

**DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL  
COUNCIL  
COMPLAINT NO: 117/2024**

IN THE MATTER OF **ERIKA MARGE BIRGIT GERSTENBERG** and **ANO MAGGIELIN MILLER SEWELL** an Attorney-at-Law

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

**PANEL:**

Trevor Ho-Lyn (Chairman)  
Ursula Khan  
Delrose Campbell

**The Parties**

1. ERIKA MARGE BIRGIT GERSTENBERG (hereinafter referred to as the “Complainant”)
2. ANO MAGGIELIN MILLER SEWELL (hereafter referred to as “the Attorney”)

**Hearing Dates**

3. March 1, 2025, April 26 2025, May 5, 2025
4. The Complaint and Affidavit in support both dated the 8th of July 2024 were filed on the 9th of July 2024. The Panel noted at the hearing on March 1, 2025 that the Attorney was duly served with the Complaint, Affidavit and Notice of Hearing but had not responded, no Affidavit was filed by the respondent Attorney. The matter was adjourned to April 26, 2025 for delivery of judgement, which date was subsequently traversed to May 5, 2025.
5. At the hearing on May 5, 2025 the Panel noted that the Attorney tendered a doctor's certificate stating that she is ill without particulars of the of the illness and how it would prevent the Attorney from participating in the proceedings. The Attorney had still filed no Affidavit. Upon the Committee being satisfied that the Attorney had been duly served with notice of the hearing pursuant to Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules set out under the 4th schedule to the Legal Profession Act and, exercised its discretion to proceed with the hearing in the absence of the Attorney, which is provided for under Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules. The Panel also determined to hear the Complaint on affidavit evidence pursuant to Regulation 10 of the Fourth Schedule to the Act.

## **The Complaint**

6. The Complainant alleged that The Attorney is in breach of the following Canons contained in the Legal Profession (Canons of Professional Ethics) Rules, namely: -
  - a. The Attorney has not provided me with all information as to the progress of my business with due expedition although I have reasonably required him to do so in breach of Canon 4 (r )
  - b. The Attorney has not dealt with my business with all due expedition in breach of . (Canon 4 (r )
  - c. The Attorney has not accounted to me for all monies in his hands for my account or credit, although I have reasonably required him to do so in breach of Canon VII (b) (ii)
  - d. The Attorney is in breach of Canon VI (d) which states that an Attorney shall not give a professional undertaking which he cannot fulfill and shall fulfill every such undertaking which he gives

## **The Evidence**

7. By letter of engagement dated January 10 2024 the Complainant engaged the services of the Attorney for representation in the purchase of a dwelling at Lot 12A, 157 Red Hills Road, Forest Hills, Kingston 19.
8. The Complainant entered into an Agreement for Sale on the 15th of February 2024 with the Vendors named therein, the exhibited Agreement for Sale stated a purchase price of \$57,500,000.00, it required a deposit of \$5,750,000 and stated also that the balance purchase price of \$51,750,000 and the purchases portion of attendant costs would be paid in full on or before 60 days from the date of the Agreement for Sale.
9. The Agreement for Sale named the Attorney as the Complainant's Attorney and required that within 30 days from the date of the Agreement the Purchaser should obtain in favor of and deliver to the Vendor's Attorney at law an acceptable undertaking for the payment of all monies payable by the Purchaser on completion or alternatively that the Purchaser shall pay those sums to the Vendor's Attorney failing which the Vendor shall be entitled to immediately cancel the agreement.
10. The Agreement for Sale provided that time shall be of the essence of the contract in respect of all payments to be made by the purchaser and that on the failure of the purchaser on the due date to pay any sums payable the Vendor is entitled immediately to terminate the Agreement and forfeit the deposit. The Agreement for Sale also required the purchaser to pay interest at the rate of 10% per annum on all monies payable under the Agreement which are not paid on the due dates.
11. The Complainant paid the Attorney \$57,661,865.00 on March 31 2024 the receipt of that date stated that the sum represents the purchase price and half cost for the Agreement for Sale.

