

- (ii) The Attorney has not provided me with all information as to the progress of my business with due expedition, although I have reasonably required [her] to do so in breach of Canon IV(r);
- (iii) The Attorney has not dealt with my business with all due expedition in breach of [Canon IV (r)];
- (iv) The Attorney has acted with inexcusable or deplorable negligence in the performance of [her] duties in breach of Canon IV(s);
- (v) The Attorney has not accounted to [the Complainants] for all monies in [her] hands for [their] account or credit; although they have reasonably required her to do so in breach of Canon VII(b)(ii);
- (vi) 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 [s]he is a member in breach of Canon I(b).

2. On November 11, 2023, the Panel ruled on the Respondent's no case submission. The Panel upheld those submissions in respect of complaint (iv) above. It was however ruled that the Respondent had a case to answer in respect of the other complaints set out above.

HEARING

- 3. The Panel heard evidence from the Complainant and the Respondent on October 7, 2023 and November 11, 2023.
- 4. On October 7, 2023, the complaint was amended, without objection from the Respondent, to add Tomika Chance as a Complainant.
- 5. Both Complainants gave evidence, as did the Respondent. Neither party called any witnesses on their behalf.
- 6. The following documents were admitted into evidence in support of the Complainants' case:-
 - a. Exhibit A - List of Documents (Letter dated May 15, 2023) with attachments
 - b. Exhibit B - Form of Application dated January 3, 2023;
 - c. Exhibit C - Form of Affidavit sworn to on January 3, 2023;
 - d. Exhibit D - 2nd Affidavit of Stephanie Bennett dated June 26, 2023;
- 7. The Respondent adduced into evidence the following documents in support of her case:-

- a. Exhibit E – Affidavit of Maisha Wilson-Campbell Sworn To On The 4th July 2023;
- b. Exhibit F – Final Statement of Account dated the 21st November 2022
- c. Exhibit G – Email Dated the 27th January 2023 from Stephanie Bennett
- d. Exhibit H - Undated Agreement For Sale
- e. Exhibit I - Savings Withdrawal Slip Dated The 26th January 2023 From First Global Bank
- f. Exhibit J - First Affidavit of Maisha Wilson-Campbell Sworn to on June 9, 2023

Complainants' Evidence

8. The Complainants' case is that the Respondent was retained on December 10, 2021 to act on behalf of Tomika Chance, also known as Tomika Bennett, in the sale of a property known as Lot 229 Harbour Village, Phase II, St. Catherine, owned by Mrs. Chance. Mrs. Chance resides overseas and as such her sister, Stephanie Bennett (hereinafter "Ms. Bennett") was authorised to communicate with the Respondent on her behalf.
9. By letter dated December 10, 2021, the Respondent agreed to be paid fees in the amount of 2% of the sale price. The property sold for \$13,500,000.00 which meant that the attorneys' fees should be \$270,000.00.
10. Mrs. Chance said she received several Final Statements of Account from the Respondent. Save for Exhibit F – Final Statement of Account dated the 21st November 2022, all such statements comprised of charges which were disputed by her and for which she sought clarification from the Respondent which was not forthcoming. Among the figures disputed was the Legal Fees, closing costs and transfer tax. She said further that the correct Final Statement of Account was not provided to her until the intervention of another lawyer and after the complaint herein was lodged with the General Legal Council.
11. She also deferred to her sister who she says has most of the information relevant to this matter as she was the one who communicated with the Respondent.
12. Ms. Stephanie Bennett gave evidence that the Respondent did not sufficiently advise them on the conduct of the matter and that she was often non-responsive. Ms. Bennett alleges that they would have to follow up with the Respondent several times before getting a response from her.

