

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

COMPLAINT NO. 29 of 2021

IN THE MATTER OF SONIA McPHERSON and JOHN THOMPSON, an Attorney-at-Law.

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT,
1971

PANEL: Mrs Debra McDonald - Chairperson
Ms Annaliesa Lindsay
Mr Kevin Powell

APPEARANCES: Ms Sonia McPherson, the Complainant
Mr John Thompson, Respondent
Mr Ludlow Black, Attorney-at-Law for the Complainant
Ms Ingrid Lee Clarke Bennett, Attorney-at-Law for the Respondent

HEARING DATES: November 6 and December 11, 2021; February 5, March 5 and 19, April 2 and 23, June 18, July 25, September 21, October 11 and 26, 2022 and May 17, 2023

Introduction

1. This is the decision in a complaint by Sonia McPherson (“the Complainant”) against Attorney-at-Law, John Thompson (“the Respondent”). The complaint against the Respondent is that in breach of the respective Canons:
 - a. He gave a professional undertaking which he failed to fulfil.
 - b. He did not provide the Complainant with all information as to the progress of her business with due expedition, although she required him to do so.
 - c. He did not deal with the Complainant’s business with all due expedition.
 - d. He acted with inexcusable or deplorable negligence in the performance of his duties.
 - e. He has failed at all times to maintain the honor and dignity of the profession and failed to abstain from behavior that would tend to discredit the profession of which he is a member.

2. The complaint has had a long and tortuous route which has led to this ruling. It may be relevant to recount it.
3. The first hearing date was on November 6, 2021. The Respondent had not filed an affidavit in response to the complaint and the Panel directed that he should do so and adjourned the matter to December 11.
4. On December 11 the Complainant and the Respondent appeared before the Panel which gave directions in relation to a receipt dated August 17, 2001 purportedly issued by the Respondent to the Complainant. The Panel adjourned the complaint to February 5.
5. On February 5 the Respondent was absent and efforts to contact him by telephone were unsuccessful. The Panel proceeded to take the Complainant's evidence, at the end of which the Panel adjourned the matter and directed that notes of the evidence should be sent to the Respondent.
6. On March 5 when the complaint was called up, the Respondent was absent. When the secretary contacted the Respondent by telephone, he indicated that he was not aware of the hearing date and had not received the notes of evidence. He applied for an adjournment. The Panel noted that notice of the hearing was sent to the Respondent by email on February 10 and the notes of evidence sent to him by email on February 21. The Panel adjourned the complaint to March 19.
7. On March 19, 2022 the Respondent was present and was now represented by counsel. His counsel objected to the Complainant's affidavit and the oral evidence which the Complainant had given. The Panel directed that the Respondent's counsel should reduce her objection and any application she wished to make in writing and should file them with submissions on or before March 25.
8. On March 25 the Respondent filed Notice of Application to Strike Out Complaint and Subsequent Proceedings Thereon. In a written decision delivered on April

2, the Panel dismissed the Respondent's application and directed that the hearing of the complaint should continue. The Respondent's counsel indicated that the Respondent intended to appeal and that in any event the Respondent would be traveling that day and applied for an adjournment. The complaint was adjourned to April 23.

9. On April 23, 2022 the Panel was informed that the Respondent had filed an appeal against the Panel's decision referred to in paragraph 8 above and an application for a stay of the hearing of the complaint. The Respondent was also absent having submitted a medical certificate. As a result, the complaint was adjourned to June 18, 2022.
10. On June 18, 2022 the Panel was informed that the Respondent's application to the Court of Appeal for a stay of the hearing of the complaint was refused. The Panel therefore fixed July 25, 2022 for the continuation of the hearing.
11. On July 25, 2022 prior to the cross-examination of the Complainant, the Respondent's counsel applied to make a no-case submission. The Panel indicated that if the Respondent proceeded with the no-case submission, he could not thereafter seek to cross-examine the Complainant. Following an exchange with the Panel, the Respondent's counsel decided to forego cross-examination of the Complainant and make the no case submission. The parties' counsel advanced submissions in respect of the application on July 25 and September 21, 2022.
12. In an oral decision delivered on September 21, 2022 (and subsequently provided in writing) the Panel upheld the no case submission in respect of the complaint that the Respondent had given a professional undertaking that he did not fulfill. The Panel dismissed the no case submission in respect of the remaining complaints against the Respondent¹ and directed that the trial should continue on those issues.

¹ See paragraph 1(b)-(e) above.

13. The trial resumed on October 26, 2022 with the Respondent's evidence. At the close of the Respondent's case, the Panel directed the parties to file and serve written submissions on or before November 30, 2022. No submissions had been filed by November 30, 2022 and the Panel extended the date for the parties to do so to April 21, 2023. The Complainant filed written submissions on that date. The Respondent did not.

