

**DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL**

COMPLAINT NO. 20/95

MICHAEL HARVEY GLAZER AND
BARBARA JEAN DELMAR
Executors of the Estate of
Theresa Francis, deceased

COMPLAINANT

and

RAPHAEL BISHOP

RESPONDENT

PANEL - Hilary Phillips, Q.C. - Chairman
Leila Parker
Merlin Bassie

NICOLE LAMBERT/MINETT PALMER instructed by Myers, Fletcher & Gordon
for Complainant
RAPHAEL BISHOP – in person

HEARING DATES: 30th November 1996, 8th November 1997, 2nd May 1998 and
4th July 1998.

This matter has had a somewhat checkered history which will be set out in the judgment. We also apologise for the delay in delivering the same, but the notes of the final hearing were, due to some misunderstanding, not delivered to members of the panel until earlier this year and that contributed to the delay, but cannot in any way be considered the sole factor for the same.

THE PROCEEDINGS

The Application against the Respondent herein was duly filed on the 5th day of May, 1995. The application was stated to be on the ground that the matters of fact stated in the Affidavit of the complainant, constitute conduct “unbecoming his profession on the part of the said Raphael Bishop in his capacity of Attorney-at-Law.”

The Affidavit in support of the application was filed with the Application and was in curious format. It set out the fact that the complainants were the applicants and that they were executors of the deceased Theresa Francis, by virtue of grant of probate issued by the High Court of Justice out of the District Probate Registry at Winchester, England on the 1st day of February, 1994. In paragraph 10 of the

Affidavit, the complainants made certain allegations against the respondent and then in paragraph 11 in unusual style required the respondent to provide by way of Affidavit answers to certain questions.

An Affidavit of Minett Palmer sworn to on the 27th November, 1996 had also been filed, but contained much hearsay information.

In this state of affairs, the matter came before the panel on the 30th November, 1996.

On that date, Miss Nicole Lambert, representing the complainant was present, but the respondent was absent. The Affidavit of service of the Notice of the hearing was taken as read and note made that Mr. Bishop had received sufficient notice of the hearing.

The panel therefore proceeded to deal with the matter in his absence.

Many difficulties arose.

The panel was concerned with the fact that:

- (1) Several important issues raised in the two (2) Affidavits before the panel were addressed in the Affidavit by affiants who could not speak positively to the facts.
2. There was no indication to the satisfaction of the panel that the Affidavit of Minett Palmer had been served on the respondent.
3. The Notice to complete the transaction referred to an address therein which was supposed to be the property the subject of the said transaction but the address of the same was different from the address of the property the subject of the proceedings.

An adjournment requested by Miss Lambert to address several relevant matters was granted.

On the 8th November, 1997 the matter came back before the panel, and on this occasion and on all subsequent occasions the respondent was present. By this time several other Affidavits had been filed and we set them out hereunder:

- (1) Affidavit of Vincent Chen, sworn to on the 1st day of June, 1997;
- (2) Affidavit of Michael Harvey Glazer and Barbara Jean Delmar, sworn to on the 13th day of June, 1997;
- (3) Affidavit of Sally Powell, sworn to on the 18th day of June, 1997;
- (4) Affidavit of Service by Registered Post of Fay Smith, sworn to on the 5th day of August, 1997;

THE COMPLAINT

In the application filed the complaint was as stated before that the facts in the Affidavit constitute conduct unbecoming the profession (Canon I). However the Affidavit filed by Michael Glazer and Barbara Delmar In paragraph 9 alleged the following

- (a) That Mr. Bishop has failed to provide them with any information regarding the sale of the deceased's property in Jamaica known as 416 Willowdene in the Parish of Saint Catherine;
- (b) That as the attorney of the deceased he acted with inexcusable neglect in completing the sale of the deceased's property with the result that the estate will have to bear increased costs to complete the transaction;
- (c) That Mr. Bishop has failed to account for any monies received on behalf of the deceased.

