

GENERAL LEGAL COUNCIL	
DATE	June 18, 2013
TIME	12:00pm
PER	[Signature]

**DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL**

COMPLAINT NO. 21/2012

BETWEEN	TEESA NORMAN	COMPLAINANT
AND	ARLENE BECKFORD	RESPONDENT

PANEL

Miss. Beryl Ennis - Chairman
Mrs. Debra McDonald
Mr. Peter Champagnie

HEARING DATES:

June 15th, 2013
July 27th, 2013
August 2nd, 2013

APPEARANCES

Attorney in person (27th July 2013)

Messrs. Leonard Green & Roger Davis for the Attorney (August 2nd, 2013)

The Complaint

In this matter, Tessa Norman by way of a complaint to the General Legal Council supported by an Affidavit dated the 7th of January 2013 stated that the Attorney Miss Alrene Beckford, an Attorney at Law duly admitted and enrolled as Attorney at Law to so practice in the Island of Jamaica:

“(a) has not accounted to me for all monies in her hands for my account or credit although I have reasonably required her to do so .

(b) she is in breach of Canon 1 (b) of the Legal Profession (Canons of Professional Ethics) Rules , which states " An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which he is a member . "

The Evidence

The Complainant a Cosmetologist, gave evidence on the 15th of June. On that occasion , the Attorney was absent without any excuse tendered on her behalf in a situation where the panel was fully satisfied that she had been given due and proper notice of the hearing of this matter .

In her evidence, the complainant said that herself along with her fiancé Mr. McKoy Donovan McKenzie on the 21st of February 2012 attended upon that office of the Attorney at 52 Duke Street Kingston. Their purpose was to enquire as the sale of a property located at Eltham, Lot 1 Garden Boulevard, St. Catherine. Their referral to the Attorney was via a real estate manager. The complainant and her fiancé saw and spoke to the Attorney who represented the vendor of the said property, Mr. Winston Rowe.

Subsequent to their meeting of the 21st of February 2012, with the Attorney the Purchasers paid three installments i to the offices of the said Attorney towards the purchase of the aforementioned property. These installments were as follows:

1. \$930,000.00. A receipt evidencing this amount dated 2nd February 2012 was tendered as exhibit # 1.
2. \$400,000.00 on July 5th 2012. This amount was paid over to the Attorney's assistant Miss Averett Jarrett by way of manager's cheque by the complainant. The receipt obtained from the Attorney's office representing this amount was tendered into evidence at exhibit # 2

3. \$ 562, 500.00 on July 30th 2012. The receipt received from the Attorney's office was tendered into evidence as exhibit # 3

It was the complainant's evidence also that on the 2nd of February 2012 the Attorney prepared a Power of Attorney which effectively granted the complainant power of attorney over the affairs her fiancé including but not limited to seeing to the enforcement of contracts entered into by her fiancé. This Power of Attorney was tendered into evidence as exhibit # 6.

The Complainant deponed that this Power of Attorney was prepared by the Attorney at a cost of \$1000.00. A receipt for this service of even date of the Power of Attorney was tendered as exhibit 4 Also tendered into evidence was the Agreement for Sale, dated February 29th 2012 signed by the complainant. This was exhibit 5.

In completing her evidence, the complainant stated that that the Attorney had represented to her that the sale transaction would have taken no longer than six (6) months. However after the passage of this period she could not get any reasonable explanation from the Attorney as to why the sale had not been completed. Indeed it was the evidence of the complainant that further financing of the sale was to be obtained from the National Housing Trust, however due enquiries of the National Housing Trust by the complainant revealed that the Attorney had not forwarded any of the necessary documents to the National Housing Trust for effecting this process. As a result, the offer of financing from the Trust was cancelled. As to whether the vendor had actually received any of the proceeds paid toward the sale, the complainant said that as recently as the very day of the commencement of this hearing, in a discussion with him, she was of the view that no proceeds of the sale were received by him.

Up to January 7th, 2013, notwithstanding numerous requests, the complainant had not received a refund of the monies paid to the Attorney in respect of this sale. Neither was she provided with any reasonable explanation by the Attorney.

As a consequence, a formal complaint was lodged with the General Legal Council. The form of Application and Affidavit dated January 7th and 8th were tendered into evidence as exhibits # 7 and # 8 respectively. The final exhibit was exhibit # 9, the contents of which was a letter dated November 23rd, 2012 penned by the complainant to the chairman of the GLC and the essence of which was the complaint in summary. This was the sum total of the evidence of the complainant.

The hearing was then adjourned to the 27th of July 2013 for the notes of evidence to be prepared and a notice sent to the Attorney with the notes of evidence, of the next hearing date for the Attorney to attend and to cross examine the complainant. On the 27th July 2013, the Attorney was in attendance and commenced her own cross examination of the complainant.

