

DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

Complaint No. 148/2015

MARIE CLEMETSON AND DOREEN CLEMETSON VS GREGORY LOPEZ
represented by Mrs. Jennifer Rowe

Panel:

Mr. Walter Scott, Q.C.
Charles Piper, Q.C.
Mr. Michael Thomas

Present: Ms. Marie & Doreen Clemetson – Complainants
Mr. Gregory Lopez – Respondent (Present on 2/7/16)
Mrs. Jennifer Rowe – Attorney for Complainants

Hearing Dates: 13th February 2016; *2nd July, 2016; 29th October, 2016; 3rd June, 2017; 23rd September, 2017; 25th November, 2017. *(Evidence commenced)

BACKGROUND TO COMPLAINT

The complainants were appointed as Executors in their mother's estate, that is, estate Alice Maud Clemetson.

Mr. Cecil Lopez, Attorney-at-Law of the firm Lopez & Lopez was retained in respect of the aforementioned estate comprised of 3 lots and related estates comprised of 10 lots making a total of 13 lots which together was generally known as the Clemetson estate.

Upon the death of Mr. Cecil Lopez, the files concerning all the estates/lots were passed to Mr. Gregory Lopez (hereinafter referred to as "the Attorney").

The Attorney was engaged in about 2004 on the basis that all fees would have been deducted from the proceeds of sale of the properties.

Between 2004 and 2014 the Complainants made several enquiries of the Attorney as to the progress being made in respect of the matters of which he had been engaged.

Up to the date when the Complainants filed a complaint against the Attorney, they had received no documents from him nor any account relating to their matters which was verbally requested of him between 2006 – 2013.

On the first day that the matter was called, i.e. 13th February 2016 no parties were present, and the Panel ordered that the Attorney file an Affidavit in response to the complaint as required by the Rules, by the 31st March 2016. Up to the final day of hearing i.e. 25th November 2017 the Attorney had not filed any such Affidavit.

Before the evidence in this complaint commenced on the 2nd July 2016 at the office of the General Legal Council before the Panel named above and present were the Complainants and their Attorney-at-Law Mrs. Jennifer Rowe. The Attorney was absent when the matter was called up at 10:32 a.m. but later arrived at 11.49 a.m.

When asked by the Panel if he had anything to say about the matter, he replied "not really, and I did not come prepared to deal with this matter this morning". The panel was advised by Mrs. Jennifer Rowe that "since all of this started, 5 properties, 3 of which were completed; 2 were not. Mr. Stewart had written to the Council. The matter was being handled by Lavern George. She has the money that was not sent to Mr. Lopez."

When asked by the Panel if she had been trying to retrieve files to take charge of the matter, she replied that all the files are with Mr. Lopez, and that she represents the Complainants in the disciplinary proceedings filed by the Complainants.

The Attorney was advised by the Panel that it was going to start the matter and directed Mrs. Rowe to determine which of the sisters would begin.

THE COMPLAINT

By way of Form of Application against the Attorney dated 18th March 2015 and Affidavit in Support bearing the same date the complaint alleged that:

The Attorney is in breach of the following Cannons, namely:

1. Canon (IV) which states that an Attorney 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.
2. Canon IV (r); an Attorney shall deal with his client's business with all due expedition.
3. Canon IV (s) which states, in the performance of his duties, an Attorney shall not act with inexcusable or deplorable negligence or neglect.
4. Canon VII (b) (ii) which states an Attorney shall account to his client for all monies in the hands of the Attorney for the account or credit of his client, whichever reasonably required to do so.

5. Canon 1(b) which states; an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may lend to discredit the profession of which he is a member.

THE EVIDENCE

Ms. Marie Clemetson was sworn and gave the following evidence:

1. Marie Clemetson stated her full name to be Marie Louise Clemetson and that her address is 4 Cooper Drive, Kingston 10 and she is a Retired Nurse. She said that the lady sitting beside her is her sister Doreen Clemetson whose address is the same as hers and that she, (Marie) is a Teacher but does not teach anymore.

2. The Complainant in answer to the Panel stated that she was familiar with the matter of Alice Clemetson who was her mother and now deceased. She and her sister were appointed Executors of Alice Maud Clemetson's estate.

3. She further stated that the deceased had property at the time of her death, being Clemetson's estate have property in Prospect, St. Thomas.

4. She stated that she had certain issues in completing the estate which was to be the subject of application for probate by Cecil Lopez and when he died it was handed over to his son Gregory Lopez, the attorney.

5. In answer to her lawyer the Complainant said that the understanding as to the payment for those services was that he would get remuneration from the property because the idea was that the property was to be sold.

6. In answer to her lawyer concerning her awareness of the status of these properties, the Complainant stated that "I am afraid we are not fully aware of what has been sold and what transaction has been made for sale".