These allegations, the complainants say ground the claim for professional misconduct on the part of Mr. Bishop as the Attorney for the deceased. As such, he acted in breach of Canon IV(r) and (s) and Canon VII of the Legal Profession (Canons of Professional Ethics) Rules. The opening submissions on behalf of the complainants were that the conduct complained of was a breach of the abovementioned canons and pursuant to s.12(4) of the Legal Profession Act the Tribunal after hearing all the evidence should order:

1. That a fine be imposed in such sums as the Tribunal think proper;

2. That the respondent be required to contribute to the complainants costs;
3. And finally, alternatively to 1, that the respondent be ordered to make such restitution as the circumstances warranted.

Counsel also reminded the panel, that pursuant to s.12(5) of the Legal Profession Act, the Tribunal could make an order that part of the fine could be paid to the complainant as damages.

In this matter, the complainants through their counsel indicated that they intended to rely on Affidavit evidence. No objection was made by the respondent to the evidence on behalf of the complainant being adduced by way of Affidavit.

THE EVIDENCE OF THE COMPLAINANT

An early objection was taken on behalf of Mr. Bishop, that the complaint brought by Michael Glazer and Barbara Delmar was so made without authority as they had no *locus standi*. It was the contention that for the complainants to have *locus standi*, they must first have resealed the probate as it was obtained in a foreign (English) Court.

There did not appear to be any or any substantial dispute, that the complainants Glazer and Delmar were who they said they were to wit, executors of the deceased Teresa Francis, the Respondent's client. A copy of the Grant of Probate and copy Will was attached to their Affidavit. The panel after hearing argument from counsel rejected the objection of the respondent and the complaint proceeded as conceived.

The Affidavit of the complainants disclosed that subsequent to the deceased's death, they became aware that she owned property in Jamaica. The Will made no mention of property here in Jamaica. They therefore became aware of this property as a Notice Making Time of the Essence dated June 14, 1994 prepared

by the legal firm of Clinton Hart & Co., was sent to their offices by re-directed mail from the deceased's address. This Notice was exhibited to their Affidavit.

The Notice referred to property at 6 Browns Lane, but the property the subject of the notice and these proceedings is really 416 Willowdene in the Parish of Saint Catherine registered at volume 1880 Folio 993. The description of the property was obviously an error and this was subsequently explained in the Affidavit of Vincent Chen. The Affidavit of the complainants claimed that the matter was being dealt with by Ms. Sally Powell, partner of the complainants and that through the offices of Clinton Hart & Co., the complainants had discovered that the respondent represented Ms. Francis and had not completed the sale on her behalf. They claimed in their Affidavit that Mr. Bishop had not provided them with any information to assist them in carrying out their duty to complete the administration of the estate of the deceased (paragraph 7).

In paragraph 8 of their Affidavit, they indicate that they were advised by their Jamaican attorneys, that due to the respondent's failure to stamp the agreement for sale from the deposit paid by the purchasers in March 1993, the estate would now have to incur additional and unnecessary costs to pay penalties for late stamping of the Agreement for Sale and transfer. Their further complaint was that the sale could not be completed until the transfer executed by the transferor was delivered to Messrs. Clinton Hart & Co., by the respondent.

The Notice making time of the Essence, the Probate and Will annexed were attached to the Affidavit as exhibits, so too a letter to the respondent from Glazer Delmar, dated the 27th June, 1994 introducing Glazer Delmar to the respondent as the executors, enclosing the notice, and asking the respondent to contact the complainants, as a matter of urgency, preferably by telephone

- (1) to advise of the circumstances of the transaction;
- (2) whether it was in the interest of the estate to complete the transaction or not;

- (3) to advise of the necessary steps to be taken in order to complete the transaction.

It is not disputed that the respondent did not respond to this request.

The Affidavit of Sally Powell, sworn to on the 18th day of June, 1997 was also relied on by the complainants. Ms. Powell deponed that she was a solicitor and partner in the firm of Glazer Delmar. She indicated that the grant of the Probate was made to two (2) of the partners in the firm, the two (2) complainants. She indicated however, that she was the solicitor in the firm that was responsible for and was actively involved in the legal aspect of the administration of the deceased's estate.