13. Like her sister, she says that the Respondent presented several statements of account which charged amounts in excess of the sum agreed or payable. This included Attorneys' Fees which were in excess of the 2% agreed upon. She also alleges that the Respondent's Statements of Account showed transfer tax in excess of the 2% charged by the Stamp Commissioner.
14. The exhibits relied on by the Complainants reveal that on 23 September 2022, the Respondent advised Ms. Bennett that she received the proceeds of sale. At the same time, she requested Mrs. Chance's banking details. However, it does not appear that a Statement of Account was prepared until 11 October 2022 [Exhibit A/8]. That statement included Legal Fees of \$646,000.00 and Transfer Tax of \$405,000.00 but did not give an account of the net sale proceeds to be paid over to the Complainants.
15. The Complainants received a second statement of account dated 6 November 2022 in which the Legal Fees were increased to \$675,000.00 and there were charges related to the transfer costs for registration fees and stamp duty amounting to \$36,250.00 and additional legal fees amounting to \$181,000. This statement also reflected the proceeds from the NHT and gave a figure of \$5,850,381.13 as the net proceeds of sale due to Mrs Chance [Exhibit A/9].
16. Subsequently, there was a third statement of account dated 21 November 2022 which amended the second statement to (1) reduce the Legal Fees back to \$646,000.00, (2) remove the line items for registration fees, stamp duty and letters of possession and (3) add a section headed "Attorneys Costs", with a sub total of \$301,750.00, which now included Closing Costs of \$128,750. The balance due was now stated to be \$5,786,242.08 [Exhibit A/10].
17. A fourth statement also dated 21 November 2022 was sent to the Complainants via email on 2 December 2022. The Legal Fees and the section headed "Attorneys Costs" are not included in this fourth statement. The balance due is stated to be \$6,733,992.08 [Exhibit A/11].
18. Exhibited to Ms Bennett's affidavit in support of the Complaint is a chain of emails between her and the Respondent. On 1 December 2022 Ms Bennett wrote asking for a more detailed breakdown of the costs and querying the rate for transfer tax, the charge for closing costs and the legal fees of \$646,000.00 as not being the agreed 2%. On 2 December 2022, the Respondent wrote berating Ms Bennett about questioning the statement of account and stating that she would be removing the legal fees and other fees for attorneys' costs. This fourth Statement of Account was the attachment to the Respondent's email.

19. A fifth statement of account also dated 21 November 2022 (Exhibit F) was generated by the Respondent which set out Legal Fees of \$270,000.00; transfer tax in the amount of \$270,000.00. The statement shows the sum of \$6,568,881.13 to be transferred to Ms. Chance. The sum was transferred in or about February 2023. The Complainants accept that this is the correct statement save for the charges of Expenses to Pay Water Bill \$25,000.00 and Expense to collect Water Bill Statement \$20,000.00.
20. In summary, there are five statements of account produced by the Respondent. Three of them are dated 21 November 2022 and are described as Final Statement of Account.

Respondent's Evidence

21. By way of Affidavit of Maisha Wilson-Campbell Sworn to on the 4th July 2023 and on the 9th June 2023, the Respondent states that she was retained to act on behalf of the Complainant Tomika Bennett in the sale of a property located in New Harbour Village in the parish of Saint Catherine.
22. She alleges that the Agreement for Sale, letters of authorisation and Instrument of Transfer were sent to Ms Bennett for her signature overseas. She was surprised that the documents were returned signed as Tomika Chance as she was not previously aware that she was married. The documents were returned for re-signing as Tomika Bennett.
23. The Respondent states further that the delay in sending proceeds of sale to the Complainants was due to their fault. The initial instructions she received was to transfer the proceeds of sale to an account in Ms. Stephanie Bennett's name. However, the bank would not transfer the proceeds to Ms. Bennett as she was not named in the Agreement for Sale. She says further that had Ms. Chance sent the letter of authorisation allowing the cheque to be written to Ms. Bennett, there would not have been this delay.

Submissions of the Complainants

24. Ms. Bennett made oral submissions on 11 November 2023 in which she reiterated the basis of the complaint. She stated that she felt like she had to be running behind the Respondent to get information. The Respondent acted unprofessionally, she attempted to charge fees greater than the 2% agreed and that the transfer tax stated in the several statements of account was \$405,000.00 which was more than the \$270,000.00 paid to the Stamp Commissioner on the

sale of the land [Exhibit A/1] and had she not taken issue with it, including getting evidence of the amount, as well as the other discrepancies, the Respondent would have taken the extra money and not given them the correct sum. Even though the Respondent eventually paid over the proceeds, this was only after they had got a lawyer involved.

Submissions of the Respondent

25. The Panel has thoroughly read and considered the submissions of the Respondent which was provided in writing on 5 December 2023. In summary, the submissions are that:
- (i) Ms. Chance was ultimately given a Final Statement of Account in which fees of 2% of the sale price was charged and the correct amount of transfer tax was stated;
 - (ii) Ms. Chance also contributed to the delay in that:
 - a. she took approximately two months to return documents to the Respondent signed in her maiden name.
 - b. she failed to keep current on her mortgage with NHT which resulted that entity's delayed response to the Respondent's request for the Certificate of Title;
 - c. the delay in sending funds to Ms. Chance was the result of the Complainant's failure to provide the correct banking information and/or a power of attorney to allow transfer of funds;
 - d. The attorney has paid all sums due and outstanding to the Complainants.