Under cross examination, the complainant reaffirmed that monies were paid over by her to the Attorney's office and that these sums were in respect of the purchase of the aforementioned property. The complainant also reaffirmed that the Respondent had prepared the Power of Attorney mentioned herein being exhibit # 6. There were no challenges by the Attorney to these assertions by the complainant.

In relation to the National Housing Trust, the complainant asserted that the Attorney had represented to her that documents relative to facilitating the sale had been sent to the Trust. This was challenged by the Attorney who suggested that she had never

made any such representation as she had never sent any document to the Trust. The complainant denied the suggestion.

This in essence was the extent of the cross examination of the complainant as the Attorney indicated that she was in need of an adjournment to obtain notes on a document in order to continue her cross examination of the complainant . The adjournment was granted. The hearing was adjourned to the 2nd of August 2012.

On the 2nd of August 2012, the complainant was in attendance. On this occasion, the Attorney appeared with her Counsel Messrs. Leonard Green and Roger Davis. On the Attorney's behalf, an application was made for an adjournment. Counsel in requesting the adjournment indicated that their representation of the Attorney came about after being contacted on the said day set for the continuance of the hearing. The application was denied .

Counsel for the Attorney then submitted that there were two (2) complainants against the Attorney , this being the second one and that both complaints were made on substantially the same facts, as the other concerned Mr. Winston Rowe the vendor of the property in respect of the said matter complained of by Miss Teesa Norman .

Counsel further submitted that the Attorney would be exposed to severe prejudice were the hearing to continue, as a member of the present panel was also a member of the panel hearing the other matter . Counsel submitted further that the Attorney was charged and before the Half Way Tree Court in a matter in which Miss Teesa Norman was the complainant. On this basis it was submitted the panel should await the determination of that matter as an adverse finding in this matter would be published , and would prejudice the Attorney from receiving a fair hearing in respect of the matter before the Half Way Tree Court.

These submissions having been made by Counsel, the panel ruled that the matter would proceed, as there was no merit seen in the submissions

For the purposes of this judgment , it should be noted that the decision of the panel to proceed rested essentially on two limbs:

1. Counsel having raised the issue of prejudice and fairness on the basis that one member of this panel was sitting on another panel in which the said Attorney was the subject of a hearing arising from the same facts (but different complainant - the vendor). This panel was mindful of **Regina. v. Gough [1992] 4 ALL ER. 481**. At page 673 of that case, Lord Woolfe noted that the test for bias is whether there was a real danger of bias and not just a real likelihood. Indeed in the case of *President of the Republic of South Africa & Others. v. South African Rugby Football Union & Others* 1999 (7) BCLR (CC) 725, page 753, states that the onus is on the applicant to show that one of the members of the tribunal must recuse himself because of bias and that this must be adjudged by the standards of the reasonably objective and informed person, keeping in mind that judges are able to disabuse their minds of any irrelevant personal beliefs and predispositions.

2. Regarding the submission that this panel should await the outcome of another tribunal before continuing , this panel notes the decision in *Panton and Others v. Financial Services Limited* [2003] UKPC 95 of 2002. In Panton's case, the appellants were defendants in criminal and civil proceedings, both arising from the same set of events. In dismissing the appeal the court noted inter alia, that it was for the defendants to point to a real and not merely a notional risk of injustice. In this case before the panel Counsel for the Attorney did not satisfy the requirements in his submission.

Within this context, this panel was of the view that the fact that the Attorney had another matter related to the one before it and/or that the Attorney is before the Half Way Tree Court pursuant to a complaint filed by this complainant had no bearing on these proceedings, or sufficient to result in recusal of any of its members, or to halt the hearing, therefore the hearing should proceed.

Consequent upon this ruling, Counsel indicated that he would rest on the submissions and that the Attorney would not participate any further in the hearing as same would not afford a fair hearing to the Attorney. This being the case, the panel elected to make its final ruling on what evidence it had received in the matter.

The Burden & Standard of Proof

The panel notes that the burden of proof rest on the complainant to prove her case against the Attorney: this burden never shifts. The standard of proof that is required is of the criminal standard. That is, "beyond a reasonable doubt ". This is the standard that must be applied by the panel in evaluating the evidence adduced before it to determine the appropriate decision to make in the circumstances of the complaint.

Evaluation of the Evidence

The evidence of the complainant in essence was that she along with fiancé were directed it the Attorney as the Attorney at Law to deal with purchase of a property. To this end monies were paid over at the Attorney's office on at least 3 occasions towards the purchase of the said property. In proof of this receipts were tendered into evidence. The complainant noted that she had obtained a power of Attorney to continue the transaction which presumably was effected to facilitate the continued transaction of the purchase of the said property in the absence of her fiancé. After the passage of an

inordinately long period the sale the remained incomplete. According to the complainant no reasonable explanation was forthcoming from the Attorney nor were there any refunds of the monies paid.

