

JUDGEMENT OF THE DISCIPLINARY COMMITTEE

COMPLAINT NO.60/2013

BETWEEN **KAON NORTHOVER** **COMPLAINANT**
AND **MINETTE LAWRENCE** **RESPONDENT**

PANEL: **PAMELA BENKA-COKER Q.C.**
 CHARLES PIPER Q.C.
 GLORIA LANGRIN

Hearing dates: 15th March 2014, 7th June 2014, 11th July 2014, 18th July 2014, 13th November 2014, 4th December 2014, 9th May 2015, 20th June 2015, 22nd July 2015, 27th February 2016, 2nd April 2016, 23rd April 2016.

The panel continues to be concerned about the length of time that disciplinary complaints take to be resolved. There are a number of factors contributing to this unsatisfactory state of affairs and culpability cannot be assigned to anyone reason, we only know that all parties have to cooperate in seeking to ameliorate this undesirable situation.

This Complaint and affidavit in support were filed on the 2nd April 2013.

THE PARTIES:

Mr. Kaon Northover, (hereinafter referred to as the complainant) in his affidavit in support, states that he is an information technology specialist and businessman who resides in Kingston.

The Respondent Attorney-at-Law (hereinafter referred to as "the attorney") Mrs. Minette Lawrence, is in private practise and the records reflect that she has chambers at 26 East Street in the parish of Kingston. The attorney is a sole practitioner.

THE COMPLAINT:

By Form of Complaint dated the 2nd April 2013 and affidavit in support dated the 2nd April 2013, the complainant alleges in paragraph 3.1 that:

"Mrs. Minette Lawrence is indebted to me for a sum exceeding US\$498,000.00 or \$69,000,000.00 Jamaican Dollars. Mrs. Lawrence acted as my Attorney-at-Law and received US\$400,000.00 from me

around the 11th August 2008 to invest for a period of forty five days. She subsequently informed me that my investment had realized interest of US\$132,000.00 and that the interest and principal was being transferred to me totalling US\$532,000.00 by way of her letter dated the 12th September 2008. This letter is exhibited to the affidavit in support of the complaint as exhibit KN1. This letter is directed to the complainant from the attorney. In this letter the attorney informs the complainant inter alia.

I am pleased to advise that on the repayment for the bridge loan to the Schwarzenberg Trust, the sum of US\$532,000.00 was repaid in accordance with our instructions. On September 9th Mr. McLeod confirmed availability of funds and an immediate transfer was made as directed."

In the summary of the complaint alleging the grounds of the complainant it states:

The complaint I made against the Attorney-at-Law is:

- 1 Gross professional misconduct;
- 2 She failed to deal with my business with all due expedition;
- 3 She acted with inexcusable and/or deplorable negligence or neglect;
- 4 She failed to keep proper accounts for my money; and
- 5 She failed to account for my money, namely US \$492,000.00.

The panel will analyse this letter in its totality, and its effect, when evaluating the evidence adduced in the complaint.

The actual taking of evidence in this complaint commenced on the 15th March 2014 when the complainant gave evidence. Prior to the evidence being adduced, counsel for the respondent, Mr. Christopher Dunkley, took a preliminary objection to the hearing of the disciplinary complaint. He submitted that the hearing of the Disciplinary Complaint should be stayed pending the resolution of the civil case between the complainant and the attorney, Claim No 2013 HCV 01171, as this claim addresses the same circumstances as those being pursued before the Disciplinary Committee. The panel exercised its discretion by ordering that the hearing proceed as no arguments were presented to it by counsel for the attorney which persuaded the panel that by continuing the hearing of the complaint this would be prejudicial to the fair resolution of the civil suit in the Supreme Court.

THE EVIDENCE:

On application of counsel for the complainant 3 affidavits were produced in evidence. These affidavits were produced pursuant to rule 10 of the Fourth Schedule to the Legal Profession Act after the complainant was sworn and commenced his oral evidence. The complainant stated that he lives at 14 Marine Drive, Copa Cabana, Bull Bay, St. Andrew, and that he is a businessman, currency trader and he owns a Construction Company. He confirmed

that the person Hubert James is his stepfather. The complainant was shown the form of complaint signed on the 2nd April 2013. This document was admitted in evidence as exhibit 1. His affidavit in support was admitted in evidence as exhibit 1A. The complainant's affidavit dated the 30th April 2014 was admitted in evidence as exhibit 2. Affidavit of the complainant dated the 9th January 2014 was admitted in evidence as exhibit 3. These three affidavits formed the basis of the examination in chief of the complaint.

The panel has already referred to the contents of exhibits 1 and 1A. The contents of exhibit 2 are important and will be reviewed to the extent that it contains evidence that is particularly relevant to the complaint although the entire affidavit is in evidence. Exhibit 2, is in direct response to a letter dated the 12th April 2013 written by an Attorney-at-Law Ms. Diane Watson representing the respondent attorney and in response to the complaint.

The complainant confirms his complaint and affidavit in support, exhibits 1 and 1 a. He then asserts that the attorney has no real defence to the complaint. He alleges that he finds aspects of the attorney's defence as conveyed in the letter of the 13th April 2013 scandalous, absurd, malicious and irrelevant. In paragraph 5(a) the complainant says that he was introduced to the attorney by a third party. In paragraph 5(b) the complainant then decided to use the services of the attorney to set up his offshore company. In paragraph 5(c) the complainant says that at all material times the attorney acted on his instructions for the incorporation of K Ann J.S.A. and was paid by him for his work. In paragraph 5(d) he states that the attorney was paid US \$5,000.00 and he received a receipt for the said sum. The relevant receipt is exhibited as KN1 and is dated the 22nd April 2008.

In paragraph 5(e) he further says that the company K ANN is a company incorporated under the laws of the British Virgin Islands. He exhibits as KN2 a copy of the certificate of incorporation. He alleges in the succeeding paragraph that he holds all the 50,000 shares in the said company and exhibits the relevant share certificate as exhibit KN3.

In paragraph 5(h) the complainant asserts that the attorney's failure to pay over the sums due to him has caused him to default in paying fees required by the authorities in the British Virgin Islands and that the attorney had fraudulently converted the funds entrusted to her pursuant to the loan.

In paragraph 6 the complainant states that at all material times he and his company enjoyed a client Attorney-at-Law relationship with the attorney. He further avers that the attorney

"was at all times aware that I had a surplus of funds to invest from my earnings. It was the attorney who informed me of the investment opportunity with the Schwarezenberg Trust Services and that I got to get involved with bridge financing. She informed me that one Mr. Norman McLeod and the Schwarezenberg Trust Services would provide a safe investment opportunity for my money and that I was not to worry about anything as she was the one preparing all the documents and would ensure that I would be well looked after and my money would be safe'.

The complainant says that the attorney "encouraged me to invest my money in the form of a loan and made all the arrangements including the drafting of all relevant documents and got me to sign them"

The complainant then says that he will rely on the Loan Agreement with the Schwarzenberg Trust Services for its full meaning and effect. He specifically reaffirms the allegation that the attorney acted for him and his company as the lender in the agreement with Schwarzenberg Trust Services. He asserts that the attorney also acted for the borrower, the Trust, at the same time that she was acting for him in the same transaction and at that time he only recently became aware of this. He had believed that the attorney was representing him solely and not the Trust, and that she was representing his interests alone.

The complainant, on various occasions in this affidavit, alleges that the attorney was dishonest and that she acted fraudulently in persuading him to enter into this loan agreement with the Trust. Between paragraphs 7 and 17 the complainant explains different discussions with other persons and the attorney which did not materialize in any formal business arrangements.

In paragraph 18, the complainant refers to the letter of the 12th September 2008 and states that he understood from that letter that the attorney was saying that the loan had been returned to him with interest. "The interest was to be paid to me, and the principal was to go to the British Virgin Islands to an account which I had asked the attorney to set up when my company was being incorporated. I was expecting the entire interest and not a portion and nowhere in the letter is it stated that a portion of the interest was to be received. I understood by the letter that the attorney was now in control of all the funds and received no other communication from the attorney to say otherwise."

He further stated that the attorney did not set up the account in the BVI as agreed and to which the sum of US \$400,000.00 should have been sent. He expected the payment of the interest of \$132,000.00 US in Jamaica He said that the very failure of the attorney to establish that account is further evidence of fraudulent design on his money from the outset. The complainant says that the respondent was not entitled to deduct any money from the sums due to his company as he paid all fees due. Paragraphs 23-29 repeat his assertion that the attorney is dishonest and denials of assertions that the attorney made in her letter of response written by her then Attorney-at-Law, Ms. Diane Watson dated the 13th April 2013.

In paragraph 30 the complainant says that the " Attorney had suggested to me that I should also set up an account with the Cash Management company with herself. In paragraph three of her letter of the 12th September 2008 she makes reference to setting of a joint account with her for future transactions with the Cash Management Company. The letter confirms that the Cash Management Company's function was to manage cash funds lodged with it by investors.

In paragraph 31 the complainant states the following: "Further, the website of Sotayreeah Financial Services LLC, states that it is "a privately held money management company that educates consumers and small business

owners on financial matters. We assist small business owners and consumers on methods to identify and resolve the source of their financial concerns. A copy of the printout from this website is exhibited as KN5 (1-4).

The complainant expresses the opinion that it is "evident that the Respondent lodged my money into the account with Sotayreeah over which she had access and control pursuant to her scheme to part me with my hard earned money. The complainant, in the final paragraph of this affidavit again refers to the letter from the attorney of the 12th September 2008 and that she confirms in this letter that she had received the funds that the complainant had invested, that she has paid over to him only US\$34,000.00 and that the attorney has not accounted for US\$498,000.00 which "to all intents and purpose was under her control and possession. The Respondent must therefore be deemed to have converted the money for her own use and that the loan scheme was an elaborate device to get me to part with my US \$400,000.00".

The third and final affidavit filed by the complainant is dated the 9th January 2014 and is exhibit 3. This affidavit is in response to an affidavit of the attorney which itself will be reviewed in this judgement and analysed. This third affidavit is in substance a denial of the attorneys' affidavit and an effort to undermine the allegations of the attorney in her affidavit.

