

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

**COMPLAINT NO. 105/2022**

**IN THE MATTER OF CHURCH OF GOD  
SEVENTH DAY VS SEAN G.M. OSBOURNE**

**AND**

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

PANEL: MR. PETER CHAMPAGNIE, K.C. - CHAIRMAN

MR. PIERRE ROGERS

MR. JEFFERY DALEY

The instant matter being complaint number 105 of 2022 was initiated by way of a form of complaint and affidavit of complainant sworn to by Mr Edwin Scott. In this affidavit Mr Scott held himself out to be a duly appointed representative of the Church of God of Seventh Day (hereinafter referred to as the Church) and made several allegations of serious misconduct against the Respondent Mr. Osbourne. These allegations all arose out the retainer of the Respondent by the Complainant to effect the purchase on their behalf of lands part of Newtown Braeton, St. Catherine on their behalf from the Ministry of Housing. In this context the Respondent Attorney-at-Law was accused of several infractions including the mishandling of client's funds.

Notwithstanding the fact that both the form of complaint and the affidavit were served on the Respondent as per the rules governing the operations of the Disciplinary Committee, it is interesting to note that at no time before trial did the said Attorney-at-Law respond with his own affidavit as is required. However, The Panel does not hold this against the Respondent or factor same in its decision arrived at.

This then was the state of affairs which obtained on January 13, 2021, when the matter came up for hearing. On this day both the complainant through Mr Scott and the Respondent attorney was present and the trial started.

Evidence was taken on the 13<sup>th</sup> day of January 2023, 19<sup>th</sup> day of January 2023, 24<sup>th</sup> day of February 2023, 26<sup>th</sup> day of May 2023, 13<sup>th</sup> day of June 2023, and 26<sup>th</sup> day of July 2023.

On these diverse dates not only did the panel hear the evidence of both the Complainant Church through Mr Edwin Scott and the evidence of the Respondent Attorney-at-Law Mr Sean Osborne who called no witness but himself, but we also perused several documents which were admitted into evidence. These exhibits numbered nine (9) and included the following: -

1. The Form of Complaint.
2. Affidavit of Complainant.
3. Letter from the Ministry of Housing addressed to the Church dated June 16, 2021.
4. Email from Mr. Edwin Scott to the Respondent dated January 14, 2021.
5. Undated Agreement for sale between the Ministry and the Church executed by both parties.
6. Email from Mr. Edwin Scott to the Respondent.
7. Interim Statement of account prepared by the Respondent dated July 20,2020 referencing the relevant transaction.
8. Interim Statement of Accounts prepared by the Respondent dated August 25, 2020, referencing the relevant transaction.
9. Email from Mr. Edwin Scott to the Respondent Attorney-at-Law Mr. Sean Osborne dated June 17, 2020.

It was in the context of this evidence that the panel was called upon to determine whether the Respondent was in fact guilty of the several breaches being alleged by the complainant through Mr Edwin Scott.

Specifically, the Panel was asked to say whether the Respondent Attorney-at-Law on the evidence provided was guilty of:-

- A. Withdrawing from the Complainant's employment without taking steps to avoid foreseeable prejudice and injury to the Complainant.
- B. Failing to see to the Complainant's business with all due expedition.
- C. Acting with inexcusable and deplorable negligence in the performance of his duties
- D. Failure to maintain and the honour and dignity of the profession.

E. Breaching The Legal Profession ( Accounts and Records) Regulations.

This list of charges was supplemented when during the course of the trial and without any objection by the Respondent the Panel exercised its discretion under the 4<sup>th</sup> Schedule of Rule 17 and allowed an application by the Complainant through Mr Edwin Scott for an additional charge to be added namely:

F. Failure to account to the client for all funds in his hands or to the credit of the client.

The Panel wishes to make entirely clear that in coming to its decision it took into account the entirety of the evidentiary material available and while we will recite the evidence that is most pertinent to the central issues to be determined, this should in no way be taken to mean that any evidence was ignored or indeed not taken into account.

Further, before treating with the evidence, the Panel now takes the opportunity to remind itself that the burden of proof in this matter rest entirely on the shoulders of the Complainant and never shifts. We acknowledge that the Respondent has nothing to prove.

We also remind ourselves that this burden which necessarily rests on the shoulders of the complainant is an onerous one. Indeed, the complainant is required to prove his case to a standard which leaves us sure. Anything less will not suffice for these proceedings. The standard of Proof is beyond a reasonable doubt.

**THE EVIDENCE.**

As observed earlier, the complainant's evidence came exclusively from Mr Edwin Scott. Mr Scott during the course of his sworn evidence deponed that he was the Treasurer of the Complainant Church and indeed was the "organ" of the Church that made first contact with the Respondent and arranged his retainer. This evidence was in no way controverted by the Respondent and indeed it common ground between the parties that at least some of the funds relevant to the purchase of the Newtown Braeton premises which passed to the Respondent Attorney-at-Law from the complainant church originated from Mr. Edwin Scott's account.

