**JUDGEMENT OF THE DISCIPLINARY COMMITTEE(SANCTIONS)**

**COMPLAINT NO: 60/2013**

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

**PANEL PAMELA BENKA-COKER Q.C.**

**CHARLES PIPER Q.C.**

**GLORIA LANGRIN**

The Judgment as to culpability on the complaint was delivered on the 2nd March 2018.

The panel found the respondent attorney guilty of professional misconduct and then adjourned the hearing of the complaint to permit submissions to be made on the following issues, namely the rate of interest to be applied to the sum to be accounted for by the respondent attorney, the period for which the interest should run, and whether the interest should be compounded.

Counsel of both parties were directed to do the above. In addition, Counsel for the respondent was asked to address us on the sanctions to be imposed on the attorney as a consequence of the panel having found her guilty of professional misconduct.

On the 3rd April 2018, the panel reconvened to hear oral submissions on the written submissions that were submitted to the panel on behalf of the complainant and the respondent.

At the commencement of the hearing on this date, the panel directed counsel for the respondent to present and speak to the issue of sanctions as wells as those that the panel had directed that counsel for both parties address.

Counsel for the respondent called two witnesses to attest to the character ofthe respondent. The first one called was Mr. Norman McLeod. This witnesses' name loomed large in the substantive disciplinary proceedings but he never appeared to give evidence.

Mr. McLeod was sworn and gave evidence. He identified himself. The witness then declined to answer any material questions as to the character of the respondent. He consistently asserted his right to remain silent in light of the

existence of the civil proceedings pending against him and which were instituted by the complainant in the Supreme Court.

He provided no assistance to the panel and his evidence ended. The next witness called to attest to the good character of the respondent attorney was Mr. Harold James Samuels. This witness was sworn. He said he has known the respondent for over 25 years. He considers her a friend and a colleague. When he first met the attorney, she was a budding attorney with the firm of Myers Fletcher & Gordon.

The respondent was a member of the Ligaunea Club and ~~so was he~~ in fact he was the general manager of the Club. He advised that this Club is a social and sports club. The respondent was a squash player and a determined player and a relentless person. The respondent also served on the Tourist Board. He further said that the respondent is reliable and her word is her bond in his dealings with her. She was also very helpful and he had no cause to question her integrity.

Counsel for the attorney then addressed the specific issues the panel had directed. He spoke to his written submissions. Subsequently, he submitted additional written submissions on the same issues, which he had originally addressed.

In summary, Counsel for the respondent argues that the rate of any interest awarded to the complainant on the sum of$498,000.00 US, should not exceed 3%. He used statistics from the Statistical Digest compiled by the Bank of Jamaica over the period 2007-2016.

Counsel for the respondent, argued that the panel ought not to compound the any interest that it awards to the complainant. He cites the first instance judgment of Sykes J as he then was in the claim of **National Commercial Bank Staff Association (Bringing the claim in a representative capacity on behalf of all members of the Association) v National Commercial Bank Jamaica Limited.**

In this case the learned judge reviewed a number of authorities. The first case he addresses relevant to theissue of compound interest is the case of**Y P Seaton & Associates Company Limited v National Housing Trust.** He observed that this case confirmed that compound interest may be awarded in the Supreme Court because that decision approved the decision of the House of Lords case of **Sempra Metals v Inland Revenue Commissioners and another {1998} 1 AC 561.**

In the Sempra case it was decided that in order for compound interest to be awarded in commercial cases it had to be pleaded and proved. **The Y P**

**Seaton v NHT** also went to the Privy Council,where the Privy Council adopted the reasoning and ratio in the Sempra case.

The learned judge then departed from his own decision in the matter of **RBTT v YP Seaton** et al in which he had awarded compound interest on the judgment where he had determined that compound interest need not be pleaded and proved. In order for an award to be made. Incidentally, this decision is on Appeal and Court of Appeal judgment has not yet been delivered.

Counsel for the respondent also argued that the period over which the interest should run from the date that the order of the Committee is made or no earlier than the time of the filing ofthe complaint.

In addition to counsel for the respondent addressing the specific issues above, the respondent attorney submitted an affidavit dated the 27th March 2018. In this affidavit she attests to her Christian upbringing and good character and that she was trained by two of best attorneys. She does not name these attorneys in her affidavit. She sought to explain why she had no records to support the circumstances surrounding the transaction and said that she had lost some because they were stored electronically. She denies that she stole nor did she conspire to steal the complainant's money.