She indicated that the Notice making time of the Essence, mentioned supra had come to her attention. She mentioned that the property referred to in the notice was 6 Browns Lane, and she mentioned that the notice was directed to Ms. Francis at her address in England and the respondent, Attorney-at-Law at 9 White Church Street, Spanish Town in the Parish of Saint Catherine. She concluded that the Teresa Francis in the notice and the deceased were one and the same.

Ms. Powell then made several efforts to contact the respondent:

- (i) she telephoned his offices on several occasions and left several messages with a lady who identified herself as Ms. Phyllis Gordon and she says she told Ms. Gordon of the position of her partners as executors.
- (ii) she says that her firm wrote several letters to Mr. Bishop requesting information from him with regard to the matter. The letters June 27, September 8, September 22, November 4, 1994 were all attached to Ms. Powell's Affidavit. This correspondence, *inter alia*, requested information in respect of the sale, e.g., whether the monies for the

sale had been paid to Mr. Bishop and exactly when the property had been sold, informing that a Power of Attorney ceases on death and therefore no funds should have been passed over to an attorney subsequent to the death of the deceased, and emphasising the urgent need for a response, requesting a response and warning of the intention to file the complaint.

Ms. Powell complained that Mr. Bishop had not responded to any of her telephone messages and neither had he responded to any of the written communications. She said however, that on one occasion Ms. Phyllis Gordon in or about August 1994, informed her that the property owned by the deceased had been sold and that the sale proceeds had been paid to the deceased's nephew.

With matters in this state, as she put it, due to the failure, unwillingness and refusal of the respondent to provide Glazer Delmar with any information required to efficiently complete the administration of the deceased's estate, the executors decided to file a complaint against the respondent.

Ms. Powell indicated that she had been able to ascertain some information with regard to the transaction from Clinton Hart & Co., and she exhibited certain letters, to wit, July 8 1994, May 15 1995, July 28 1995, between Glazer Delmar and Clinton Hart & Co., to her Affidavit.

Ms. Powell requested of Messrs. Clinton Hart & co., specific information with regard to the transaction e.g., the date of the same, had the deceased signed the contract, who held the title deeds and was it in the interest of the deceased to complete the sale of the property.

Mr. Chen of Clinton Hart & Co., who had the conduct of the matter on behalf of the purchasers wrote to the complainants indicating that they were unaware of

the death of Ms. Francis, and confirmed that they had been in communication with Mr. Bishop with a view to completing the sale of the property. Copies of the executed Agreement of Sale dated March 3, 1993 and letter dated March 3, 1993, the undated Instrument of Transfer, were sent to the complainants. Mr. Chen asked the complainants for assistance. He stated that his clients had paid in excess of Forty Thousand Dollars (\$40,000.00) from as long ago as March 1993 and yet the transaction had not been completed. Mr. Chen also wrote a letter to Glazer Delmar on the 28th July 1995 the contents of which read as follows:-

28th July, 1995

Messrs. Glazer Delmar
Solicitors
223 – 229 Rye Lane
Peckham
London SE15 4TZ
England

Dear Sirs:

Re: Proposed Purchase of Lot 416 Willowdene, St. Catherine
Geneva Mais and Cheryl Smith from Theresa Francis

Mr. Raphael Bishop's letter of 23rd March, 1995 enclosing the cheques advised that they represented the purchaser's deposit plus Stamp Duty and Registration Fee.

We had requested an accounting from Mr. Bishop but have never received one and can only confirm that we sent him \$40,000.00 being the deposit as set out in the agreement. Our clients confirm, however, that they paid further sums directly to Mr. Bishop which may account for the fact that the cheques total more than the sum sent to him by us as deposit.

Yours very truly
CLINTON HART & CO.

Per:
VINCENT A. CHEN

Suffice it to say that Ms. Powell formed the view (paragraph 11) that Mr. Bishop was still in possession of the deposit paid by the purchasers and the registrable Instrument of Transfer signed by the deceased and the purchaser in respect of the property.

