

**DECISION OF THE DISCIPLINARY COMMITTEE OF THE  
GENERAL LEGAL COUNCIL ON HEARING SUBMISSIONS IN MITIGATION**

---

**COMPLAINT NO. 78/2015**

In the Matter of FACTORIES  
CORPORATION OF JAMAICA LIMITED  
and HAROLD BRADY, an Attorney-at-  
Law.

AND

In the Matter of the Legal Profession Act,  
1971

Panel: Daniella Gentles-Silvera - Chairman  
Trevor Ho-Lyn  
John Graham

Appearances: Desmond Sicard, representative of Factories Corporation of Jamaica  
Limited

Maliaca Wong, Attorney-at-Law, for the Factories Corporation of Jamaica  
Limited  
Harold Brady

Hearing: *JK* 24<sup>th</sup> January, 2017, 4<sup>th</sup> March, 2017  
*25 Febman*

**BACKGROUND**

- JK 25<sup>th</sup> Febman*
1. On the ~~24<sup>th</sup> January~~, 2017 this Panel delivered a Decision in which it found that the Attorney-at-Law, Harold Brady, (hereinafter called “the Attorney”) was guilty of professional misconduct as per Canon VIII (d) in that he has breached Canon I (b) and Canon VII (b) of **The Legal Profession (Canon of Professional Ethics) Rules**. The Decision arose out of a complaint by Factories Corporation of Jamaica Limited (hereinafter called “the Complainant”) that the Attorney:

- (a) had not accounted to it for all monies in his hands for its account or credit, although it had reasonably required him to do so.
- (b) had breached Canon I (b) which states that 'An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.
- (c) had failed to deliver up the file with due expedition after being requested so to do in breach of Canon IV (r); and
- (d) had failed to submit the Agreement for Sale within thirty (30) days of the date of the Agreement or at all and to pay the relevant duties causing 100% penalty to be incurred in breach of Canons IV (r) and IV (s).

(See Form of Affidavit sworn to on the 24<sup>th</sup> March, 2015 and Amended Form of Application and Supplemental Form of Affidavit sworn to on the 7<sup>th</sup> October, 2016).

2. On the <sup>25<sup>th</sup> Feb</sup> 24<sup>th</sup> February, 2017 the Attorney attended the hearing after being given notice that the Decision would be handed down and a sanction hearing would be permitted if necessary. Prior to the Decision being handed down the Attorney asked to be heard. The Panel allowed this and the Attorney stated several things for the Panel's consideration which we have summarized below:

- (a) He has been suffering from hypertension which has affected his eyes and that was the reason why he did not attend the previous hearings.
- (b) He owes the moneys claimed by the Complainant for which the Complainant had been laid. His accountant did something wrong but he accepts that he is responsible.

- (c) He is willing to repay the moneys to the Complainant, Factories Corporation of Jamaica Limited, and in fact wrote to the Complainant for their bank account number so that he could wire the funds into same. He recently received a letter from the Complainant with its account number. He has not yet lodged any money to the Complainant's account but he intends to do so although it would not be the full amount immediately.
- (d) He has worked for the Complainant for years and this sale was part of a larger transaction with respect to which he had money on deposit.

3. In determining the appropriate sanction to be imposed, the starting point is the case of **Bolton v Law Society [1994] 2 All ER, 486** and the judgment of Sir Thomas Bingham, MR where he stated that:

*"It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers it is because this appeal concerns a solicitor, and where a client's moneys have been misappropriated the complaint is inevitably made against a solicitor, since solicitors receive and handle clients' moneys and barristers do not.*

*Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or*

not leading to criminal proceedings and criminal penalties. 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 Solicitors... It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element; a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to

his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

(pages 491 – 492)

(Emphasis Added)

4. The applicable principles gleaned from Sir Thomas Bingham, M.R. in **Bolton v Law Society supra** are as follows:

- (a) Where an attorney is guilty of serious dishonesty he must expect a severe sanction.
- (b) For dishonesty, tribunals have invariably struck off the attorney from the roll no matter how strong his plea in mitigation.
- (c) The reason for such seemingly harsh orders such as striking off is:
  - (i) to punish the attorney and deter other attorneys from behaving in a similar manner; and
  - (ii) to maintain the reputation of the profession and give the public confidence in the integrity of the profession.

5. We examine below each of the matters raised by the Attorney against the background of these principles.

- (a) The Attorneys' illness had nothing to do with the Complaint but rather to explain his absence from the hearing on the 17<sup>th</sup> January, 2017. The Attorney did appear on the 30<sup>th</sup> September, 2016 but left during the hearing.