The respondent exhibited her curriculum vitae to this affidavit. This document gives a detailed review of a very impressive resumewhich includes vast experience in corporate law, commercial law, telecommunications, and litigation in all of the several courts of Jamaica including the Privy Council and a number of other documents including the Particulars of Claim Filed by the complainant in the Supreme Court against the respondent and Norman McLeod.

Counsel for the respondent addressed the panel on his written submissions in mitigation with respect to the sanction that the panel should impose on the respondent attorney. Counsel for the respondent referred to sentencing guidelines for the use of judges of the Supreme Court of Judicature of Jamaica and the Parish Court in criminal cases. The panel was advised that these Guidelines were introduced in December 2017.

Counsel quoted extensively from these guidelines and said that they are helpful to the panel's deliberations in seeking to determine the appropriate sanction to be imposed on the attorney. Counsel for the respondent sought to address the findings of the panel which predicated the finding of professional misconduct and urged the panel to re-evaluate its findings and see the respondent in a more favourable light.

Counsel also sought to import certain legal principles relative to civil law into these disciplinary proceedings including the duty of the complainant to mitigate any damages that he may have suffered. There was also a wide-ranging re-assessment by counsel of the evidence and findings of the panel in an effort to persuade the panel to reverse its findings.

Counsel urged the panel to take into account the known antecedents of the respondent and the order for restitution and not impose any additional sanctions. He urged that the only sanctions that should be imposed are the order for restitution and costs.

On the other hand, the submissions of counsel for the complainant not surprisingly are in stark contrast as to their content compared with those of counsel for the respondent.

Counsel for the complainant argues that the interest awarded should be compounded and relies on the Privy Council case of **Air Jamaica Limited v Joy Charlton and others (Jamaica) 1999UKPC 20(28th April 1999).**

This panel of the Disciplinary Committee reviewed that case in its ruling on the issue of whether or not the panel should make an award for compound interest in the disciplinary decision of **Olive Blake v Michael Lorne**. The panel refers to its reasoning in the said judgment in considering the issue of compounding the interest due.

Counsel for the complainant had already submitted that the complainant was owed a fiduciary duty by the respondent as he was her client.

Counsel also relies on the reasoning of the panel in the **Blake v Lorne** complaint in support of his arguments that the interest awarded should be compounded. In his additional submissions at paragraph (b) counsel for the complainant says this "the Michael Lorne case is the sole instance to date where compound interest has been awarded by the Disciplinary Committee of the General Legal Counsel. It is submitted that the case now before the Disciplinary Committee is one of the worst instances of professional misconductin living memory. The amount of money involved dwarfs that in the Michael Lorne case by a very significant margin. Less than J$4 million in the Michael Lorne case as compared with US $498,000.00."

And at paragraph (c) "The respondent betrayed the trust vested in her by the complainant who in 2009 was around 22years old and believed in the respondent's assurances of returns?on his money of over 33%over a period of 45 days. She assured him that she would protect his interest and that she was the one drafting the key documents and that he had nothing to worry about. The respondent was at the Jamaican Bar since 1990 and was a highly experienced commercial/corporate lawyer having worked for a top law firm of

Myers Fletcher & Gordon. She cannot be considered to be ignorant of her professional and ethical obligations as an Attorney-at-Law."

Counsel for the complainant incorporated many of the findings of this panel into his submissions in urging that the interest awarded be compounded. In addition, he said that the loan Agreement drafted by the respondent expressly contemplates the award of compound interest on the principal sum loaned.

It was also argued by counsel that the rate of interest should accord with the rates provided by the Bank of Jamaica on US dollar investments rather than those from the local Investment Firms. Counsel urged that an appropriate rate on his reasoning should be 20%.

He opines that the period of interest should run from the 25th September 2008 to the 3rd April 2018. The date set by the panel for dealing with the penalty phase of these proceedings.

Counsel presents arguments on the costs that should be awarded to the complainant for his prosecution of the complaint as well as damages for depression and that the respondent pay a fine for the "suffering and distress the respondent caused the complainant" including the loss of several luxury cars worth in excess several million Jamaican dollars or such sum deemed reasonable by the Committee."