7. The Complainant stated that she made an Application to the General Legal Council supported by Affidavit which were signed by her sister and herself before a Justice of the Peace on 18th March 2015.

The Form of Application and Affidavit were shown to the Complainant and she, having identified them, they were admitted into evidence as **EXHIBITS #1 & 2** respectively.

8. The Complainant further stated that she and her sister signed a letter to the Attorney with a list of related properties attached. She was shown the letter dated 28th October 2013 and identified her signature. She said that the letter was sent to the Attorney.

The said letter together with the list of properties sent to the Attorney was admitted into evidence as **EXHIBIT #3**.

9. Asked by her lawyer who is Shirley Cridland, the Complainant replied that she was her sister and she had discussions with her concerning Mr. Lopez.

10. Letter dated November 8, 2013 from Dr. Shirley Cridland to Gregory Lopez was identified by the complainant as being her sister's letter, it was tendered and admitted into evidence as **EXHIBIT #4**.

11. The Complainant further stated that she was aware of a letter that was sent on her behalf to Mr. Lopez. This was a letter of October 28, 2013 from Jennifer Rowe Attorney-at-Law addressed to Mr., Lopez which was identified by the Complainant and was admitted into evidence as **EXHIBIT #5**.

12. In answer to her lawyer concerning the list of titles identified, whether she required copies when she was making the complaint to the General Legal Council, the complainant answered in the affirmative. She further confirmed that the title numbers conform with the list as follows:

Re: Estate Alice Maude Clemetson:

Lot 341	Volume 1037 Folio 407
Lot 350	Volume 1037 Folio 416
Lot 177	Volume 1014 Folio 38

Re: Estate Paul Goulbourne:

Lot 175	Volume 1014 Folio 37
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Re: Estate Alice Bernard Cridland:

Lot 33 & 34	Volume 1009 Folio 646
Lot 14 & 14A	Volume 1014 Folio 622
Lot 211	Volume 1012 Folio 197
Lot 213	Volume 1012 Folio 198

Re: Estate Clive Williams:

Lot 212	Volume 1014 Folio 57
Lot 214	Volume 1014 Folio 58
Lot 216	Volume 1014 Folio 69

13. The Complainant gave evidence that in respect of Paul and her late sister Jean, there was paperwork done in respect of title for Paul Goulbourne that Mr. Lopez would be aware of. She further stated that she met Paul with Mr. Lopez in 2012 to have title sorted out.

13. In answer to her lawyer the Complainant stated that she was aware of paperwork signed by a representative of Goulbourne estate.

14. She added that they were in Canada, so adjustment had to be made. Goulbourne died in Canada and his letter was made in Canada. Documentation was required for the local property.

15. Asked whether she personally saw any documents being signed, the Complainant answered that "I know that Andrew Goulbourne met with Mr. Lopez although I did not actually see." She further told the Panel that it was this Gregory Lopez.

16. In answer to the Panel as to whether she got any account in respect of sale of the property, lot 350, the Complainant said "yes, lot 350 was in the name of Alice Maud".

17. The Complainant then proceeded to identify a document shown to her by her lawyer as being a document she received from Gregory Lopez dated 29 September 2005 and which included a statement of account in respect of lot #350 Prospect in the name of Alice Maud Clemetson. The letter dated 29th September 2005 along with Statement of Account dated 28th September were admitted into evidence as **EXHIBIT #10**.

18. The Complainant went on to say that since September 29, 2005 she has not received any accounting in respect of any of those titles, and she is not aware of anybody giving her an accounting in respect of the other properties.

19. In answer to her lawyer the Complainant said that "all these titles were originally handed to Cecil Lopez and he passed them on the Gregory Lopez, and none of these titles had ever been given to me."

18. Her lawyer asked "In respect of transaction which showed a sale to Wilfred Stewart, exhibit 9, are you aware of sale to Winifred Stewart and other lots 214, 216? The Complainant answered "I was not aware verbally about a proposed sale"

19. Her lawyer asked "Do you have information about lots 211 and 214, 8c and d? Estate Predler has two lots, do you know whether those have been sold? The Complainant replied that "Communications that they wanted to get lots together". Her lawyer asked: 211, 212, 214 and 216? Complainant replied; Yes, Purchasers wanted to get lots 211, 212, 214 and 216.

20. Her lawyer asked "In respect of Estate Alice Maud 6a, b, c to the best of your knowledge is it those that have been sold? The Complainant replied, yes. The Panel asked, which two? Her lawyer said, lot 341 6a, 350 6b. The Complainant replied, "yes".

21. In answer to her lawyer the Complainant stated that lot 6c still papers in Alice Maud and that our names don't appear on that.