It is important to specifically identify certain paragraphs in this affidavit of the complainant. In paragraph 3(f) the complainant said " I was never informed of any involvement/investigation by the Fraud Squad on the part of the Respondent into Mr. Norman McLeod which would have expected if it was true that he was wholly responsible for the non-return of my money". In paragraph 3(g) "The Respondent tried to pay me off by offering me a high end Mercedes Benz motor vehicle which I refused as I wanted nothing less than the return of my hard earned money/cash. And in paragraph 3(h) he says" Further, there is no indication that the Government of Jamaica was involved in the transaction. One which would lead to a loan of \$700, million Euros for the Jamaica Railway Corporation (JRC).

In paragraph 4 the complainant states that "in the light of the involvement of Mr. Harold Brady, Attorney-at-Law, he should be required to give an account of any involvement to the Committee along with Mr. McLeod. In paragraph 5 he repeats "inter alia" his allegations that he holds the attorney" personally responsible for the non return of my money" In paragraphs 7, 8 and 9 the complainant seeks to bolster the allegations in this complaint that the attorney fraudulently deprived him of his monies and that it is the attorney who led him to believe that the purported Loan Agreement was " a safe one for his investment".

The above is a fair representation of the three affidavits filed by the complainant. There was argumentative material that is not included in the review of the complainant's affidavits in exhibits 2 and 3 and the review has sought to concentrate on allegations pertinent to the substance of the complaint.

CROSS EXAMINATION OF THE COMPLAINANT:

The complainant is asked to look at exhibit 2 and asked to read paragraph 3. he was then asked by counsel for the attorney what was his understanding of why he was here. He said that his complaint was about an attorney to client. Mrs. Lawrence has put him out of his funds and was very negligent as it relates to his affairs. First and foremost that she was representing him and that she was operating on his behalf. She was negligent in handling his affairs. He said that she was negligent by not handing over his money to him. When asked if the attorney had handed over his money would he have considered her negligent? He said not necessarily. He said that she was negligent in her response to him, the seriousness of the matter and how she handled it. In response to further questioning he said that he was introduced to the attorney by someone else who wanted a company incorporated. He had nothing to do with that.

The complainant further stated that he himself wanted the attorney to set up a company for him and to the best of his knowledge she did, he then confirms that the attorney did incorporate his company and that she was not negligent in doing so. The attorney did incorporate companies abroad to set up his company and there was no negligence by the attorney in doing so.

When asked how the attorney came to have his money, the complainant referred to the letter from the attorney to him dated the 12th September 2008 which he said answered the question. He added that the sum of US\$532,000.00 after the loan agreement to Norman McLeod from my company, there were payments made to him from the attorney which represented the loan. The attorney made a part payment. The complainant denied that Mr. McLeod was his debtor. He was told that it was paid. He was told this by the attorney. The complainant said that as his attorney she told him that the money had been repaid, the transaction was successful, and that the money was available to him. The attorney advised him that he should wire the loan agreement between Kaon Northover and Mr. McLeod who is the borrower. Minette Lawrence, his attorney, gave him advice to participate in the transaction. In response to questions from the panel, the complainant said that the attorney told him to wire half a million United States dollars. The attorney introduced him to Norman McLeod. He was introduced to Mr. Norman McLeod by the attorney. She told him about a very attractive arrangement. This took place in June 2008. He was introduced to Mr. McLeod at the Nipoline Building on Constant Spring Road. This building is no longer there.

The following persons were at this meeting. Mr. McLeod, the complainant, the attorney and her husband, Mr. Lawrence, Dave Rangling and Donovan Hunter. The attorney was representing the complainant at that meeting. The complainant said that he was not of the opinion that the attorney was representing anyone else.

The complainant was then directed to the affidavit of the attorney and then asked if this was the wire transfer he was referring to in paragraph 3.1 of his affidavit in support of the complaint, exhibit 1a. The complainant admitted that this was the wire transfer to which he referred. He was then asked if he agreed that wiring money to

somebody else's company is not wiring money to the attorney. He did not agree with that suggestion and said he stood by what he said.

The complainant, when asked if he understood Schwarzenberg Trust and the attorney to be one and the same person, he said that now that he saw Mr. Brady's letter he was not of the opinion that Schwarzenberg Trust got his money. He is also of the opinion that the Jamaica Railway Company had nothing to do with the transaction. The hearing of the complaint was then adjourned for continuation to the 15th and 16th April 2014 at the offices of the General Legal Council.

On an examination of the relevant minutes of order it does not appear as if there were any sittings on the 15th and 16th April 2014. The next scheduled date on which evidence was heard is the 11th July 2014. The cross examination of the complainant continued.

THE CONTINUATION OF THE CROSS EXAMINATION OF THE COMPLAINANT:

At this stage of the proceedings, the bundle of documents filed on behalf of the complainant was admitted in evidence as exhibit 4. The bundle of documents filed on behalf of the attorney was admitted in evidence as exhibit 5. The complainant said that he did not know who Schwarzenberg Trust and Services are and he has never met anybody. He has been questioning the existence of the Trust based on the letter that Mr. Brady wrote. Mr. Brady was the chairman of The Jamaican Railway Corporation. The complainant said that he met the attorney through a mutual friend. That mutual friend was Dani Williams.

The attorney did not incorporate the company K Ann JSA but she registered it for him in the British Virgin Islands. There is no relationship between Dani Williams and K Ann JSA. The Company is his, the complainant's company. The company was formed about four months after he met the attorney. The complainant said he paid for the services of the attorney in cash. At that time the \$US was 7-1. The cash in Jamaican dollars was \$356,250.00. The rate of exchange worked out to be US\$5,000.00. The cash with which he paid for the attorney's services came from his bank account. He drew the money from his account at the Victoria Branch of the Bank of Nova Scotia and took it to the attorney's office at 26 East Street. He denied that the source of the money came from Dani Williams. He repeatedly denied Dani Williams provided the money to pay the attorney. He did agree that there was a loan agreement between the company K Ann JSA and Schwarzenburg Trust.

He was not aware of any representatives of the "Trust" The attorney did tell him that Mr. McLeod is a business entrepreneur who has expertise in bridge financing. He has met Mr. Norman McLeod. This is the Mr. McLeod to whom he refers. He has met him. Mr. McLeod told him that he should accept what information the attorney gave him. He the complainant did not do any research on his own. The attorney told him about the Trust.

The complainant was shown the Loan Agreement and directed to the page containing the signatories to the document. He admitted that he signed the document. He also said that Mr. McLeod signed the document and his

signature was witnessed by Mr. Hunter. There is also a reference to a Mr. Soares. The complainant confirmed that Mr. McLeod did sign the document on behalf of the trust. He was not present when Mr. McLeod signed the document. The complainant says that he signed the document at the offices of the attorney. He insists that he was not present when Mr. McLeod signed the document.

The complainant said that he did wire funds after the document was signed. He did not do the wiring himself. The funds were wired from the RBTT bank. The complainant reiterates that he did not personally remit the funds. He did give the instructions for the funds to be wired. There is no other member of the company K&J SA other than himself. The funds were wired to Sotayreeah Financial Services and he referred to the document at p 21 of the bundle filed on behalf of the complainant. The complainant did not agree with counsel for the attorney when it was suggested to him that the money was not sent to the attorney. The complainant did not know Sotaire Financial Company. In fact the document at p21 of exhibit 4, Transfer Instructions specifies the name of the beneficiary as Sotayreeah Financial Services. That is the correct spelling of the named beneficiary.

The complainant was asked if there were other independent persons dealing with this matter. The complainant said yes according to my attorney's instructions. She prepared everything and presented it to me she prepared the loan agreement. When asked whether or not he believed the attorney had a relationship with the borrower, the complainant said that the attorney drafted the loan agreement and she was instrumental in all of this. Without her he would not know that JRC was seeking funds to start Railway. She was instrumental in that she introduced him to everyone.

He had absolutely no relationship with any of those persons. When asked whose money was wired to America, the complainant said that the money wired was his money. He said that his stepfather is Mr. Hubert James and that they do have a joint account but the funds in the joint account are the complainant's funds. The attorney, Mrs. Lawrence is the first attorney he has ever dealt with. He made no effort to contact the Trust Service independent of the attorney. He did some research on line, but the result was that he found nothing that he sought. He did not see any Trust that manages English Trust as he was told, who specialize in over 30 years. Schwarzenburg Trust is a specialized body that manages wealthy people funds. He saw a name only. He saw the profile on persons. It was not a company.

He consulted the attorney on his own after learning what the attorney does. He understood that she is a civil attorney. He did no due diligence. He did not know the Trust and he relied strictly on the advice of the attorney. The attorney brought it to him and told him that it was a good investment. He did not do due diligence. He had an attorney who had a contractual duty of care to him just as how he paid her US \$2,000.00. She has a duty of care to him.

The complainant repeated that the attorney introduced him to Mr. McLeod. He did not instruct her. The attorney in the presence of her husband said that she wanted \$3.6 million US for bridge financing. Mr. Dave Ranglin at

Nepoline said that he was not liquid enough to participate in the transaction. The complainant further stated that it was after this that the attorney asked him if he knew anyone who is interested, and he said he knew an institution that would be able to facilitate the transaction.

He first introduced the attorney to a Mr. Herman Ming, chairman of Investment Management Board in Mandeville. He set up a meeting with Mr. Ming, the attorney, her husband and himself. Certain proposals for financing were made to Mr. Ming but these discussions bore no fruit. The complainant said there was a third effort by the attorney to secure financing but that also failed. He did not attend that meeting.

The complainant said that it was after all these meetings that he got into the transaction. The attorney told him that he did not have all the money but she knew a way to overcome that and get it done. The attorney then suggested to him that if he the complainant were to put US\$500,000.00, Mr. McLeod would be able to raise the US\$3.5 million that is required. The complainant then enquired of the attorney how would that be done. She said that Mr. McLeod would hypothecate the funds and borrow against it until he received that amount. He, the complainant, would receive 33 and one third percent on his US\$500,000.00.

