

**PANEL'S RULING ON WHETHER INTEREST AWARDED SHOULD BE
SIMPLE INTEREST OR COMPOUND INTEREST**

COMPLAINT NO 182/2012

BETWEEN OLIVE BLAKE COMPLAINANT
AND MICHAEL LORNE RESPONDENT

PANEL

PAMELA BENKA-COKER Q.C.

CHARLES PIPER Q.C.

GLORIA LAN GRIN

On the 2nd March 2017, the panel delivered judgment in this complaint wherein it found the respondent Attorney Michael Lorne guilty of professional misconduct.

On the 11th April 2017 the panel reconvened to hear submissions on behalf of the attorney in mitigation of any sanction that the panel may impose.

On that date the attorney was represented by attorney-at-law Bert Samuels and the complainant by attorney-at-law Kevin Williams.

The parties informed the panel that the attorney had paid to the attorneys-at-law for the complainant Messers Grant Stewart Phillips & Co. all the sums listed at p 30 of the judgment. These payments were made on the 10th April 2017.

Counsel for both parties agreed the following; that the complainant was entitled to be awarded interest on the sums paid by the attorney, that the rate of interest should be 6% per annum, and that the period over which interest should be calculated was from the 22nd November 2011 when the purchaser's name was noted on the registered title, to the 10th April 2017 when the sums were paid.

The sole live issue for the determination of the panel on the question of interest is whether the interest awarded should be simple or compound interest

INTEREST: in oral and written submissions dated the 18th April 2017, Counsel for the complainant argued that the interest should be compounded. This he says is because the attorney was in law a trustee of the complainant's funds, and the attorney had a fiduciary duty to the complainant to deal with her funds in keeping with the legal responsibilities imposed on him as trustee. He further submitted that the attorney was in breach of his

fiduciary duties to the complainant and in those circumstances any interest awarded should be compounded.

Counsel for the complainant relied on the case of **Supreme Court Civil Appeal No. 27/96 Joy Charlton et al v Air Jamaica limited et al.** The Court of Appeal specifically addressed whether or not the Court had legal authority to award compound interest and in what circumstances.

The Court said that **section 3 of the Law Reform Miscellaneous Provisions Act** permitted the Court to award simple interest only. However The court had the power to award compound interest where "the parties agreed to it", or "in the absence of fraud, courts of equity have never awarded compound interest except against a trustee or other person owing fiduciary duties who is accountable for profits made from his position. Equity awarded simple interest at a time when courts of law had no right under common law or statute to award any interest. The award of compound interest was restricted to cases where the award was in lieu of an account of profits improperly made by the trustee"

This is a direct quotation from Lord Brown Wilkinson .in the case of **Westdeutsche v Islington Borough Council{1996} 2 WLR p802**. See Judgment of Forte JA at p3

In his judgement, Downer JA cited a number of authorities in support of the proposition of law cited from the Judgement of Lord Brown Wilkinson in the case referred above and said this at pp 35 of the judgement" I have cited passages from both the majority and minority speeches to demonstrate that where a fiduciary relationship exists it may be appropriate to award compound interest"

In the case of Air Jamaica Limited v Joy Charlton and others (Jamaica) (1999) UKPC 20(28th April 1999) The court agreed with the Court of Appeal that the interest awarded should be compounded but it based its decision not on equitable principles but on the express terms wherein the moneys were released to the Company on the Attorney General's undertaking to replenish the trust fund "to the full extent required" In ordering the repayment to be made with compound interest, the Court of Appeal was not exercising its equitable jurisdiction over trust funds but merely giving effect to the Attorney General's undertaking as properly construed" See paragraph 53 of the judgement.

Counsel for the respondent attorney, in his written submissions received on the 19th April 2017 argued that the interest awarded should be simple interest and not compound interest. He said that the Disciplinary Committee of the General Legal Council is a creature of statute and does not have the jurisdiction to award compound interest and may only award simple interest pursuant to the provisions of section 3 of the Law Reform Miscellaneous Provisions Act

Counsel relies on the Privy Council decision of **National Housing Trust v YP Seaton (2015) UKPC No. 0072 of 2014**. In this case, on the issue of whether or not an arbitrator

had the jurisdiction to make an award of compound interest, the Privy Council said that the arbitrator did not have the jurisdiction to make an award of compound interest and was confined to an award of simple interest under section 3 of the Law Reform Miscellaneous Provisions Act. The Privy Council reversed the decision of the Court of Appeal on that issue.

ANALYSIS OF THE ARGUMENTS PRESENTED:

The panel found the arguments extremely interesting and has given them very careful consideration in the context of this complaint. The panel is of the considered opinion that Disciplinary Proceedings are not juridically defined as either, criminal, quasi criminal or civil proceedings. They are "sui generis" proceedings

Disciplinary proceedings are discreet proceedings with the specific dual objectives of protecting the interests of the public and the general reputation of the legal profession. They are not in any way similar to arbitration proceedings in which the parties have contractual agreements that encompass their legal obligations to each other and which they agree should be subject to arbitration.