Having been cross examined by the Attorney, it is instructive to note that it was never suggested to the complainant by the Attorney that monies were never paid over to her at her office. Indeed it was never even challenged that in one of the instances monies were paid over directly to the attorney herself. What was suggested was that she the Attorney had never sent off any documents to the National Housing Trust. For most parts the evidence therefore touching and concerning the gravamen of this complaint was never challenged even though the opportunity had presented itself for this to be done. **Findings**

The Panel was impressed with the evidence of the complainant and therefore accepts her as a witness of truth. The panel finds as facts the following based on the evidence:

1. That the Respondent was Attorney at law entitled to practice law within this jurisdiction with offices at 52 Duke Street, Kingston
2. The Attorney had carriage of sale of the property located at Lot 1 Garden Boulevard, St. Catherine on behalf of the Vendor Winston Rowe.
3. That the complainant and her fiancé did attend upon the Respondent's office in respect of purchase of Lot 1 Garden Boulevard.
4. That the Attorney prepared the Agreement for sale of the property between the complainant and her fiancé and her client the vendor.
5. That the Agreement for sale was duly executed by the purchasers.

6. That monies totaling \$ 1,892,500 were paid over to the Attorney by the Purchasers being part of the purchase price towards the purchase of the property subject of the Agreement for sale..

7. That in one instance a portion of the said sum was collected directly by the Attorney and in the other instances by her agent at her said office and all instances receipts from the Attorney's office were issued to the purchasers.

8 That the complainant was by a Power of Attorney prepared by the said Attorney duly authorized to act on behalf her fiancé and also in the bringing of this complaint.

9. That in her capacity as the Attorney –at-Law having carriage of sale in the transaction, the Attorney the Attorney acted with inexcusable delay and negligence and failed to inform the purchasers who were unrepresented as to the status of the transaction

10. That the Attorney failed to account to the complainant for the aforesaid sums collected.

11. That the Attorney acted dishonestly in respect of the sums of monies that were paid over to her in respect of this complainant.

Conclusion


On the basis of the findings herein, the panel concludes that the Respondent is guilty of professional misconduct in that she has:

1. Breached Canon V11 (b) (ii) of the Legal Profession (Canons of the Professional Ethics) Rules, in that she failed to account to the purchasers for all monies in the hands of the Attorney for the account or credit of the purchasers although reasonably required to do so.

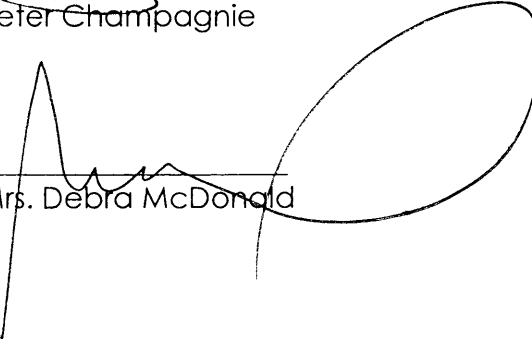
2. Breached Canon 1 (b) of the Legal Profession (Canons of the Profession Ethics) Rules, in that she failed to maintain the honour and dignity of the profession and failed to abstain from behaviour which tend to discredit the profession of which she is a member.

In view of the Jamaican Court of Appeal's decision in Owen Clunie v. GLC, CA 3/2013 delivered on the 22nd of September, 2014; wherein it was noted that: there should be an opportunity for the Attorney to be heard in mitigation before a sanction is imposed, this Panel directs that a date be set for this purpose and the Attorney be contacted for this opportunity to be given.

Dated the 20th / 6 / 2015


Miss Beryl Ennis - Chairman


Peter Champagnie


Mrs. Debra McDonald

SANCTION

On the 8th day of October, 2015 this Panel was set to determine the appropriate sanction to be applied having found the Respondent guilty of Professional Misconduct for Breaches of the Canons mentioned herein.

Two (2) days prior to the 8th day of the October, 2015 communication from the Respondent was received via email to the effect that she was ill. A Medical Certificate was sent outlining that from the 6th day of October, 2015 up until 7 days the Respondent would be ill. In light of this, this matter was adjourned until the 17th day of November, 2015. Directions were given that the Respondent be notified of this date. The Panel is satisfied that the Respondent was notified of this date and had reasonable time based on the notice sent to her on the 13th day of October, 2015 to be in attendance. The Notice was by way of Registered Post with the accompanying Certificate of Postings.

On the 17th of November, 2015 the Respondent was not in attendance nor was there any communication from her in writing or otherwise explaining her absence. In the circumstances, the Panel is satisfied that the Respondent was given a reasonable opportunity to be present and heard in respect of mitigation before the application of the sanction.