The Contending Evidence:

14. The Panel heard oral testimony from the Complainant and admitted several documents into evidence including her affidavit. The Panel concludes that while the Complainant may not have been *au fait* with the relevant legalities associated with the transactions in issue, she was a truthful witness. Her evidence was also not subject to cross-examination.
15. The Respondent gave oral evidence, which under cross-examination, sometimes bordered on the belligerent. He also admitted documents into evidence including his affidavits.
16. The Panel will not recite the evidence in detail but assures the parties that the Panel has considered all the material that was a part of the evidence.

The Complainant's Case:

17. In April 2000 the Complainant's mother (Beryl McMahon) and her siblings entered into an agreement for sale to purchase Lot 24, Haughton Court registered at Volume 1238 Folio 937 of the Register Book of Titles ("Lot 24"). The Respondent had carriage of sale over this transaction.
18. The Complainant's evidence is that she was later interested in purchasing Lot 24 to allow her to expand from a neighboring property she had already purchased ("Lot 23") and sought the agreement of her mother to do so in exchange for which she would purchase another property for her mother ("Lot 12"). After discussing this arrangement with Sonia Clare, the person to whom

she made payments for the property, Ms Clare directed the Complainant to the Respondent.

19. The Complainant approached the Respondent for him to bring her wishes into effect. On August 17, 2001 the Complainant paid the Respondent US\$770.00 and the Respondent issued a receipt for the sum stating that it was received for: **“Cancellation of Agreement for Lot 24 Haughton Court”**, for **“Refund Stamp Office”** and to **“draft new agreement of sale”**. The receipt was admitted into evidence as Exhibit 2.
20. The Complainant's evidence is that despite following up with the Respondent, Lot 24 was not transferred to her, and he did not provide her with any information or explanation until September 2020. At that time, the Complainant claims that the Respondent advised her that she would need to make further payments in order to transfer Lot 24 to her.
21. The Complainant's evidence is that she purchased Lot 12 for her mother and siblings in 2001 for \$850,000. The final instalment of the purchase price was paid in 2016. The Respondent had carriage of sale. However, in 2017, the Complainant discovered that Lot 12 was up for sale by Jamaica Redevelopment Foundation (“JRF”) because of a debt owed to that entity. To prevent JRF from selling Lot 12 she paid them \$765,799.40. See Exhibits 3(a), 3(b), 4, 5 and 6.
22. The Complainant's evidence is that the Respondent only provided the duplicate certificate of title for Lot 12 in 2020. Her complaint is that the Respondent's delay in doing so (the property having been purchased in 2001) is what caused her to have to incur the payments to JRF to prevent its sale.

The Respondent's Response:

23. The Respondent's evidence is that he had carriage of sale for a number of lots in a development done by the Buchanan brothers (Abijah, Banfield and Fredel) in Lucea, Hanover. He said he took all his instructions from Ms Clare, who acted as the agent for the Buchanan brothers and later under cross-examination, admitted that Ms Clare also acted as agent for the purchasers of the lots.

24. The Respondent asserts that after issuing the receipt to the Complainant in August 2001, he reviewed his files and realized that the agreement for sale for Lot 24 had already been stamped and it would be “impossible” to cancel it, because it required all three purchasers to sign it signifying its cancellation and because the proceeds had already been committed to the mortgagee of the Lot. The Respondent’s evidence is that he was not in contact with the Complainant and requested Ms Clare to inform her. The issue was further complicated when one of the Buchanan brothers died in 2003.
25. According to the Respondent, “sometime thereafter” the Complainant contacted him, and he suggested to her that a way to achieve her wishes in relation to Lot 24 was for her mother to do a deed of gift. At this time, another Buchanan brother had died and the other was non compos mentis. The Respondent said he informed the Complainant she would have to pay taxes and fees, but the Complainant refused.
26. The Respondent continued that “thereafter being pressured by my clients’ executors and the bank, I finalised the transfer” and completed the transfer of Lot 24. The transfer was completed in September 2020. As of the date of the hearing the Respondent was still in possession of the original duplicate certificate of title for Lot 24 (which he showed to the Panel).
27. Under cross-examination, the Respondent’s evidence was that he did not refund the monies received from the Complainant because the Complainant owed him “...some money in respect of services for possession letters and they had even owed interest on these monies that are outstanding. So, it would have been an accounting process.”

Findings of Fact:

28. Having considered all the evidence and the demeanor of the witnesses the Panel makes the following findings of fact set out below and in the disposition of the complaint.

