

DECISION OF THE DISCIPLINARY COMMITTEE

Complaint No. 28 of 2001

ALFRED WILLIAMS

COMPLAINANT

SHAUN REYNOLDS

RESPONDENT

PANEL:

PAMELA BENKA-COKER Q.C
GLORIA LANGRIN
CHARLES PIPER

HEARING DATES

6th March 2004, 4th December 2004, 19th July 2005, 30th July 2005, 29th August 2005

BACKGROUND HISTORY

The respondent Shaun Reynolds, (hereinafter also referred to as "the attorney") is an attorney-at-law in private practice with offices at Main Street, Lucea in the parish of Hanover.

The complainant Alfred Williams (hereinafter referred to as the complainant) is a businessman who resides at Negril in the parish of Westmoreland. In or around 1995 or 1996, the complainant secured the services of the attorney to act on his behalf in the purchase of two pieces of land. One plot of land was being sold by one Mr. James at a price of \$1,520,000.00. This lot will be referred to as lot one.

The complainant was purchasing the other plot; lot two, from one Mr. Hopeton Sirjue. This lot was being sold at a price of \$1,400,000.00. The complainant alleged that he paid a sum of \$1,400,000.00 and all costs to the attorney and a sum of \$120,000.00 to the vendor Mr. James in relation to lot one.

The complainant further alleged that he paid a sum of \$1,200,000.00 and costs to the attorney and a sum of \$200,000.00 directly to the vendor Mr. Sirjue in relation to lot 2. In spite of having paid over these sums with respect to the purchases of the two plots, the purchases have never been completed and the complainant has never received title to either of the plots.

THE COMPLAINT

By way of Form of Application against the attorney dated the 28th March 2001 with affidavit in support, the complainant stated:

- “1 that around 1997 I retained the attorney to act on my behalf when I was sued by one Cheston Ferguson who had sued me for monies owed. I was not represented in court and a judgement was entered against me for monies totaling seventy four thousand (\$74,000.00). I paid Mr. Reynolds twenty thousand dollars (\$20,000.00 and received no representation, nor refund. I paid a further eight thousand dollars (\$8,000.00) to set aside default judgment but that was not done.
- 2 I instructed him in the matter of a purchase of property from Neville James for one million five hundred and twenty thousand dollars (\$1,520,000.00) –all monies were paid including Mr. Reynolds’ fees and all duties and I have not had the matter completed since 1995.
- 3 I instructed Mr. Reynolds in respect of a purchase from Mr. Copeland Sirjue for one million four hundred thousand dollars (\$1, 400,000.00) and have paid all fees and duties to have my name placed on the Title registered at Volume 1149 Folio 364-this was done around April 1996 and Mr. Reynolds, though he has collected all the monies relevant to the transaction, he has not to the best of my knowledge, stamped the documents and tells me he has lost the file.

The complaint I made against the attorney is that:

He has failed to account to me in respect of my affairs and has not dealt with any of my matters with due haste and expedition and has failed to account to me for the monies paid to him for work to be done on my behalf.”

THE HEARING

Considerable delays beset the expeditious hearing of, and the resolution of this complaint. Efforts were made to resolve it amicably, but those failed, save and except in relation to the complaint listed at paragraph 1 of the affidavit in support. This one was not proceeded with as the parties had settled it to their mutual satisfaction.

The complaint came before other panels of the Committee but the hearing did not commence before us until the 6th March 2004. On that date Mr. Alfred Williams gave evidence touching and concerning the complaint as it related to the proposed purchase of two lots of land. After Mr. Alfred Williams gave evidence in chief, Mr. Eric Frater Attorney-at-Law who was then representing Mr. Reynolds, asked for time to prepare his cross-examination and asked for an adjournment. The complaint was adjourned to the 15th May 2004 for continuation. There is no minute of order for the 15th May 2004, but

on the 5th June 2004 when the complaint again came up for hearing, Mr. Alfred Williams, Mr. Egerton Saint, Mr. Eric Frater Attorney-at-Law and Mr. Lloyd Wiggan Attorney-at-Law, were present. A medical certificate was tendered on behalf of Mr. Reynolds indicating that he had a medical condition. The hearing was further adjourned to the 17th July 2004 for completion.