The complainant said that he did see through the transaction. He thought it could happen. The attorney reassured him that she would protect him. The attorney said that she had done business with Mr. McLeod and she would take care of the complainant. Counsel for the attorney put a hypothetical question to the complainant which was posited in this way. "If the three places that the complainant referred the attorney to had done business with the Trust Services wouldn't the Trust Services be the client of the attorney?"

The panel then intervened and said that the exhibits produced showed that the attorney prepared the documents for and on behalf of the complainant and he paid money. He was the attorney's client. So what is the Defence of the attorney? Counsel for the attorney said that the attorney's response is contained in the letter sent to the GLC for the attorney. Counsel then said that the complainant was not the client of the attorney. The complainant instructed her to prepare the documents. She did that. The complainant lost his money, and with that the attorney discharged her responsibility as an Attorney-at-Law and that's it. The complainant is going further, he is asking the attorney to underwrite. He claimed that the attorney fraudulently converted his funds.

Counsel for the attorney then asked whether or not his complaint is that the complainant believes that the attorney took his money. The complainant said yes. Counsel then suggested to the complainant that his complaint is not about her being his attorney but about money. The complainant then again read the letter of the 12th September 2008, from the attorney to him and exhibited to his affidavit in support of the complaint. The attorney gave him a cheque for \$15,000.00 US which was dishonoured.

He said that the attorney did not ask him to hold the cheque before lodging it. The only funds that have been repaid to him is a sum for \$34,000.00US. The attorney drew that cheque from the Bank of Nova Scotia. After the

complainant did not receive the return of his money, he met with the attorney, Mr. McLeod and a Mr. Steve Smith. He was a person who got involved in the whole situation.

The complainant stated why he was called. He said Mr. Smith advised the complainant in the presence of the attorney that the Lawrences were soliciting money from him to pay to the complainant. Mr. Smith said that before he released any money he would have to sit and speak to all parties involved. He identified himself as being a friend of Mr. Lawrence not of the attorney. The meeting took place at the Liguanea Club. Mr. McLeod told the complainant at that meeting that he had done all that he was supposed to do in that he had paid back the entire amount of interest in the sum of \$132,000.00 US to the attorney. He had first wired a sum of \$100,000.00 and then a sum of \$32,000.00.

The complainant said that Mr. McLeod was essentially saying the same thing that the attorney's letter of the 12th September 2008 said. The principal was to be wired to the BVI account. There was a business plan involving Mr. Brady and US\$50,000 was to be paid to Mr. Brady for him to effect the release of the business plan. The principal was the cash management company. He did not make any attempt at the cash management company. He reaffirmed that the attorney told him that the money was going to be transferred to his account. The complainant said that attorney was still at 26 East Street.

That was the end of the complainant's evidence. The complaint was adjourned to the 18th July 2014 for continuation.

THE EVIDENCE OF MR. HUBERT BARRINGTON JAMES given on the 18th July 2014:

The hearing of the complaint continued. This witness was sworn and gave evidence. In response to questions from counsel for the complainant he said that he is Hubert Barrington James and he lives at 14 Marcine Drive Bull Bay and his mailing address is 47 Beaston Street. He identified his affidavit dated the 17th October 2013 and this affidavit was admitted in evidence as exhibit 6 and the panel ruled that this affidavit should stand as his examination in chief.

In this affidavit the witness states that his postal address is 47 Beasant Street CSO in the parish of Kingston and that he is a businessman by occupation. He is the stepfather of the complainant. In 2008 he opened a joint account with the complainant at RBTT Jamaica Limited in Spanish Town, St.Catherine as part of a business arrangement. The money was in United States dollars. He continued that on or around the 11th August 2008 acting at the request of (Kaon) the complainant, he transferred US \$400,000.00 to Sotayreeah Financial Services 1631 Stockton Drive, Stanford, Florida 31771 USA to account 7440566714. The witness said that all material times the US \$400,000.00 belonged to Kaon and he was making the transfer at his request because Kaon was out of the parish and could not do it himself.

Mr. James stated that he recollected that the attorney telephoned him at least three times during the course of that day making enquiries as to whether he had made the transfer. The attorney explained to him the urgency of doing the transfer that day. He even took a call from the attorney whilst he was in the bank dealing with the teller during which the attorney confirmed the account detail for the account the money was to go to in the United States. A copy of the transfer is exhibited to his affidavit as exhibit HJ1.

He said that he was neither a shareholder nor director of his son's company K ANN J.S.A. which was incorporated in the British Virgin Islands. He said that he was informed by Kaon that the US \$400,000.00 was for an investment which involved the attorney and which would generate substantial returns. He further said that the attorney confirmed the same thing to him in one of her telephone calls on the day he transferred the money.

The witness added that several weeks later after the money was transferred. He was shown a letter addressed to Kaon from the attorney informing him that the investment had generated returns of US\$132,000.00 and a total of US\$532,000.00 had been repaid to her. A copy of the said letter was exhibited to this affidavit as HJ2. Kaon later told the witness that he received the sum of US\$34,000.00 from the attorney. A further cheque for \$15,000.00 US was dishonoured on presentation to the bank.

The witness said that when he heard that Kaon was having trouble in getting back his money he contacted the attorney to find out why Kaon had not received the balance of his money, the attorney was unable to give what he considered a credible explanation. He also told the attorney that his stepson had a number of luxury motor cars on the wharf which required clearance but the attorney told him that there was nothing that she could do as the fault was with another person. The vehicles were sold off by customs as Kaon did not have the money to clear the vehicles.

As far as he knew the money was transferred to the account supplied by the attorney and he had seen the attorney's letter advising that the money had been returned to her with interest. He ended his affidavit by saying that he made no report to the Fraud Squad or any Regulatory Authority as the money belonged to his stepson (Kaon) and it was his money which had been transferred to the account in the United States at the request of the attorney.

CROSS EXAMINATION OF HUBERT BARRINGTON JAMES:

He said, when asked if he knew what the transactions was about involving the US\$400,000.00, he said Kaon asked him to do a wire transfer because he was out of town. He agreed to do the transfer. Apart from that all he knows is that he asked him to do a wire transfer based on a transaction he was doing with the attorney.

While he was in the bank doing the wire transfer he got a call. The voice was of a female. The person identified herself as Mrs. Lawrence. There were a number of other questions and answers which were not very material to the allegations of professional misconduct as they were directed to ascertaining if the witness knew the person to

whom he was speaking when he received those telephone calls in the bank. This evidence will not be replicated here as the witness did say that the person to whom he spoke identified herself as Mrs. Lawrence.

When asked if he understood that the role of the attorney was as an Attorney-at-Law, the witness said that what he understood from Kaon was that his attorney has brought this wonderful deal to him which will make a lot of money. Kaon did tell him about a meeting at Napoline and one with Mr. Ming, but he did not know about a meeting with Intertrade. He did not know when the meetings with Napoline and Mr. Ming took place. The witness is referred to paragraph 12 of his affidavit. In this paragraph he referred to a meeting he sought and got with the attorney. This meeting was to discuss with the attorney what had happened to Kaon's money and why it had not been returned to Kaon.

This meeting took place at the offices of the attorney. He did not remember when his meeting with the attorney took place. When he went to the attorney's offices, this was the first time he was meeting her in person. They spoke in the attorney's offices. He asked about Kaon's money and told her that Kaon was having serious difficulties and that his finances had practically disappeared and it was affecting him mentally. The witness asked the attorney to explain to him what had happened to the money and he mentioned the payment of the US\$34,000.00 paid as interest and the US\$15,000.00 cheque that was dishonoured.

The attorney said that she told Kaon that she would have given him back the money but that she felt that her life was threatened so she fled the country. The witness said that the attorney laughed when she said that. The witness asked the attorney if she was saying that Kaon would threaten her. He said he told her that Kaon would not do that as Kaon had told him that he had found a new attorney and that she just loved him, and he had displayed a love for the attorney.

When the witness enquired about the money the attorney said that Mr. Norman McLeod was instrumental in the deal. The attorney did not explain the situation. The witness expressed his opinion to her that's as Kaon's attorney she should be the one with the responsibility to make sure that the young man's money was returned to him. The meeting lasted half an hour to forty five minutes. Any information he had received about Mr. McLeod he had heard from Kaon. He now thinks that Kaon did sign documents with Mr. McLeod. At the end of the meeting the attorney told him that she was having difficulty finding Mr. McLeod. The attorney said that if they could locate Mr. McLeod it would shed some light on what happened to the money and the attorney asked if he the witness could assist in locating Mr. McLeod He advised her that they didn't have the money to do so. The only occasion on which he saw Mr. McLeod was after this meeting. Counsel for the attorney asked a number of questions in relation to the contractual documents signed.

This witness said that he did not understand the whole documents thing and he was not really interested. He did have other discussions on matters unrelated to the issue of Kaon's money, The witness then stated that Kaon bought a 2005 Mercedes Benz from the attorney for US\$1,000,000.00. He was of the view that the car was not

worth that kind of money. The witness advised that he did locate Mr. McLeod in Oracabessa, St. Mary he introduced himself to Mr. McLeod and tried to find out the nature of the deal and what he Mr. McLeod had to do with this deal. They did not discuss the Schwarzenberg Trust. He said that he did what he had to do. He said that he could not speak to the money. The witness concluded that that was the end of his conversation with Mr. McLeod.

Counsel for the attorney then asked a series of questions in an effort to show that the witness had claimed that he owned the money that was loaned in the transaction. There was some mention of Mr. Conrad George and an e-mail. Counsel for the attorney then suggested to the witness that in or around March 2011, he asked the attorney to communicate to Mr. George that he had an interest in the funds. The witness denied this. When asked if he complained to the Financial Services Commission, the witness said he did not even know where they were. In re-examination the witness confirmed that the US\$400,000.00 was Kaon's money.

The complainant's case was closed.

