

SANCTIONS

COMPLAINT No. `182/2012

BETWEEN OLIVE BLAKE COMPLAINANT

AND MICHAEL LORNE RESPONDENT

PANEL

PAMELA BENKA-COKER Q.C.

CHARLES PIPER Q.C.

GLORIA LANGRIN

On the 4th May 2017 the panel continued the hearing of the sanction phase of the above complaint. On that date, three additional character witnesses gave evidence in support of the respondent attorney

EVIDENCE OF VAUGHNETTE GOODE WALKER.

On the 11th April 2017 Mrs. Vaughnette Goode Walker was the first character witness called. She gave evidence that she lived in the United States of America and that she is 63 three years old and the director of the Ralph Mark Gilbert Civil Rights Museum. She has known the attorney for 20 years

When she married and her husband was unable to enter the United States of America she was referred to the attorney to assist her with this problem. The attorney wrote a letter to her congressman and her husband was able to enter the USA. This was in 2009.

As a character witness she mentioned his name to persons at the station in Jamaica, St. Lucia and in the U S, he was known to them as an attorney. She observed that in the Rastafarian community the attorney was generous with his time and information. His radio programme is an extension of that message. The attorney is the patriarch of his family.

EVIDENCE OF FRANK PHIPPS Q.C. was sworn and said that he was called to the Bar in the 1950's He met the attorney some seven years after the attorney was admitted to the Bar. He knew him socially although they did not have a personal relationship. They exchanged books and things like that. This witness found the attorney to be concerned about the interest of others and he had a reputation for being a person on whose integrity

one could rely. He knew little about the attorney's family. The attorney is respectful to the Bench and was always interested in the history of the negro race.

He, the witness, is a member of the Reparations Council and the attorney has a strong position on reparations for enslaved people. The witness did refer to important cases in which the attorney had appeared such as the Mario Dean case.

THE EVIDENCE OF DR. LEACHIM SEMAJ This witness says that he is a psychologist by training and he has a PHD from Rutgers University in Educational Testing Training. He said that he has known the attorney since 1982. He would characterise the attorney as someone who is overly concerned with justice even in circumstances that will not benefit him.

He knew the attorney both personally and professionally. When divorce matters were referred to him he would seek to amicably settle them and heal the family. He would take responsibility for a child who was acting disruptively. The witness said that he had lost count of the instances where the attorney has taken cases without cost. A number of these cases had to do with the police and domestic violence. The witness further stated that the attorney was a family man and a good father, and that some of the attorney's children attended a school that he the witness founded.

He said that he and the attorney lived in the same community in Stony Hill and that the attorney participated fully in the community, this included the football team, larceny and all domestic disputes. The disputes all ended at his home which is known as the African Embassy. The attorney is totally committed to retention of the African community in Jamaica and he has been an advocate for the Rastafarian community and he likened him to Malcolm X and Peter Tosh.

THE EVIDENCE OF GLENFORD GAYLE This witness is a lawyer called to the Ontario Bar since 1991. He grew up with the attorney on Lincoln Avenue in Whitfield Town and he has known him since 1961. They have worked together and attended Wolmer's High School for Boys together. The attorney could always be relied on as his friend. They maintained their friendship even after High School.

He left Jamaica in the 1970's but they kept in touch. Because of the attorney's cultural and social engagement and his strong advocacy for individual and collective social issues he was always well received when he visited Canada. He the witness just returned to Jamaica and did the course at the Norman Manley Law School and his internship with the attorney. He was present with him on a daily basis and he saw the gratitude that the members of the public expressed to the attorney. He is proud of the attorney.

This review of the evidence of the character witnesses is a fair replication of the substance of each witness' evidence.

Counsel for the attorney then spoke to the evidence of the character witnesses and submitted speaking notes to which he directed his oral presentation. Counsel said that the evidence of the character witnesses reflected the entire life of the attorney and he should

not be judged on this case in isolation. The panel should not take into account the suspension from practice that was imposed on the attorney when he was found guilty of professional misconduct as a consequence of the attorney having been convicted of a criminal offence. In any event the conviction has been expunged. Counsel urged the panel to take into account the cases that the attorney has initiated against the Attorney General as part of his community service. The attorney has been involved in the publication of four books and has taken action against the Queen for reparations to be paid to enslaved Jamaican people. This action has been used as a precedent all over the world. .

The panel must also take into account the contribution of the attorney to society. Counsel reviewed the various sanctions included in section 12(4) of the Legal Profession Act and urged the panel not to take into account the past finding of professional misconduct against the attorney and that the fact that the attorney has made restitution of the sums due to the complainant should weigh heavily in determining what sanctions should be imposed.

The panel has taken careful note of the evidence of the witnesses as to the good character of the attorney. All the evidence given was highly complimentary of the attorney which among other tributes included his devotion to the Rastafarian community, his total involvement in the community in which he resides, his commitment to the fight for the recognition of human rights and his participation in important cases in that regard.

The panel also notes that in his opening submissions, made on the 11th April 2017, at the commencement of this aspect of the hearing, counsel for the attorney referred to the concept of Restorative Justice which he said is being used in the criminal courts when the court is considering the imposition of sanctions, and that by analogy, the panel should take into account the payment by the respondent attorney of the principal sums and interest which have been found to be due to the complainant, as being significant to any sanction that may be imposed.