22. Her lawyer asked, do you know if all transfer taxes and estate duties have been paid. Do you have an accounting in respect of whether these have been paid? Her response was "No, I am not aware if the taxes or transfer taxes that has been paid". The Complainant further stated that she made requests to Gregory Lopez on several occasions for these papers and she never got it.

23. Her lawyer asked, were these requests in writing or what? Complainant stated that "No, all requests were done verbally. I can't remember ever writing to him. Her lawyer said, "Exhibit 5" was sent to him".

Further background

The Panel then adjourned the matter to the 29th October 2016.

On that day the complainants were present, but the Attorney was absent. A medical report from his Doctor dated 25th October 2016 was sent to the General Legal Council stating that the Attorney was ill and under his care. The matter was adjourned to the 2nd December, 2016.

On the 2nd December 2016 no hearing was held due to the fact that the Panel was not being properly constituted.

The next hearing date was on the 3rd June 2017. Present were the Complainants and their Attorney-at-Law. The Panel was advised by the Secretariat that it was reported to them that the Attorney was the victim of a traffic accident and was a patient in the hospital. The matter was adjourned to the 23rd September 2017.

On the 23rd September 2017, present were the complainants and their Attorney. At 12:21 p.m. there was no answer from the Attorney.

The Panel noted that the Notice of Hearing sent by registered mail to the Attorney was returned. The Panel ordered that the matter be fixed for hearing on the 25th November 2017 at 11:00 a.m. and that the Notice of Hearing be served by publication in the newspaper.

On the 25th November 2017 the complainants and their Attorney were present. At 12:06 p.m. the Attorney was absent. The Panel noted a letter dated 24th November 2017 from Mr. Peter Abrahams, Attorney-at-Law on behalf of the Attorney. The Panel further noted:

- a. The Notice of Hearing was advertised in the newspaper (Jamaica Observer of 2nd November 2017).

- b. The Affidavit of Service of Wayon Henry. See Certificate of Posting no. 730915.
- c. The letter of Peter Abrahams which confirmed that the Attorney was is aware of the matter.

The Panel further noted that:

1. The Attorney for the Complainant confirms that the Complainant has completed all of her evidence.
2. Panel is satisfied that the Attorney has been served.
3. The Complainants having closed their case and the Attorney being absent treats the matter as completed and will deliver its judgement as soon as is possible.

THE LAW

24. The Panel reminds itself that the burden of proof to establish the complaint rest solely and entirely on the Complainant. The Panel also reminds itself that the standard of proof which is required from the complaint is proof beyond a reasonable doubt. (**Wilston Campbell v David Hamlet (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001**)
29. As regards the claim that the Attorney was in breach of Cannons 4(r) and (s) which state:
 - (r) **An Attorney shall deal with his client's business with due expedition and**
 - (s) **In the performance of his duties, an Attorney shall not act with inexcusable or deplorable negligence or neglect.**
30. In the leading case of **Earl Witter v Roy Forbes (1989) 26 JLR 129** the Court of Appeal in Jamaica had to deal with these two issues. Carey JA (as he then was) stated as follows: -

"We are not in this appeal dealing with professional misconduct involving an element of deceit or moral turpitude.....as to rule (r) it is not mere delay that constitutes the breach, but the failure to deal with the client's business in a business-like manner. With respect to rule

(s) it is not inadvertence or carelessness that is being made punishable but culpable non-performance.”

31. The Judgement of Witter v Forbes was recently applied by the Disciplinary Committee in Complaint **No. 63/2010 David Bennett v Sean Kinghorn.**

32. The Panel accepts that in matters such as these the Complainant has to prove, to the requisite Standard of Proof; not mere carelessness or inadvertence that would suffice in a civil trial, but culpable non-performance or gross recklessness.

FINDING OF FACTS

33. Having seen and heard the uncontroverted evidence of Complainant Marie Clemetson and having reviewed the exhibits we accept her evidence as a witness of truth and make the following findings of fact:

