rouage utile et parfois nécessaire à une saine administration de la justice. Lors de toute négociation, chaque partie fait des concessions dans le but d'en arriver à un règlement qui convienne aux

[2] *Infirmières et infirmiers auxiliaires (Ordre professionnel de)* c. *Ungureanu*, 2014 QCTP 20 (CanLII);

> deux. Elles se justifient par la réalisation d'un objectif final. Lorsque deux parties formulent une suggestion commune, elles doivent avoir une expectative raisonnable que cette dernière sera respectée. Pour cette raison, une suggestion commune formulée par deux avocats d'expérience devrait être respectée à moins qu'elle ne soit déraisonnable, inadéquate ou contraire à l'intérêt public ou de nature à déconsidérer l'administration de la justice.
>
> (nos soulignements)

[29] Il en résulte que lorsque des sanctions sont suggérées conjointement par des procureurs d'expérience, le Comité n'a pas à s'interroger sur la sévérité ou la clémence de celles-ci. Il doit y donner suite, sauf s'il les considère contraires à l'intérêt public ou si elles sont de nature à déconsidérer l'administration de la justice, et ce, tel que la Cour suprême le décide dans l'arrêt *Anthony-Cook*[3].

[30] Or, en l'espèce, nous sommes d'avis que la sanction suggérée par les procureures est une sanction qui *colle aux faits* du présent dossier.

[31] Voilà pourquoi le Comité a accepté la recommandation conjointe des parties lors de l'audition sur culpabilité et sanction. Il y a lieu maintenant de l'entériner.

[32] Finalement, tous les déboursés et frais de l'instance seront à la charge de l'intimé et ce dernier disposera d'un délai de 12 mois pour acquitter les amendes ainsi que les déboursés et les frais.

PAR CES MOTIFS, LE COMITÉ DE DISCIPLINE :

PREND ACTE du plaidoyer de culpabilité de l'intimé sur l'ensemble les deux chefs de la plainte 2021-11-05(C);

DÉCLARE l'intimé coupable du chef nº 1 pour avoir contrevenu à l'article 23 du *Code de déontologie des représentants en assurance de dommages*;

DÉCLARE l'intimé coupable du chef nº 2 pour avoir contrevenu à l'article 37(6º) du *Code de déontologie des représentants en assurance de dommages*;

DÉCLARE l'intimé coupable du chef nº 3 pour avoir contrevenu à l'article 29 du *Code de déontologie des représentants en assurance de dommages*;

DÉCLARE l'intimé coupable du chef nº 4 pour avoir contrevenu à l'article 15 du *Code de déontologie des représentants en assurance de dommages*;

[3] *R.* c. *Anthony-Cook* 2016 CSC 43 (CanLII);

DÉCLARE l'intimé coupable du chef nº 5 pour avoir contrevenu à l'article 37(1º) du *Code de déontologie des représentants en assurance de dommages*;

DÉCLARE l'intimé coupable du chef nº 6 pour avoir contrevenu à l'article 25 du *Code de déontologie des représentants en assurance de dommages*;

DÉCLARE l'intimé coupable du chef nº 7 pour avoir contrevenu à l'article 21 du *Règlement sur le cabinet, le représentant autonome et la société autonome;*

PRONONCE un arrêt conditionnel des procédures à l'égard de toutes les autres dispositions réglementaires alléguées au soutien des chefs susdits;

CONSIDÉRANT LE PRINCIPE DE LA GLOBALITÉ, IMPOSE LES SANCTIONS SUIVANTES À L'INTIMÉ :

Chef nº 1 : une amende de 2 000 $;

Chef nº 2 : une réprimande;

Chef nº 3 : une réprimande;

Chef nº 4 : une amende de 2 000 $;

Chef nº 5 : une amende de 2 000 $;

Chef nº 6 : une réprimande;

Chef nº 7 : une amende de 2 000 $;

CONDAMNE l'intimé au paiement de tous les déboursés et frais de l'instance;

ACCORDE à l'intimé un délai de 12 mois pour acquitter les amendes, déboursés et frais de l'instance, le tout en 12 versements mensuels, égaux et consécutifs, délai qui sera calculé uniquement à compter du 31e jour suivant la signification de la présente décision;

DÉCLARE que si l'intimé est en défaut de payer à échéance l'un ou l'autre des versements susdits, il perdra le bénéfice du terme et toute somme alors impayée deviendra immédiatement due et exigible.

Me Daniel M. Fabien, avocat
Vice-président du Comité de discipline

M. Philippe Jones, courtier en assurance de dommages
Membre du Comité de discipline

M. Antoine El-Hage, courtier en assurance de dommages
Membre du Comité de discipline

Me Valérie Déziel
Procureure de la partie plaignante

Me Cynthia Brunet
Procureure de la partie intimée

Date d'audience : Le 16 mai 2022 par visioconférence

3.7.3.3 OCRCVM

Aucune information.

3.7.3.4 Bourse de Montréal Inc.

Aucune information.