The authorities of **R v. Carlile, [1834] (6C & P, 636)**; **R v. Jones, No. 2 [1972] 2 All ER, 731**; and our local Court of Appeal decision of **R v. Lloyd Chuck [1991] 28 JLR, 422**. albeit, all criminal cases speak to continuation or conclusion of a matter in the absence of an accused. In the absence of any excuse or any reasonable excuse from an accused person a tribunal would be well within its right in exercising its discretion to conclude its hearing notwithstanding the absence of the accused. This position appears to be no different from tribunals which concern itself with disciplinary matters

such as this present matters. In this regard reference can be made to Awan v. Law Society [2001] All ER (D) 156 (Dec)

The appellant, A, had been due to appear before the Solicitor's Disciplinary Tribunal in August 2000 to answer allegations falling into four categories, namely a failure to pay transcription fees due to a firm of shorthand writers; a failure to pay an expert witness whom he had instructed in a trial; a failure to pay counsel's fees; and a failure to make accounting documents from the time when he was practicing on his own available to an investigating officer of the Office of Supervision of Solicitors. In respect of the first three categories, A had made numerous excuses and undertakings subsequently unfulfilled over a period of several years. He failed to appear before the tribunal in 1999 to answer some of the allegations, but it was agreed the matter could be reheard as there had been a misunderstanding as to the nature of the hearing. Thereafter it was made clear to him in correspondence that further adjournments would be opposed by the prosecutor, and what medical evidence would be required by the tribunal in order for a further adjournment to be considered. He failed to appear before the tribunal and did not adduce the evidence requested. The tribunal therefore considered the matter in his absence, and ordered that he be struck off the

roll of solicitors. A appealed, contending that the tribunal had been wrong not to adjourn the hearing because of his poor state of health, and thus he had not had a fair hearing; the order striking him off the roll of solicitors was too severe in the circumstances; and that he was not in fact guilty of any of the substantive allegations made against him.

Held: Where a solicitor had acted with the attitude of A, namely refusing to respond to requests and evading them, over a number of years, he was demonstrably unfit to practice as a solicitor. The history of A's actions in respect to the payment of fees owed was one of prevarication and obstruction. There was no excuse for A's having failed to produce the accounting documentation to the investigating officer when requested. On the facts, the tribunal had been justified not to adjourn the hearing, and the order and decision was one which they were manifestly entitled to make.

In the present case, the Respondent has not furnished any excuse for her absence.

In the circumstances and determining what sanction to apply, reference can be made to Bolton v. Law Society [1994] 2 All ER, 486 and the Judgment of Sir Thomas Bingham, MR:

"It is required of Lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness."

Sir Thomas Bingham MR continues by noting that severe sanctions must be imposed particularly where an act of dishonesty is the case, whether or not such an act had led to criminal proceedings and penalties. Indeed it was stated that in such cases "the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitor.

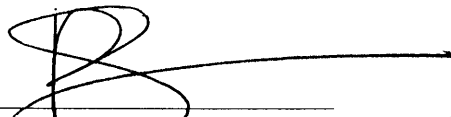
The fact that the funds were received by the Respondent in this matter was never challenged. The funds paid by the Complainant were not fees due to the Respondent, but were delivered to the Respondent in her capacity as the attorney-at-law having carriage of sale and in pursuance of the Conveyance of property to the Complainant. The funds were not returned to the Complainant, and there has been no explanation forthcoming from the Respondent as to the whereabouts of the said funds. There can be no greater breach of good faith by an Attorney-at-Law in circumstances when such funds entrusted to the Attorney-at-Law are not used for the intended purpose.

In all the circumstances, the panel implements the following sanctions:

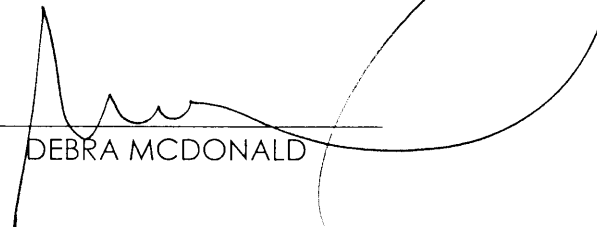
1. The Attorney-at-Law be struck from the Roll of Attorney-at-Law

2. The Attorney-at-Law make restitution to the complainant in the sum of \$1,892,500.00
3. Interest on the sum of \$930,000.00 from the 2nd of February, 2012 and on the sum of \$400,000.00 from the 5th of April, 2012 and on the sum of \$562,500.00 from the 30th of July, 2012 until payment
4. Cost to the General Legal Council in the sum of \$50,000.00
5. Cost to the complainant in the sum of \$50,000.00

Dated 22nd day of January, 2016



PETER CHAMPAGNIE



DEBRA MCDONALD



BERYL ENNIS