THE EVIDENCE ON BEHALF OF THE RESPONDENT:

EXAMINATION IN CHIEF OF THE RESPONDENT ATTORNEY

The complainant's case was closed. The Attorney was sworn and gave evidence in examination in chief. She said that her name is Minette Lawrence, she is an attorney-at-law with offices at 26 East Street. She admitted that she knew Kaon Northover, the complainant. She met him in June 2008. He was brought to her offices by Dani Williams. The complainant did not give her any instructions. He was introduced to her by Mr. Dani Williams as a foreign exchange trader who would be conducting certain business on behalf of Mr. Williams through an off shore company that she was instructed to incorporate. She did form that off-shore company. The name of the company was K. Ann J. S.A. The attorney further said that she did have further dealings with the complainant. While they were awaiting the return of the documents, she did deal with the complainant in relation to several matters connected to the incorporation of the company. The complainant needed to provide a bank reference letter to the Trust Company of the British Virgin Islands in order to open off shore accounts in the name of the company.

She believes there was a small issue with his passport and so the complainant had occasion to visit her offices. She admitted that there were other instances when she met with the complainant. In July 2008, she received an enquiry as to whether she would be interested in representing parties in an enquiry. This was from another client, Mr. White. This client e-mailed the attorney to say if he could put her name forward to do documents for someone who was doing a transaction. By an exchange of e-mail the attorney was introduced to Mr. Norman McLeod.

The attorney said that she did not know Mr. Norman McLeod prior to that. He made an appointment but the meeting was attended by a Donovan Hunter instead of Mr. Norman McLeod. At the time of meeting she did not

know that Mr. Donovan Hunter was a banker but she subsequently found out that he is a banker but she is not sure which bank. When she met with Mr. Donovan Hunter she does not know that the complainant was present at that meeting. Mr. Hunter did disclose the nature of the transaction in which they wished her to act as an attorney. The attorney was asked to share with the panel the nature of the transaction. She said that Mr. Hunter explained that they had received approval. They were Mr. Hunter and Mr. McLeod. At the time, Mr. Hunter and Mr. McLeod did not know the name of the Trust. They had received approval from JRC through its present Chairman. The present Chairman is Mr. Harold Brady. Mr. Harold Brady, to present financial proposal for the establishment of the Railway Service.

The proposal required payments of a certain transaction costs in order to advance which the JRC could not afford and Mr. Brady had permitted them to raise bridge financing for those transaction. The proposal of the funding arrangement was to source financing for those costs against the J.R.C. could not afford to put the arrangements in place. They had put the arrangement in place. They were Mr. Hunter, Mr. McLeod with a Mr. Atkinson who owns hotel in Ocho Rios. This person had agreed to underwrite the bridge financing but when the search was done it transpired that the property was tied up in a dispute with cash plus. They brought documents to show the state of affairs and what they were looking for was a source of fund to replace this person.

They were looking for someone to lend money not to do documentation. The attorney said that at this time the complainant was a regular presence in her office and was not unwelcome. He was bright ambitious and serious. He was always very respectful and always called her Mrs. Lawrence. The complainant spoke of himself as a trader so she shared this information with him. The attorney said that she told the complainant that he is a money man and that he knows money people. This conversation took place sometime in July 2008. The attorney stated that she shared with the complainant what Mr. Hunter had told her, and she asked the complainant if he knew anyone who would be interested. The complainant responded to the attorney's queries by mentioning the name Ranglin of Nepoline. There were two brothers Carl and Dave. The attorney further said that a meeting was arranged with Nepoline.

The complainant, Mr. Dave Ranglin, her husband, Lowell Lawrence and herself were present at this meeting. The attorney said that this was the first meeting at which the complainant and the attorney were hearing about what they wanted and what the investment opportunity was. She said that Mr. McLeod and Mr. Hunter each made a presentation. The attorney said that it was at this meeting that she first heard about the Schwarzenberg Trust. That is the entity for which they operated. The meeting lasted for about an hour. The attorney made some mention of another attorney in Montego Bay and also that Mr. Ranglin was considering the proposal within the week.

The hearing of the complaint was then adjourned to the 23rd September 2014 for continuation. On the 23rd September 2014, the hearing of the complaint continued. At this sitting the attorney continued her oral

examination in chief. She told the panel after some evidence which is not material and will not be replicated here, save to say that Mr. Ranglin decided not to participate in the bridge financing for the JRC. The attorney further gave evidence that her understanding of the proposal is that it was explained as bridge financing to put package for the railway business loan commitments, fees would have been involved. The term used was a transaction fee. The refusal of Ranglin not to participate in the transaction was not the last effort made to source funding for Schwarzenberg Trust. The attorney then said that she did not make any other effort to source funding for the Trust. The attorney said that she first knew about Trust when Mr. McLeod came to her for legal work relating to transaction she did not know about. He did not name the Trust or the company. The first time she knew about the Trust was at the meeting with Mr. McLeod. Mr. McLeod introduced the entity. Mr. McLeod represented the Trust. The attorney said that the complainant did not give her any money. No one gave her any money. She did not have any discussions with the complainant about wiring funds.

There were no discussions with the complainant and the attorney with instructions to the complainant to wire funds. If he had those discussions they were not with her. The attorney denied that she had any discussions with Mr. Hubert James about wiring any funds. The attorney denied that the complainant wired any funds on behalf of the attorney's firm. She said that it would be untrue if Mr. Hubert James said that she spoke to him about wiring funds. The attorney was then asked by the panel what was the content of her conversation with Mr. Hubert James. The attorney responded that the complainant had initiated an account with RBT Spanish Town. The account was in the name of Hubert James. The attorney told her later and so did Mr. James.

The attorney was then asked by the panel why was it necessary for her to have those details. The attorney responded that she had done the documents for the loan they were signing in her office. The complainant was the one who was lending the money. The panel asked the attorney if she was aware of the contents of the documents, and was she aware that the documents purported to give a loan. She said yes. Then there was a further response which was "gave instructions for the money to be wired from a bank in Spanish Town to a bank in Florida for Mr. McLeod. She had nothing at all to do with the account either in Jamaica or Florida.

The panel then directed the attorney to the letter of the 12th September 2008. The attorney admitted that this was her letter sent to the complainant. She was directed to the first paragraph of the letter which reads:

"I am pleased to advise that on the repayment date for the bridge loan to the Schwarzenberg Trust, the sum of US\$532,000.00 was repaid in accordance with our instruction. On September 9th Mr. McLeod confirmed availability of the funds and an immediate transfer was made as directed".

The attorney was then asked the following questions:

"What do you understand by that the sum was repaid? Who sent off that money to the Schwarzenberg Trust? That money was meant to repay. Who made the loan?"

The attorney in response says,

"That was not a loan. The loan to the Trust was from Mr. Northover. The US\$532,000.00 was not the loan amount. The letter is not being interpreted the way I meant it. On the day Mr. McLeod's Company was to receive."

The attorney was then asked " Mr. McLeod was the principal you are saying it was repaid in accordance with whose instructions? The attorney responded " Mr. Northover to Mr. McLeod. She was then asked " are you referring to the \$532,000.00." She said "Not all of it." The panel then said " You must be referring to the funds"? The attorney said that "she was writing to Mr. Northover who has knowledge." She was then asked " When you say our City Bank Account in Miami which account are you referring to? The attorney responded " my personal account in Miami."

Counsel for the attorney sought to interrupt the questions of the panel. The panel advised the attorney that he could not respond on behalf of the attorney. The attorney was then asked "to which cash management company were you referring to transfer money to the BVI. "? She said "The same company to which Mr. Northover had wired the funds."

She was then asked " where did Mr. Northover get the information to wire the funds? The attorney said "From Mr. McLeod but I was aware of it because I learnt and understood what the transaction"

The panel then brought the attorney's attention to the evidence of the complainant where he said that he got the information from the attorney and he called his stepfather. Was she saying that that evidence was false. The attorney responded that that evidence was false.

The attorney in response to a further question from the panel said that the account in the BVI was the account of the company belonging to Kaon Northover. Mr. McLeod had account with the cash management company. Mr. Northover wanted an account in the BVI so that the money could go there. The attorney went on to explain that half of the interest was to go to the complainant and the principal was to go to the BVI account. He was to go to Ms. Ledgister to open an account. US\$400,000. was to go to the BVI account.

The interest was to be sent to the attorney at BNS for disbursement. When asked by the panel, Who gave all these instructions and were they ever given in writing. The attorney said "No" The attorney said she got her instructions by telephone or visit to my office. When asked if the attorney made note, the attorney said she searched but could not find them. She confirmed that she does not have any written notes. In response to a further question from the panel if she had a file on the complainant, the attorney said she had a file for the Corporation and Trust but no notes of the specific instruction. The attorney confirmed that she did not get anything in writing, she made a note but can't find it. The sum of \$532,000.00 US was principal and interest, of which amount \$132,000 was interest.

The attorney said that she did not know anything about Schwarzenberg Trust. She said that she did obtain records and they were in German. She got them translated. She was not comfortable and she told the complainant that

the Trust is in Europe and if anything happened it would be difficult. A personal guarantee should be taken out. The panel then observed that it was having a difficulty understanding the evidence of the attorney in that the evidence she was giving at this stage was never put to the complainant by her counsel nor was any of it contained in her letter of the 12th September 2008.

The attorney responded that when she began pursuing the matter, it was Mr. McLeod who brought the transaction to her and she was seeking to represent him. In response to a further question from the panel wherein the panel sought to understand the complainant's evidence where he said that it was the attorney who introduced the complainant to these parties and this investment and he had the money and he was trying to get interest on this money. The attorney said that when the complainant outlined what he was looking for was not something that she could do, and she raised it with him.

The attorney further stated that they could not find anyone and she let it go and the complainant came back and said that he had this money. She said that she and the complainant were good friends. The rest of the evidence on this date is a bit garbled and does not advance the issues raised.

The complaint remained part heard and was adjourned to the 13th November 2014 for continuation. On that date the complainant was reported ill by her counsel and a medical certificate was produced. The complaint was adjourned to the 4th December 2014. On the 4th December 2014 prior to the attorney continuing her examination there was some discussion about the translation of the incorporation documents of the Trust which documents the attorney said that she would have made an effort to produce in evidence. The attorney said that she had searched for the documents but she could not find them.