ANALYSIS

Standard Of Proof

26. In disciplinary proceedings, the Panel applies the criminal standard of proof, that requires it to be sure that the complaint brought against the attorney are proved beyond reasonable doubt: **Campbell v Hamlet [2005] UKPC 19**. The complainant bears the burden of proof to marshal the requisite evidence to make out each complaint beyond a reasonable doubt and thereby proving that the attorney is guilty of professional misconduct.
27. The Panel must examine each complaint to determine whether the evidence meets the required standard of proof in either respect.

Acting with due expedition

28. The Complainants have alleged that the Respondent failed to act with due expedition in:
- a. providing them with all information as to the progress of their business; and
 - b. in the conduct of their business.
29. In this regard, it is alleged that the Respondent failed to advise them from the outset of all that was required of Ms. Chance so that the matter could move smoothly.
30. On perusal of the evidence, it is noted that there was a significant delay in NHT sending the Certificate of Title for the relevant property to the Respondent. Based on the WhatsApp evidence, on 12 January 2022, the Respondent indicated that she was awaiting the Title from the National Housing Trust. She advised the 1st Complainant that she received same on or about 2 August 2022.
31. However, the evidence also reveals that some of the delay was due to the Respondent's conduct of the matter. The Whatsapp messages reveal that on 4 December 2021 she advised the 1st Complainant that she received the signed Agreement for Sale from the Purchaser. However, the Agreement was not sent to the 2nd Complainant for signing until 4 January 2022. The 2nd Respondent returned the Agreement on 18 January 2022. On 17 March 2022, the Respondent again sends related documents to the 1st Complainant for the 2nd Complainant's signature. On 30 March 2022, the 1st Complainant advises the Respondent that the signed documents were on the way to her. It is unclear whether this was the letter of authorization or the Power of Attorney. On 4 April 2022, the Respondent advises that she has received the documents but it appears that it was only on 11 April 2022 that she realized that the 2nd Complainant's signature was not in order. On the said date, she also belatedly asks for a certified copy of the 2nd Complainant's passport.
32. It also appears that there was a delay caused by the fact that the mortgage account was in arrears. The Complainants allege that they asked the Respondent whether they should continue making payments on the mortgage. However, it does not appear that she told them what to do in this regard. It is not reasonable for the Complainants to believe that they should stop making payments on the mortgage in the absence of direction or recommendation from the lawyer. There is also the unexplained delay between the period 30 May 2022 when the Complainants say that the mortgage was paid up, and 2 August 2022 when the Respondent received the title from the NHT. We are prepared not to hold this period to the Respondent's account.

33. The Respondent did not act with all due expedition in the conduct of the Complainants' business. Much of this delay could have been avoided if the Complainants were advised from the outset of what would be required of them to bring this sale to completion. Indeed, had the Respondent taken the necessary steps to advise herself of the marital status of the 2nd Complainant and/or whether the property was mortgaged from the beginning and advised the 2nd Complainant accordingly of what was expected of her, the delay could have been minimized if not avoided altogether. Instead, some four (4) months after the Agreement was signed by the Purchaser, the Complainants' business was not progressing as it should.
34. Whilst a review of the WhatsApp messages which appear to document a large portion of the communication between Ms. Bennett and the Respondent shows that she responded to her requests for information on the progress of the matter within a reasonable time whenever asked for same, the issue was the Respondent providing the information and advice in a piecemeal fashion.
35. There was also a further delay in the conduct of this matter after the receipt of the proceeds of sale on 23 September 2022 by the Respondent. The evidence indicates that after the Complainants received the Statement of Account from the Attorney on 11 October 2022 they started making enquiries about its contents. For example, they requested a copy of the Transfer Tax Certificate proving the total sum paid for transfer tax. There is no evidence that they ever received it from the Respondent. The Attorney's explanation of the Statement of Account appeared to be limited to the additional work she had to do to obtain the water bill. The Respondent's failure to give a true account of her fees (as will be discussed below), the transfer tax paid and/or the failure to give an explanation for the sums stated on her several Statements of Accounts resulted in a delay of five (5) months in the Complainants receiving the proceeds of sale.
36. This Panel therefore finds that the Respondent failed to act with due expedition in providing them with information and in the conduct of their business.