- (b) The Attorney has admitted to owing the money to the Complainant but such an admission cannot excuse his betrayal of the trust and confidence placed in him by his client. The Complainant placed all its trust and confidence in the Attorney in retaining him to protect its interest in the sale of its property and in allowing him to collect the purchase price. This trust and confidence has been betrayed by the Attorney who collected the purchase price and yet failed to account to his client for the balance purchase price save for Seventy Million Dollars (\$70,000,000.00) which was paid after the Attorney's retainer had been terminated.
- (c) The Attorney alluded to some problem with his accountant but gave no details of what his accountant did but in any event the fact is that he would nevertheless be ultimately responsible which he himself accepted.
- (d) The Attorney's expression of a willingness to now repay the moneys misappropriated cannot obviate his dishonest behaviour. Even if the moneys were now to be paid this cannot justify such a gross act of dishonesty in failing to pay over his client's money when it was due. Further not only did the Attorney deprive his client of the full purchase price of its property but he failed to have the Agreement for Sale stamped as a consequence of which the Complainant was obliged to pay penalties in the amount of Twelve Million Six Hundred Thousand and Twenty Dollars (\$12,600,020.00). They were therefore forced to incur further expenses. This misappropriation by the Attorney of the Complainant's purchase price for its property and costs is dishonesty which we view quite seriously. It has caused great loss to the Complainant. The evidence was that as of the 30<sup>th</sup> September, 2016 the balance owing to the Complainant by the Attorney was One Hundred Eleven Million Three Hundred Eighty Thousand Three Hundred Sixty-Four Dollars and Sixty-Two Cents (\$111,380,364.62) inclusive of interest.
6. What this Panel finds to be even more egregious is that the Attorney misled the Complainant with a statement of account dated the 29<sup>th</sup> April, 2014 issued to the Complainant under cover of letter dated the 30<sup>th</sup> April, 2014 (Exhibits 1A and 1B) which showed that interest had allegedly been earned on the funds. Indeed, by letters dated the

30<sup>th</sup> April, 2013 and 3<sup>rd</sup> March, 2014, the Attorney wrote to the Complainant and confirmed that he held the funds on account at the Bank of Nova Scotia Jamaica Limited earning interest at 4½% per annum (Exhibits 2 and 3). By letter dated the 23<sup>rd</sup> April, 2014 the Complainant sent the Attorney its banking details and asked that the Attorney lodge the proceeds of sale into its account (Exhibit 6); however apart from the payment of Seventy Million Dollars (\$70,000,000.00) paid between July and August 2014, the Attorney paid no further sums to the Complainant and made no effort to repay same until the 24<sup>th</sup> February, 2017 when the Decision was to be handed down whereupon the Attorney in mitigation indicated an intention to repay the moneys but up to that date he had not repaid same. The Complainant has therefore been without its funds (which are substantial) for over approximately 2½ years.

7. At the eleventh hour on the 2<sup>nd</sup> March 2017 the Attorney filed an Affidavit in which he stated inter alia that at the time he was transferring the files to Mrs. Scott- Motley, who took over the matter on behalf of the Complainant, he discovered that his account had been compromised by his accountant and US\$500,000.00 misappropriated. He says he told Mrs. Scott-Motley about this. The Attorney engaged the services of an accounting firm and following that investigation he discovered that by letter dated August 2011 to the Bank of Nova Scotia Jamaica Limited he instructed the bank to transfer US\$673,000.00 to the National Commercial Bank account of the Complainant and taking that amount into account he has paid \$127,703,020.000 to the Complainant.
8. The Attorney himself admitted at the hearing on the <sup>25<sup>th</sup> Mar 17</sup> 24<sup>th</sup> February, 2017 that the compromise of his account by his accountant would still leave him ultimately responsible to his clients. Further and in any event no detail has been given as to how that affected

the monies he held for the Complainant particularly as he later says in the same affidavit that he has paid \$127,703,020.00 to the Complainant.

9. It is to be noted that the letter he relies on as evidence that he informed Mrs. Scot Motley of the fact that his account had been compromised does not state that but instead states that he has engaged financial consultants and would be advising of a timetable to settle the balance owed. This letter is dated 13<sup>th</sup> March, 2015.

10. What is remarkable about this affidavit of the Attorney is that on the <sup>25<sup>th</sup> 29</sup> 24<sup>th</sup> February, 2017, the Attorney on more than one occasion told this Panel that he owed the Complainant the money and that he would be repaying it. Indeed, he went as far as to advise that he had requested from the Complainant their bank account number so that he could lodge the money into same and that he had received it and would be lodging the monies into same. The Attorney now seems to be saying six days later, that he discovered that in August 2011 he had instructed the Bank of Nova Scotia Jamaica Limited to transfer US\$673,000.00 to the Complainant's account and that the Jamaica equivalent together with the \$70,000,000.00 paid between July and August 2014 means that he has paid \$127,703,020.00 to the Complainant. No evidence has been produced to confirm that this sum was in fact wired to the Complainant nor has any report /letter/document on the audit investigation been produced in support. The letters and statement of account admitted into evidence at the hearing contradict this allegation of the Attorney as in those letters and documents the Attorney admits that he is holding funds for the Complainant being the balance proceeds of sale and confirms that he is holding same in his account at the Bank of Nova Scotia Jamaica Limited at a rate of interest of 4½% per annum. (See letter dated 30<sup>th</sup> April, 2014 from the Attorney to the Complainant -Exhibit 1A; statement of account dated 29<sup>th</sup> April, 2014 from the Attorney to the Complainant- Exhibit 1B;



letters dated 30<sup>th</sup> April, 2013 and 3<sup>rd</sup> March, 2014 from the Attorney to the Complainant-Exhibits 2 and 3).