29. The Respondent acted in the sale of several lots at Haughton Court, Hanover for the owners, the brothers, Abijah, Banfield and Fredel Buchanan. The Respondent received all his instructions from Sonia Clare, who he knew acted as agent for both the vendors and the purchasers of the lots, including Lots 12, 23 and 24.
30. The Complainant and her husband purchased Lot 23. The Complainant's mother and siblings entered into an agreement for the purchase of Lot 24. The Respondent had carriage of sale over these transactions.
31. Lots 23 and Lots 24 were adjoining lots. The Complainant intended to erect a structure that would straddle both lots and was interested in purchasing Lot 24, which would require the cancellation of the sale of Lot 24 to her mother and her siblings. In exchange for the cancellation of the sale of Lot 24, the Complainant purchased Lot 12 for her mother and her siblings.
32. Prior to the completion of the sale of Lot 24, Ms Clare informed the Respondent of the Complainant's intentions. The Complainant met with the Respondent and in furtherance of her intentions paid the Respondent the sum of US\$770.00, which the Respondent accepted and for which he issued a receipt.
33. The Respondent did not cancel the agreement for sale of Lot 24 in accordance with the Complainant's intentions as informed by Ms. Clare or at all. Instead, the Respondent completed the transfer of Lot 24, 19 years after the Complainant had communicated her intentions to him and paid him US\$770.00 in furtherance of those intentions. The Respondent did not inform the Complainant that he could not carry out her intentions until September 2020. The Respondent has failed and/or refused to refund to the Complainant the sums he received from her.

Disposition:

34. To find the Respondent guilty of professional misconduct the Panel must be satisfied on the evidence beyond all reasonable doubt - see Wilton Campbell v

David Hamlet (as Executrix of Simon Alexander) Privy Council Appeal No. 7 of 2001.

35. The Canons import a stringent test of the degree of neglect or negligence that constitutes professional misconduct. In the case of Earl Whitter v Roy Forbes [1989] 26 JLR at page 129 Carey, JA stated:

Specifically, Rule (s) of Canon 4 is concerned with professional misconduct for Attorneys. It is expected that in any busy practice some negligence or neglect will occur in dealing with the business of different clients but there is a level which may be acceptable or to be expected from beyond no reasonable competent Attorney would be expected to venture. That level is characterized as inexcusable or deplorable. A single act of negligence in the course of a matter therefore will not normally be regarded as inexcusable or deplorable negligence so as to amount to professional misconduct within Canon 4 paragraph (s)."

(Our emphasis)

36. In Gresford Jones v The General Legal Council (ex parte Owen Ferron) Miscellaneous Appeal No. 22/2002 (delivered March 18, 2005) Harrison, JA (with whom Panton, JA (as he was then) and Smith, JA agreed) considered that a charge against an attorney for not maintaining the honour and dignity of the profession (as required by Canon I(b)) may be considered in this way:

The governing words of Canon 1 are: "An attorney shall assist in maintaining the dignity and integrity of the Legal Profession and shall avoid even the appearance of Professional impropriety." This standard of conduct required to be maintained by members of the legal profession is easily understood and perceived as basic good, upright and acceptable behaviour. Any deviation from this legal code is subject to scrutiny as it relates to the requirement of a particular canon. Consequently, "the honour and dignity of the profession ..." may be besmirched by a breach of a particular canon or "the behaviour (of an attorney) may tend to discredit the profession ..." and be a breach of a specific canon. Either conduct would not fail to contravene the requirements of the proper conduct demanded by Canon 1 (b). It is my

view that the Canon is specifically widely drafted, in order to emphasize the ever prevailing high standard of conduct demanded by the profession and re-enforced by all the Canons in the Rules. The Committee was accordingly not in error to find that Canon 1 (b) relates to the conduct of an attorney "in relation to the Court, the regulatory body governing the profession, the law practice, the client, colleagues and certain other persons" and to find that the appellant was in breach thereof. The Canon may also be construed in light of the cumulative effect of the overall conduct of the appellant towards Ferron and the other beneficiaries from 1988 up to the filing of the complaint in 1996. Frequently, in legal proceedings, the same set of facts may point to several breaches of conduct. A tribunal is not for that matter precluded from making an adverse finding on each. The sole prohibition is that the offender may not be punished twice for the same breach..."

37. The Panel is grateful to the Complainant's counsel for the extensive and well-researched submissions on the issue of whether there was a retainer between the Complainant and the Respondent. No disrespect is intended to counsel, but the Panel is of the view that whether the Respondent was retained by or acted as the attorney for the Complainant is not determinative of or necessary to dispose of the complaint.

38. The Court of Appeal has given a wide meaning to the phrase "a person aggrieved" as used in the Legal Profession Act to include persons who do not fall within the attorney-client relationship. In Arlean Beckford v The General Legal Council Civil Appeal No. 32 of 2005 delivered July 31, 2007, Marsh, J.A. (ag) (with whom Panton P and Smith JA agreed) made the following pronouncement (at pages 8-9):

...that the words "aggrieved person" have a wide scope within the Legal Profession Act. It is not restricted to attorney-at-law/client relationships. It is of much wider scope...