On the 17th July 2004, the hearing was again adjourned as Mr. Alfred Williams was ill. Present on that date were Mr. Shaun Reynolds and his attorney-at-law Mr. Eric Frater and also Mr. Leonard Green now representing Mr. Williams. The complaint was adjourned to the 30th October 2004. On the 30th October 2004, Mr. Alfred Williams, Mr. Egerton Saint, Mr. Shaun Reynolds and Mr. Lloyd Wiggan were present. Mr. Eric Frater sent a letter to the tribunal indicating that he was unable to attend on that date. Mr. Lloyd Wiggan said that he could not proceed to represent Mr. Shaun Reynolds case as he did not have the file. On the application of Mr. Lloyd Wiggan representing Mr. Shaun Reynolds, the hearing was adjourned to the 4th December 2004.

On the 4th December 2004, present were Mr. Alfred Williams, Mr. Egerton Saint, Mr. Shaun Reynolds, Mr. Eric Frater and Mr. Lloyd Wiggan. Mr. Leonard Green was not present. Mr. Eric Frater sought to have the hearing postponed on the basis that Mr. Leonard Green was absent. We did not accede to that request and proceeded with the hearing. At this sitting Mr. Eric Frater and Mr. Lloyd Wiggan withdrew from appearing for Mr. Reynolds. In the light of the withdrawal of his attorneys-at-law, Mr. Reynolds applied for and was granted an adjournment to the 29th January 2005. On the 29th January 2005, the panel was improperly constituted as Mrs. Langrin was absent. Present on this occasions were Mr. Alfred Williams, Mr. Egerton Saint, Mr. Shaun Reynolds and Mr. Terrence Ballantyne Attorney-at-Law, now representing Mr. Shaun Reynolds. Mr. Ballantyne was not ready to proceed, so the complaint was put for mention on the 19th February 2005 when a date for completion would be set.

On the 19th February 2005, Mr. Shaun Reynolds, Mr. Egerton Saint and Mr. Alfred Williams were present. The complaint was set for completion on the 18th June 2005. On the 18th June 2005, Mr. Reynolds, Mr. Saint, Mr. Alfred Williams, and Mr. Leonard Green were present. Mr. Ballantyne was not present. Mr. Reynolds applied for an adjournment on basis that Mr. Ballantyne was unable to be there. Mr. Green opposed the application on the ground that the complaint should have been completed a long time ago and that the complainant had been attending for a long time. We adjourned the complaint to the 19th July 2005.

On the 19th July 2005, present were Mr. Shaun Reynolds, Mr. Terrence Ballantyne and Mr. Alfred Williams. Mr. Ballantyne completed the cross-examination of Mr. Alfred Williams. Mr. Alfred Williams closed his case. Mr. Ballantyne then applied for an adjournment as he had a matter in chambers at the Supreme Court. He advised us that Mr. Reynolds had two witnesses whom he would like to call. He said that they are Mr. Michael Brown and Mr. John Thompson. Mr. Ballantyne indicated further that he would apply for subpoenas for the two witnesses and said that he would complete the hearing of the complaint on the 30th July 2005, to which date the hearing was adjourned.

On the 30th July 2005, present were Mr. Alfred Williams, Mr. Shaun Reynolds and Mr. Terrence Ballantyne. On that occasion Mr. Shaun Reynolds gave evidence. He was also cross-examined but the panel wished to see copies of receipts for all payments made by Mr. Williams, receipt books reflecting the payments, statements of account presented by Mr. Reynolds to Mr. Williams and the original agreements for sale. The complaint was adjourned to the 29th August 2005 for completion. On the 29th August 2005, present were Mr. Reynolds, Mr. Ballantyne and Mr. Alfred Williams. Mr. Ballantyne advised that he only had the receipt books but neither Mr. Reynolds nor Mr. Ballantyne was able to secure the other documents from Mr. Eric Frater. Certain receipts were produced in evidence and on the application of Mr. Reynolds the hearing of the complaint was adjourned to the 21st September 2005 for completion. Mr. Reynolds was advised that all documentation was to be produced on that date. On the 21st September 2005, no parties were present as they had been previously advised that a member of the panel, Mr. Charles Piper was off the Island. The complaint was set for continuation on the 29th October 2005. *****