In the Affidavit of Vincent Chen, he deponed to the fact that the purchaser Ms. Geneve Mais was his client. That in about February 18, 1993 she attended at his office, with Ms. Francis indicating that she was interested in purchasing the property at 416 Willowdene owned by Ms. Francis. He attached the relevant copy duplicate certificate of title. He said that he had indicated to the parties that he could not represent them both. He told Ms. Francis to retain the services of an Attorney-at-Law. On March 3, the parties revisited his office. This time Ms. Francis had an Agreement for Sale, which he says she said had been prepared by her Attorney-at-Law Mr. Raphael Bishop. The consideration stated was \$60,000.00. Mr. Chen deponed that he asked both parties whether that was the price they had agreed to and they confirmed that that was their agreement, and they signed the agreement in the presence of one of his employees one Christine Wright. The agreement was dated the same day and was attached as an exhibit.

It is of note, that one of the terms of payment set out in the Agreement for Sale states - a first deposit of \$40,000.00 on the signing of the agreement and the balance of \$20,000.00 on receiving Commissioner's certificate and presentation of registrable transfer to purchaser. The attorney having the carriage of sale is stated to be Mr. Raphael Bishop, Attorney-at-Law of 9 White Church Street, Spanish Town, St. Catherine.

Mr. Chen further depones that since Ms. Francis had informed that she would be leaving the island shortly to return to England for an extended time, the Instrument of Transfer was duly prepared by him and signed by the parties on March 3, 1993.

Mr. Chen also depones that the duly executed original Agreement for Sale was sent to Mr. Bishop on March 3, 1993 with the deposit. He exhibits the letter (VC2) which promises to send the Instrument of Transfer when executed and requests copies of the Certificate of Title for the premises and evidence of the payment of taxes.

Mr. Chen says the Instrument of Transfer was sent to the United States for the signature of Ms. Cheryl Smith, the daughter of Ms. Mais who was one of the purchasers. The transfer however, he says was duly signed by Ms. Smith and sent to Mr. Bishop on May 7, 1993. Exhibited at VC3 is the letter of 7th May, 1993 which sent the Instrument of Transfer and gave Mr. Bishop, the firm's (Clinton Hart & Co.) professional undertaking to pay the balance purchase money in exchange for the Duplicate Certificate of Title registered in the names of Mr. Chen's clients.

On 27th January 1994 (VC4) Mr. Chen wrote to Mr. Bishop complaining about his failure to respond to numerous letters sent and to telephone calls made. He reminded Mr. Bishop of the fact that

- (i) the executed Agreement of Sale and deposit had been dispatched from March 3, 1993;
- (ii) the duly executed Instrument of Transfer had been dispatched with the undertaking for payment of the balance purchase money on May 7, 1993; and
- (iii) that his client had paid costs of the matter directly to Mr. Bishop.

In the closing paragraph of this letter, Mr. Chen threatened Mr. Bishop with

- (i) an intention to take steps to enforce the contract if the matter was not completed within thirty (30) days and to claim any loss and damage; and
- (ii) to bring Mr. Bishop's refusal to deal with the correspondence of Mr. Chen to the attention of the General Legal Council as a breach of the canons of profession conduct.

Mr. Chen claims that despite many letters and calls to the office of Mr. Bishop, he had no further word from him until March 7, 1994.

On March 7, 1994, Mr. Bishop responded. In his letter he said that he was enclosing and had sent the following to Mr. Chen.

- (i) The Duplicate Certificate of Title for the subject property
 - (ii) The Instrument of Transfer and Sale Agreement duly executed
 - (iii) Bankers cheque in the amount of \$7,040.00 drawn to the Commissioner of Stamp Duty for
- | | |
|--------------|-------------------|
| Stamp Duty | \$3,290.00 |
| Transfer Tax | <u>\$3,750.00</u> |
| | <u>\$7,040.00</u> |

He requested in the final paragraph (contrary to the Agreement for Sale as he had carriage of sale) that Mr. Chen should have the transfer registered in the names of the purchasers and requested payment of the balance of purchase money in due course pursuant to the undertaking.