For these reasons we have no difficulty accepting as a matter of fact that Mr Edwin Scott was a properly constituted representative of the Complainant Church. Indeed, we are bolstered in this position by the fact that while the Respondent took many issues during the trial, Mr Scott's capacity to represent the complainant **FOR THE PURPOSES OF THE CONDUCT OF THE TRIAL** was not one of them.



Mr. Edwin Scott during the course of his examination in chief gave clear and unequivocal evidence of the Respondent being retained by the Complainant Church to act on its behalf in the purchase of the property at Newtown Braeton from the Ministry of Housing.

The relevant purchase price was in the sum of Twenty-Four Million Dollars (\$24,000,00.00) and the purchase was a cash purchase.

On Mr Scott's evidence the terms of the Respondent Attorney-at-Law's retainer was settled, and a sum paid over to him by way of retainer.

The Panel pauses here to note that up to this point of Mr Scott's evidence there was no real dispute as to fact between the parties. Both sides were at idem as to the existence of the retainer and the payment of fees in respect of this retainer.

Mr Edwin Scott however gave evidence of the failures on the part of the Respondent Attorney-at-Law to honour the terms of his retainer. These failures took the forms of failing to respond to emails, telephone calls and missives and messages through third parties known to both Mr Scott and the Respondent.

On Mr. Scott's evidence that this lack of communication accompanied by the Respondent's failure to pay over to the Vendor in the transaction (the Ministry of Housing) the sum of Seven Hundred and Twenty Thousand Dollars (\$720,000) which had been entrusted to him for that very reason.

It is important to note that Mr Scott in his affidavit (exhibit 2) provided the Panel with screenshots supporting his transmission of these funds to the Respondent's Bank of Nova Scotia account. This said affidavit provided the Panel with proof of enquiries being made by Mr. Scott as to the Respondent's failure to acknowledge receipt of the sum and his failure to put it towards the purpose for which he (the Respondent Attorney-at-Law) had been entrusted with it.

Mr Scott's evidence continued thereafter and in continuing he painted a picture of the Complainant being left to its own devices to find the sum of Seven Hundred and Twenty Thousand Dollars (\$720,000) once again to complete the transaction, bereft of the Respondent's assistance.

Mr Scott was cross-examined by the Respondent and during the course of this cross examination it was put to him that there was no breakdown of communication as there were numerous telephone calls between the parties. This suggestion was stoutly resisted.

It was also put to Mr Scott that letters were dispatched to him explaining the delays in completing the relevant conveyance. This suggestion was also stoutly resisted.

Questions were also posed by the Respondent Attorney-at-Law to Mr Scott along the lines of whether Mr Scott lacked the proper authorization to act for the Church in the relevant transaction. These questions were answered with incredulity by Mr. Scott who indicated that no such issue arose during the transaction.

Within this context no suggestions were put to Mr Scott treating with his transmission of the seven hundred and twenty thousand dollars (\$720,000.00).

At the end of Mr Scott's cross examination, the Complainant closed its case and the Respondent through his legal representative, Mr A. Spencer, made a no case submission.

This submission was not upheld by the panel who ruled that on the evidence there was a case to answer. The Respondent was therefore called upon to respond.

The Respondent thereafter opened his case and gave sworn evidence.

During the course of this evidence the said Respondent roundly denied the several allegations made against him. He insisted that he was not guilty of any of the charges levelled against him.

He gave evidence to the effect that he never abandoned the Complainant Church or their retainer. According to him the transaction was completed through his industry and with his assistance. Interestingly, while we acknowledge that the Respondent was under no obligation to prove anything, these bald assertions were not accompanied with letters or emails evidencing his labours.

Further, the Respondent denied that he failed to see to the client's business with due expedition and asserted that to the contrary he did all that was expected of him in a timely manner. According to him, any delays were attributable to failures on the part of the Church to provide him with information and/or documents.

In a similar vein the Respondent denied acting with inexcusable and deplorable negligence, failing to uphold the dignity of the profession and breaching The Legal Profession (Accounting Records) Regulations.

As it relates to failing to account for moneys in answer to questions posed by the Complainant's representative the Respondent denied receiving any sum of Seven Hundred and Twenty Thousand Dollars (\$720,000) and went so far as to say that the screen shots exhibited by Mr Scott went no further than showing an attempt to send a transfer.



The Respondent thereafter and in answer to the Panel made an evidential "volte face". He acknowledged that he had recently received word from his bank that he had in fact received the funds in question. His explanation of this was that he was only recently able to check with his bank using information that he only received in the Hearing. On the continuation of his cross-examination on July 6<sup>th</sup>, 2023 in answer to a question by the Panel this was the exchange between the Panel and the Attorney:

Panel: Hold on before you answer the question, there is 1. one question that I want to ask of him, that the Panel wishes to pose to him. Mr. Osbourne have you checked your accounts subsequent to the start of this matter and the material provided in this matter to determine whether the \$720,000.00 in three separate payments were credited to your account? You have been provided with material by the Complainant before the matter started. I am really interested now, subsequently since the matter having started, have you since the matter started and that material having been entered into evidence, have you checked your account and cross-referenced those three separate payments totalling \$720,000.00 to see if it had hit your account?