On the 4th November 2005, the panel was improperly constituted and so the hearing was scheduled for the 21st January 2006. Mr. Reynolds was present on the 4th November 2005. On the 21st January 2006, Mr. Shaun Reynolds, Mr. Terrence Ballantyne and Mr. Alfred Williams were present. Mr. Ballantyne indicated that he wished copies of the notes of evidence taken by the recording secretary and we directed that all of the notes of evidence relative to the proceedings which were not then in Mr. Ballantyne's possession were to be sent to him. The complaint was set for completion on the 17th February 2006. On the 17th January 2006 present were Mr. Alfred Williams, Mr. Egerton Saint, Mr. Terrence Ballantyne. The hearing had been scheduled for 2.30 p.m. At 2.50 p.m. Mr. Ballantyne advised us that he had just received a call from Mr. Reynolds who said that his car had broken down in Porus, that he had hired a car and that he was coming to the hearing. The panel did not accept this explanation for the absence of Mr. Reynolds and determined to proceed in his absence. Mr. Ballantyne closed his case and said he would put in writing closing submissions on or before the 17th March 2006.

No written submissions were received from Mr. Ballantyne despite letters to him reminding him to do so and extending the deadline. We therefore gave notice of our intention to deliver our decision on the 3rd February, 2007 but were restrained from doing so pending the hearing of an inter partes application for stay proceedings pending the hearing of an application for judicial review. We have been advised that the latter application was refused and, accordingly, we now deliver our decision in the matter.

THE EVIDENCE

Mr. Alfred Williams was the sole witness who gave evidence in support of the complaint. Mr. Egerton Saint who was his business partner at the material time, certainly in relation to the purchase of the lots, was present at the hearings. Mr. Alfred Williams stated that he is a businessman and he resides at Lot 377 White Hall Estate, Negril Westmoreland. He has known the attorney for about eleven years. He confirmed that he was not

proceeding with the first complaint stated in the affidavit in support of the complaint. In that complaint, Cheston Ferguson sued his security company Power Pack Security Services Limited. The attorney repaid the fees that had been paid to him by the complainant. Hence his decision not to proceed with those issues.

He further said that sometime in 1995-1996 he instructed the attorney to act on his behalf in purchasing property from Mr. James. The price for that property was \$1,520,000.00. The price for the other piece of property (lot two) was \$1,400,000.00. Lot one which was being purchased from Mr. James was situated in Negril. Lot two was being purchased from Mr. Hopeton Sirjue. His complaint is that from 1995-1996, he paid to the attorney the sum of \$1,400,000.00 in relation to the purchase of lot one. The sum of \$120,000.00 had been paid to Mr. James. In addition to the sum paid to the attorney, he had paid to him all costs and stamp duties and he had yet to get title to lot one.

In relation to Lot two, the sum of \$1,200,000.00 was paid to the attorney and a sum of \$200,000.00 to Mr. Sirjue. The attorney was also paid all costs and charges in relation to lot two. The witness clearly indicated that he wished to proceed with the complaint. He indicated that he and his partner had taken the matters up with their attorney-at-law Mr. Green who had agreed to conclude all the transactions. This undertaking was reduced into writing and signed by Mr. Green and Mr. Alfred Williams. Mr. Eric Frater witnessed it.

This undertaking was produced in evidence as exhibit one. This document is dated the 6th March 2004. In it Mr. Green undertakes “personal responsibility to apply for obtain and deliver to Alfred Williams and Egerton Saint, all parcels of land purchased through the office of Mr. Shaun Reynolds attorney-at-law of Main Street, Lucea, Hanover. It is agreed that the said Leonard S Green will communicate directly with Mr. Shaun Reynolds, and obtain from him all monies needed to process the said titles and where necessary litigate for the purpose of obtaining the said titles. To be completed within six months from the date of this agreement.”