Mr. Chen deponed in paragraph 8 of his Affidavit that the cheque for \$40,000.00 referred to in the letter of March 7, 1994 was not included in the letter and stated further "and has still not been paid to our offices by Mr. Bishop" (this is clearly an error as the letter from Mr. Bishop only referred to \$7,040.00, and see also VC13 infra)

In paragraph 9 of his Affidavit, Mr. Chen points out that, much to his surprise, the date of March 3, 1993 on the Agreement of Sale had been deleted and a new date April 3, 1994 had been inserted and enclosed in the letter dated March 7, 1994. He indicated that neither his client nor he had agreed to or authorised Mr. Bishop to make any change to the date of the Agreement for Sale.

Mr. Chen was also concerned that he had been requested to register the transfer when the agreement stated that Mr. Bishop had carriage of sale. He also stated that as an experienced conveyancer, it was his understanding that the practice required that the Agreement for Sale and Transfer be stamped with stamp duty by the vendor's attorneys from the deposit which had been paid by the

purchaser. By letter dated 10th March, 1994 (VC8) Mr. Chen therefore returned the documents to Mr. Bishop, as he said they had not been stamped. Indeed the transfer was not therefore in registrable form. Mr. Chen requested that the Agreement for Sale be stamped indicating payment of appropriate tax and stamp duty and the denoting stamp showing payment of the duty endorsed on the Transfer.

Mr. Chen therefore indicated to Mr. Bishop the following:

- (1) The cheque of \$7,040.00 allegedly sent in the letter of 7th March, 1994, had not been enclosed;
- (2) He requested the return of the stamped Transfer with the required registration fee;
- (3) A Statement of Account to close;
- (4) That he had retained the Duplicate Certificate of Title.

The Notice making time of the essence was duly prepared on June 14, 1994 and is attached to the Affidavit as VC9. Mr. Chen deponed and in his Affidavit attempted to explain the error in the notice with regard to the address of 6 Browns Lane, which should have read 416 Willowdene, Spanish Town in the Parish of Saint Catherine.

The problems continued. On July 22, 1994, Mr. Bishop wrote to Mr. Chen (VC10) indicating that the stamp office had placed a valuation of \$260,000.00 on the subject lot, and the charge of stamp duty and transfer tax were being calculated accordingly.

He closed the letter by asking of Mr. Chen "what are your new instructions in this matter?" (This letter incidentally was signed by Phyllis Gordon for Mr. Bishop).

On July 28, 1994 (VC11) Mr. Chen wrote to Mr. Bishop confirming a discussion between Ms. Gordon and his secretary, wherein the \$260,000.00 was affirmed and the stamp duty fixed at \$14,290.00 and the transfer tax at \$19,500.00.

Mr. Chen indicated that the increased stamp duty should be borne by both parties, but the increased transfer tax by the vendor solely and he requested details as to whether the amount of \$14,290.00 contained any amount for penalties.

Mr. Chen confirmed his clients intention to complete the transaction and reminded Mr. Bishop that the correspondence was entirely without prejudice to his client's rights under the Notice making time of the essence already served.

On August 23, 1994 VC12, Mr. Chen confirmed information received from Mr. Bishop that the amounts stated for stamp duty and transfer tax did not include penalties and interest, and requested confirmation that the vendor was under an obligation to pay not only the Transfer Tax but one-half ($\frac{1}{2}$) stamp duty.

Then came the letter VC13 dated 23rd March, 1995 from Mr. Bishop wherein Mr. Bishop

- (1) enclosed cheques in the amount of \$41,706.00 representing purchaser's deposit, plus stamp duty and registration fee;
- (2) indicated that since the stamp commissioner's valuation was so radically different from the consideration expressed in the agreement then, the parties must make a new Agreement or new arrangements.

He insisted on this view and enclosed the Sale Agreement and Transfer.