The substance of this approach as, the panel understands it, is that in imposing sanctions on an accused person in criminal proceedings, the court now considers and takes into account any restitution or compensation made by the accused to the complainant, to reduce the punishment which would otherwise have been imposed. This, it was submitted, is reflective of the best practices of Restorative Justice being introduced in the administration of justice in Jamaica.

Counsel did not present any authorities to the panel as to the practical application of this concept and its relevance to Disciplinary Proceedings under the Legal Profession Act. In any event, the panel has already expressed its view as to the nature of Disciplinary Proceedings.

The panel has considered these submissions and is satisfied that this is not an appropriate case for the application or implementation of this process even if it were of the opinion that this approach is applicable.

The panel is not taking into account the finding of professional misconduct and the imposition of a five year period of suspension made against the attorney in 1992.

It is worth repeating some of the salient findings in this complaint. The complainant was a client of the attorney. The attorney had carriage of sale of property in which the complainant had a legal and beneficial interest. The attorney, as trustee of the proceeds of sale of this property failed to turn over her share of the proceeds of sale to the complainant. The complainant was forced to institute these proceedings in an effort to receive the sums that were due to her.

Even after the institution of these proceedings in October of 2012, the attorney failed to pay these sums to the complainant. After at least 15 days of hearing over a period of five years between April 2013 and 2nd March 2017 when the judgement was delivered, the attorney failed to pay to the complainant the sums due to her from the sale of the subject property. The sums listed on p 30 of the judgment were paid by the attorney to the attorneys-at-law for the complainant on the 10th April 2017, one day prior to the scheduled date for the hearing of mitigation submissions as to the appropriate sanction to be imposed.

The panel is of the considered opinion that the unethical acts of the attorney which constituted its findings of professional misconduct against the attorney are very serious, and are extremely egregious, inexcusable and unacceptable. The conduct of the attorney totally undermines the basis of trust in attorneys-at-law on which the entire practise of conveyancing in Jamaica is based.

Attorneys-at-law are expected to adhere to the highest ethical standards when dealing with the business of clients and third parties. They are obliged to account for and pay over sums of money that are due to clients as they become due. They are obliged to keep funds in trust accounts and deal with them in a manner that is wholly in the interest of and at the direction of the client. This the attorney did not do.

In considering the sanctions to be imposed the panel cites a passage from the English Court of Appeal case of **Bolton v Law Society reported at 1994 2 ALL ER p 486 and in particular p 491 paragraphs f onwards**

“ it is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. –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 ordered that he be struck from the Roll of Solicitors.

And at p 492 paragraph d and onwards “ 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. ---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 the solicitor will be a person whose trust worthiness is not and never has been seriously in question.. Otherwise, the whole profession, and the public is injured . A profession’s most valuable asset is its collective reputation and the confidence which that inspires” .

The legal reasoning in this case has been adopted in many disciplinary cases against attorneys in Jamaica and these attorneys have been struck from the Roll of Attorneys-at-law entitled to practise in Jamaica for dishonestly handling monies belonging to clients or to third parties. These decisions by the Disciplinary Committee have been upheld by the Court of Appeal. .

Taking all the circumstances of this cases as outlined above the panel imposes the following sanctions on the attorney

- That the attorney make restitution to the complainant Olive Blake of the sums stated at p 30 of the judgement
- Half balance proceeds of sale \$1,935,913.40
- Half of outstanding proceeds of sale \$38,310.23
- Half Transfer Tax on Esatate Constance Wilson \$\$91,651.92
- Half Real Estate Commission \$90,000.00
- Half Rental and initial Retainer \$84,236.85
- Total \$2,240,112.40

The panel confirms that all the above sums were paid to the attorneys-at-law for the complainant on the 10th April 2017 and which receipt has been acknowledged by these attorneys-at-law

- It was also agreed by the attorneys-at-law for the complainant and the attorney-at-law for the attorney that the following sums be paid to the complainant.
- Interest compounded in the terms ordered by the panel \$858,380.22
- Costs of travel and accommodation \$868,475.20
- Attorneys costs \$2,000,000.00
- Total due \$3,726,855.42

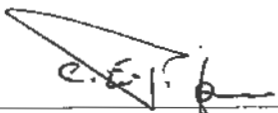
The panel so orders in keeping with the above terms of Agreement.

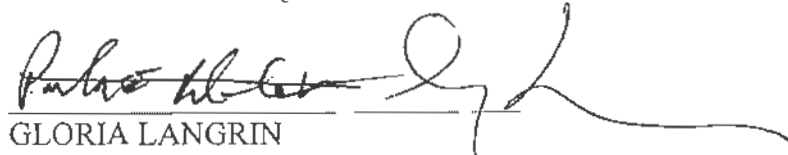
Lastly, based on the detailed analysis of the evidence and the relevant law outlined above, and in spite of the fact that the attorney has repaid the sums incorporated in the order, and

the glowing tributes made by the character witnesses of the attorney, it is the decision and order of the panel that the Attorney Michael Lorne be struck from the Roll of Attorneys-at-law entitled to practise in Jamaica. pursuant of Section 12 (4) (a) of the Legal Profession Act as amended.

Dated the 24th day of JUNE, 2017


PAMELA E BENKA-COKER Q.C.


CHARLES PIPER Q.C.


GLORIA LANGRIN