The attorney was then sworn and she continued her examination in chief,

CONTINUED EXAMINATION IN CHIEF OF THE ATTORNEY: In response to questions from her attorney, the attorney said that she paid over a cheque in the sum of \$34,000.00 US to the complainant. This sum was paid into her husband's personal Citibank account in Miami by Mr. McLeod and the sum was transferred from that account to her account in Jamaica. This was a BNS account. A second cheque in the sum of \$15,000.00 US was issued by her husband on the Citibank account to the complainant. The attorney requested her husband to do this. The funds were to be transferred to her husband's account. This process was adopted instead of having the funds directly transferred to her clients' account at BNS in Jamaica because it took a longer time for a cheque drawn on a US Bank to be processed if the funds were being sent from the US to Jamaica.

She further stated that it was important to her that the cheque given to the complainant should be honoured, although the complainant knew that Mr. McLeod had been delayed in completing these transfers. Her recollection was that there was something he wanted to do which caused her to adopt this route that caused her to contact her husband to make the cheque instead of giving him her usual cheque. She thought she was speeding up the process for the complainant's sake. This transferred cheque was not honoured. This was because the complainant

presented the cheque before the funds were there. He was asked to hold until the attorney confirmed that the funds were there. The complainant was not paid because the funds from Mr. McLeod did not materialize. After the sum of \$34,000.00 was paid by Mr. McLeod he paid no further sums.

The attorney outlined the efforts she made after no further payments were made by Mr. McLeod. She said that she communicated with Mr. McLeod and the complainant both by e-mail and telephone. She further stated that Mr. McLeod made several promises and gave updates on the movements of the funds. He gave fresh deadlines and said by early November. The attorney said that she realized that there was a problem. She met with the complainant and Mr. McLeod at her offices and engaged the services of a retired police officer Mr. Steve Smith. The purpose of the meeting was to discuss default in payments by Mr. McLeod and steps to recover the money. Mr. McLeod outlined the circumstances in which the investment has gone bad. This was done in the presence and hearing of the complainant. He explained that the persons engaged in trading the funds made a loss in that the overall financial trading collapse.

The panel then asked the attorney if she had said in evidence that the complainant was a foreign exchange trader. The attorney in response said that the trading Mr. McLeod made reference to was not foreign exchange trading. He was trading in securities. The panel said that it understood that the complainant was a foreign exchange trader.

In response to that question the attorney said Mr. McLeod explained that although the funds were lost. He accepted liability and would repay the funds. He was seeking to get a mortgage on property he had in Long Mountain. The attorney stated that the complainant was at this meeting.

After the meeting Mr. Steve Smith called the attorney to tell her that the complainant had gone to the police about her. The attorney said that she then telephoned the complainant and asked him if he had made a report to the police about her. The complainant told her that he did go to the police station but he did not disclose what he did there. The attorney said that prior to Mr. Jarrett acting on behalf of the attorney there was another attorney acting for the complainant. This attorney was Mr. Conrad George. Mr. Hubert James had come to her and told her that the funds from the RBTT account were his funds and they were not to be returned to the complainant. The attorney tried to communicate with Mr. George but failed. She said that she then wrote to Mr. George.

She was referred to an e-mail dated the 28th March 2011. This e-mail sent from the attorney to Mr George was admitted in evidence as exhibit 7. The attorney said that she is still concerned that no steps were in place by Mr. Northover to enforce the guarantee. She proposes to enforce the guarantee against Mr. McLeod who is present in the Island and continues to accept responsibility. The examination in chief of the attorney was concluded.

CROSS EXAMINATION OF THE ATTORNEY: The attorneys said that she was called to the Jamaican Bar in October 1990. In 2008 she had been in practice 18 years. She started her practice at Myers Fletcher & Gordon in the

Litigation Department. She left Myers Fletcher in 1999. While she was at Myers Fletcher she was appointed by that firm to work in the BVI. She worked in the BVI for 2 years. The hearing of this complaint was then adjourned to the 2nd March 2015 for continuation. There was no hearing on that scheduled date. The next hearing of the complaint took place on the 9th May 2015 when the cross examination of the attorney continued.

CONTINUATION OF THE CROSS EXAMINATION OF THE ATTORNEY: The attorney informed the tribunal that when she worked in the BVI she was not involved in the incorporation of companies nor was her work concerned with financial investments. When asked how long she had been practicing at East Street the attorney said she bought the building in 2005 but she has not been practicing there since he acquired it. She started practising there in April 2005 and she closed her offices in 2006. She returned to these offices to practise in 2008 and then she closed the offices in 2010. She has practised on and off then but not full time since she had her baby.

The attorney was then asked about an entity called Jamaica Story Limited Tours. She replied that she does know of that company as it operated from 26 East Street. That company started operation in 2007 and ceased operations shortly thereafter. The attorney said that she was never the attorney for Cash Plus or Carlos Hill. She did not recall when she met the complainant but this was in 2008. She could have met him in April 2008. The attorney was then shown a document at p 45 of exhibit 4. This is a receipt signed by one G Thomas for the sum of \$356,250.00 and issued to the complainant. The attorney denied that the receipt was issued by her company Jamaica Story Tours in the British Virgin Islands. The attorney denied that she issued this receipt or that the company is her company. She said that she was never a shareholder or director of this company. She did have a connection with them. They were tenants in the building. The directors were Dave Cameron, Adam Keys and Ms Thompson. Her husband was in discussion to acquire the company. She continued her evidence by stating that she knew that the complainant paid for the incorporation. Ms. Thomas was the person to whom the complainant delivered the payments and she issued the receipt. The attorney said that she was incorporating the company. She did not instruct the complainant to pay over the money to Ms. Thomas. The lady at the front desk issued the receipt.

The attorney confirmed that she did incorporate the company Mr. Dani Williams and the complainant gave her the instructions to incorporate the company. They came to her offices and did so. She did charge a fee. She advised the complainant of the fees in the presence of the complainant and Mr. Williams. The fees were paid the same day. She advised to whom the funds were to be paid. They were to be paid to her.

The attorney in response to further questions from the panel said that the fee for the incorporation was US\$5,000.00 that is the equivalent in Jamaican dollars. This sum was deposited to her account. The attorney said that she could not explain why Ms. Thomas wrote the receipt in the name of Jamaica Story Tours in her book and in her opinion it must have been an error.

The attorney admitted that Ms. Thomas was her assistant and that she also worked with Jamaica Story Tours as well. Ms. Thomas was employed to her and had the attorney's authority to collect funds and deposit them to her

account. The attorney was aware that Ms. Thomas was employed to Jamaica Story Tours, She had receipt books for the attorney and also for Jamaica Story Tours. She also collected money for the company. She insisted that Ms. Thomas may have made an error. She assumed that the complainant paid over the money.

The attorney said that the address of 26 East Street was given in the incorporation documents. The attorney said that the complainant was the nominee of Mr Dani Williams to hold his shares. In response to a question from the panel the attorney said that this direction by Mr. Dani Williams as to how the shares in the company were to be held was not in any documentation before the panel. This direction was contained the Appointment in Mr. Williams' documents. This document is called 'Appointment of Nominee'. The attorney said that she prepared it for Mr. Williams. She said that the complainant was not a signatory to that document. The attorney repeated that she was introduced to Mr. McLeod by Mr. White. She had not known Mr. McLeod before. She did meet with Mr. Donovan Hunter who said that he had received approval from Mr. Harold Brady for the re-establishment of the Jamaica Railway Corporation.

She was provided with a document from Mr. Brady. She got this document from Mr. Hunter and Mr. McLeod to the effect that the Jamaica Railway Corporation authorized them to make the proposal for the financing of the Railway Corporation. Mr. Brady was Chairman of the Railway Corporation. She was not sure that there were copies of the

document to which she referred. There is an aspect of the cross examination by Mr. Jarrett where the attorney is directed to a document at p 39 of exhibit 4 and allegedly dated the 2nd May 2008. This document is not found in the said bundle at the stated location.

The attorney says that she did not receive written approval from Mr. Brady to approach Schwarzenberg Trust Services to seek loan from them but she got written confirmation from Mr. Brady as she e-mailed him and he e-mailed her back. She was unable to produce these documents for the panel. The attorney said that she did not have a meeting with the Minister of Transport, she did not have a meeting with the Minister of Finance. She conceded that the Jamaica Railway Corporation is a government owned corporation.

The attorney was asked to look at the Loan Agreement dated the 8th August 2008. She agreed that she drafted the Agreement. The attorney said that the borrower in the Agreement was Schwarzenberg Trust and K ANN JSA was the lender. She did not agree that the loan Agreement as drafted by her had significant implications for the Government of Jamaica She said this because my instruction and understanding of what was happening Schwarzenberg Trust was really seeking to make a proposal to the Government of Jamaica. They did not have an agreement with the Government of Jamaica, they were seeking costs and expenses relevant to the preparation of that proposal which had to be covered and they were raising funds to cover this costs.

In her explanation of her understanding she said that as far as she knew no proposal had been made to the Government of Jamaica. Schwarzenberg Trust was borrowing this money to put together the proposal. She said

that the full amount of the loan was 700,000.00 Euros and would be reimbursable if the proposal was made and accepted.

When she was asked by counsel for the complainant she said she had due diligence with Mr. McLeod but not Mr. Donovan Hunter. Her due diligence was that she checked with the attorney with whom Mr. McLeod had done business, he gave her the name of one local company and she spoke to the principal of one local company for whom he had raised funds. When asked if the attorney asked for these references in writing, the attorney said that she did not ask for these references in writing. She did not do police record check on Mr. McLeod.

The attorney said that she did due diligence on Schwarzenberg Trust Services. She requested and received documents on the company from the Trustee a Mr. Delroy Daknu. She contacted him and spoke with him. The documents she received she shared with Mr. Northover. When asked by the panel if she had these documents the attorney she said she was searching for them, she gave them to her counsel.

The attorney said that Schwarzenberg Trust is an overseas company. At the time when she was dealing with them the company was not incorporated. She said that she did receive a certificate of incorporation but she could not find the original. She went back to a registry on the internet but when she went back to the registry in 2008 they were no longer available. She did not have a certificate of incorporation but she continues to search for it. She no longer had access to the company on line as it changed from a commercial to a non-commercial entity. The nature of the company had changed in about October or November 2008. The company is still on record but the documents are not accessible. When asked by the panel what was the date of the document the attorney said 2008.

