

A FIRM MANAGER WHO DOESN'T FULFIL HIS OBLIGATIONS

The consequences can be costly

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This article is based on actual cases that were brought before the syndic. We hope it will help you to reflect on the quality of your professional practice, specifically with respect to the ethical obligations that enable you to better protect the public.

The Complaint

A firm blows the whistle on its manager. Furthermore, after this manager leaves the firm, our investigation reveals that he had committed a number of breaches of negligence, in particular that of leaving business lines clients uninsured. The whistleblowing leads to the filing of a formal complaint; the disciplinary process is currently underway.

During the course of the investigation, we also noted a number of irregularities within the complainant-firm itself, and this leads us to open an ethics investigation of the broker-owner.

This is the file I would like to discuss with you.

The Ethics Investigation

The owner, who was also the president of the complainant-firm, was an experienced damage insurance representative. Although duly certified, he had little involvement with the day to day services provided to the firm's damage insurance clients. "Module directors" took care of daily operations and clients were assigned to a module by alphabetical order. This structure is widely used.

Our investigation revealed that for three years, one client-module had been serviced by a non-certified employee who was not grandfathered under section 547 of the *Act respecting the distribution of financial products and services* (the Act).

We also noted that during the "high season" – the fall and the spring – two representatives helped the firm out with its business lines insurance module. However, their certificates were either not in force or did not permit them to practice.

And finally, apart from the owner, only one other employee in charge of a module actually held a damage insurance certificate. In fact, without even realizing it, in February and March, while the owner was on his regular vacation, this employee was the firm's only duly certified damage insurance representative and thus the only person responsible for its business activities since the owner had failed to renew his certificate, which had expired while he was on vacation.

Legal Rationale for Our Investigation

Pursuant to section 12 of the Act, an individual must hold a certificate in order to act as a damage insurance representative. The only exemption to this rule concerns employees covered by section 547 of the Act, as long as these employees report to a certified employee who is ethically responsible for their acts.

Furthermore, pursuant to sections 85 and 86 of the Act as well as section 2 of the *Code of ethics of damage insurance representatives*, executive officers must oversee the conduct of their employees, whether or not they are certified. For their part, employees must comply with the Act and its regulations.

Finally, section 37(12) of the *Code of ethics of damage insurance representatives* prohibits anyone from carrying on his activities with persons who are not authorized to do so.

Code of ethics of damage insurance representatives

Section 37

The fact that a damage insurance representative acts contrary to the honour and dignity of the profession constitutes a breach of the Code of Ethics, including:

(12) carrying on activities with persons not authorized to carry on such activities by this Act or the regulations thereunder, or using their services to do so.

The Formal Complaint against the Representative in Charge of the Firm

I went before the discipline committee to file a formal complaint against the owner of the complainant-firm. The charge concerned having allowed non-authorized staff to carry on activities with clients that required certification and having done so for extended periods of time.

Between the time at which the formal complaint was filed and the hearing before the discipline committee, the owner sold his firm and confirmed that

he did not intend to continue practicing. Although he had left the industry, he pled guilty to the four charges included in my complaint and paid the related fines.

Criminal Complaint for Illegally Practicing as a Representative

Furthermore, the *Autorité des marchés financiers* (the Authority) filed a criminal complaint against the employee who was neither certified nor grandfathered under section 547 for having illegally served the firm's clients for three years. She was found guilty and the owner of the firm paid her fines.

Administrative Decision of the Authority

Moreover, since the Authority has the power over firm, it fined the firm for having breached section 86 of the Act, which obliges a firm to ensure that its executive officers and employees act in compliance with the Act and its regulations. And finally, the Authority cancelled the firm's registration.

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A firm's executive officers are legally responsible for their employees' acts in the workplace. It is therefore up to the firm and its executive officers to institute supervisory measures to ensure that both certified and non-certified employees comply with the legislation and provide quality services.

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