

DISCIPLINARY COMMITTEE

CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

CANADA
PROVINCE OF QUÉBEC

N°: CD00-1438 and CD00-1474

DATE: August 19, 2022

THE COMMITTEE: M^e George R. Hendy, President
Mr. Jacques Denis, A.V.A. Pl. Fin., Member
Mr. Sylvain Jutras, A.V.C. Pl. Fin., Member

SYNDIC OF THE CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

Plaintiff

vs.

JOANNE IACONO, (certificate number 116784, BDNI 1625921)

Respondent

DECISION REGARDING SANCTIONS

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

- **The non-disclosure, non-publication and non-dissemination of the personal information of the consumer involved in the disciplinary complaints herein, as well as any information which might enable his/her identification. Notwithstanding the above, it is understood that the present order does not apply to exchanges of information provided for under the *Act respecting the regulation of the financial sector* and the *Act respecting the distribution of financial products and services*.**

[1] On December 6, 2021, the Committee declared Respondent guilty pursuant to two

disciplinary complaints, the texts of which are reproduced in Annexes 1 and 2 below, which may be summarized as follows:

- a) disciplinary complaint submitted by the Syndic against the Respondent on September 24, 2020, accusing the Respondent of having placed herself in a conflict of interest when she negotiated and offered to purchase the residence of her client, the Committee having decided to sanction Respondent pursuant to Article 18 of the *Code of Ethics of the Chambre de la sécurité financière* (the "**Code of Ethics**");
- b) disciplinary complaint submitted by the Syndic against the Respondent on April 9, 2021, accusing the Respondent of having submitted to a bank a lease on her own residence that was knowingly false and of not having promptly disclosed to the bank an Addendum to the offer to purchase which significantly reduced the purchase price of her client's house, the Committee having decided to sanction Respondent pursuant to Article 35 of the Code of Ethics.

OVERVIEW

[2] Plaintiff's attorney informed the Committee that the sanctions sought by his client were as follows:

- a) in case CD00-1438 (conflict of interest), a lifetime radiation and a fine of \$5,000;
- b) in case CD00-1474 (submitting a fictitious lease and making a tardy disclosure to the bank), a radiation of five years.

[3] The salient factual findings of the Committee in its judgment regarding guilt herein may be summarized as follows:

- a) a personal and professional relationship (spanning approximately 20 years) existed between the Respondent and M.B., for whom Respondent was the registered financial representative and financial planner, said client having

relied on Respondent for advice and guidance in her financial affairs, including the possible sale of her home;

- b) on or about January 22, 2019, Respondent persuaded M.B. to accept an offer to purchase her home for the declared price of \$900,000, later reduced by \$250,000 pursuant to an Addendum, with the apparent intention of renovating the home (with the help of her son) and reselling it at a profit;
- c) Respondent submitted a fictitious lease regarding her personal residence to the bank from which she sought mortgage financing, in order to enhance her income profile and obtain the desired financing, and only advised the bank of the existence of above-mentioned Addendum reducing the price about one month after it was signed;
- d) when M.B. refused to proceed with the sale agreement she had concluded with Respondent, the latter filed proceedings for passage of title in the Québec Superior Court, but the Court dismissed Respondent's action, after concluding that the promise to purchase M.B.'s home and the Addendum reducing the price by \$250,000, were null and void since they were "...prepared and signed as part of a stratagem of mortgage fraud on the Bank" and that Respondent's proceedings against M.B. were abusive and "...instituted by Ms. Iacono at least in part to harm" M.B.
- e) on April 2, 2019, Respondent's employment was terminated by Investors Group for allegedly using her influence over M.B. to purchase her home and later sign the Addendum reducing the price by \$250,000;
- f) Respondent persisted, during the hearing regarding guilt as well as at the sanctions hearing, in maintaining that she had not placed herself in a conflict of interest, but was simply trying to help her client resolve her financial difficulties, that the adjusted price of \$650,000 represented fair market value in January 2019 (\$10,000 more than the offer M.B. had received from a third party) and that the fictitious lease was a common practice in the industry.

THE EVIDENCE OF THE PARTIES

[4] Plaintiff called M.B. to testify about her relationship with Respondent and the financial and emotional difficulties caused to her by Respondent's impugned conduct herein.

[5] The evidence revealed that, after the dismissal of Respondent's ill-fated legal proceedings, M.B. succeeded in selling her home for its then market value (approximately \$950,000).

[6] She claimed that Respondent's actions caused her severe emotional stress, high blood pressure, that she doesn't trust anyone anymore and that she even wanted to end her life.

[7] M.B. paid her lawyer between \$50,000 and \$60,000, almost half of which was compensated by the costs award in the above-mentioned judgment of the Superior Court.

[8] Respondent's testimony (supported by her written submission filed at the sanctions hearing) was largely an attempt by her to re-litigate the merits of the judgment regarding guilt herein and reiterate her innocence of the charges laid against her, the Committee having informed her that the appropriate forum for such a discussion was by way of appeal after the judgment on sanctions herein.

REPRESENTATIONS OF THE PARTIES

[9] In his submissions regarding sanctions, Plaintiff's attorney invoked the following factors:

- a) the objective gravity of Respondent's infractions, which undermined public trust and the image of the profession, given the fundamental nature of the ethical rules breached by her, which go to the heart of the profession;
- b) Respondent's misconduct was carried out during a period of almost two years, starting from the first discussions regarding the sale of M.B.'s home until the judgment of the Superior Court;

- c) Respondent's conduct was carried out with premeditation, persistence and was motivated by a desire to make a profit from the resale of her client's home;
- d) the emotional stress suffered by M.B. and the legal fees for which she was not compensated;
- e) the experience of Respondent (at least 23 years) at the time of the infractions;
- f) Respondent's persistence in maintaining her blamelessness and her total lack of remorse, which increases the risk of recidivism.

