

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

**Complaint 75/2021**

<b>Between</b>	<b>Carol Jackson</b>	<b>Complainant</b>
<b>And</b>	<b>Jennifer Housen</b>	<b>Respondent</b>

**Panel:**       **Mrs. Tana’ania Small K.C.**  
                  **Ms. Marjorie Shaw**  
                  **Mr. Seyon Hanson**

**Appearances: Ms. Jennifer Housen represented by Mr. Lemar Neale**

**Hearing date: June 1, 2024**

**COMPLAINT**

1. The Panel delivered its decision on the Complaint against the Attorney on the 25<sup>th</sup> day of April 2024 finding the Respondent Attorney guilty of professional misconduct. The sanction hearing was scheduled for the 1<sup>st</sup> day of June 2024, and proceeded as scheduled. The hearing proceeded in the absence of the Complainant or her Attorney Mr. Donovan Collins who had represented her at the substantive hearing. The Panel heard submissions from the Respondent’s Attorney Mr. Lemar Neale, and also heard directly from the Respondent Attorney by way of a plea in mitigation in respect of which she spoke on her own behalf. The Respondent Attorney was allowed to file written submissions in relation to the sanction, and the submissions were received on the 25<sup>th</sup> day of June 2024.
2. The Attorney was called to the Bar in March 2009 and at the time of being retained by the Complainant in January 2018 was 9 years at the Bar. Ms Housen was also called to the Bar of England and Wales in 1999.
3. In considering the appropriate sanction the findings on the complaint are relevant, and were that the Attorney was guilty of professional misconduct and had breached the following Canons:
  - a. 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”;
  - b. Canon IV (s)- “In the performance of his duties an Attorney shall not act with inexcusable negligence or neglect”.
4. The Panel’s findings of fact were as follows:

- (a) The Complainant retained the Respondent to represent her interest in the sale of her property to Tanglewood Limited;
- (b) The Respondent attorney also acted for the Purchaser, Tanglewood Limited;
- (c) The Respondent prepared an Agreement for Sale which was initialed on each page and signed by the Complainant as vendor;
- (d) The Respondent was introduced to the Complainant by the Purchaser;
- (e) The Respondent also acted for the Purchaser in separate transaction(s);
- (f) The terms of the Agreement provided that in the event of a conflict of interest, the Respondent would put the transaction on hold to allow the Complainant to find a new lawyer and she would continue to represent the Purchaser;
- (g) There is no evidence that the Registered Proprietor/Vendor/Complainant was advised to secure independent legal representation;
- (h) There is no evidence that the consequences of the terms of the Agreement was explained to the Complainant by the Respondent;
- (i) The Property was transferred from the Complainant to the Purchaser prior to payment of the full purchase price to the Complainant as provided in the Agreement for Sale;
- (j) The Complainant sought the Respondent's assistance in collecting the unpaid portion of the purchase price from the Purchaser for her account;
- (k) The Respondent accounted to the Complainant for the sum of £21,874.00 which she had received from the Purchaser and eventually paid over that sum plus interest to the Complainant on account of the balance purchase price;
- (l) The Complainant was told by the Purchaser that he had paid over the full balance purchase price to the Respondent;
- (m) A portion of the purchase price remains due and owing to the Complainant.

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)

6. The principles in **Fuglers LLP** have been applied by subsequent tribunals and courts including our Court of Appeal in cases such as **Minett Lawrence v General Legal Council (Ex parte Kaon Northover [2022] JMCA Misc 1, (Paragraphs 108-114).**
7. With regards to the seriousness of the misconduct of the Attorney we accept that the misconduct for which the Attorney was found guilty is of a serious nature insofar as the Complainant did not receive the full purchase price for her property prior to the Attorney transferring the said property to the Purchaser. Based on the Retainer Agreement dated January 15, 2018 the Respondent provided that in the event of a conflict arising in respect of her representation of both the Vendor and the Purchaser she would:  
*"place the transaction on hold, that I will continue to represent the purchaser, however, allow you as the Vendor time to seek alternative legal representation in the event the sale/purchase is proceeding".*

We have also taken into account that the misconduct was committed by an attorney who at the time was 9 years at the Bar. Based on our review of the matter the following aggravating factors are apparent:

- a. The Attorney placed herself in position of potential conflict of interest from the outset when she agreed to act on behalf of the Vendor and the Purchaser;
- b. The Agreement prepared by the Attorney provided for the transfer of title in the name of the Purchaser prior to the payment of the balance of the purchase price without adequate or appropriate protection for the Complainant in the event of the Purchaser's breach of contract to pay the balance purchase price, for example a vendor's mortgage, which could have given the Complainant the right of foreclosure;