The panel is of the considered opinion that **the NHT v YP Seaton** Privy Council decision is not helpful on the issue being considered by the panel. Further, **section 3 of the Law Reform (Miscellaneous Provisions) Act 1955**, gives any Court of Record the jurisdiction to award simple interest "in any proceedings for the recovery of any debt or damages" This section expressly prohibits any award of compound interest.

However Disciplinary Proceedings are not claims for "the recovery of any debt or damages", they are proceedings designed to promote ethical standards in the legal profession. Consequently although Disciplinary Panels do have the legal authority to award simple interest on sums payable to the complainant, they are in certain circumstances, in equity allowed to compound any interest awarded.

It is the law that the relationship between attorney and client is a fiduciary one. In many of its findings pursuant to section 15 of the Legal Profession Act this panel specifically found that the attorney Michael Lorne owed a fiduciary duty to Olive Blake and was trustee of the funds belonging to Olive Blake.

One of the orders which the Disciplinary Committee is empowered to make against an attorney after a finding of professional misconduct is that of an order for restitution. Implicit in that order is the duty of the panel to seek to restore the complainant to a position that she would have been in had her funds not been wrongfully withheld by the attorney. Such restoration should include the duty to award compound interest if the circumstances so demand.

The panel also relies on the "ratio decidendi" enunciated in the Court of Appeal case of **Joy Charlton et al v Air Jamaica** and the cases cited therein and is of the opinion that the attorney Michael Lome ought to pay compound interest on the sums which he paid over to Mrs. Blake on the 10th April 2017.

Further, the panel is of the view that it has the statutory jurisdiction to award compound interest in light of the provisions of the **Legal Profession(Accounts and Records Regulations)1999. Section 8 of these regulations reads as follows:**

8-(1) Subject to Regulation 14 of these Regulations an attorney who holds money for or on account of a client shall account to the client for the interest or an equivalent sum in the following circumstances:

"(i) Where such money is held in an interest bearing trust account the attorney shall account to the client for the interest earned on that money;

(ii) Where such money is not held in an interest bearing trust account, the attorney shall, subject to Regulation 9 of these Regulations, pay to the client out of the attorney's own money a sum equivalent to the interest which would have been earned during the period it should have been so held." It must be noted that the attorney is not protected by the provisions of Regulation 9.

Regulation 11 states "for the purposes of regulation 8(i) of these regulations the sum payable to the client shall be calculated by reference to;

(i) the interest payable on an interest bearing trust account at the bank where the money is held"

Regulation 3(1) of the said regulations mandates the attorney" forthwith, to pay trust money into an account at a bank to be designated as a clients' trust account and to be kept in the attorney's name or the joint names of the attorney and the client"

The Privy Council, in the Jamaican case of **Financial Institutions Services Limited v Negril Holdings Limited and Negril Investment Company Limited reported at Privy Council Appeal No 37/2003 delivered on the 22nd July 2004 found the following:**

That there is a banking custom in Jamaica which permits commercial banks to compound interest on sums due on overdraft balances at monthly rests, that is to say the interest is calculated daily by the simple interest method and added to the principal at the end of the month and the interest then becomes part of the sum on which interest is subsequently computed.

See paragraph 37 of the judgement which states" In their Lordships' opinion the Bank was entitled to interest at a reasonable commercial rate ---- on the overdrawn balances from time to time due; but with unpaid interest added to the overdrawn accounts at monthly intervals. This solution could be justified either by the implication of a contractual term or as a requirement imposed by the Court in granting relief of a restitutive nature.

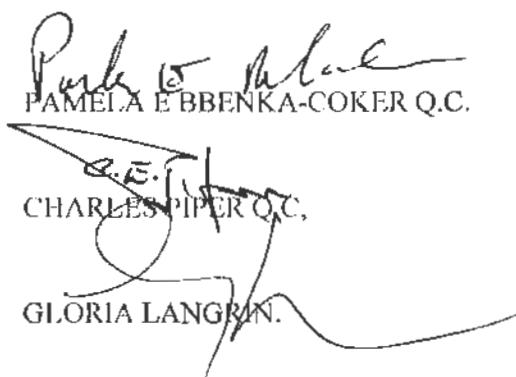
As found by the panel in paragraphs 27- 31 the attorney had legal duty to put the funds he received on account of the complainant in a dedicated clients' trust account. The attorney

in law had a duty to place these sums in an account at a bank The attorney failed to do so . He had a duty to pay interest on the sums due to the complainant whether or not he had placed these sum in a bank.

In light of the several statements of legal principle contained in the panel's analysis, the panel orders that the complainant is entitled to interest due to her compounded at monthly rests.

The panel now awaits further submissions on the remaining issues of sanctions and costs

Dated the 26th day of April 2017


PAMELA EBBENKA-COKER Q.C.
CHARLES PIPER Q.C.
GLORIA LANGTON