39. It is against this legal background and having considered all the evidence, both oral and documentary, that the Panel determines this complaint as follows.

40. The Respondent does not dispute the Complainant's intentions in relation to Lot 24. She required that the agreement for sale entered into by her mother and her siblings in respect of Lot 24 was to be cancelled and she would purchase it. This was to facilitate a construction that would span Lot 23 (which she already owned with her husband) and Lot 24.
41. The Respondent was aware of this prior to meeting with the Complainant and at the time he collected US\$770.00 from her and issued her a receipt for that sum in August 2001.
42. The Panel does not accept that the Respondent advised the Complainant at the time he collected her money that he was collecting it pending her mother's written consent to cancel the agreement for sale and apprising the vendors of the cancellation. This contradicts the Respondent's earlier evidence that the vendor's agent, from whom he received all instructions, had already informed him of the proposed transaction, and that when he met with the Complainant, he did not give her much or any attention.
43. The Panel does not accept that the Respondent is entitled to retain all or a part of the sums he received from the Complainant. No statement of account or demand in writing for sums he claims to be owed and against which an "accounting process" was to be carried out was produced. Having accepted that Ms Clare was equally an agent for the purchasers of the lots in Haughton Court, it was open to the Respondent to write to her in relation to fees owed to him by any of the purchasers, and no evidence of this was provided to the Panel.
44. Having accepted the sum of US\$770.00 to carry out the Complainant's intention, if it was not possible to do so after consulting his files, the Respondent was under an obligation to return the money or inform the Complainant of any sums due by her and against which that money would be applied. The Respondent did not return the money, and it was not until the trial of the complaint that he first mentioned that the Complainant may owe him money but that he had not completed the "accounting process". A process which stood incomplete some 21 years later.

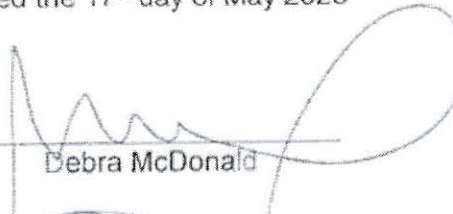
45. The Respondent did not provide any sufficient explanation for taking 19 years to complete the transfer of Lot 24. This fact by itself would not directly affect the Complainant but would be more prejudicial to the purchasers, namely the Complainant's mother and her siblings. However, in circumstances where the Complainant was seeking a cancellation of the agreement for the sale of Lot 24 and to acquire that lot in her own name (and that of her husband), this was an inordinately long time before she was informed or refunded the money, she paid for a transaction that the Respondent did not complete.
46. The Panel's view is that these circumstances establish beyond a reasonable doubt that the Respondent is guilty of professional misconduct in that he has failed to provide the Complainant with all information as to the progress of her business and has not dealt with the Complainant's business with all due expedition.
47. The Panel is slow to find but is satisfied that the Respondent acted with inexcusable or deplorable negligence. Having accepted a payment from the Complainant to carry out her intentions, the Respondent's duty was to carry out the Complainant's intentions or advise her if it cannot be carried out. The evidence is that the Respondent could not have carried out the Complainant's intentions as he required instructions from persons other than the Complainant (the purchasers and vendors of Lot 24) and those instructions were not received, nor were they solicited. In addition, the Respondent did not inform the Complainant, at the time he received her money, of this requirement.
48. However, it was not until September 2020 (19 years later) that the Respondent advised the Complainant that her intentions could not be carried out and that she would be required to pay additional fees for the transfer of Lot 24 to her (and her husband). This was also after the Respondent had completed the transfer of Lot 24. This omission is inexcusable and constitutes deplorable negligence on the part of the Respondent.
49. The Panel is constrained to hold that the allegations in respect of Lot 12 are not made out on the evidence to the standard required and must be dismissed. The

evidence on this issue did not prove beyond a reasonable doubt that the Respondent's conduct led to the Complainant having to pay \$765,799.40 to prevent JRF from selling Lot 12. For example, there was no correspondence from JRF to this effect and the title to Lot 12 was not included in the evidence.

CONCLUSION

50. In all the circumstances, the Panel finds that the Respondent has breached the Canons as set out in this judgment and is guilty of misconduct in a professional respect.
51. Following the guidance of the Court of Appeal in *Owen Clunie v. GLC, CA 3/2013 delivered on September 22, 2014*, the Panel directs that a date be fixed to give the Respondent an opportunity to be heard in mitigation before a sanction is imposed.

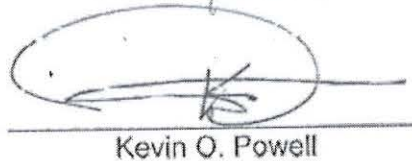
Dated the 17th day of May 2023



Debra McDonald



Annaliese Lindsay



Kevin O. Powell