By letter dated 5th July, 1995 (VC15) Mr. Chen responded

- (1) he acknowledged receipt of the letter with enclosures (thus his statement in paragraph 9 of his Affidavit was in error);
- (2) although he stated that the cheques were stale-dated and could not be used,
- (3) he insisted that he disagreed with Mr. Bishop's view of the contract; he said the parties were bound by the contract, and must pay the Transfer Tax and Stamp Duty regardless of the amount assessed by the stamp commissioner. Further he made the point that the agreement was prepared by Mr. Bishop;
- (4) he insisted on completion on the part of the purchaser and warned that because of the delay penalties would then become payable;
- (5) he noted the improper alteration of the date of the contract;
- (6) he indicated that he had lodged a caveat to protect the purchasers;
- (7) he informed Mr. Bishop that it had now come to his attention that Ms. Francis had died;
- (8) he indicated an intention to complete the transaction on the part of the purchasers;
- (9) he requested that the appropriate steps be taken to complete the transfer, e.g., noting the death of James Francis on the Certificate of Title. He mentioned that that would involve payment of estate duties by the deceased's estate;
- (10) he enclosed a copy of the death certificate of James Francis.

In paragraph 19 of his Affidavit, Mr. Chen indicated that he had filed his Affidavit in support of the complaint filed by Michael Glazer and Barbara Delmar and stated that in his view Mr. Bishop had been guilty of inexcusable delay in completing the sale or refunding sums paid to his client in respect of the sale.

Miss Palmer closed her submissions and presentation tracing the history of the dates, the submission of documents, the fact that when Mr. Bishop sent the documents in March 1994, he ought to have known that Ms. Francis had died.

Further Ms. Palmer submitted that Mr. Bishop had enclosed a document, to wit, the Agreement for Sale allegedly bearing a different date than the date it originally bore when the document had been sent to him, and he had not returned a registrable Instrument of Transfer to Mr. Chen and yet he was requesting Mr. Chen to register the transfer without obtaining any assessment of the duties payable, in circumstances where so much time had elapsed since the dispatch of the documents to him.

The complainants relied on the Affidavits as enunciated above to prove their complaint and thereafter closed their case.

THE EVIDENCE OF THE RESPONDENT

On the 2nd May, 1998, Mr. Bishop gave evidence.

He confirmed that he was an Attorney-at-Law practising at 9 White Church Street, Spanish Town, St. Catherine. He deponed to the fact that the deposit was returned to Clinton Hart & Co., by way of two (2) cheques, Managers cheque No. 92427 dated 4th March, 1994 in the sum of \$7,040.00 the cheque voucher was tendered (exhibit 1) and one (1) dated 22nd March, 1995 cheque #938380 in the sum of \$34,666.00 (Mutual Security Bank) the cheque voucher, also, was tendered as (exhibit 2).

Mr. Bishop gave evidence to say that he had sent back the cheques to Mr. Chen as he took the view that since the stamp commissioner's valuation was far above the price stated in the agreement for sale, the matter could not proceed. He tendered in evidence (as exhibit 3) a copy of the Stamp Commissioner's assessment on the property.

He said that to sell at the price stated in the agreement he would not have been doing justice to the vendor and he therefore needed fresh instructions. He said

on his calculation, the vendor would have received less than \$40,000.00 and he thought that she needed protection.

He stated that the sum of \$34,666.00 was a fresh cheque drawn in March and paid over to Clinton Hart & Co., the other was a cheque purchased when he submitted the sale agreement to the commissioner of stamp duty and in his view was money recoverable from the Commissioner of Stamp Duty and the bank from which it had been purchased. He said together the cheques made up the \$40,000.00 deposit.

Mr. Bishop further indicated to the panel his reason for any alleged issue of delay in the matter. He said the delay was due "basically to my knowledge of real estate prices in the area", that is Willowdene in the Parish of St. Catherine.

He said he was not in office, when the agreement was done but when it was brought to his attention, he formed the view that a mistake had been made, as from his personal knowledge of land in Willowdene, properties are sold for at least 5 times that price.