In response to a series of questions by the panel, the attorney said the following. She did do a search before she prepared the Agreement. She was able to access the incorporation documents it is a profile on the report itself of Dr. Dakuru. She confirmed that prior to her preparation of the agreement of 8th August 2008, she accessed information on the company on line. She did not print all the documents on the company. She now agrees that she should have printed all the documents on the company and kept them. She agrees now but events were unfolding in a short space of time, by e-mails. It was copied to the complainant in 2008.

When asked if she did not think that in a such commercial transaction she did not have anything, the attorney said that Mr. McLeod was coming to see her and she had no reason to doubt him. In response to a question from counsel for the complainant the attorney said she spoke to Mr. Dakuru to satisfy herself that Mr. Norman McLeod was a trustee of the company. She does not know Mr. Dakuru, she spoke to him about Mr. McLeod. She does not have any written evidence that Mr. McLeod is a trustee of the company. She had spoken to persons who have raised money for Mr. McLeod and told me that the Trust Company had done business in Jamaica for years and she spoke to one person and got information that Schwarzenberg Trust had raised money for them. It was Mr. McLeod with whom he dealt. The attorney said she did not have the Articles of Incorporation of the Trust. She requested all

documents for the Trust. She did not get the trust deed. She requested them but she did not get them. She got other documents.

The panel then asked the attorney why she resorted to a loan agreement of this nature. She said that she was not aware of other kinds of agreement. In response to a further question from the panel the attorney said that the complainant confirmed that he wished to lend money to the Trust and so did Mr. McLeod. The complainant confirmed his desire to make the loan to the Trust over the telephone and in person at her offices. The attorney insisted that the complainant was not her client, Mr. McLeod was. For the loan transaction Mr. McLeod was her client. She does not recall having advised the complainant to get independent legal advice. She did admit that looking back she ought to have advised the complainant to get independent legal advice. She said that she should not have acted as the only attorney in the transaction.

She was introduced to Mr. McLeod by Mr. Steve White. She was introduced to the complainant by Mr. Williams. The panel sought to get some clarity from the attorney as to the nature of the transaction and who were the persons involved. The attorney said she did not know why the sum of US\$400,000.00 was wired to the cash management company in Florida. That was between Mr. Jones and the complainant. On her instructions the Trust had accounts in Florida. In the presence of the complainant, the attorney said that Mr. McLeod told her where the funds were to be sent. This was the first time she was hearing about the place to which the funds were to be sent. She did go on-line to check out this place. She verified the location. She checked the information they had on line and she did visit their office in Florida in October 2008. This was after the funds had been wired and before they were due to be repaid. The attorney said that the company had an office at the premises. One Ms. Smart wrote to her and told her that she had funds for Mr. McLeod and the Trust. When asked why the money was not transferred in the name of the Trust in a proper Commercial Bank Account instead of Sotoyree Cash Management Company, the attorney said her instructions were that this company belonged to the Trust. The attorney said that she did get confirmation in writing that these funds had been lodged to Schwrazenberg Trust.

The attorney then said that she did not have this confirmation that the Trust had received the funds. This was never an issue. It only became an issue in these proceedings since the complainant is saying that she misappropriated the money. She did not seek to get further information from the Cash Management Company whether or not they had paid out the money and to whom.

The attorney said that it is Mr. McLeod who confirmed the repayment. These instructions were not in writing. The funds to be repaid were to come from Mr. McLeod only. She wrote the letter of the 12th September 2008 because she did not doubt the information given to her by Mr. McLeod. She had no other means of confirming that the funds had been repatriated. Mr. McLeod told her that there were personal losses of the money in 2008 financial meltdown and that all the funds were not returned to him. Mr. McLeod said this in the presence of the complainant and the attorney. She does not recall the reaction of the complainant when Mr. McLeod said this.

The Trust needed US \$3million to fund their proposal to the JRC. They tried to borrow that amount and could not find a lender. In the end they disbursed the US\$400,000.00.

The only sums that Mr. McLeod has refunded are \$66,000.00 US. The attorney said that she has never sued Mr. McLeod on the guarantee as he continues to acknowledge that he owes the money. Counsel for the complainant then asked the attorney why in all the e-mails no mention was made that the money had been lost. She responded that she had made an error with the date.

The hearing of the complaint was then adjourned to the 20th June 2015. On that date there was no hearing as a member of the panel was absent. The hearing of the complaint continued on the 11th July 2015 on that date the cross examination of the attorney continued.

FURTHER CROSS EXAMINATION OF THE ATTORNEY: The attorney said she did not know if the loan agreement was stamped but she knows that both parties got originals of the agreement. She was advised about stamping the documents but she was not put in funds to do so. The attorney does not recall the date when the loan agreement was handed to the complainant. She knows that it was given shortly after execution and both of them received two documents. The Agreement was dated before she delivered it to the complainant.

The attorney was again directed to her letter of the 12th September 2008. In this letter at the very last paragraph she says that she "encloses for the records of the complainant a copy of the signed Loan Agreement and Guarantee. The attorney did not respond to the question as to whether this was the first time she was giving the complainant a copy of Agreement.

The attorney said that in spite of her letter of the 12th September 2008 the US\$532,000.00 was not repaid. She did not receive the money. The letter did not represent her best drafting. It was wrong of her to have written it that way because it caused confusion. She says this because this letter caused confusion to say that she received the funds and it was not repaid.

The attorney was directed to page 20 of Exhibit 4. She said that she witnessed the signature of the complainant as the Agreement was signed in her presence in her offices. She did not witness the document because the complainant was her client. The registered address of the company was in the BVI, the process was not completed, for this company she was still the person.

The attorney was referred to clause 9.1.4 of the loan agreement at p 10 of exhibit 4 and asked if she did not agree that pursuant to that clause was it not a fact the borrower who was to pay attorney's fees so why was she deducting her fees from the US\$66,000.00 which was returned. The attorney said that she was entitled to her fees and Mr. McLeod was the borrower. The panel enquired why was the question of fees not referenced in her letter of the 12th August 2008. She said it was referred to in her formal response written by her attorney Diane Watson paragraph 15. She did agree that paragraph 15 did not really say that. She further said that although the amount

of the loan expressed in the Agreement was US\$500,000.00 it was really US\$400,000.00. She never held the funds as she was not instructed to do so. The loan Agreement and the Guarantee were signed in her offices but she never kept copies of the documents, she just handed them over.

The attorney in response to a question from the panel said that Mr. McLeod was a Vice President of the Trust and Dr. Monday was the President. When asked by the panel if she had the documents that would support what she said, the attorney said that she did receive a copy of the registration of the trust from Mr. McLeod. She only contacted the trust by e-mail. She did do an asset search on Mr. McLeod and give it to the complainant. She did not get a valuation of the property. She did not take any steps to enforce the guarantee as the complainant did not wish her to do so.

She got the documents for the Trust off the internet. When she was communicating with Mr. McLeod about the bridge financing she did not communicate with JRC. Apart from an e-mail from Mr. McLeod about which she spoke to Mr. Brady, she did not speak to Mr. Brady again. She did not receive a letter from Mr. Brady. The attorney was then directed to an e-mail sent by her to Mr. McLeod in which she told him that the complainant was demanding the sum of \$600,000.00 as compensation for the delay together with the sum of US\$400,000.00. This is not the sum to which he was entitled. The complainant was entitled to the principal and interest less deductions. It was pointed out to the attorney that she had said that the complainant's funds were lost in security trading yet she does not mention this in her e-mail. She did not tell her attorney, Mr. Dunkley, that the money was lost in securities trading. Mr. McLeod says what had happened to the money and she just repeated that explanation. The complaint was present at the meeting when Mr. McLeod said that the money had been lost in securities. She only wrote to the complainant advising him of what had happened to the funds but she did not have that letter here.

Counsel for the complainant suggested to the attorney that the whole loan arrangements was a scheme between the attorney and Mr. McLeod in order to deprive the complainant of US\$400,000.00. The attorney denied this suggestion. The attorney denied that Schwarzenberg Trust Services was a fictitious entity that never existed. She denied that she took advantage of the complainant's youth to deprive him of his money. The attorney denied that she was grossly negligent in the way she had conducted the transaction in the transaction between the complainant and the Trust. The attorney conceded that Mr. Harold Brady never approved of the transaction and had no knowledge of it. The attorney was asked about the documents in relation to the company that she had received. She was unable to produce these documents on this date.

The cross examination of the attorney was concluded. The re-examination was inconsequential and need not be addressed. The hearing of the complaint was adjourned to the 22nd July 2015 for hearing. On that date a witness for the attorney, Mr. Harold Brady did not attend the hearing. Another witness for the attorney, Mr. Norman

McLeod was not present either. The hearing of the complaint was adjourned to the 19th September 2015 for continuation. On the 19th September 2015 Mr. Harold Brady attended the hearing and gave evidence.

EXAMINATION IN CHIEF OF HAROLD BRADY: This witness said that his name is Harold Brady and that his address is 4 Grenada Crescent Kingston 5 and that he is an attorney -at-law. In or around the year 2007 he was the chairman of the Jamaica Railway Corporation. He stepped down from that post in 2011. The witness told the tribunal that only some a part of the JRC was operating at that time, that part which was operating was the part leased to the Bauxite Company. The other part was not operating. The policy direction of the JRC was to resuscitate that part of the JRC that was not operating. To that end a study was produced by Price Waterhouse Coopers and made available to the public.

There was a tremendous interest shown from joint venture partners and investors. Mr. Norman McLeod led a group of investors. Mr. McLeod came to the JRC from the Ministry of Transport which referred them to the JRC. Mr. McLeod wanted a copy of the proposal. He had a group out of Europe and he wanted documentation and we gave them. The witness said that he got a call from one Joan Powell of Intertrade Finance and he did get a call from the attorney. The attorney wanted to know whether or not the information he had provided Mr. McLeod did in fact come from the witness. The information was a proposal it was not a prospectus.

The attorney enquired about privatization of the Government Bill. The initiative was a policy initiative and is still going on. Letter dated the 13th March 2014 from Harold Brady to Joseph Jarrett was admitted in evidence as exhibit 8. Mr. Brady was directed to the last paragraph in the letter and then asked if the JRC was to raise capital. He said yes and that the raising of financing was important. In response to a question from the panel, the witness said that Mr. McLeod came to him and expressed an interest. He gave him documents but he never saw Mr. McLeod again.