- a) The Attorney was engaged in about 2004 to represent the Complainants (Executors of estate Alice Maud Clemetson) in the matter of estates: -
 - (i) Alice Maud Clemetson comprised of 3 parcels of land.
 - (ii) Paul Goulbourne comprised of one parcel of land.
 - (iii) Clive Williams comprised of 3 parcels of land; and
 - (iv) Bernard Cridland comprised of 6 parcels of land totaling 13 parcels of land which came to be known as the “Clemetson Estate.”
- b) The Attorney was engaged on the basis that all his fees would have been deducted from the proceeds of sale of the properties.
- c) Upon the death of Mr. Cecil Lopez, Attorney-at-Law and father of the Attorney, all files concerning all the estates were passed to the Attorney.
- d) All the titles to the 13 parcels of land which were originally handed to Cecil Lopez were passed on to the Attorney and none of those titles were ever given to the Complainants.
- e) Save and except for an accounting in writing from the Attorney dated 29th September 2005 in respect of the sale of lot no. 350, Prospect, St. Thomas Estate Alice Clemetson, deceased, the Complainant has not received any accounting in respect of the estates and the titles associated therewith.
- f) In respect of lot no. 341, estate Alice Maud Clemetson, the copy of Certificate of Title at Volume 1037 Folio 407 confirms that the lot was sold to Yvonne Finlayson in 2012 for \$3,300,000.00 and there has been no accounting to the Complainant(s) for this transaction and no payment made to them from the said transaction.

- g) In respect of Estate Clive Williams, the 3 parcels of land were sold in 2012 for a consideration money totaling \$1,200,000.00 and as far as the Complainant(s) are aware there has been no accounting for these transactions from the Attorney to them or to the Executrix of the said estate, Mrs. Williams. Copies of Certificates of title registered at Volume 1014 Folios 57, 58, and 59 confirm the sale of the parcels to Bradley Stewart et al.
- h) In respect of Estate Bernard Cridland, the two lots were transferred in 2012 to Lorris Barclay for a sale of price of \$3,100,000.00 which the Certificate of Title registered at Volume 1014 Folio 622 confirms.
- i) To the best of the Complainant(s) knowledge the Executors of Estate Bernard Cridland have received no accounting from the Attorney for transactions in respect of any of the properties.
- j) Up to the filing of the complaint against the Attorney by the Complainant(s) they received no documents from him nor any account relating to their matter which was verbally requested of him between 2006 – 2013.
- k) On the 28th October 2013 the Complainants authorized the Attorney in writing to deliver to their Attorney, Jennifer Rowe all files relating to Estate Alice Maud Clemetson as well as any relevant documentation, Certificates of Title and full accounting and proceeds of sale from the transactions to date.
- l) That letter of authorization was sent to the Attorney under cover of letter from Jennifer Rowe dated 28th October 2013 requesting that the Attorney let her know when it would be a convenient time to meet to receive from him the files and an account in respect of the estates.
- m) The Attorney did not act upon this request.

CONCLUSION

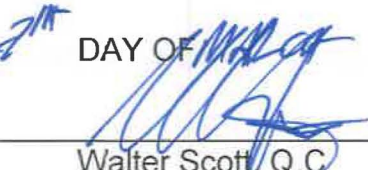
34. The Panel finds that the Attorney is guilty of professional misconduct in that he has breached Cannon 1 (b), IV (r), IV (s) and VII (b) (ii) of the Legal Profession (Cannons of Professional Ethics) Rules; the Attorney failed to provide the Complainants with all information as to the progress of their business and deal with their business with due expedition.

In the performance of his duties, he has acted with inexcusable or deplorable negligence or neglect.

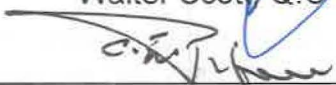
He has failed to account to his clients for all monies in his hands for the account or credit of his clients.

35. From the sale of lot 341 – estate Alice Maud Clemetson, for \$3,300,000.00, 3 parcels of land – estate Clive Williams for \$1,200,000.00, 2 lots - estate Bernard Cridland for \$3,100,000.00 there has been no accounting for the net proceeds to the Complainants or anyone else to the best of their knowledge.
36. The Attorney was engaged in or about 2004, and notwithstanding several requests made to him by the Complainants between years 2006-2013 for information as to the progress of their business or an accounting (save and except for lot 350, estate Alice Maud Clemetson in 2005) the Attorney has failed to so provide them.
37. The Attorney has failed to provide the Complainants with any explanation as to the reason(s) for the non-performance of his duties, and his contempt for the complainants and this Committee is palpable by given his him neglecting/refusing to file an Affidavit in response to their complaint.
38. The Complainants trusted the Attorney to conduct not one but several transactions on their behalf and in several of these transactions the Attorney has failed to live up to the ethics of this profession and the expectation of the Complainants and this Committee. The Attorney's conduct of the Complainants' business coupled with his neglect of these proceedings are clear indications that he has little or no regard for his clients or the ethics of the profession.
39. The Panel having found the Attorney guilty of professional misconduct, will give the Attorney the opportunity to address the Panel on the issue of the sanction which the Panel may impose on him pursuant to the directive of the Court of Appeal in the matter of Owen Clunie v General Legal Council Miscellaneous Appeal No. 3 of 2013.

DATED THE 27th DAY OF May, 2020.



Walter Scott, Q.C.



Charles Piper, Q.C.

Michael Thomas