Charging of Fees

37. The Complainants have alleged that the Respondent charged fees that are not fair and reasonable in breach of Canon IV(f) which states:

"The fees that an Attorney may charge shall be fair and reasonable and in determining the fairness and reasonableness of a fee any of the following factors may be taken into account:

- (i) The time and labour required, the novelty and difficulty of the questions involved and the skill required to perform the legal services properly;
- (ii) the likelihood that the acceptance of the particular employment will preclude other employment by the Attorney;
- (iii) the fee customarily charged in the locality for similar legal services;
- (iv) the amount, if any, involved;
- (v) the time limitations imposed by the client or by the circumstances;
- (vi) the nature and length of the professional relationship with the client;
- (vii) the experience, reputation and ability of the Attorney concerned;
- (viii) **whether the fee is fixed or contingent;**
- (ix) any scale of fees or recommended guide as to charges prescribed by the Incorporated Law Society of Jamaica, the Bar Association, the Northern Jamaican Law Society or any other body approved by the General Legal Council for the purpose of prescribing fees. [Emphasis added]

38. Although the Respondent had disputed that the legal fees agreed upon was 2% of the sale price, the Complainant provided evidence of the agreement by the Respondent's letter dated 10 December 2021. The Respondent presented several Statements of Accounts in which the attorneys' fees being claimed exceeded the agreed upon amount. The Complainants stated that they sought clarification on the statements but to no avail. They both also allege that had they not queried the statement of account, the lawyer would have collected fees and costs in excess of what was due.

39. Counsel for the Respondent made heavy weather of the fact that the Complainants were given a statement of account with the correct figure. However, this fact cannot be viewed in a vacuum but consideration must be given to the efforts which had to be made by the Complainants to receive a true statement of what was due to the 2nd Complainant.

40. This Panel finds the case of *Gresford Jones v The General Legal Council (ex parte Owen Ferron) Miscellaneous Appeal No. 22/2002* (delivered March 18, 2005) instructive. In that case, the Court of Appeal found that the Attorney cannot unilaterally alter his fees without the agreement of the client. Therefore, an attorney who altered a fee that was initially agreed with the client was guilty of professional misconduct. Harrison JA said at page 36 of the judgment:

"the conduct of the appellant in respect of his attempt to change the initially agreed rate of remuneration is unfair and unreasonable ... Such

conduct was indeed unbecoming of the appellant as an Attorney and accordingly would itself also be a breach of Canon 1(b)"

41. The findings of the Court of Appeal in *Gresford Jones* case are in keeping with section 21 of the Legal Profession Act which states:

"(1) An attorney may in writing agree with a client as to the amount and manner of payment of fees for the whole or part of any legal business done or to be done by the attorney, either by a gross sum or percentage or otherwise; so, however, that the attorney making the agreement shall not in relation to the same matters make any further charges than those provided in the agreement:..."

42. This Panel therefore finds that presenting Final Statements of Accounts to the Complainants reflecting legal fees more than the agreed 2% of the sale price, inflating the amount of transfer tax paid and charging additional closing costs amounts to professional misconduct on the part of the Respondent.

Failure To Give Account

43. The Complainant alleges that the Respondent breached canon VII(b)(ii) of the Legal Profession (Canons of Professional Ethics) Rules ("The Canons"). This Canon states:

"An Attorney shall account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so and he shall for these purposes, keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council."

44. The Complainants allege that the Respondent failed to account for monies due to Mrs. Chance as the Respondent presented five Statements of Account showing Legal Fees in excess of the agreed 2% and Transfer Tax in excess of the amount paid on the transaction. These are set out in paragraphs 14 to 19 above.
45. In respect of the Legal Fees charged on the first to fourth statements of account, the evidence indicates that the Respondent sought to justify the amount by claiming that the matter took longer than expected.
46. It is well settled law that an attorney cannot unilaterally charge fees to a client. Instead, they must be agreed between the parties. Further, where any dispute

arises between the attorney and the client as to the fees payable, said attorney may sue for recover of same or have them taxed as provided under sections 21 and 22 of the Legal Profession Act.

47. There was no agreement between the Complainants and the Respondent for fees in excess of the 2% agreed. However, the Respondent repeatedly put forward Statements in excess of what was agreed.

In respect of the amount claimed for Transfer Tax (in excess of 2%), the Respondent initially alleged that this was due to penalty incurred then explained that it was a charge for getting the penalty reversed. However, no evidence of this has been presented to this Panel. Further, if there was a penalty imposed, no explanation was given for same.

48. Notwithstanding, the questions raised by the Complainants, the Respondent maintained that her Statements of Account were a true reflection on the fees and costs incurred on this transaction. We say this notwithstanding the fourth statement as we note the contents of her email 2 December 2022 to Ms. Bennett. This Panel accepts the evidence of the Complainants that the Respondent did not present a true account of their transaction and the sums owed to the 2nd Complainant until the intervention of another lawyer.

49. In the circumstances it is our conclusion that the Complainants have proved beyond a reasonable doubt that the Attorney failed to account to them for all monies in her hands at the time of the filing of this complaint.

Conduct Unbecoming

50. The Complainant's also allege that the Respondent breached Canon I(b) which states:

"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 [s]he is a member."