CROSS EXAMINATION OF MR, BRADY: When asked by the attorney-at-law representing the complainant if he had done due diligence, the witness said that he had no further dealing with them at that stage and we would not do any due diligence because it may or may not go anywhere. The witness was shown the loan Agreement between Schwarzenberg Trust and K&J SA and asked if he had ever seen it. The witness said that he had never seen the Agreement. This was the end of this witness' evidence and the attorney's case was closed.

The panel gave directions that the written closing submissions on behalf of the parties were to be filed on or before the 15th November 2015. Written closing submissions and additional closing submissions were submitted on behalf of the complainant and the attorney. These were read by the panel and although the panel appreciates the efforts by counsel to assist, the panel is aware that the ultimate responsibility is on the panel to itself examine the evidence and the law and reach a just and fair resolution of the issues in keeping with the evidence and the law. The panel reminds itself of the following principles of law.

THE BURDEN OF PROOF: It is the law that the legal burden of proof is on the complainant to establish allegations in the complaint to a standard of proof of "beyond reasonable doubt". The evidentiary burden may shift to the respondent during the proceedings, but the legal burden never shifts to the respondent.

THE STANDARD OF PROOF: It is recognized, and well settled law, that the standard of proof in these proceedings is that of "beyond reasonable doubt". This means therefore that the panel is obliged to evaluate the evidence guided by that standard and arrive at its conclusions within those stated parameters.

EVALUATION OF THE EVIDENCE: In evaluating the evidence the panel is very mindful of the fact that it is mandated in law to make findings pursuant section 15 of the Legal Profession Act. Before addressing the evidence, the panel makes the following very pertinent observations. The panel is dismayed that there is very little documentary

evidence adduced in this complaint that can provide a paper trail of the purported loan by K ANN J.S.A to Schwarzenberg Trust Company. There are no documents of incorporation of the alleged Trust Company. There are no documents to show the juridical nature of the said company and the extent of its legal capacity under its incorporating documents.

There are no documents to prove the existence of any persons authorized to manage the affairs of this company. There are no documents to prove that Mr. McLeod was a legal representative of this alleged company and authorized in law to make binding agreements on its behalf. There are no documents to prove that this company ever existed.

There are no documents to prove that a cash management company known as Sotayreeah Financial Services existed. There are no documents to connect this cash management company to the Schwarzenberg Trust Services nor any written authority from the Trust that the cash management company had the authority to receive such sums from lenders on its behalf and to appropriate same in securities investments. The documents allegedly sourced from the Internet do not prove the legitimate existence of this cash management company.

There are no documents to show any connection of Mr. Norman McLeod to the cash management company. There is no documentary evidence to show that Mr. McLeod had access to the funds allegedly transferred to the cash management company and there is no documentary evidence that the money was received by the cash management company. There is no documentary evidence to show what happened to the money after it was wired to Sotayreeah Financial Services. The money appears to have disappeared.

Against this background, the panel will examine the demeanour of each witness, as the demeanour of the witness materially affects the credibility of the witness and the value of the evidence given. Of course, the substance of the evidence of each witness is also relevant in evaluating the credibility of the witness. In other words, the panel will look at the totality of the presentation of the witness in determining the credibility of the witness.

THE DEMEANOUR OF THE COMPLAINANT: The complainant is a young man of about 30 years old. He seemed calm and controlled and gave his evidence in a manner that was restrained. His facial expressions however spoke volumes and were indicative of how he felt about the complaint. At times, he seemed incredulous of and puzzled by some of the suggestions made to him in cross- examination by counsel for the attorney but when one looks at the substance of his evidence the panel is in no doubt that the complainant spoke the truth and substantiated his complaint in every material particular. He was a credible witness.

THE DEMEANOUR OF HUBERT JAMES: This witness, who is the stepfather of the complainant, was non-committal, and gave his evidence without any drama. The panel finds his evidence credible and accepts him as a witness of truth.

THE DEMEANOUR OF THE ATTORNEY: the attorney was pleasant but she was not a credible witness. The version that she gave of the events leading up to the drafting of this loan agreement defies belief. The attorney admitted to having drafted an agreement on behalf of an alleged Trust Company in relation to which she has failed to produce for this panel any of the incorporating documents which would confirm the existence of this company named in the Agreement as Schwarzenberg Trust Service.

The attorney claims she did a search on line for this company and that she did download documents in relation to this company but yet she has been unable to produce these documents. This company is said to be a foreign company, registered in Liechtenstein. She did not know of the existence of this company prior to settling the Agreement. Yet she acted as the attorney for the Trust in drafting this Agreement. She says that she took no written instructions from either the complainant, whose company was the named lender in this Agreement or from the alleged representative of the Trust Service, Mr. Norman McLeod. She had not known Mr. McLeod before he was introduced to her, but the only investigations she did in relation to him was to ask other persons about him. She said that she acted only on the instructions of the parties to the Agreement yet she took instructions only in person or by telephone. There is no written record of these instructions. It is to be noted that the Agreement is a fairly complex one, so how is it credible that an experienced attorney who qualified as an attorney-at-law in 1990, would draft a document that had so many far reaching consequences without taking careful written instructions signed by the parties reflecting their express intentions in entering into this Agreement.

Further, the amount of the loan was substantial, and one would have expected from the attorney a high degree of care, diligence and professionalism that the entire transaction demanded. The Jamaica Railway Corporation, ostensibly the party with an interest in the Agreement of the 8th August 2008 was unaware of the Agreement, and was unaware that the Trust was securing a loan from the complainant's company in order to promote a joint venture with the Trust and the Railway Company, which joint business venture was with the objective of restoring the functions of the Jamaica Railway Company. In fact, paragraph 3 of the Agreement reads as follows under the heading "Purpose"

"The loan shall be used by the Borrower for the purpose of on-lending to the Jamaica Railway Corporation to defray the administrative expenses and fees relative to the processing of E700,000,000.00 to the Jamaica Railway Corporation"

The purported recipient of the loaned funds Sotayreeah Financial Services is not mentioned in the Agreement as the authority designated to receive these funds and to deal with these funds whether they were to be invested in securities or as stated in the Agreement" be on lent to the Jamaica Railway Corporation. There is no reference to this so-called cash management company.

It seemed at times that the attorney was fabricating evidence when she was asked a question she found difficult to answer. She shifted her story as the situation demanded and her evidence was often in conflict with that adduced in cross-examination of the complainant by her own attorney-at-law. In short, the panel is of the considered opinion that wherever the complainant's evidence contradicts the evidence of the attorney, the complainant's evidence is to be preferred and to be believed.

DEMEANOUR OF HAROLD BRADY: This witness gave evidence in a manner that was professional and fairly concise. The panel found this witness credible and accepts his evidence that he, as the then Chairman of the Jamaica Railway Corporation, was not involved with the Agreement allegedly made between Schwarzenberg Trust Service and K Ann J.S.A.

EVALUATION OF THE AFFIDAVIT AND DOCUMENTARY EVIDENCE: The panel will confine itself to the allegations of fact in the affidavits and not be persuaded by hyperbole and the excessive use of adjectives to describe the conduct of the attorney. The panel will relate this evidence to the oral evidence and make its findings on the totality of the evidence.

The Agreement of the 8th August 2008 and the Guarantee of the loan made collateral to this Agreement and also dated the 8th August 2008, will be construed in keeping with the ordinary meaning of the words contained in those documents. The Attorney's letter of the 12th August 2008, her response written by her attorney Diane Watson dated the 12th April 2013 and all other documents will also be construed according to the ordinary meaning of the words in which those documents are expressed.

The panel now makes its findings in keeping with the requirements of Section 15 of the Legal Profession Act.

- 1 The attorney, Minette Lawrence, was admitted to practise as an attorney-at-law in Jamaica in the year 1990.
- 2 The last address from which the attorney practised is 26 East Street in the parish of Kingston.
- 3 The complainant is a business man and an Information Technologist.
- 4 The complainant was first introduced to the Attorney in around June 2008.

- 5 This introduction took place at the offices of the Attorney.
- 6 The complainant instructed the attorney to incorporate a company K ANN JSA in the British Virgin Islands.
- 7 The complainant paid the attorney to perform the professional services of incorporating the said company.
- 8 In this transaction the attorney represented the complainant.
- 9 The complainant was the client of the attorney
- 10 The attorney was aware that the complainant had funds available to be invested.
- 11 The attorney informed the complainant of an investment opportunity with a company called Schwarzenberg Trust Services
- 12 The complainant did not know of this entity prior to being told about it by the attorney.
- 13 The attorney informed the complainant that she knew Mr. Norman McLeod, a representative of Schwarzenberg Trust.
- 14 The complainant did not know Mr. Norman McLeod when he was first mentioned by the attorney.
- 15 The attorney represented to the complainant that this was a good investment from which he would secure very favourable returns.
- 16 The attorney represented to the complainant that this was a secure investment in which his money would be safe.
- 17 The attorney reassured the complainant that she was preparing all the documents and he had nothing to worry about with regard to the proposed investment.
- 18 The attorney did draft the document headed Loan Agreement dated the 8th August 2008.
- 19 The terms of this Agreement, a legal document, did not come from the complainant but were the creation of the attorney.
- 20 The attorney did draft the document headed Guarantee which is collateral to the Loan Agreement and is also dated the 8th August 2008.
- 21 The terms used in the Guarantee are those of the attorney and not the complainant.