He said he gave instructions to his staff to contact the vendor for clarification but his understanding was that much difficulty was experienced in this regard.

He indicated that his office had been bombarded with queries from relatives of Ms. Francis. He said to the best of his knowledge Ms. Francis was aging and no longer in charge of her affairs. The relatives he said were disputing the consideration. This made him more suspicious. He said, in his view this was not a sale or deal, at arms length. He said he therefore could not see how he had damaged the interest of the estate by not disposing of the asset below its true value, for if he had sold so far below the value, he was sure that would be a serious complaint.

He complained bitterly with regard to whose interest Ms. Delmar was "working in." He said the complainants were making 'heavy weather' of the complaint, he was making 'heavy weather' of the price. He insisted that the beneficiary of the estate must be better off if the land is sold for the true value. He said he had been searching for clarification of the price which never came – hence the delay.

Mr. Bishop further stated that he sent the cheque payable to the Commissioner and the agreement to Clinton Hart & Co., for them to have the document stamped, as he was firmly convinced from the inception, that such a valuation would not be accepted. He said when the assessment of \$260,000.00 was made when Clinton Hart & Co., insisted on a registrable transfer, he asked himself after all the deliberations were made, what proceeds would the vendor receive? The vendor's attorney in these circumstances he said must protect the vendor.

He maintained that the cheques were not returned to him, and that they were not stale and/or defective. They were not his personal cheques they were cheques he had bought from the bank for cash.

He stated, with regard to the specific allegations made against him in the Glazer Delmar Affidavit as follows:-

- (1) on the topic of accounting for funds, the sale was not completed and all the funds had been returned to the purchaser's attorney;
- (2) on the question of delay, he took the view that the consideration was not going to be accepted by the Commissioner of Stamp Duty;
- (3) he further took the view that there was a fundamental mistake as far as the consideration was concerned;
- (4) he had subsequently heard about the death of the vendor and the fact that she was represented by Ms. Delmar;
- (5) he had nothing to gain from the delay.;
- (6) not a single penny had entered his pocket;
- (7) he was only seeking to protect the vendor;

- (8) there was no loss to the estate;
- (9) one should not get bogged down in technicalities, one should look to see what the land was selling for and what it was really worth.

Under cross-examination Mr. Bishop admitted the following:

- (1) That he had never secured a valuation for the said lot, not in 1993 or 1997;
- (2) He said his address was currently at 9 White Church Street, Spanish Town, St. Catherine and had been so for twenty (20) years or more.

He confirmed that he knew Ms. Phyllis Gordon, who was his secretary and who had been working with him for ten (10) years or more.

He indicated that he had never met the vendor, but he considered himself her attorney. He said he "came into my office and saw a sale agreement" and that is how the relationship of attorney/client had commenced between himself and Ms. Francis. He indicated that he did not know who prepared the Agreement for Sale (VCIA) dated 3rd March 1993. Yet he said that he was not denying its preparation.

He confirmed that the consideration was for \$60,000.00 and that the document was prepared by Ms. Gordon.

He said that he is the person in charge of his office, but Ms. Gordon is the person in his office who deals with transfers of property. He said he reviews everything she does and it was in that review that he saw that the consideration was incorrect.

Mr. Bishop stated that the document was prepared before he met with the client. In fact he had not met with the client. He admitted that the document could very

well have gone out of his office in the form of VCIA minus the date and the signatures of the parties.

He also said that before the document was prepared he did have the opportunity to peruse the Certificate of Title.

Mr. Bishop accepted that the Agreement for Sale was returned to him with the cheque of \$40,000.00. He said he gave instructions to his secretary Ms. Gordon to contact the vendor to find out whether she was "talking pounds or Jamaican dollars."

He could not recall if a letter had been written to the client and stated that it was Ms. Gordon who had been instructed to make the telephone call.

Mr. Bishop said that he had not brought the file in relation to this transaction to the hearing so it could not be confirmed whether any letter had been dispatched, but he stated that he, himself had not contacted the client.