Receipt dated the 30th October 1997 in the sum of \$200,000.00 was produced as exhibit 2. This receipt indicates that that sum had been paid to the attorney by the complainant and his partner Mr. Saint. This receipt was in relation to the lot which was being purchased from Mr. James, that is lot one.

A document dated the 22nd April 1996 indicating that the offices of Shaun Reynold’s & Co. had received from Copeland SirJue the Registered Title registered at volume 1149 Folio 364 was admitted as exhibit 3. This Title relates to the lot which is referred to in this decision as lot two, and is the lot the complainant agreed to buy from Copeland Sirjue.

Mr. Green completed his examination in chief of the complainant. On the application of Mr. Frater, the cross examination of this witness was postponed and the hearing of the complaint adjourned to the 15th May 2004. The cross examination of the complainant did not begin until the 4th December 2004.

On that date, Mr. Frater asked a few questions of the complainant. The complainant confirmed that the complaint was about two pieces of land he had bought and he had not yet gotten his title from Mr. Reynolds. It was during the cross-examination of the complainant that the attorney indicated that he wished to secure the services of another attorney at law to represent him. The panel then in the interests of justice and fairness adjourned the hearing of the complaint for continuation on the 29th January 2005.

The panel resumed hearing the complaint on the 19th July 2005. At this stage Mr. Terrence Ballantyne attorney-at-law was representing the attorney. The cross-examination continued. The complainant said that the attorney had told him that the title to the property being sold by Mr. Sirjue had been lost. He said that the attorney had told him that he had joined another law firm called Godfrey, Morgan and Reynolds.

He was not aware that Mr. Green was looking after the title as Mr. Green had advised him that he could not proceed without getting documents from the attorney. The complainant said that both Mr. Green and the attorney had told him that Mr. Green had received money from the attorney. The complainant stated that he was not aware of any communication wherein Mr. Green advised the attorney of certain things he would do with respect to the two titles.

The complainant admitted that Mr. Green had undertaken to get the titles to the two properties. He also admitted that Mr. Green had told him that he had the title to the Sirjue property. He did remember that in November of last year there was a meeting between the attorney, Mr. James, Mr. Green and Mr. John Thompson.

He did remember the attorney telling him that Mr. James and his brother jointly owned the property being sold by Mr. James and that his brother was somewhere in England. The attorney had told him that he had met with that brother but he never saw any document signed by the brothers.

He denied that he was in possession of that lot, as he did not have a title. He denied being on the land and denied that he had fenced it. He never got any letter advising him that he had a right to the land. He remembered the meeting to which Mr. Ballantyne had previously referred. That meeting had been called to resolve the question of an encroachment in relation to the lot of land, which he was purchasing from Mr. James. The rest of the cross-examination touched and concerned the matters discussed at the said meeting. Mr. Ballantyne then ended his cross-examination .

In response to questions from the panel, the complainant said that he had never received any written communication from the attorney with regard to the conduct of his business. He has never seen any written communication or documentation between the attorney and other persons relative to the sale.

The attorney told him that he had given \$100,000.00 to Mr. Green. This was at the end of 2004. He was told that that sum was to deal with the Sirjue title. Both the attorney and Mr. Green told him this. In 2004, the attorney showed him the title in relation to the Sirjue

property. The witness said that he had never been given a statement of account as to the additional monies paid re the sales. He expected to get a statement of account from the attorney, as he was his attorney-at-law at that time. He remembers signing a document, which he thinks, was an agreement for sale. In some ways the document he signed was blank.

The panel permitted Mr. Ballantyne to ask further questions of the complainant as a consequence of the questions asked by the panel. The complainant said that he remembered signing a sale agreement in relation to the Sirjue sale, but he did not sign a sale agreement in relation to both sales.

On the 30th July 2005, the attorney gave evidence. He confirmed that he is an attorney-at-law and that he lives in Hanover and has a practice at Main Street in the same parish. He does know the complainant who became a client of his in the year 1992. He developed a close relationship with the complainant. In 1996, the complainant and his partner undertook to purchase property in Westmoreland, which is the parish adjoining Hanover.

