

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

COMPLAINT NO. 87/2003

In the Matter of LUNETH ORAM,
RASFORD ORAM and LORRAINE
EARLE, an Attorney-at-Law.

AND

In the Matter of the Legal Profession
Act, 1971

Panel: Pamela Benka-Coker, Q.C
Allan Wood
Daniella Gentles

Appearances: The Complainants, Luneth Oram and Rasford Oram, appeared in person.
No one appeared for the Attorney-at-Law nor did she appear.

Hearing: 29th day of April, 2006 and the 12th day of May, 2006

COMPLAINT

1. The complaint against the Attorney-at-Law, Lorraine Earle, (hereinafter called "the Attorney") as contained in Form of Affidavit sworn to on the 18th October, 2003 (Exhibit 1) by Luneth Oram and Rasford Oram, (hereinafter called "the Complainants") is that:
 - a. "Mrs. Earle has withdrawn from our employment and injured our position and rights as her clients;
 - b. [She] has not refunded deposit and other sums of monies she collected;
 - c. [She] has not provided my husband/myself/my son with any information as to the progress of our business ie 1 Foxlaw Avenue, Kingston 10;

- d. [She] has not dealt with our business with honesty nor straightforwardness;
 - e. [She] has acted with inexcusable and deplorable negligence in the performance of her duty; and
 - f. [She] has not accounted to us for any of our monies in her hands which are for our account/credit.”
2. After lodging this complaint at the offices of the General Legal Council the Attorney made full restitution and the Complainants therefore decided to withdraw the complaint. Given the gravity of the complaint this Committee however felt that the matter ought not to be withdrawn. Upon the Committee being satisfied that the Attorney had been duly served with notice of this hearing pursuant to **Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules** set out under the **4th schedule to the Legal Profession Act** and, in exercise of its discretion to proceed with the hearing in the absence of the Attorney, which is provided for under **Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules**, the Committee commenced the hearing of this matter on the 29th April 2000 with the evidence of one of the Complainants, Mrs. Luneth Oram. The matter was thereafter adjourned to the 12th May 2006 and notes of the proceedings served on the Attorney and notice of the date of the adjourned hearing. The Committee having been satisfied that the Attorney had been duly served with notice of the adjourned hearing completed the hearing of this matter on the 12th May 2006.

EVIDENCE

3. According to the Complainant sometime in 2002 she saw an advertisement in the newspaper in relation to the sale of premises at 1 Foxlaw Avenue, Kingston 10.

She telephoned the number stated in the advertisement and spoke to the Attorney who invited the Complainant to meet her at the said premises. The Complainants went to the said premises where they met the Attorney in person. The Attorney advised the Complainants that she was in charge of getting the house sold. She further advised them that she was an Attorney-at-Law and if they agreed for her to act on their behalf in the sale, the matter would be completed quickly. The Complainants decided to purchase the house and to that end they retained the Attorney to act on their behalf.

4. The Complainants through Mrs. Oram gave evidence that the purchase price for the premises was approximately \$3,500,000.00. The Agreement for Sale for the said premises was tendered into evidence as Exhibit 2. The purchase price stated in the Agreement for Sale was \$4,000,000.00. The Agreement for Sale stated the names of the vendors as Gladys Matilda Malcolm, Elaine Theresa Malcolm and Harold Lloyd Burke; the purchasers were David Ralph Benson Oram, son of the Complainants, and Rasford Oram, the other Complainant. The said Agreement for Sale contained a number of terms including that:
 - a. A deposit of \$600,000.00 was to be paid by the purchasers and the balance would be paid by Jamaica National Building Society or any other reputable financial institution.
 - b. Completion was fixed for 90 days of the date of the Agreement for Sale on payment in full of the purchase price and costs in exchange for duplicate certificate of title and registrable Instrument of Transfer.
 - c. The purchasers were to pay on execution of the Agreement for Sale their half share of the vendor's Attorney-at-Law's costs of \$30,000.00 to prepare the Agreement for Sale and the cost of stamp duty and registration fee. The Attorney's costs to prepare the relevant letters of possession and

letters to the utility companies was to be paid by the purchasers and vendors in equal share upon completion of the sale.