- c. The Complainant's property was transferred to the Purchaser prior to the Attorney receiving the balance purchase price;
  - d. The Attorney continued to represent the Purchaser after a conflict arose between the Vendor and the Purchaser pursuant to the Retainer Agreement dated January 15, 2018 which had been prepared by the Respondent Attorney;
  - e. The Respondent Attorney delayed in paying sums to the Complainant which had been paid into her client account by the Purchaser;
  - f. The Respondent Attorney upon realizing that further payments had been made by the Purchaser towards the balance purchase price instead of immediately making the payment to the Complainant prepared an agreement to make periodic payments to the Complainant over a protracted period of time together with interest on the said balance purchase price;
  - g. The Complainant has had to lodge a caveat against the Property and file a claim against the Purchaser in an attempt to recover the balance purchase price.
8. In terms of mitigating factors the Panel notes the following which came out in evidence:
- a. The Respondent has paid over sums paid by the Purchaser into her client account to the Complainant together with interest from her own resources;
  - b. The Respondent assumed personal responsibility for the delayed payment of sums paid by the Purchaser to the Complainant;
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 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. The Attorney expressed regret at the outcome of the transaction involving the Complainant, and displayed contrition in her address to the Panel.
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:

*"We are not in this appeal dealing with professional misconduct involving an element of deceit or moral turpitude. Both rules of which the appellant was found guilty are concerned with the proper performance of the duties of an Attorney to his client. The Canon under which these rules fall, prescribes the standard of professional etiquette and professional conduct for Attorneys-at-Law, vis-à-vis their*

*clients. It requires that an Attorney "shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the Law. He shall preserve the confidence of his client and avoid conflict of interest. "The violated rules, both involved an element of wrong-doing, in the sense that the Attorney knows and, as a reasonable competent lawyer, must know that he is not acting in the best interests of his client.... With respect to rule (s) it is not inadvertence or carelessness that is being made punishable but culpable non-performance. This is plain from the language used in the rules...It was both "inexcusable" and "deplorable" and in a word, culpable.*

*...Specifically, rule (s) of Canon IV is concerned with professional conduct for Attorneys. It is expected that in any busy practice some negligence or neglect will occur in dealing with the business of different clients. But there is a level which may be acceptable, or to be expected, and beyond which no reasonable competent Attorney would be expected to venture. That level is characterized as "inexcusable or deplorable". The Attorneys who comprise a tribunal for the hearing of disciplinary complaints, are all in practice and therefore appreciate the problems and difficulties which crop up from time to time in a reasonably busy practice and are eminently qualified to adjudge when the level expected has not been reached. I cannot accept that the determination of the standard set, will vary as the composition of the tribunal changes. The likelihood of variation is in the sentence which different panels might impose but that, doubtless, cannot be monitored by the Court or the Counsel itself."*

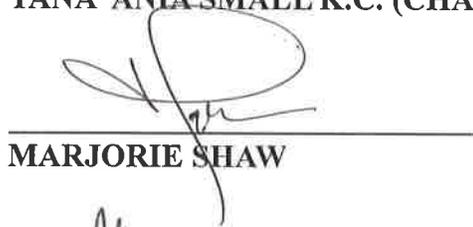
11. In submissions on the Respondent's behalf her Counsel had suggested a reprimand, and an order for the payment of costs to the General Legal Council, however it is the Panel's view that a reprimand would not be appropriate in the circumstances of this particular matter. Such a sanction is therefore much too low given the seriousness of the Attorney's misconduct. Having reviewed the facts, and assessed the aggravating and/or mitigating factors which ought properly to swing the pendulum one way or the other in determining the appropriate sanction, we consider that the range of sanctions for the offence for which the Attorney has been found guilty of, is within the range of a fine or a suspension. The fact is that the misconduct has led to financial loss by the Complainant, who has been put to further expense as a result, in circumstances where she retained the Respondent to represent her interest, and it was known to the Respondent that the Complainant was selling the property at that price for a quick sale in order to embark upon another transaction, and therefore the proceeds were needed.
12. 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 Jennifer Housen is suspended from practice for a period of six (6) months;

- b. Costs in the sum of \$400,000.00. is to be paid by the Respondent Attorney Jennifer Housen as to which \$150,000.00 is to be paid to the General Legal Council, and \$250,000.00 is to be paid to the Complainant, and the said sums shall be paid within sixty (60) days of the date hereof.

DATED THE 15<sup>th</sup> DAY OF APRIL 2025



TANA' ANIA SMALL K.C. (CHAIRPERSON)



MARJORIE SHAW



SEYON HANSON