The complainant entered into an agreement for the purchase of lot no. 8 Westland Mountains registered at Volume 1149 Folio 364 of the Register Book of Titles. The agreement for sale was prepared and the complainant and his partner Mr. Egerton Saint signed it. **An agreement for sale was produced by this witness and admitted as exhibit 4.** This document has no date but apparently was entered into in the year 1996.

The Agreement is not stamped, and in the section indicating the vendor, the name Lorna Clarke is deleted and the name Neville James written above it. In the part of the Agreement intituled "Description", this being the land the subject of the sale, the land is referred to as that being registered at Volume 1149 Folio 364. The purchase price is stated as being in the sum of \$700,000.00.

The amount of the purchase price and the terms of payment do not accord with the evidence given by the complainant. The person signing the document as vendor is one Lorna Clarke and Alfred Williams (the complainant) and Egerton Saint sign as purchasers. The signature of the person purporting to witness the signatures of the purchasers is illegible. The attorney said in evidence that he witnessed the signatures of the purchasers.

The attorney contended that the agreement for sale exhibited was the agreement signed between Lorna Clarke, the complainant and his business partner. The attorney further stated that pursuant to this agreement, the sum of \$60,000.00 was paid over to Ms. Clarke. The name Neville James appeared there because he had used the agreement as a precedent, but the Agreement is that between Lorna Clarke, the complainant and Egerton Saint.

The complainant was shown exhibit 4, and he denied taking this document to Ms. Clarke. The attorney said that the title to this property, along with other documents was sent by his offices to the main office of Reynolds, Brown, Godfrey and Morgan at East Street in

Kingston. The contract, the title, and a diagram were sent. This was about in April 1996, two to three weeks after the sale was entered into. He was on sabbatical from his offices for a time.

On his return to practice, he was unable to retrieve the file from his East Street office. The file was lost there. He was told that. He does believe that he told the complainant that he couldn't find the file. He said that the complainant and his partner were put in possession of the property sometime in 1996. Letters of possession would have been given to them, and the relevant letters in relation to water and light.

All monies paid under the agreement for sale were paid to Ms. Clarke, including the sum of \$400,000.00. He did not have any evidence to prove that these sums had been paid to Ms. Clarke as his files were with Mr. Eric Frater, and he was not able to retrieve them.

He paid over \$100,000.00 to Mr. Leonard Green to apply to replace the title, which was lost. The title was subsequently found. Mr. Green now has the title. **Letter dated the 25th February 2005 from Leonard Green to Shaun Reynolds was admitted as exhibit 5.** This letter confirms that Mr. Green had indeed received the sum of \$100,000.00 from the attorney. It also demonstrates that Mr. Green was desirous of assisting in bringing these vexed issues to a conclusion.

The attorney was then examined about the lot one, the property being bought by the complainant from Neville James. He does recollect that in the year 1996, the complainant and his partner did come to his offices with a view to their purchasing the property from Neville James. There was no title to the property, which the complainant was purchasing from Neville James. There was only a subdivision. He did explain all the problems with that purchase to the complainant. Indeed, Neville James and his brother owned lot two. Consequently, the brother had to participate in the sale of that lot.

Having advised the complainant and his brother of the problems attendant on the sale, they decided to proceed with the sale. An Agreement for Sale was prepared in his offices but Mr. James refused to sign it. The attorney then gave evidence as to other problems which plagued this sale and which were never resolved. No agreement for sale was ever signed

In response to questions from the panel, the attorney said that the purchase price of lot one, that is the lot being bought from Neville James was 1.5 million dollars. The purchase price of the lot being bought from Ms. Clarke was \$760,000. The complainant and Ms. Clarke agreed on a purchase price of \$760,000.00. The complainant was incorrect when he said that the purchase price for the lot being bought from Mr. James was \$1,520,000.00. The attorney said that the purchase price of that lot was \$1,500,000.00.

