

SU2023CW03543

FORMAL ORDER OF THE DISCIPLINARY COMMITTEE OF
THE GENERAL LEGAL COUNCIL MADE ON COMPLAINT
NO. 97/2021



IN THE MATTER OF CAREE PINNOCK v SEAN
GARVIN MOSES OSBOURNE

AND

IN THE MATTER OF THE LEGAL PROFESSION
ACT 1971

PANEL: MRS. DANIELLA GENTLES-SILVERA, KC
MS. CARLENE LARMOND, KC
MS. SIDIA SMITH

SANCTION DECISION DELIVERED 9TH OCTOBER 2023

UPON THE APPLICATION made under section 12 (1) (a) of the Legal Profession Act and dated the 2nd July 2021 with supporting Affidavit sworn to on 2nd July 2021 coming on for hearing before the Disciplinary Committee on the 15th January 2022, 26th March 2022, 2nd and 30th April 2022, 18th June 2022, 23rd July 2022, 22nd October 2022, 19th November 2022 and 25th September 2023,

AND UPON the Complainant Ms. Caree Pinnock (“the Complainant”) appearing with Counsel Ms. Sue-Ann Williams and having given evidence on oath,

AND UPON the Attorney-at-law Mr. Sean Osbourne (“the Attorney”) appearing with Counsel, Mr. Russell Stewart and having given evidence on oath,

AND UPON the Complainant’s witnesses appearing and having given evidence on oath,

AND UPON DUE CONSIDERATION of the sworn evidence of the Complainant, the Attorney and the witnesses, together with documentary evidence,

AND UPON the Committee having found the Attorney guilty of professional misconduct on the 25th September 2023,

AND UPON Counsel for the Attorney having made submissions in mitigation on sanction on the 9th October, 2023,

THE COMMITTEE FINDS THAT:

- (a) The Attorney was contracted by the Complainant in or about October 2020 to act on her behalf in the purchase of a property located at 198 Mountain View Avenue in the parish of St. Andrew.
- (b) The Attorney sent to the Complainant by email several documents including the draft Agreement for Sale and a draft Retainer Agreement;
- (c) The Complainant signed the Retainer Agreement but did not return it to the Attorney.
- (d) The proposed purchase of the Mountain View property was not completed.
- (e) No sums were paid to the Attorney in respect of the Mountain View property.
- (f) The Attorney acted for the Complainant in the proposed purchase of land located in Ebony Vale, St. Catherine.
- (g) On 5 February 2021, the Complainant paid to the Attorney's client account the sum of \$547,500.00. Of the sum transferred, \$100,000.00 was the retainer amount and \$447,500.00 was the deposit payable on the proposed purchase of property located in Ebony Vale.
- (h) There was no written Retainer Agreement for Ebony Vale setting out how the "retainer fee" of \$100,000.00 for services rendered in the purchase of the property was to be treated. It is undisputed, however, that the sum of \$100,000.00 was paid as a retainer in respect of services for conducting that sale and the Panel finds that there is an oral agreement in that regard.
- (i) The proposed purchase of the Ebony Vale property was not completed.
- (j) The Attorney acted for the Complainant in the proposed purchase of land located at Hampton Green, Spanish Town.
- (k) The proposed purchase of Hampton Green was never completed.
- (l) No Final Statements of Accounts were delivered to the Complainant by the Attorney.
- (m) There was no agreement between the Complainant and the Attorney in respect of the fees set out in the Final Statements of Accounts adduced into evidence (exhibits 8-10) by the Attorney.
- (n) The Attorney transferred from his trust account the sum of \$547,500.00 as his fees for the conduct of all the land transactions including Mountain View Avenue, Ebony Vale and Hampton Green;

- (o) The Complainant did not agree to the Attorney's entitlement to such fees.
- (p) The Complainant has made several reasonable requests to the Attorney for her monies to be returned to her.
- (q) The Attorney has not returned any sums to the Complainant.
- (r) The Attorney had no proper basis to transfer funds of \$547,500.00 from his trust account as fees for the conduct of transactions for the properties listed at (n) above. At most, the Attorney could properly have claimed a lien in respect of the amount of \$100,000.00 held, as to the fees to be charged upon the failure of the Ebony Vale transaction.

The Committee finds that the Attorney is guilty of professional misconduct, in that he has breached Canon VII(b) (ii) of the Legal Profession (Canons of Professional Ethics) Rules in that he failed to account to the Complainant, his client for monies in his hands for the account or credit of the Complainant whenever reasonable required to do so.

PURSUANT TO THE FOREGOING FINDINGS THE COMMITTEE UNANIMOUSLY HEREBY ORDERS THAT: -

Pursuant to section 12 (5) (a) of the Legal Profession Act:

1. The Attorney Sean Garvin Moses Osbourne is hereby reprimanded.
2. The Attorney shall pay to the Complainant the sum of \$447,500.00 by way of restitution on or before 17th October 2023.
3. The Attorney is to pay a fine of \$100,000.00 of which \$50,000.00 is to be paid to the Complainant on or before 31st October and the balance to the General Legal Council on the said date.
4. The Attorney is to pay costs in the sum of \$100,000.00, of which \$80,000.00 to the Complainant and \$20,000.00 to the General Legal Council on or before 31st October 2023.



CHAIRMAN OF PANEL

Dated 9th October 2023