12. The Complainant also paid the Attorney \$1,150,000.00 and the receipt for that sum dated March 31 2024 states that the payment represents legal fees.
13. Of the payments made to the Attorney the Complainant says the Attorney has not accounted to her for the sum of \$37,392,000. This amount representing a portion of the purchase price was never paid over to the Vendor's Attorney nor was an acceptable undertaking given to the Vendor's Attorney for the payment of that sum. This led to the cancellation of the Agreement for Sale by the Vendor.
14. The complainant states that The Attorney when silent since July 1 of 2024 that she has not heard from her since and that prior to that she failed to communicate with her and provide her with information on the state of her business.

### **The Burden Of Proof And Standard Of Proof**

15. It is the law that the legal burden of proof is on the Complainant to prove the salient facts of the complaint. It makes no difference that the Attorney never attended any of the hearings at which evidence was taken, the legal responsibility remains on the Panel to evaluate the evidence it has before it to the standard of proof required, before it makes any findings.
16. The standard of proof in cases of professional misconduct is that of "beyond reasonable doubt". This is the standard that must be applied by the Panel in evaluating the evidence adduced before it. (Winston Campbell v David Hamlet (as Executrix of Simon Alexander) Privy Council Appeal No 73 of 2001): -

### **Evaluation Of The Evidence**

17. The only evidence before the panel is the affidavit evidence supported by documentary evidence given by the complainant; the panel is left with her unchallenged account. This is the evidence that the panel will examine in seeking to arrive at its conclusion by applying the law to the facts.

### **Findings**

18. An examination of the evidence did not disclose any inconsistencies or discrepancies in the evidence which was supported by exhibits which the Panel perused. The Panel is entitled to accept it in its entirety. The following therefore are the findings of fact which meet the exacting standard "beyond reasonable doubt":-
  - a. The Complainant employed the Attorney to represent her in the purchase of the property.
  - b. The Complainant paid \$57,661,865.00 to the Attorney , \$37,392,000 of which was not paid over to the Vendor's Attorney or refunded to the Complainant.

c. The Attorney ceased communications with the Complainant since July 2024.

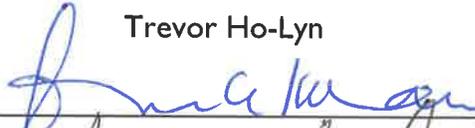
**Conclusion:**

1. There was no evidence of the Attorney giving a professional undertaking so there is no finding of a breach of Canon VI (d).
2. It follows from the above findings of fact the breaches of the following Canons:-
  - a. The Attorney has not provided me with all information as to the progress of my business with due expedition although I have reasonably required him to do so in breach of Canon 4 (r )
  - b. The Attorney has not dealt with my business with all due expedition in breach of . (Canon 4 (r )
  - c. The Attorney has not accounted to me for all monies in his hands for my account or credit, although I have reasonably required him to do so in breach of Canon VII (b) (ii)
3. These breaches have been made out to the requisite standard as required by law, of proof beyond reasonable doubt and accordingly the respondent Attorney is guilty of professional misconduct in respect to each of the specified Canons. The panel now affords the respondent Attorney the opportunity to address it on the sanction to be imposed.

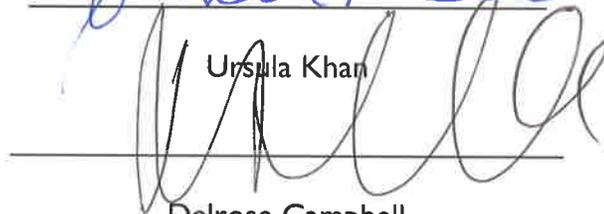
DATED MAY 31, 2025



Trevor Ho-Lyn



Ursula Khan



Delrose Campbell