- d. The Attorney, Lorraine Earle, was stated as being the Attorney with carriage of sale.
5. According to the Complainant the Attorney advised her that although by law she was only required to pay a certain percentage by way of a deposit on the purchase price she should pay as much as possible. The Complainants accepted this advice and on the 11th July, 2002 they paid her a manager's cheque drawn on a Jamaica National Building Society's account in favour of Loraine Earle in the sum of \$1,200,000.00 as a deposit. This cheque, which was negotiated by the Attorney, was tendered into evidence as part of Exhibit 4. Between the 19th July, 2002 and the 9th January, 2003 the Complainants paid the Attorney the following sums of money:
- a. J\$28, 000.00 on the 19th July, 2002 being valuation fee;
 - b. J\$75,000.00 in July, 2002 being the Attorney's fees;(see Exhibit 4- receipt dated the 26th July, 2002 for £1,000.00 equivalent to J\$75,000.00);
 - c. J\$331,000 on the 6th September, 2002 being a loan made to the Attorney, on her request, which the Attorney agreed to repay within 7 days. According to the Complainants the Attorney came to their home one night at about 8 o'clock in distress. She told them that her son was to go to college in the USA but would not be able to go as she did not have the money. The Complainants lent her £4,000.00 which was equivalent to J\$331,000.00 (see receipt dated the 6th September 2002 – Exhibit 4);
 - d. J\$92,575.00 on the 9th January, 2003 which was to be paid to Cedric Earle, the Attorney's husband, for him to carry our repairs to the house. (See

Exhibit 4- receipt issued by the Attorney dated 9th January, 2003 for £1,050.00 for house repair).

In total the Complainants paid the Attorney \$1,726,575.00, between the 11th July 2002 and the 9th January 2003.

6. After January, 2003 when the Complainants made the last payment to the Attorney, they saw her again in March, 2003 and she assured them that everything was fine and that the documents were now with Jamaica National Building Society whom the Complainants were getting a mortgage from to purchase the house. After this meeting in March 2003 the Complainants received no communication from the Attorney nor did they have any further contact with her. They visited the Attorney's office in New Kingston but the office was closed and they could not reach her by telephone as all of the Attorney's phone numbers which they had, rang without answer. The Complainants visited the Attorney at her home at Ocean Towers but were not permitted by the security to see her so they left a message with the security at the complex for her to get in touch with them. The Attorney never got in touch with the Complainants. The purchase of the said premises was never completed as the monies paid by the Complainants to the Attorney on account of the purchase price was not paid to the Vendors and the Attorney could not be found.

7. Not hearing from the Attorney and not knowing her whereabouts in circumstances where she had received over \$1,700,000.00 from the Complainants, the couple eventually reported the matter to the police who arrested the Attorney for misappropriation of money. Sometime in 2004 and again in August 2005 the Attorney made restitution to the Complainants directly and through their new Attorney, Eme Usim, in the sum of \$2,000,000.00. A letter dated the 30th August, 2005 from Eme Usim to the Complainants enclosing monies from the Attorney was tendered into evidence as Exhibit 3.