- 22 The attorney acted as the attorney -at-law for the complainant in the drafting of these documents and in the transaction between Schwarzenberg Trust Services and the complainant's company K ANN J.S.A.
- 23 The attorney acted for Schwarzenberg Trust Services in the same transaction in which she acted for the complainant.
- 24 The complainant was a client of the attorney-at-law and there was the client/lawyer relationship between the attorney and the complainant.
- 25 The attorney did not inform the complainant that she was also representing Schwarzenberg Trust in the same transaction.
- 26 The Attorney did not advise the complainant that in circumstances of this transaction he should consult with and secure the services of another attorney to advise him and to act for him.
- 27 The attorney had a clear conflict of interest between protecting the interests of the complainant and the interest of Swarzenberg Trust Services.
- 28 The attorney failed to do due diligence and to perform the relevant and necessary enquiries and searches in relation to the existence of Schwrazenberg Trust and so failed to protect the best interests of the complainant.
- 29 The attorney failed to produce to this panel any documentation which would prove that Schwarzenberg Trust Services is a legal entity and that it was in existence at the time that she drafted the Loan Agreement dated the 8th August 2008.
- 30 The attorney failed to produce to this panel any documentation to establish that Mr. Norman McLeod was a bona fide representative of Swarzenberg Trust authorized to enter into binding contracts on behalf of the Trust Services.
- 31 In this Agreement, Schwarzenberg Trust Services, alleged to be a company registered in Liechtenstein, is the borrower and the lender is K ANN JSA a company registered in the British Virgin Islands.
- 32 The complainant is the only shareholder in K ANN JSA and controls that company.
- 33 In paragraph C it is stated that "The Borrower requires the Loan for on - lending to the Jamaica Railway Corporation for the purpose of defraying the administrative expenses and fees in respect of a E700, 000,000.00 loan to the Jamaica Railway Corporation."
- 34 The Jamaica Railway Corporation was not a party to this Agreement nor did the then Chairman of the Jamaica Railway Corporation, Harold Brady know of this Agreement.

35 In paragraph 2.1 of the Agreement, inter alia, it is stated as follows:
"the Lender agrees to lend to the Borrower the sum of five hundred thousand United States Dollars (US\$500,000.00) together with such further sums as the parties may agree (hereinafter called the loan)".

36 In paragraph 4.1 of the Agreement it is stated that:
"the rate of interest available on the Loan for each Interest Period from the date of the signing hereof shall be thirty three percent(33%) for a period of 45 days (the initial term)".

37 In paragraph 5.1 the Agreement states. The Borrower shall ON DEMAND by the Lender, repay the principal amount of the loan together with any such interest.

38 This is a demand loan which gives the Lender the right to demand full repayment of the loan at any time it so wished.

39 There is nothing in the Agreement which authorizes the investment of these sums in securities.

40 On the 11th August 2008 the complainant, transferred the sum of US\$400,000.00 to an entity alleged to be called Sotayreeah Financial Services, situate in Florida in the United States of America. This entity is named in the Transfer document as a beneficiary.

41 The amount transferred is less than the amount stated in the Agreement but the Agreement was not amended to reflect this.

42 The Bank to which the funds were transferred is named as Fifth Third Bank at Lake Mary, Florida. This entity is also referred to in the said document as a beneficiary but is not mentioned in the Agreement.

43 Mr. Hubert James, the stepfather of the complainant carried out the transaction acting on the instructions of the complainant.

44 The funds transferred belonged to the complainant and were wired from his account at RBT Bank, Spanish Town.

45 Mr. Hubert James was a joint signatory to the complainant's account at the above bank.

46 The attorney telephoned Mr. James while he was in the bank conducting the transaction and gave him the details as to whom and to where the funds were to be transferred.

47 The attorney telephoned him at least three times to tell him how urgent it was to send off the money and enquiring whether or not he had done so.

48 The attorney told Mr. James that the funds should be wired to the entity reflected on the document entitled "Transfer Instructions" Sotayreeah Financial Services"

49 The attorney did no due diligence research on the entity described as Sotayreeah Financial Services.

50 The attorney, who drafted the Agreement, does not include any reference to this entity in the Agreement or that the funds loaned were to be sent to this entity.

51 There is no evidence of any connection legal or factual between Schwarzenberg Trust Services and Sotayreeah Financial Services.

52 There is no evidence of any connection, legal or factual between Mr. Norman McLeod and Sotayreeah Financial Services.

53 The attorney provided the panel with no evidence about any of the entities which were allegedly involved as a principal in the loan Agreement and beneficiary under the Transfer Instructions.

54 By letter dated the 12th April 2013, which letter purports to be a response by the attorney written by her then attorney-at-law Ms. Dian Watson the attorney purports to explain her role in the transaction between the complainant's company and Schwarzenberg Trust Services.

55 The panel recognizes that this is not direct evidence by the attorney, and that it is not by way of affidavit. The panel attaches what weight it thinks fit to this letter.

56 The panel does not believe the attorney's version of the events as detailed in this letter. The events as stated by the attorney are not credible. They read as very creative work of fiction. Her version of the purpose of the Agreement differs markedly from what she said in her oral evidence.

57 The panel does not accept the attorney's interpretation of her letter dated the 12th September 2008 directed to the complainant. Her attempted interpretation is tortured and incoherent.

58 In this letter, it is clear that the attorney is informing the complainant that Swarzenberg Trust Services has repaid the sum of US\$532,000.00.

59 The attorney said that Mr. McLeod confirmed that the funds had been immediately transferred as directed.

60 The attorney said that the funds required for use in Jamaica are en route to BNS by wire transfer from our Citibank account in Miami.

- 61⁴ The attorney then says that the principal remains in the cash management company for onward transmission to the BVI.
- 62 There are inherent contradictions in this letter in that in one paragraph of the letter the attorney confirms that the principal and earned interest had been repaid without mentioning to whom it had been repaid, and then she announces later in the same letter that the money is in the cash management company to be forwarded to the BVI without naming the cash management company.
- 63 In unequivocally stating that the sum of US\$532,000.00 had been repaid the attorney is confirming that she knew by way of her own knowledge and not hearsay that the funds had been repaid.
- 64 In unequivocally stating that the funds to be transferred to the BVI remained in the cash management company, the attorney was confirming that she knew of her own knowledge that the funds were in fact in the cash management company.
- 65 By unequivocally stating that the funds required for use in Jamaica are en route to BNS by wire transfer from her Citibank account the attorney was unequivocally stating this as a fact that she knew of her own personal knowledge.
- 66 The attorney never opened any account for the complainant in the BVI.
- 67 This is the account to which the attorney was obliged to pay the principal sum of US\$400,000.00 at the expiration of the term of the loan.
- 68 The attorney advised the complainant that an amount of \$132,000.00 US had been earned in interest and paid.
- 69 The attorney paid to the complainant the sum of \$34,000.00 US in interest.
- 70 A cheque in the amount of US\$15,000.00 paid by the attorney to the complainant in October 2008. Was dishonoured by the bank on which it was drawn.
- 71 This cheque purportedly represented a further payment on interest.
- 72 Based on the figures provided by the attorney, the complainant has not been repaid the sum of US\$498,000.00 comprised of US\$400,000.00 in principal and US\$98,000.00 in interest.
- 73 The attorney sought to cast blame for the disappearance of the complainant's funds unto Mr. Norman McLeod.

- 74 There is no credible evidence before the panel that Mr. McLeod is responsible for the disappearance of these funds.
- 75 Mr. Norman McLeod never gave evidence before this panel.
- 76 The attorney, in having conduct of this transaction, acted with inexcusable and deplorable negligence in the performance of her duties.
- 77 She took no written instructions from the parties to the Agreement and kept no records. She proceeded to draft an Agreement between the complainant's company and a company of which there is no evidence that it exists or ever existed.
- 78 The conduct of the attorney viewed as a whole is inexplicable except to conclude that she was involved in a dishonest scheme to persuade the complainant to part with his funds in pursuit of what turned out to be a fictitious investment.
- 79 At every stage of this transaction the attorney was the main actor who engineered and facilitated the creation and performance of the loan Agreement and the disbursement of the funds.
- 80 The fact that the attorney failed to produce any documentation whatsoever to establish that the alleged loan Agreement was predicated on the existence of genuine legal corporations speaks volumes.
- 81 The very cavalier and unprofessional manner in which the attorney handled this alleged transaction, on her own admissions, not only falls far short of required professional standards, but fortifies our opinion that that this was done with the deliberate intention of obfuscating what really happened to the sum of money ostensibly loaned to Schwarzenberg Trust Services and wired to Sotayreeah Financial Services.
- 82 The attorney, in her letter to the complainant dated the 12th September 2008 assured the complainant that the principal together with interest had been repaid and implied that she had control of the funds to be disbursed in the manner directed by the complainant or at the very least that the sums were in a place where she could direct their disbursement.
- 83 In all the circumstances of this case, the attorney was under a duty to account to the complainant for the principal and interest that was then due to him.
- 84 The attorney, by her conduct failed to maintain the honour and dignity of the profession and indulged in behaviour that tended to discredit the profession of which she is a member.

CONCLUSIONS: In light of the above findings, the panel is persuaded to a standard of proof of "beyond reasonable doubt" that the attorney is guilty of professional misconduct. The attorney has breached canons iv(k) iv(r) vii(b) (ii) and I(b) of the Legal Profession of (Canons of Professional Ethics) Rules.

1. The attorney accepted and continued her retainer or employment on behalf of the complainant and Swarzenberg Trust Services when their interests were likely to conflict or the independent professional judgement of the attorney was likely to be impaired.
2. The attorney acted with inexcusable and deplorable negligence in the performance of her duties.
3. The attorney shall account to his client for all the monies in the hands of the attorney for the account or credit of his client whenever reasonably required to do so.
4. The attorney failed to maintain the honour and dignity of the profession and failed to refrain from behaviour which tended to discredit the profession of which she is a member.

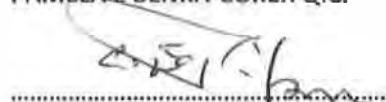
In light of the finding at paragraph (3) the attorney is obliged to account to the complainant for the sum of US\$498,000.00. Interest is payable on that sum.

The panel would like to hear submissions from counsel for the parties on the rate of interest and the period over which this interest is payable. The panel, having found the attorney guilty of professional misconduct, gives the attorney the opportunity to address the panel on the sanctions that she urges should be imposed on her in the light of these findings. See **Owen K. Clunie v General Legal Council Miscellaneous Appeal 3 of 2014**.

The parties are reminded that these proceedings are not complete until the appropriate sanction has been imposed by the panel.

Dated the 2 day of March 2018


PAMELA E BENKA-COKER Q.C.


CHARLES PIPER Q.C.


GLORIA LANGRIN