[10] In support of his recommended sanctions, Plaintiff's attorney cited the following jurisprudence:

- a) *C.S.F. vs. Exilus*, 2012 CanLII 97197 (QC CDCSF)
- b) *C.S.F. vs. Lefebvre*, 2021 QCCDCSF 63
- c) *C.S.F. vs. Chaoulski*, 2011 CanLII 99536 (QC CDCSF)
- d) *C.S.F. vs. Pelletier*, 2009 CanLII 70172 (QC CDCSF)
- e) *C.S.F. vs. Szabo*, 2016 QCCDCSF 31
- f) *C.S.F. vs. Prieur*, 2017 QCCDCSF 54
- g) *C.S.F. vs. Boissonneault*, 2013 CanLII 43412 (QC CDCSF)
- h) *C.S.F. vs. Bélanger*, 2016 CanLII 36656 (QC CDCSF)

[11] As stated above, Respondent's position was that she should be acquitted of all charges and no sanctions imposed.

ANALYSIS

[12] Articles 18 and 35 of the Code of Ethics read as follows:

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

35. A representative must not practise dishonestly or negligently.

[13] There is no question that the infractions committed by Respondent constitute a clear and serious breach of the ethical obligations enunciated in Articles 18 and 35 of the Code of Ethics.

[14] The gravity of her misconduct is aggravated by her premeditated, deliberate and persistent desire to acquire her client's property in order to make a profit, and her refusal to realize and confirm the errors of her ways.

[15] Obviously, the sanction to be imposed must reflect the seriousness of her misconduct and serve as an example to the public and the industry that such conduct cannot be tolerated.

[16] Of all the cases cited by Plaintiff in support of its recommendation of a lifetime striking off the roll for conflict of interest, only one (Pelletier) imposed a lifetime suspension, based on the joint recommendation of the parties. The other cases imposed periods of striking off the roll ranging between two and five years, even where the client was considered to be vulnerable.

[17] In view of the foregoing, the Committee is of the view that a lifetime radiation (striking off the roll) is excessive, considering the Respondent's lack of a prior disciplinary record, her right to practise her profession, the principle of graduation of sanctions, the fact that Respondent's offer was \$10,000 more than the only other offer which M.B. had received and the fact that M.B. ultimately sold her property at market value in 2021 for a price substantially higher than that offered by Respondent in 2019.

[18] Accordingly, the Committee considers that the following sanctions would be more appropriate in the particular circumstances of this case and would serve as an exemplary warning that such conduct is unacceptable, while respecting the need to protect the public from such conduct:

- a) for case CD00-1438, a fine of \$5,000 and a striking off the roll of five years;

- b) for case CD00-1474, a striking off the roll of 5 years, to be served concurrently with the above-mentioned radiation.

FOR THESE REASONS, the Disciplinary Committee:

CONDEMNS Respondent to pay a fine of \$5,000, as regards case CD00-1438;

ORDERS Respondent's striking off the roll for a period of five years as regards case CD00-1438, and for a period of five years as regards case CD00-1474, said sanctions to be served concurrently;

ORDERS the Secretary of the Committee to publish, in conformity with Article 156 of the *Professional Code* and at the expense of the Respondent, a notice of the present decision in a newspaper having general circulation in the place where the Respondent has her professional domicile and in any other place where Respondent has practised or could practise;

CONDEMNS Respondent to pay the costs pursuant to Article 151 of the *Professional Code*;

PERMITS the notification of the present decision to the Respondent by technological means, in accordance with section 133 of the *Code of Civil Procedure*, that is, by electronic mail.

(S) M^e George R. Hendy

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

(S) Jacques Denis

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

(S) Sylvain Jutras

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

M^e Claude Leduc
M^e Éric-Alexandre Guimond
ML AVOCATS, s.e.n.c.r.l.
Legal counsel for the Plaintiff

Ms. Joanne Iacono, Respondent
Self-represented

Hearing date: March 9th, 2022

TRUE COPY OF THE ORIGINAL SIGNED

ANNEX 1**COMPLAINT CD00-1438**

1. Dans la région de Montréal, entre le 24 octobre 2018 et le 1^{er} avril 2019, l'intimée n'a pas sauvegardé son indépendance et s'est placée en situation de conflit d'intérêts en négociant et en offrant d'acheter la résidence de sa cliente M.B., contrevenant ainsi aux articles 16 de la *Loi sur la distribution de produits et services financiers*, 18 du *Code de déontologie de la Chambre de la sécurité financière* et 14 du *Règlement sur la déontologie dans les disciplines de valeurs mobilières* ;

ANNEX 2**COMPLAINT CD00-1474**

1. Dans la région de Montréal, entre le 22 janvier 2019 et le 1^{er} avril 2019, alors qu'elle négociait et offrait d'acheter la résidence de sa cliente, M.B., n'a pas fait preuve d'intégrité dans l'exercice de ses fonctions, notamment:
 - (a) En soumettant à l'institution financière auprès de qui elle cherchait à contracter un prêt, un bail de logement sur sa propre résidence, qu'elle savait fictif;
 - (b) En divulguant tardivement auprès de cette institution financière, l'existence d'un addendum à l'offre d'achat ayant pour objet une diminution significative du prix d'achat de la résidence de M.B.;

contrevenant ainsi aux articles 6, 11 et 35 du *Code de déontologie de la Chambre de la sécurité financière*.