

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

COMPLAINT NO. 105/2022

In the Matter of THE CHURCH OF
GOD (SEVENTH DAY) and SEAN MOSES
OSBOURNE, an Attorney-at-Law

AND

In the Matter of the Legal Profession Act, 1971

Panel Mr. Peter Champagne, KC – Chairman
 Mr. Jeffrey Daley
 Mr. Pierre Rogers

Appearances: The Complainant's representative Mr. Edwin Scott

 Mr. Aston Spencer, the Respondent's Attorney.

Hearing dates: 24th November 2023 and 26th January 2024

On the of 3rd November 2023, written judgment in this matter was perfected we having before delivered it orally. The Panel having found the Respondent Attorney guilty of professional misconduct of the particulars which included withdrawing from the Complainant's employment without taking steps to avoid foreseeable prejudice and injury to the Complainant, failing to complete the Complainant's business with all due expedition, acting with inexcusable and deplorable negligence in the performance of his duties, and also failing to maintain the honour and dignity of the profession and failing to account for all funds in his hands or to the credit of the client, we now address our minds in respect of what is the appropriate sanction to be applied.

In this regard we adopt the submissions made by Counsel for the Respondent, Mr. Aston Spencer that is that the overriding arm of the legislature which governs us and the inherent powers given to us as the disciplinary body is to ensure that the standard for an Attorney in Jamaica is that they are trusted to the ends of the earth. We note that this submission formed part of the Counsel's written submissions in the way of mitigation, which was filed and received by the General Legal Council on 24th November 2023. In treating with what is appropriate in terms of a sanction to be applied, regard must be had

to the aggravating features as well as the mitigating features. We start with the aggravating features of this particular case.

Firstly, we note that based on the nature of the evidence the relationship between the parties was that they were no strangers. That is to say, the Complainant in the person of Mr. Scott and the Respondent were no strangers and in fact, along the way it was borne out that they knew each other for a long time. Continuing in relation to this aspect of the aggravating feature therefore we find that there was a breach of trust and confidence in terms of a long standing relationship as between someone (according to the Complainant) who was mentor to the Respondent. The Respondent in an attempt to mitigate the circumstances, gave evidence and this was on 24th of November. He said that he was devastated in respect of the findings of the Panel. He expounded to say that he felt very bad, that is what was said. However, nevertheless, he went on to say that he accepted, and we quote, "I accept the findings of the Tribunal" and this is why he was devastated.

While the burden is always on a Complainant to prove his case and the Respondent need not say anything and in fact he may test the case, the Respondent in these circumstances having accepted the findings of the Panel at the end of the proceedings, begs the question as to why it is that from the initial period, he did not take responsibility for his actions. Is it a case where it was upon the presentation of detailed evidence and cross-examination was only when he recognized his failings? We don't know. However, in all of the circumstances it would seem to us that it would fall as an aggravating feature. There were, indeed, an abundance of factors pointing to the culpability of the Respondent Attorney.

A very important question was asked of the Respondent and it had to do with the funds; the return of the funds. It was this, "having been found liable in the circumstances between that time and at the time of mitigation what is it that was done in relation with the funds?" As it turns out the proceeds were still not yet handed over to the Complainant. The response given to this was that he the Respondent was waiting on the Panel to make the appropriate order so that could be done. That's the best interpretation that could be given to it in the circumstances for the benefit of the Respondent, but these are aggravating features. It smacks of a lack of contrition. This was not a case also where along the way the Respondent asserted that he had a claim of right to the funds and then the Panel found otherwise. This is a case where there was no assertion that there was any claim of right. The assertion was that he simply did not receive the funds and of course, this turned out not to be so.

Before we go to the mitigating factors, we would like to say that in all the circumstances we found that the conduct of the Respondent was dishonest.

We note along the way there were some health challenges in respect of the Respondent because there were times when the matter had to be adjourned to facilitate a particular

medical procedure. Of course, we had no medical certificate but we do not doubt for a moment the word of a Counsel that represented the Respondent. We took this into account as a mitigating factor. We don't think that there was any evidence before us also that he had any previous infractions in terms of his antecedent record, and we therefore take it that this was his first where an adverse verdict had been arrived at or indeed his first time where there was a complaint.

Now interestingly in treating with this matter reference was made to the case of Bolton v Law Society, 1994 2 ALL ER where Sir. Thomas Bingham said, ***“it is required of Lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. 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 the most serious involve proven dishonesty”***. It is important therefore that we have a full appreciation of the dicta of Sir. Thomas Bingham Master of the Roles in Bolton v Law Society.

In all the circumstances we have taken into account other authorities that were cited to us to include the matter of Barry Frankson v General Legal Council, 2012 JMCA Civ 52, General Legal Council v Michael Lorne, R v Beckford and Lewis 1980, and also passing reference to Meisha Clement v R 2016 JMCA which is a criminal case that saw it's way in the Court of Appeal in 2016. In short, the aggravating features of this particular matter far outweigh the mitigating features. It is a very sad state of affairs. It represents a breach of trust between one party, a member of the clergy no less, a person who knew the Complainant very well before. A person who would write recommendations, a person who interfaced with the Respondent, and in these circumstances, it was a case where the evidence was clear. There were emails being sent to the Respondent, various emails with no response. The Complainant had to find another sum of \$720,000.00 in order to have the transaction completed.

Now if we were to simply impose the least severe of sanction, that would be a slap on the wrist. A reprimand, or even a fine would be sending the wrong signal. That would definitely be sending the wrong signal, out of the ordinary with what the general position is in relation to matters such as these where there are such findings of blatant dishonesty and failing to account for funds held for clients.

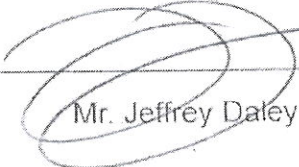
We therefore have unanimously agreed that in all the circumstances , we are constrained to make the following orders in the way of sanction:

1. The Attorney Sean Osbourne is struck from the roll of Attorneys-at-Law entitled to practice law in Jamaica.
2. The Attorney is to pay restitution in the sum of \$720,000.00 to the Complainant on or before 26th February 2024.
3. The Attorney is to pay costs of \$150,000.00 to the General Legal Council on or before 26th March 2024.
4. The Attorney is to pay costs of \$150,000.00 to the Complainant on or before 26th March 2024.

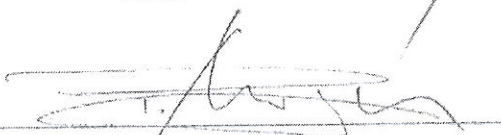
Dated the 26th day January 2024



Mr. Peter Champagnie, KC



Mr. Jeffrey Daley



Mr. Pierre Rogers