The attorney insisted that the purchase price of the lot being bought from Lorna Clarke/Sirjue was \$760,000.00, and not \$1,400,000.00. He was then shown the affidavit of the complainant in support of the complaint in which the complainant had stated that the lot being bought from Sirjue was \$1,400,000.00. He was then asked if it had been put to the complainant when he was being cross examined that the purchase price of that lot

was \$760,000.00 and not \$1,400,000.00. The attorney eventually said that this had not been done nor was it put to the complainant in cross-examination the difference between the purchase prices he stated and those contended by the attorney.

The attorney said that there had been no resolution in the sale from James to the complainant, and he admitted that he had monies holding for both Mr. James and the complainant, and that he had to account for those monies. Then there were further questions from the panel as to whether or not the complainant had terminated the attorney's retainer.

In response to questions from his own attorney-at-law, the attorney said that he also held funds in the Sirjue matter. He said that Sirjue was the original owner of lot two and then Lorna Clarke became the owner. He confirmed that the title to the Sirjue property had been found in 2004. In response to questions from the panel he said that he was unable to say how much money he had on account for the complainant in relation to the sale of lot one. He was unable to say how much money he has on account for the complainant in relation to lot two, the Sirjue sale.

Some of the sums in relation to the sale of lot two were paid to Ms. Clarke and some were paid to him. He knows that the complainant paid the full purchase price in relation to the sale from Lorna Clarke, but he is unable to say if the complainant paid the full purchase price in relation to lot one. The attorney said that he did do statements of account, and receipts and documents had been sent to the East Street Office.

The panel granted permission to the complainant to ask further questions of the attorney. The complainant put to the attorney that he paid the sum of \$1,200,000.00 in relation to the Sirjue sale. The attorney insisted that the sum was \$760,000.00. He said that costs would have been paid as well. The complainant put it to the attorney that he did not take any sale agreement to Ms. Clarke to be signed. That is exhibit 4.

There were further questions asked by the complainant, which I will not recount here. In response to additional questions put by the panel the attorney stated that his duty to the complainant was to ensure that the sale agreement came to a conclusion. His duty to Ms. Clarke was to stamp the agreement, prepare the transfer and lodge it for registration. He had carriage of sale in relation to the purchase from Ms. Clarke.

When asked if he was of the opinion that he should account to the complainant, the attorney said that he had already accounted to the complainant. He had already set out in writing the account to the complainant. He can get copies of it. He dared the complainant to say that he had meddled with his money. He first became aware that the complainant was saying that he had failed to account to him in 2004. His delay in becoming aware of the complaint was because he was abroad and he was sick with a stroke.

After another series of questions to the attorney, he admitted that he acted for both vendor and purchaser in both transactions. The attorney could give no specifics as to how much money was paid to him by the complainant in relation to each sale and much had been

paid directly to the vendors. The panel requested that the attorney produce all the receipts, documents and statements of account relative to both transactions and which he said were in the possession of Mr. Eric Frater his former attorney- at-law.

This request was made at the hearing of the 30th July 2005. The hearing of the complaint was then adjourned to the 29th August 2005. On the 29th August 2005, the attorney produced the following documents. **Exhibit 6a, a receipt issued to Mr. Alfred Williams and Mr. Edgerton Saint.** It is numbered 2853 in the sum of \$72,400.00. It is stated to be for land sale expenses at West End Negril James/Williams/Saint. Presumably this relates to the sale of Lot one.

The receipt next in sequence 2854 dated the 19th January 1996 was issued by the attorney to Alfred Williams and Egerton Saint for the sum of \$820,000.00 relative to Land Sale at West End i.e. half lot Negril Westmoreland. **This was admitted as 6b.** This sum appears to have been paid by cheque No. 627558

The next exhibit was that of **6c which is receipt dated the 19th January 1996** receipt No. 2855 in the sum of \$820,000.00 issued to Williams and Saint, Land Sale West End, Negril Westmoreland. A reference was made to the preceding receipt 2854. The sum in exhibit 6c was paid by cheque No. 627557.

Exhibit 6d is also dated the 19th January 1996 and is in the sum of \$186,400.00 and on which is noted James/ Williams/ Saint Land Sale Expenses.