FINDINGS OF FACT

8. Having seen and heard the Complainant's evidence and having perused the exhibits, the Committee accepts the Complainant, Mrs. Oram, as a witness of truth and finds that the following has been established beyond reasonable doubt:
 1. The Complainants retained the services of the Attorney to act on their behalf in the purchase of premises at 1 Foxlaw Avenue sometime in or around July 2002.
 2. Between 11th July, 2002 and 9th January, 2003 the Complainants paid the Attorney the sum of \$1,726,575.00 being payments in relation to the purchase of the said premises and a loan to the Attorney in the amount of £4,000.00 (Jamaica equivalent being J\$331,000.00).
 3. The Complainants paid the Attorney a deposit on account of the purchase price in the amount of \$1,200,000.00, which was more than the required deposit, upon the advice of the Attorney.
 4. The Attorney went to the Complainants' home on or about the 6th September 2002 and borrowed from them £4,000.00 (the Jamaica equivalent being J\$331,000.00, while she was their Attorney-at-Law, which the Attorney agreed to repay within seven days of the date from which the monies were loaned.
 5. After receiving the aforesaid sums of monies from the Complainants, the Attorney had a meeting with them in March 2003, and thereafter the Attorney could not be located either in person or by telephone by the Complainants. The Attorney failed to contact the Complainants or communicate with them as regards the status of the transaction or the

whereabouts of the monies which they had paid to her. The Complainants were therefore unable to complete the purchase of the premises.

6. The Attorney did not use the monies collected from the Complainants in furtherance of the purchase of the said premises.
7. Given the conduct of the Attorney, the Complainants retained the services of a new Attorney, Emi Usim, and reported the matter to the police.
8. The Attorney kept the Complainants' monies for almost three years without any communication with them.
9. Sometime in 2004 the Attorney made restitution to the Complainants in the sum of \$220,000.00 and in August 2005 the Attorney paid them a further sum of \$1,800,000.00 .

CANONS

9. In breach of **Canons I (b) and VII (b) and VIII (b) of The Legal Profession (Canons of Professional Ethics) Rules** the Attorney did not use the monies received from the Complainants on account of the purchase price for premises in furtherance of the purchase of the said premises but kept it and failed to account to the Complainants for these monies paid to her for the purchase of the said premises in circumstances where the Complainants could not locate the Attorney and she failed to communicate or correspond with them as regards the transaction, their documents and the monies paid to her. In the circumstances it is reasonable to infer that the Attorney misappropriated the monies paid. This inescapable conclusion is further supported by the fact that the Attorney after some years made restitution to the Complainants.
10. For ease of reference we set out below the aforesaid Canons.

Canon I (b) provides 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”.

Canon VII (b) provides that:

“An Attorney shall –

- (i) ...
- (i) account to his client for all monies in the hands of the Attorney for the account or credit of the client , whenever reasonably required to do so; and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council.”

Canon VIII (b) states that:

“Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.”

11. We find that the Attorney further breached **Canons IV (o)** and **IV (r)** as contained in **The Legal Profession (Canons of Professional Ethics) Rules** as after the Complainants had paid to her monies on account of the purchase price she could not be located for sometime which severely prejudiced the Complainants in relation to the sale transaction as they could not retain the services of another Attorney nor were they in a position to pay the vendors the monies on account of the purchase price as the Attorney had it, hence they lost the sale.

12. **Canon IV (o)** provides that:

“An Attorney who withdraws from employment by virtue of any of the provisions of Canon IV (n) shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client including-

- (i) giving due notice;
- (ii) allowing time for employment of another Attorney;
- (iii) delivering to the client all documents and property to which he is entitled;
- (iv) complying with such laws , rules or practice as may be applicable; and
- (v) where appropriate obtaining the permission of the Court where the hearing of the matter has commenced.”

13. **Canon IV (r)** provides that:

“An Attorney shall deal with his client’s business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client’s business with due expedition.”