51. The Respondent's conduct in inflating the transfer tax paid by \$135,000, initially charging Legal Fees of \$646,000, \$376,000 than the fee agreed, denying that she had agreed to charge a fee at the rate of 2% of the sale price are instances where the Respondent Attorney's honesty in her dealings with the Complainant can only be viewed adversely. And when considered along with the several versions of the Statement of Account, the tone of her correspondence with the Complainants in addressing their queries as to the

charges and the fact that the final Statement only came after the Complaint was laid, the Respondent acted in a manner that discredited her honour and dignity and by extension the profession.

52. For the reasons set out above, this Panel finds that the Respondent engaged in behaviour which may tend to discredit the profession.
53. Having heard the evidence of the Complainants and the Respondent and read all the affidavits and exhibits, the Panel makes the following findings of facts:

Finding of Facts:

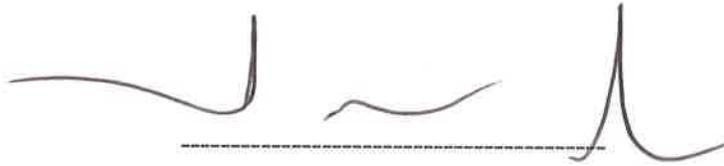
- (i) The Respondent was contracted by the Complainant on or about December 10, 2021 to have carriage of sale for property known as Lot 229 Harbour Village, Phase II, St. Catherine
- (ii) The agreed legal fees payable to the Respondent was 2% of the sale price;
- (iii) The Respondent received the proceeds of sale on 23 September 2022;
- (iv) The Respondent issued five Statements of Account to the Complainants, three of which misstated the legal fees and stated additional costs;
- (v) The Respondent misrepresented the amount paid for transfer tax;
- (vi) The Complainants made several requests for clarification of the statement and for the correct figure to be paid over to them;
- (vii) Final Statement of Account dated 21 November 2022 sent to the Complainants in December 2022 was presented to the Complainants with legal fees in the amount the amount agreed upon;
- (viii) The Respondent failed to give a true account of the monies she had in hand for the Complainants;
- (ix) The proceeds of sale was received by the Complainants in February 2023;
- (x) The Respondent failed to handle the Complainants' business with due diligence;
- (xi) The Respondent failed to provide the Complainants with all information as to the progress of their business with due expedition, although reasonably required to do so;
- (xii) The Respondent acted dishonestly in inflating the sum payable as transfer tax;
- (xiii) The Respondent displayed behaviour in the conduct of the Complainants' business which may tend to discredit the profession;

CONCLUSION

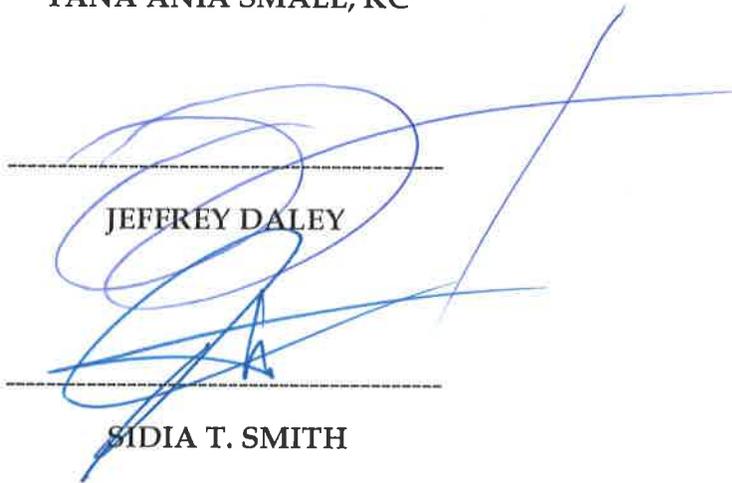
54. Having carefully considered the oral and affidavit evidence of both the Complainants and the Respondent together with the exhibits, the Panel finds

- that the evidence presented by the Complainant has met the requisite standard of proof, that is proof beyond all reasonable doubt in relation to the grounds of complaint. The Panel therefore finds the Attorney to be guilty of professional misconduct as per Canon VII (b) of the Legal Profession (Canons of Professional Ethics of Rules).
55. In accordance with the procedure recommended by the Court of Appeal in *Owen Clunie v General Legal Council SCCA No. 03 of 2013*, the Panel directs that a date be fixed to give the Respondent an opportunity to be heard in mitigation before a sanction is imposed.

Dated the 28th day of May 2025



TANA'ANIA SMALL, KC



JEFFEREY DALEY



SIDIA T. SMITH