11. Finally, the Affidavit of Kenneth Rowe filed on the 3<sup>rd</sup> March, 2017 in response to the Attorney's affidavit cannot be ignored. Mr. Rowe who is the Director of Finance of the Complainant depones that the amount claimed by the Complainant in this disciplinary hearing remain outstanding and the money which the Attorney said was paid to the Complainant related to another transaction specifically the sale of lots 17H and 18H Montego Freeport in which the Attorney's firm also represented the Complainant. Letters were attached to Mr. Rowe's affidavit in support of this contention. Indeed, one of the letters exhibited is dated the 18<sup>th</sup> August, 2011 which is the same date of the Attorney's letter to the bank about wiring the sum of US\$673,000.00 to the Complainant. That letter, which is exhibited to Mr. Rowe's affidavit, relates to another transaction and encloses a cheque for the same amount of US\$673,000.00 to the Complainant. The cheque is described as the balance purchase price and interest on the sale of lots 17H and 18H Montego Freeport which is a different transaction than the sale which gave rise to this complaint.

12. On the 4<sup>th</sup> March, 2017 the Attorney attended the hearing and indicated that he was mistaken in his affidavit filed on the 2<sup>nd</sup> March, 2017 when he said that he had repaid \$127,703,020.00 to the Complainant which included the US\$673,000.00, as after discussions with the Complainant earlier this week which was confirmed by the letters attached to Mr. Rowe's affidavit he realized that the US\$673,000.00 indeed related to a different transaction than the one being the subject matter of this complaint. Accordingly he admitted that he owes the monies claimed by the Complainant and indicated that he has made steps to satisfy the debt by sending to the Complainant's Attorneys-at-Law, a

title, transfer of land , mortgage, and promissory note. The Attorney expressed his sorry  
to the Complainant and asked the Panel that the worse not be visited upon him in terms of  
a sanction.

M  
I so sorry  
JRG  
2011

13. In all the circumstances, it is the view of this Panel that nothing has been stated by the Attorney in mitigation whether verbally or in his affidavit to warrant the imposition of a lesser sanction than striking off. This sanction of striking off is not applied to only punish the attorney and deter others but more importantly it is to protect the public and to maintain the reputation of the profession in circumstances where serious dishonesty has been committed. The reputation of the profession is based on the maintenance of standards of honesty and integrity which members of the public should rightly and confidently expect to be observed by attorneys in their dealings with them.

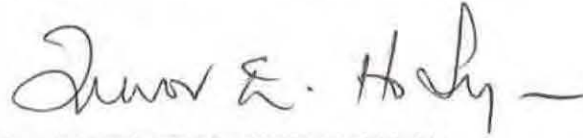
14. Accordingly, it is the decision of this Panel that:

- a) Pursuant to section 12(4) (a) of the Legal Profession Act the name of the Attorney, Harold Brady, is struck off the Roll of Attorneys-at-Law entitled to practice in the several courts of the island of Jamaica.
- b) Pursuant to section 12(4)(f) of the Legal Profession Act by way of restitution, Harold Brady is to pay to the Complainant the sum of \$111,380,364.62 with interest on the sum of \$102,302,061.56 at the rate of 4½% per annum from the 1<sup>st</sup> October, 2016 until payment.
- c) Costs of these proceedings in the amount of \$80,000.00 are to be paid by the Attorney as to which \$50,000.00 is to be paid to the Complainant and \$30,000.00 to the General Legal Council.

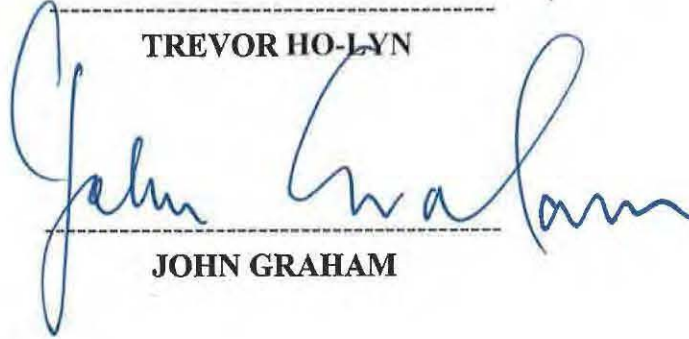
Dated the 4<sup>th</sup> day of March, 2017



-----  
**DANIELLA GENTLES-SILVERA**



-----  
**TREVOR HO-LYN**



-----  
**JOHN GRAHAM**