

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



COMPLAINT No. 36/2004

**IN THE MATTER the complaint by
ERROL HAMMOND VS BERRITON
BRYAN**

AND

**IN THE MATTER OF THE LEGAL
PROFESSION ACT, 1971**

**PANEL: MRS. MARGARETTE MACAULAY
 MR. LINCOLN EATMON
 MR. ALLAN WOOD**

This complaint was made against Mr. Berriston Bryan on the 23rd June, 2004 in which he complained that he paid the Attorney the sum of \$30,000.00 as a retainer for the Attorney to represent him in a dispute concerning a coffee farm at Mavis Bank in the Parish of St. Andrew, that Mr. Bryan had withdrawn from his employment and had not refunded such part of the fees as was fair and reasonable. The trial of the Complaint commenced on the 10th February 2007 when the Complainant gave evidence that elaborated upon his written Complaint. It appears that in addition to the dispute concerning ownership of the coffee farm, arising from an altercation the Complainant had been charged with conspiracy to murder and the Attorney had represented him on that matter at the Half-Way-Tree Magistrate's Court and had been paid \$79,000 for such representation.

The Attorney put to Mr. Hammond that his fee for the criminal matter was actually \$365,000 which Mr. Hammond denied. In any event Mr. Hammond insisted that the Criminal matter in which Mr. Bryan had represented him was a separate retainer from the matter in which he had paid Mr. Bryan \$30,000.00 which concerned a dispute with one Leslie Hylton over the coffee farm and in which Mr. Bryan had promised to meet with the owner of the farm to amicably negotiate and to work out an arrangement to resolve a demand made that Mr. Bryan vacate the farm. In support that \$30,000.00 was paid for this separate retainer.

Mr. Hammond produced a cash receipt issued by Mr. Berriston Bryan's office dated 22nd July, 2003 confirming that the sum of \$30,000.00 had been received for the "Retainer Re Errol Hammond vs. Hylton Leslie." Mr. Hammond

contended that having received the sum of \$30,000.00 Mr. Bryan did nothing to represent him in respect of the demand made by the owner of the farm. Mr. Hammond was cross examined in detail by Mr. Bryan. At the conclusion of Mr. Hammond's evidence on the 10th February 2007 the matter was adjourned to the 27th February 2007 to permit Mr. Bryan to give evidence. Mr. Bryan did not attend on that date and costs of \$10,000.00 were awarded. The matter came up again on the 26th May, 2007 when Mr. Bryan was again not in attendance and a further order for costs of \$10,000.00 to be paid by Mr. Bryan was made.

The Panel was unable to reconstitute to continue the hearing until today when Mr. Bryan was again not in attendance. Further Mr. Bryan has not paid the costs as ordered which conduct we find to be deplorable and discreditable. The Panel accepts that Mr. Hammond was a witness of truth and his testimony that he paid \$30,000 for Mr. Bryan to represent him in respect of a demand made by the owner of the coffee farm that Mr. Hammond vacate and not in respect of any criminal proceedings is corroborated by the receipt dated 22nd July, 2003 that the sum of \$30,000.00 was paid as a retainer in respect of the matter of Errol Hammond vs. Hylton Leslie

Mr. Hammond contends that Mr. Bryan did nothing on his behalf in that matter. It was in our view incumbent on Mr. Bryan to say what work he did in the representation of the Complainant in respect of that matter and Mr. Bryan has not done so despite ample opportunities given on three occasions.

In the circumstances the Panel finds that the Attorney Mr. Berriston Bryan has charged the Complainant fees that are not fair and reasonable in breach of Canon IV of the Legal Profession (Canons of Professional Ethics) Rules (hereafter called the Canons) and further that Mr. Bryan's refusal to refund such fees is behaviour which tends to discredit the profession of which he is a member in breach of Canon 1(b)

Finally having failed to undertake the work for which he was retained, the Panel finds that Mr. Bryan had effectively withdrawn from his employment and was liable to refund the fees, which he failed to do in breach of Canon 1(p).

In the circumstances acting pursuant to S. 12 (4) of the Legal Profession Act, it is ordered:-

1. That the Attorney Mr. Berriston Bryan is to pay to the Complainant Mr. Errol Hammond by way of restitution the sum of \$30,000.00 together with interest thereon at the rate of 8 percent per annum computed from the 22nd July, 2003 to the date of payment.
2. That inclusive of all previous orders for costs the Attorney Mr. Berriston Bryan is also ordered to pay costs to the Complainant Mr. Errol Hammond in the sum of \$40,000.00.

2. That inclusive of all previous orders for costs the Attorney Mr. Berriston Bryan is also ordered to pay costs to the Complainant Mr. Errol Hammond in the sum of \$40,000.00.
3. The aforesaid sums set out in paragraphs 1 ^{and} ~~2~~ are to be paid within 30 ^{AW} days of the date hereof.

Dated the 8th day of March, 2008


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Mrs. Margarette Macaulay


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Mr. Lincoln Eatmon


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Mr. Allan Wood