

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

COMPLAINT NO. 97 of 2021

**IN THE MATTER of SEAN GARVIN MOSES OSBOURNE, an
Attorney-at-Law.**

AND

IN THE MATTER of the Legal Profession Act, 1971

BETWEEN	CAREE PINNOCK	COMPLAINANT
AND	SEAN GARVIN MOSES OSBOURNE	RESPONDENT

PANEL:

Mrs. Daniella Gentles Silvera, KC (Chairman)
Ms. Carlene Larmond, KC
Ms Sidia Smith

APPEARANCES:

Ms. Caree Pinnock
Mr. Sean Osbourne
Ms. Sue-Ann Williams for the Complainant
Mr. Russell Stewart for the Respondent

1. This matter came on for sanction hearing on 6 October 2023. After hearing the plea in mitigation submitted by Attorney-at-Law for the Sean Garvin Moses Osbourne (hereinafter “the Attorney”), Mr. Stewart Russell, the panel handed down its decision and promised to give its reasons in writing. The following are our reasons.

COMPLAINT

2. The Complaint laid against Sean Garvin Moses Osbourne (hereinafter “the Attorney”) is that:-

- (i) He has acted with inexcusable or deplorable negligence in the performance of his duties;

- (ii) He has not accounted to [her] for all monies in the hands for [her] account or credit; although I have reasonably required him to do so;
 - (iii) He has breached the Legal Profession (Accounts and Records) Regulations
3. On 23 July 2023, the Panel ruled on the Respondent's no case submission. The Panel upheld those submissions in respect of complaint (i) and (iii) above. It was however ruled that the Attorney had a case to answer in respect of complaint (ii), above.
4. After considering all the evidence we made the following factual findings on 26 September 2023:
- i. 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.
 - ii. The Attorney sent to the Complainant by email several documents including the draft Agreement for Sale and a draft Retainer Agreement;
 - iii. The Complainant signed the Retainer Agreement but did not return it to the Attorney.
 - iv. The proposed purchase of the Mountain View property was not completed.
 - v. No sums were paid to the Attorney in respect of the Mountain View property.
 - vi. The Attorney acted for the Complainant in the proposed purchase of land located in Ebony Vale, St. Catherine.
 - vii. 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 the property located in Ebony Vale.
 - viii. 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.
 - ix. The proposed purchase of the Ebony Vale property was not completed.
 - x. The Attorney acted for the Complainant in the proposed purchase of land located at Hampton Green, Spanish Town.
 - xi. The proposed purchase of Hampton Green was never completed.
 - xii. No Final Statements of Accounts were delivered to the Complainant by the Attorney.

- xiii. 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.
- xiv. 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;
- xv. The Complainant did not agree to the Attorney's entitlement to such fees.
- xvi. The Complainant has made several reasonable requests to the Attorney for her monies to be returned to her.
- xvii. The Attorney has not returned any sums to the Complainant.
- xviii. 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 (xiv) 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.

5. On 26 September 2023, we found the Attorney guilty of a breach Canon VII(b)(ii) of the Legal Profession (Canons of Professional Ethics) Rules and in keeping with the guidance laid down in the case of **Owen Clunie v The General legal Council [2014] JMCA Civ 31**, we gave him the opportunity to be heard on mitigation before we decided what his sanction should be. This decision should therefore be read together with the Decision of the Panel on 26 September 2023.
6. The Attorney has, through his Attorney-at-Law, Mr. Stewart A. Russell, made submissions in writing which was contained in two documents. One document is headed "Plea in Mitigation" and undated while the other is headed "Skeleton Submissions for Plea in Mitigation" also undated. The sum total of both documents is that the Attorney, though guilty of professional misconduct should not be handed down the most severe sanction of being struck from the roll of Attorneys qualified to practice in Jamaica nor should he be fined. It was also submitted that the Panel should consider that the Attorney, at the time of committing the breach, was a junior attorney with less than ten years of experience at the Bar. As such, it was submitted that the sanction to be imposed should be one to facilitate rehabilitation. It was also submitted that the Attorney should not be fined.

7. Mr. Russell also made extensive oral submissions in which he reiterated the contents of the written submissions including that the actions of the Attorney did not warrant the most serious sanction of being struck from the roll.
8. The Panel also allowed the Attorney to address it. In brief, the Attorney stated that since carryout the actions which led to this complaint, he has undertaken a Masters Degree in Business Administration which he says has given him a better understanding of his professional duties and in the management of a law office. He also stated that he has represented the public across Jamaica and Antigua and Bermuda. He further stated that he tutored at the University for one semester and has given back to his high school, Glenmuir High School.
9. Mr. Osbourne in his address to the Panel also apologized for his actions and said that he meant no harm to the general public or the profession. It is however noteworthy that at no point did he offer any apology to the Complainant who was at all times present at this hearing. Any display of remorse surely ought to have included an apology to the very person who was directly affected by the Attorney's actions.

THE LAW

10. In determining the appropriate sanction to be imposed on an attorney found guilty of misconduct, this Panel is guided by the case of **Bolton v Law Society [1994] 2 ALL ER, 486, p. 491 - 492**. In particular, we find useful guidance from the judgment of Sir Thomas Bingham, MR. He said:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors’ Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty. It is important that there should be full understanding of the

reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission... A profession's most valuable asset is its collective reputation and the confidence which that inspires." (Emphasis Added)

11. Mr. Russell sought to distinguish this case on its facts. However, while the facts may be different from the present case, the principles remain applicable.
12. This Panel considers the Attorney's conduct in this matter to be very serious as there was a disregard for the provisions of the Legal Profession Act with respect to the charging of fees and where disputes arise. It is certainly not low on the totem as Mr. Russell suggests in his oral submissions.

13. The Panel also doubts the remorsefulness of the Attorney in light of the fact that he did not consider it necessary to apologize to her for his actions.

14. Notwithstanding, after considering the submissions of Counsel and the Attorney, we do not find that the conduct rises to the level of dishonestly as would warrant the most serious punishment of being struck off the roll. Accordingly, it is our decision that:

- i. The Attorney Sean Garvin Moses Osbourne is hereby reprimanded.
- ii. The Attorney shall pay to the Complainant the sum of \$447,500.00 by way of restitution on or before 17th October 2023.
- iii. 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.
- iv. 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

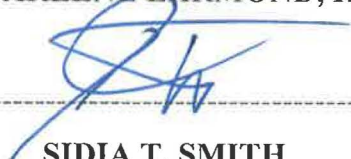
Dated 9th day of October 2023



DANIELLA GENTLES-SILVERA, KC



CARLENE LARMOND, KC



SIDIA T. SMITH