Exhibit 7 is dated the 30th April 1996 in the sum of \$960,000.00 paid by N.C.B cheque 715411. Noted on it is the name Lorna Clarke Land Sale expenses, balance paid in full. No other documents were produced by the attorney relative to the complaint.

The above is a summary of the evidence and does not purport to be verbatim. The panel thought it necessary to do this extensive review to demonstrate the reasons for our findings. The attorney never produced any of the documents, which he said were in the custody of Mr. Eric Frater, although given ample opportunity to do so, with adjournments granted to enable him to do so.

Counsel for the attorney agreed to do written closing submissions on behalf of the attorney. This was never done. As in relation to the production of the documents, counsel for the attorney was given more than ample opportunity to present these written submissions. Adjournments were granted to facilitate the presentation of these submissions. The secretary of the General Legal Council wrote to counsel for the attorney on at least two occasions extending the deadline within which the closing submissions should be produced. As already stated the panel never received written submissions for and on behalf of the attorney.

BURDEN OF PROOF

It is accepted that the burden of proof is on the complainant to establish, by credible evidence, the allegations made in the complaint to the standard of proof applicable in law.

THE STANDARD OF PROOF

It is the law, that in all complaints of professional misconduct, the standard of proof is the standard of proof in criminal prosecutions, namely that of "beyond reasonable doubt". That was suggested in the Privy Council case of **Bhandari v Advocates Committee reported at 1956 3 All Erp742**, but there was a dichotomy of approach in that case depending on the degree of moral turpitude contained in the allegations of professional misconduct. In the case of **Winston Campbell v David Hamlet Privy Council Appeal No.73 of 2001**, it was confirmed that the standard of proof is that of "beyond reasonable doubt".

EVALUATION OF THE EVIDENCE

The only witnesses in this complaint were the complainant Alfred Williams and the respondent attorney Shaun Reynolds. In these circumstances the resolution of this complaint depends on the credibility of the evidence given by the parties.

THE COMPLAINANT

Alfred Williams was a very balanced witness who at no time gave evidence which was exaggerated or emotive. He was calm, thoughtful and credible. There was no hostility towards the attorney in spite of the opportunity to vent his discontent, nor did he say anything but what he understood to be the facts. In short he was a very credible witness, whose evidence was not adversely affected by cross-examination, and whose demeanour was impressive.

THE ATTORNEY

The attorney prevaricated in some of his responses to questions, and gave answers that clearly supported the contentions of the complainant. For example, he said that he had accounted to the complainant for the sums paid over to him in relation to the sales. He insisted that Mr. Eric Frater had documents in his possession, which would demonstrate his assertion. However, despite the opportunities given to him to do so, the attorney never produced any of the documentation to support his assertion that he had accounted to the complainant. Further, he was unable to say how much money had been paid to the vendors directly and how much he retained in his custody.

The attorney produced no agreement properly signed by the parties; he produced no stamped agreements for sale, no transfers and certainly no duplicate certificates of title registered in the names of the complainant and his business partner. These sales were never completed.

The evidence of the complainant is clearly to be preferred to that of the attorney and the panel is of the opinion that wherever there is conflict between the evidence of the complainant and that of the attorney, the evidence of the complainant is to be preferred.

In keeping with the requirements of section 15 of the of the Legal Profession Act the panel makes the following findings:

- 1 In or around the year 1996, the complainant and his partner Mr. Egerton Saint retained the services of the attorney to act for them in the purchase of two lots of land.
- 2 Mr. Neville James was selling one lot of land for \$1,520,000.00.
- 3 The sum of \$120,000.00 on that purchase was paid by the complainant directly to the vendor Mr. James.
- 4 The sum of \$1,400,000.00 was paid by the complainant and his partner directly to the attorney on the purchase price of the said lot being purchased from Mr. James.
- 5 The complainant paid all costs to effect the transfer of the lot the subject of the sale.
- 6 The sale of the lot was never completed.
- 7 There has been no certificate of title registered in the names of the complainant and his business partner.
- 8 The attorney has never accounted to the complainant for the sums paid to him by the complainant.
- 9 No written statement of account has been made by the attorney to the complainant.
- 10 The attorney was unable to explain to the panel how he had dealt with the funds entrusted to him by the complainant.
- 11 The attorney admits that he holds sums on behalf of the complainant.

