

DISCIPLINARY COMMITTEE
of the
GENERAL LEGAL COUNCIL

ORDER

Complaint No. 44 of 1987

Sydney Phillips - Complainant

Trevor Malcolm - Respondent - Attorney-at-Law

IN THE MATTER of SYDNEY PHILLIPS and
Trevor Malcolm, Attorney-at-Law

IN THE MATTER of the Legal Profession
Act 1971.

1. This matter was heard ^{on the 13th February 1988} by a division of the Disciplinary Committee consisting of -
Hon. Douglas Fletcher, O.J.
J. A. Leo-Rhynie, Q.C.
Earl DeLisser, Esq.
2. Mr. Ian Ramsay, Attorney-at-Law appeared on behalf of the Respondent/Attorney-at-Law who was also present.
3. The Affidavit in support of the complaint in this matter was executed by Mr. Sydney Arthur Phillips, Senior Partner of the Firm of Robinson, Phillips & Whitehorne, Attorneys-at-Law of Highgate in the Parish of Saint Mary and is dated the 1st of September, 1987. At the hearing the said Affidavit was read in its entirety.
4. In response, Mr. Ramsay advised the Committee that all the allegations contained in the aforementioned Affidavit of Mr. Sydney Phillips dated the 1st of September, 1987 were admitted by his client, Mr. Trevor Malcolm, the Respondent/Attorney-at-Law. Reference was also made by Mr. Ramsay to a letter addressed to the Secretary of the Disciplinary Committee of the General Legal Council dated the 6th of October, 1987 in which Mr. Trevor Malcolm the Respondent, expressly admitted that the allegations contained in the Affidavit of Mr. Sydney Phillips "are true and correct".

5. A comprehensive, candid and eloquent plea in mitigation was made on behalf of the Respondent/Attorney-at-Law by Mr. Ramsay.

UPON DUE CONSIDERATION of the matters contained in the Form of Affidavit By Applicant herein, the admissions of the Respondent and the submissions of Counsel, the Committee finds the following facts:-

- (1) The Respondent, Trevor Malcolm, was employed as a salaried Attorney-at-Law by the Firm of Robinson, Phillips & Whitehorne, Highgate in the Parish of Saint Mary on the 1st November, 1985 and he continued in the employment of the Firm until the 9th September, 1986 when the Firm accepted his resignation.
- (2) The Respondent's duties were mainly in the area of Litigation and included advocacy in the courts. He had authority to receive for and on behalf of the Firm payments on account of fees from clients of the Firm.
- (3) During the period of his employment the Respondent received moneys on behalf of the Firm for which he failed to account to the Firm, to wit:

Reg vs Clive Bonito	\$ 300.00
" " Wayne Hibbert	900.00
" " Dennis Williams	260.00
" " Ratcliffe Barnes	750.00
" " Devon Johnson	50.00
" " Robert Hudson	130.00
" " Desmond Gregory et al	140.00
" " Deloris Gibson	270.00
" " Jimmy Tamas	150.00
" " Alvin Bennett	400.00
" " Claudette Campbell	130.00
" " Robert Hart	100.00
" " Clayton Graham	80.00
" " Carl Williams	310.00
" " Bertland Smillie	150.00
" " Lillian Taylor	260.00
" ats Charm Bishop vs Vincent Lee	120.00
Suit vs Florizel Vidal	250.00
	<u>\$4,750.00</u>
	=====

- (4) It was the discovery by the Firm of the first of the eighteen transactions listed in (2) above which led to the resignation of the Respondent on the 9th September, 1986.
- (5) By letter dated the 10th November, 1986, the Firm wrote to the Respondent setting out details of the amounts missing and unaccounted for including the other seventeen transactions referred to in (2) above details of which were discovered by the Firm subsequent to the Respondent's resignation. The said letter also requested the Respondent to communicate with the Firm with respect to the matters referred to therein within seven days of the date of that letter failing which the matter would be referred to the Disciplinary Committee of the Bar. Counsel for the Respondent referred to this letter and advised the Committee that unfortunately the Respondent was not in Jamaica and therefore was not able to comply with the request.
- (6) By a letter dated 1st December, 1986, the Firm reported the matter to the Disciplinary Committee of the General Legal Council.
- (7) The Form of Application Against an Attorney-at-Law and the Form of Affidavit by Applicant herein were executed on the 1st September, 1987 by Mr. Sydney Arthur Phillips, Senior Partner in the Firm of Robinson, Phillips & Whitehorne and were filed with the Disciplinary Committee of the General Legal Council.
- (8) In a letter dated October 6, 1987 to the Secretary of the Disciplinary Committee of the General Legal Council, the Respondent Attorney-at-Law acknowledged receipt of the aforementioned Affidavit of Mr. Sydney Phillips and stated (inter alia):
"I wish to admit that the allegations contained in the

aformentioned Affidavit are true and correct.

However, it was never my intention at any time to permanently deprive the Firm of Robinson, Phillips & Whitehorne of the sum unaccounted for. Indeed, whereas it was an unauthorised loan and therefore wrong it was always my intention to return same".

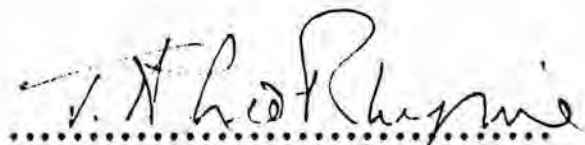
- (9) The Respondent's mitigating plea that "it was always his intention to return" the sums of money to the Firm, is unacceptable having regard to the following facts (inter alia):
- (a) all of the eighteen transactions, the subjectmatter of the complaint, were discovered by the firm and not disclosed by the Respondent;
 - (b) the Respondent resigned from and left the firm without having divulged to the firm that he had received and failed to account for the sums of money set out in respect of all, save the first, of the transactions referred to in (2) above.

The conduct complained of is, in character, dishonest, dishonourable, disgraceful and such as tends to discredit the profession of which the Respondent is a member. The Committee finds that the Respondent, Trevor Malcolm, Esq., Attorney-at-Law, has been guilty of misconduct in a professional respect. In arriving at its decision, the Committee had regard (inter alia) to the Legal Profession Act - the Legal Profession (Canons of Professional Ethics) Rules, and in particular, Canon 1(b).

PURSUANT TO THE FOREGOING findings the division of the Committee
HEREBY ORDERS -

- (a) That the name of the Attorney-at-Law, Trevor Malcolm, shall be struck off the Roll of Attorneys-at-Law;
- (b) That the said Attorney-at-Law shall pay to the Complainant the sum of Four Thousand Seven Hundred and Fifty Dollars (\$4,750.00) by way of restitution.

DATED the 16th day of March 1988.



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(CHAIRMAN of the Division of the
Disciplinary Committee of the
General Legal Council)

FILED with the Registrar of the Supreme Court by Secretary of the
Disciplinary Committee of the General Legal Council of 78 Harbour Street
in the parish of Kingston, in accordance with the Legal Profession Act
1971.