Having considered the submissions and the relevant law the panel rules as follows:

1. The interest should be compounded for these reasons. The respondent owed a fiduciary duty to the complainant who was her client. The conduct of the respondent is particularly egregious and the panel relies on its findings and in particular those at paragraphs 78-84 of the judgment. Further the very agreement created by the respondent expressly stated that the interest on the principal should be compounded. See clauses 4.1 and 4.2 of the loan agreement.

2. The panel determines that the rate of interest in the circumstances should be 2%.

3. The period of interest should run from the 25th September 2008 until payment ofthe sum ordered.

The panel has no jurisdiction to award damages for depression or loss of luxury cars or on any other basis proffered on behalf of the complainant. Those remedies are best pursued in the civil courts.

Further, we do not agree with counsel for the respondent attorney that the panel should recognize and rely on guidelines as to sentencing in criminal cases issued by the ChiefJustice in late 2017, when considering the sanction to be imposed on the attorney. The panel is of the respectful opinion that those guidelines are not relevant to these proceedings and that it would be wrong in law to import these recommendations into our deliberations.

Equally, the duty to mitigate damages imposed on a claimant in certain civil proceedings does not apply in disciplinary proceedings.

The panel is of the considered opinion that it bears repeating that the primary objectives of disciplinary proceedings are to protect the members of the public and the general reputation of the profession.

Further, the practice of the law demands very high integrity from attorneys-at-law as clients and 3rd parties, fellow attorneys, judges must be able to repose the utmost trust in what each of us says or does.

Attorneys must protect the interests of their clients and not inflict serious injury to those interests or act in a manner that is duplicitous and dishonest.

It is our duty to promote these qualities individually and as a collective. Our very livelihood depends on us, our sense of morality and what is just and right. When the panel looks at the misconduct of which it has found the respondent guilty, it is utterly unacceptable. The panel found that the attorney acted dishonestly, and 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."

The panel further found "that at every stage of the proceedings the attorney was the main actor who engineered and facilitated the creation and performance of the Loan Agreement and the disbursement of the funds." It is not correct for counsel for the respondent to draw any conclusion that the respondent was only found guilty of inexcusable and deplorable negligence and that she should really not be penalized for that infraction.

Our findings go much further and demonstrate that the panel is of the opinion that the most material actions of the attorney were deliberate and deceitful. Her conduct is even more confounding in light of the fact that the respondent is a senior attorney-at-law with some 28 years at the Bar and considerable experience in the very areas of commercial law and company law that should have favourably impacted her conduct of the transaction and brought the very best practices and expertise to bear in how she managed a proposal that she insists is legitimate.

It is inaccurate to characterize our findings as such and to minimize the gravity of our conclusions as they relate to the professional misconduct of the respondent attorney. As the panel has found, it is its view that the conduct of the attorney "failed to maintain the honour and dignity ofthe profession and failed to refrain from behaviour which tended to discredit the profession of which she is a member."

The misconduct of the attorney has to attract sanctions that are justified on the evidence and in lawand send a message that such conduct will not be condoned or tolerated in the profession. The panel therefore makes these orders pursuant to section 12(4) of the Legal Profession Act.

**Sanctions:**

The panel orders:

1. That the respondent attorney Minette Lawrence do pay over to the complainant KaonNorthover the sum of$498,000.00 in the currency of the United States of America with interest.

2. The interest payable is at the rate of2% and is to be compounded.

3. The period over which interest is payable is to run from the 25th September 2008 until payment.

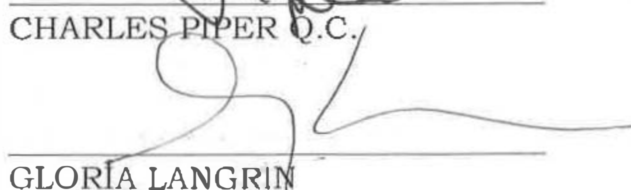
4. Costs of$750,000.00 are awarded to the complainant against the respondent.

5. The attorney-at-lawMinette Lawrence is struck from the Roll of Attorney's Law entitled to practise in the several courts of the island of Jamaica.

Dated the 26 day of May 2018.

PAMELA E BENKA-COKER Q.C.

CHARLES PIPER Q.C.



GLORIA LANGRIN