- 12 The attorney has made no refunds of all or any of the sums owed to the complainant in relation to the purchase of the lot of land from Mr. James.
- 13 In or around the year 1996 the complainant and his business partner Mr. Saint secured the services of the attorney to act on their behalf in relation to purchase of a lot of land from one Mr. Copeland Sirjue.
- 14 The purchase price of that lot was \$1,400,000.00. The sum of \$200,000.00 was paid directly to Mr. Sirjue by the complainant and his business partner.
- 15 The balance of the purchase price in the amount of \$1,200,000.00 was paid to the attorney along with all costs necessary to effect the transfer of this lot.
- 16 The sale of this lot was never completed. There has been no certificate of title in relation to this lot of land registered in the names of the complainant and his business partner.
- 17 The attorney has never accounted to the complainant for the sums paid by him to the attorney on account of either of the sales.
- 18 He has never rendered an invoice of his charges for work done to the complainant.
- 19 He has never refunded any of the sums paid by the complainant to him.
- 20 A sum of \$100,000.00 was paid by the attorney to attorney-at-law Leonard Green who at one stage undertook to complete the sales.
- 21 The attorney did not advise the panel of the source of that sum paid to Mr. Green.
- 22 The attorney was retained to act for the purchaser in both sales from in or around 1996 and has, to this day failed to complete them.
- 23 The attorney acted for both vendor and purchasers in connection with the sale of both lots of land.

CONCLUSIONS

We find that the complainant Alfred Williams has established the complaints made against the attorney at law Shaun Reynolds to the standard of proof of 'beyond reasonable doubt'. We find the following charges proven against the attorney:

- (a) That the attorney-at-law Shaun Reynolds failed to deal with the complainant's business with all due expedition contrary to canon iv (r) of the Legal Profession (Canons of Professional Ethics) Rules.
- (b) That the attorney-at-law Shaun Reynolds has failed to account to the complainant for all the monies in his hands for the account or credit of the complainant although reasonably required to do so, contrary to canon vii (b) of the Legal Profession (Canons of Professional Ethics) Rules.
- (c) The attorney-at-law Shaun Reynolds, by his conduct, has failed to maintain the honour and dignity of the profession and has behaved in a manner which tends to discredit the profession of which he is a member contrary to canon 1(b) of the Legal Profession Canons of Professional Ethics) Rules.

In the light of the above findings and conclusions, the attorney-at-law Shaun Reynolds is guilty of professional misconduct contrary to section 12 (4) of the Legal Profession Act.

It is now the duty of the panel to impose the sanction in relation to the findings of professional misconduct.

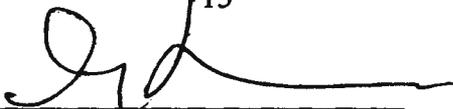
After the delivering the judgment on the 24th March 2007, the panel gave the respondent attorney-at-law time to address the panel on the issue of sanctions. On the 31st March 2007, the respondent attorney did so. Prior to his making submissions to the panel on the matter of sanctions, the attorney admitted that the Disciplinary Committee had found him guilty of professional misconduct on four prior occasions.

Having listened to his address on sanctions, and having deliberated on the appropriate punishment to impose on the respondent attorney-at-law in the circumstances of the previous findings of professional misconduct, and those of the within complaint, the panel made the following orders.

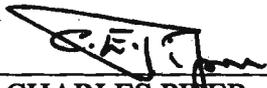
- (1) The attorney-at-law Shaun Reynolds is to make restitution to the complainant Alfred Williams in the sum of \$2,687,545.00 with interest at the rate of 10% from the 28th March 2001 to the time of payment.
- (2) The attorney's name be struck from the Roll of Attorneys-at-Law entitled to practise in the several courts of the Island of Jamaica.
- (3) Costs of \$50,000.00 to the complainant.

Dated the 31st day of MARCH, 2007.


 PAMELA E BENKA-COKER Q.C.

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GLORIA LANGRIN



CHARLES PIFER