14. We believe that specific reference should be made of the conduct of the Attorney in visiting the Complainants’ home and there borrowing money from them whilst she was still their Attorney and in the middle of a transaction. Given the fiduciary

not be a more moral act, one, that would do more credit to a young man beginning the world, or afford a better omen for the future, than if, a trustee having done his duty, the cestui que trust, taking it into his fair, serious, and well-informed, consideration, were to do an act of bounty like this. But the Court cannot permit it; except quite satisfied, that the act is of that nature, for the reason often given; and recollecting, that in discussing, whether it is an act of rational consideration, an act of pure volition, uninfluenced, that inquiry is so easily baffled in a Court of Justice, that instead of the spontaneous act of a friend, uninfluenced, it may be the impulse of a mind, misled by undue kindness, or by forced oppression; the difficulty of getting property out of the hands of the guardian or trustee thus increased; and therefore, if the Court does not watch these transactions with a jealousy almost invincible, in a great majority of cases it will lend its assistance to fraud; where the connection is not dissolved, the account not settled, everything remaining pressing upon the mind of the party under the case of the guardian or trustee.”

16. On page 57 of the Judgment Stirling L.J. said:

“... and I think it is a clear authority for these propositions: First, that transactions of gift between solicitor and client are watched and scrutinized by the Court with the utmost jealousy. This doctrine is one founded on important reasons of public policy; and the result is that, before such a transaction can be upheld, the Court must be satisfied that, as Lord Eldon puts it, “it is an act of rational consideration, an act of pure volition, uninfluenced.” In other words, the Court, in dealing with such a transaction, starts with the presumption that undue influence exists on the part of the donee, and throws upon him the burden of satisfying the Court that the gift was uninfluenced by the position of the solicitor. Secondly, this presumption is not a presumption which is entirely irrebuttable, though it is one which is extremely difficult to be rebutted. Lord Eldon puts it that it was “almost impossible” to uphold such a gift in the case of the relationships which he specified, one of them being that of attorney and client.”

The Complainants did not make a gift of the monies to the Attorney however the same principles above still apply where the Attorney borrows money from his client without the intervention of another Attorney (see **Cordery on Solicitors 8th edition p. 17 paragraph E**).

17. The Attorney ought not to have borrowed money from her clients while she was still representing them and in any event ought to have ensured that the clients obtained independent legal advice and that their interests were properly protected. The Attorney obviously took advantage of the relationship she had with the Complainants and got them to give her money which she promised to repay within seven (7) days which she failed to do. Indeed for a few years after lending

the Attorney the money, the Complainants could not find her. This conduct the Committee finds reprehensible and a breach of **Canons I (b) and VIII (b)**.

18. One of the complaints listed by the Complainants was that the Attorney acted with inexcusable or deplorable negligence or neglect. Negligence connotes a certain carelessness which the evidence does not disclose but rather something much more serious than negligence.

19. To summarise we find that the applicable standard of proof has been established in this case and the Attorney as she then was, is guilty of professional misconduct as per **Canon VII the Legal Profession (Canons of Professional Ethics)** in that she has breached **Canons I (b), IV (o), IV (r), and VII (b) (ii)**.

20. Given the gravity of the complaints and our findings, had the Attorney's name not already been struck off we would have ordered that her name be struck off the Roll of Attorneys-at-Law. To this end we are mindful of the statement by Sir Thomas Bingham M.R. in **Bolton v Law Society [1994] 2 ALL ER 486**:

“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.” (P. 491)

On page 492 Sir Thomas Bingham M.R. went on to state that:

“... 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

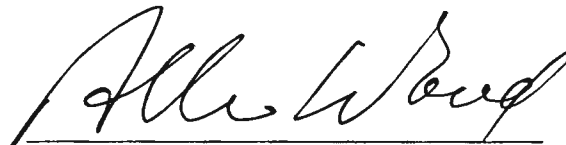
earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house , very often his largest asset , and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness in 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.”

21. In the circumstances it is the decision of this Committee that pursuant to section 12(4) of the **Legal Profession Act** the Attorney, Lorraine Earle,:
1. Pay a fine in the amount of \$300,000.00 of which the sum, \$200,000.00 is to be paid to the Complainants when collected ; and
 2. Pay the costs of these proceedings in the amount of \$20,000.00;


DATED THE 13th DAY OF MAY 2006



PAMELA BENKA-COKER



ALLAN WOOD



DANIELLA GENTLES