Osbourne: On the last occasion we were here, I did. After leaving, I did make contact with my bank about that particular thing.

Panel: Not the question. The question is did you check to find out whether those sums had in fact hit your account?

Osbourne: Yes, I did check.

Panel: The result of your check was that they did, or did not hit your account?  
Osbourne: The result of the check is that they did hit the account when I contacted the bank.

Panel: Sorry sir, I did not hear you. I want to be crystal clear, did they hit your account, or they did not hit your account?

Osbourne: The bank indicated that they received that money.

Panel: The bank indicated what, sir?

Osbourne: That the money was transferred.

Panel: To whose account?

Osbourne: My account.

Panel: One question following that, if that is your response that you had done checks subsequent to these proceedings having commenced and your information was that they were in fact deposited into your account, why then did you just now in cross-examination by Mr. Scott when it was put to you that the monies were sent to your account, you said no? That is the question I want to ask.

Osbourne: The discovery that occurred of monies hitting from a particular account occurred after the last occasion.

Panel: No, at the suggestion that was put to you today, the suggestion was put to you today that the monies were sent to your account, and you said no, today. I want to know why you would give that answer if it is that you have subsequently been advised before today that the monies hit your account. I thought your answer would have been yes, they were received, I am now learning that.

Panel: The question was, do you still hold that you never received the \$720,000.00 into your account and your answer was that is still my position.

Panel: Why would you give that answer, Mr. Osbourne?

Osbourne: I am sorry, I am a bit confused.

Panel: So, am I.

Osbourne: What I understand from the whole case and from the discussion with him is that he sent me \$720,000.00 in three payments. Up to the trial starting, I did locate, several checks were made even from September when the trial started that was not discovered. Upon the last occasion certain things came to my attention, did certain checks and certain things were discovered.

## ANALYSIS

The Panel has had the benefit of the demeanour of both parties. We have listened closely to all the evidence led and examined all of the exhibits. We have noted the consistency of

the parties in their evidence and just as importantly, we have noted inconsistencies where they have occurred.

Mr Edwin Scott appeared creditable.

We are mindful however of our obligation to examine the Respondent Attorney-at-Law's evidence before coming to any conclusion. This examination led us to the position that his evidence is not to be trusted. In particular we are unimpressed by his failure to respond to Mr Scott's several written queries about the Seven Hundred and Twenty Thousand Dollars (\$720,000) in writing. Similarly, we are unimpressed by his failure to make any effort before trial to determine through his bank whether the sums in question were in fact deposited to his account. Finally, and importantly, having discovered that he had received the funds the Panel was puzzled as to why the said funds would remain in his possession up to the time of decision?

To reject the Respondent's evidence is not sufficient in and of itself to arrive at a verdict of guilt, and we are mindful of the need to return to the Complainant's case.

## FINDINGS

Having so done and having reviewed the Complainant's case we now make the following findings of fact: -

1. We find that Mr. Edwin Scott was a truthful witness.
2. The Complainant Church through Mr Edwin Scott retained the Respondent Attorney-at-Law Sean Osborne to act on its behalf in the purchase of lands at Newtown Braeton.
3. In pursuance of this retainer the Complainant Church through Mr Scott transmitted the sum of Seven Hundred and Twenty Thousand Dollars (\$720,000.00) to the Respondent.
4. This said sum of Seven Hundred and Twenty Thousand Dollars (\$720,000.00) was received by the Respondent into his account.
5. The Respondent thereafter failed to put this sum to the use for which it had been entrusted to him.
6. The Respondent has failed to account to the complainant church for monies to their credit.



7. The Respondent thereafter failed to complete the purchase on the complainant's behalf.
8. The Respondent failed to communicate with the complainant when he was reasonably required do so.
9. The Respondent through his actions has failed to uphold the honour and dignity of the profession.
10. The Complainant's evidence has not made out a case against the Respondent that he has breached The Legal Profession (Accounts and Records) Regulations.

Accordingly, the Panel finds that the Attorney's conduct clearly fell below the required standard of professional conduct prescribed by the Canons of the Legal Profession and proof of professional misconduct has been made out beyond a reasonable doubt.

Following the guidance of the Court of Appeal in Owen Clunie v. GLC, CA 3/2013 the Panel will adjourn the matter to a date for the hearing of an appropriate sanction to applied to give the Attorney an opportunity to make submissions in respect of same.

Dated this 3<sup>rd</sup> day of November 2023



MR. PETER CHAMPAGNIE, K.C.



MR. PIERRE ROGERS



MR. JEFFERY DALEY

