

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

**Complaint 200/2020**

**IN THE MATTER OF SHERRIL TAYLOR SMITH TENN AND SERENA ELAINE  
BYRON, an Attorney-at-Law**

**AND**

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

**Between                      Sherril Taylor Smith Tenn                      Complainant**

**And                              Serena Elaine Byron                              Respondent**

**Panel:                      Mrs. Daniella Gentles Silvera, KC.**

**Mr. Pierre Rogers**

**Mr. Seyon Hanson**

**Appearances: Sherril Taylor Smith Tenn represented by Shadecia Hamilton**

**Serena Elaine Byron represented by Sean Kinghorn**

**Hearing dates:** February 23, 2024, March 25, 2024, May 6, 2024, November 11, 2024

**COMPLAINT**

1. The Panel delivered its decision on the Complaint against the Attorney on the 30<sup>th</sup> day of November 2023 finding her guilty of professional misconduct. The sanction hearing was subsequently scheduled for the 23<sup>rd</sup> day of February 2024 at which point it was adjourned at the request of the Complainant's Attorney to the 15<sup>th</sup> day of March 2024. The hearing scheduled for the 15<sup>th</sup> day of March 2024 was further adjourned at the request of the Complainant's Attorney to the 6<sup>th</sup> day of May 2024. The hearing proceeded on the 6<sup>th</sup> day of May 2024 with the respective Counsel for both the Complainant and the Respondent making oral submissions in support of their respective written submissions which had been filed. The Panel uses this opportunity to thank both Counsel for their respective submissions which have been considered in determining the appropriate sanction.
2. The Attorney was called to the Bar in December 2015 and worked as an Associate at the Firm Kinghorn & Kinghorn during her representation of the Complainant, but has since changed her employer.
3. The Panel's findings of fact were as follows:

- i. The Respondent's firm received the medical report of Dr. Rose dated 16<sup>th</sup> February 2015.
4. In considering the appropriate sanction the findings on the complaint are relevant, and were as follows:
  - a. The Attorney has acted with inexcusable and deplorable negligence in the performance of her duties (Canon IV (s));
  - b. The Complainant failed to discharge the burden of proof in relation to the complaint under Canon I(b) (*"An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member."*)
5. In **Fuglers LLP et al v Solicitors Regulatory Authority [2014] EWHC 179** Justice Popplewell addressed what should be the correct approach of a Solicitors Disciplinary Tribunal to sanction as follows:

*"28. There are three stages to the approach which should be adopted by a Solicitors Disciplinary Tribunal in determining sanction. The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.*

*29. In assessing seriousness, the most important factors will be (1) the culpability for the misconduct in question and (2) the harm caused by the misconduct. Such harm is not measured wholly, or even primarily, by financial loss caused to any individual or entity. A factor of the greatest importance is the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover, the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise, whether or not as things turn out the risk eventuates. The assessment of seriousness will also be informed by (3) aggravating factors (eg previous disciplinary matters) and (4) mitigating factors (eg admissions at an early stage or making good any loss)." (Emphasis Added)*

- g. The Complainant observed cheques for payment of the medical reports which were collected by the Complainant.
  - h. In all the circumstances the Respondent as Counsel had a duty to research the location of the missing reports and receipts, and she fell below the standard of a reasonably competent Attorney and failed to discharge her duty to the Complainant.
8. In terms of mitigating factors the Panel notes the following which came out in evidence:
- a. Final judgment was obtained on the Complainant's behalf with \$2,500,000.00 awarded for general damages and \$320,277.88 awarded for special damages (Exhibit 5);
  - b. The award by the court exceeded the policy limit which the 2<sup>nd</sup> Defendant had with its insurer, of \$2,000,000.00, which has been wound up, and the whereabouts of the 1<sup>st</sup> Defendant are unknown;
  - c. The Complainant failed, refused, and/or neglected to accept the sum paid to her by Kinghorn & Kinghorn and the said sum remains payable to her.
9. Having outlined the aggravating and mitigating factors the Panel has noted the demeanour of the Attorney during the time she appeared before us, her apparent lack of remorse and failure to appreciate the seriousness of the matter and the effect her actions had on the Complainant's case; her previous disciplinary record, and the impact of the negligence on the Complainant, as well as the number of years the Attorney had been in practice prior to her handling of the Complainant's matter, and the fact that she was an Associate in the Firm with which the Complainant had the contingency agreement, which Firm was not added as a Respondent to the Complaint. The Panel has also taken note of the unchallenged evidence in relation to the limit on the insurance policy, and the prospect of recovering directly from the Defendants in the substantive matter in respect of which the award was made.
10. The purpose of a sanction against an Attorney who has been found guilty of professional misconduct is to punish the offending member; act as a deterrent against further acts of misconduct on the part of the offending Attorney, and other members of the profession, as well as to protect the public, and maintain the high standards of the profession and to maintain the public's confidence in the integrity of members of the profession. (See *Bolton v Law Society* [1994] 2 All ER 486.) The standard which is expected of an Attorney was also addressed by Carey JA in the authority of *Witter v Forbes* (1989) 26 JLR 129, where he stated as follows:

the Attorney and others in the legal profession recognizes the severity of the Attorney's misconduct so that it does not reoccur.

11. In full appreciation of all the relevant facts and circumstances the Panel is of the view that the sanctions should be as follows:

- a. The Respondent Attorney Serena Elaine Byron is fined \$500,000.00 to be paid to the Complainant;
- b. Costs in the sum of \$300,000.00. is to be paid by the Respondent Attorney Serena Elaine Byron as to which \$100,000.00 is to be paid to the General Legal Council and \$200,000.00 is to be paid to the Complainant.
- c. The sums of money referred to at paragraphs a. and b. above must be paid on or before 11<sup>th</sup> December 2024.

DATED THE 11 DAY OF *November* 2024



**DANIELLA SILVERA, K.C. (CHAIRPERSON)**



**PIERRE ROGERS**



**SEYON HANSON**