Mr. Bishop also confirmed that he had not written any letter to the vendor suggesting that a valuation be prepared. He said he had not done so as for a number of years he had no need of a valuation due to the fact that he had been buying and selling properties. Mr. Bishop also said that although he had formed the view that there was a fundamental mistake and that the vendor and purchaser needed to rethink the matter, he had not communicated this to the client, but he maintained that he had given those instructions.

Mr. Bishop said that from the very inception, Mr. Chen was informed that the consideration was not going to be approved. He could not say how he was so informed but he mentioned that he was. In fact he finally conceded that he could not recall how Mr. Chen was informed of this information.

Mr. Bishop also could not recall any communication to Mr. Chen between March 1993 and March 1994.

In answer to Ms. Lambert's question in relation to VC5, the letter of March 7, 1994, whether in circumstances when an attorney is requesting payment of the balance purchase price, it is an indication that he/she is agreeing that there is a binding agreement in progress? He answered that when he did that, it was mainly to prove that the transaction was not going to go through.

When pressed in relation to why there was no correspondence to that effect, Mr. Bishop agreed that he had not personally said this to Mr. Chen.

Mr. Bishop accepted that when the agreement for sale came to him the next step was that it ought to have been stamped, but he admitted that it had not been stamped because of the difficulty which he viewed existed due to the inaccurate consideration.

Mr. Bishop did not recall

- (i) whether on receipt of VC4, he had indicated to Mr. Chen that he had not sent the Agreement for stamping since 1993;
- (ii) whether he had received in June 1994 notice making time of the essence;
- (iii) whether the statement of account requested by Mr. Chen (VC8) had ever been sent to Mr. Chen; or
- (iv) the registrable executed transfer.

He confirmed however, that the transfer remained with Mr. Chen.

In response to Ms. Lambert's question as to how the agreement came to have the date of the 3rd April, 1994 Mr. Bishop's response was "my experience is that

you do not date the document until you submit them because they will attract penalty if the date exceeds thirty (30) days.”

He also indicated that he does not submit documents to the stamp office with dates which are bound to attract penalty. He indicated that in doing this, he was not aware that in acting in that way, he may misrepresent the state of affairs between the parties. He said he was not aware of tampering with any document, but insisted that he does not date any document until it is submitted for stamping. He admitted, however that the document bearing the date of the 3rd April, 1994 was the one sent to the stamp office, and that the date of the 3rd April, 1994 was affixed in his handwriting.

Mr. Bishop reiterated that he had given instructions for the status of the transaction to be communicated to the client and he said that to the best of his knowledge that had been attempted. He maintained that although most of the letters leaving his office were signed by him, he could not recall signing any letters to the client.

Mr. Bishop said he took the view that his client was to make the new offer, but he could not recall ever sending any letter to Mr. Chen stating that there was no binding agreement.

He also could not recall that by August 1994, when Mr. Chen was writing to him insisting on completion on the part of his client, that the purchasers attorneys in the UK, had been making efforts to contact him.

Mr. Bishop indicated quite candidly under oath that he was not aware that there were two (2) names endorsed on the Certificate of Title as registered owners. Further, he said he only became aware that Ms. Francis had died when Ms. Delmar made enquiries about the proceeds of the purchase. He indicated that to

the best of his knowledge, this was through the offices of the General Legal Council.

Mr. Bishop said that to the best of his knowledge he had responded to the letter of Ms. Powell, but he admitted that he had not made a telephone call and he could not recall if he had signed any letter. He could not recall seeing SP3 and also could not recall responding to it.

Mr. Bishop indicated that his practice was a mixed practice, the conveyancing part of his practice represented approximately 20 – 50%. He further indicated that he was aware that a clause could be put into the contract to deal with unusually high assessments made by the stamp office, but he said that such a clause does not “cover something that is 5 times higher.”

Finally Mr. Bishop stated that he did not agree that the transaction had not been handled by him but by his secretary Ms. Gordon.

On the 4th July, 1998, although Mr. Bishop had indicated on the 2nd May that he was considering whether to produce an Affidavit by Ms. Gordon, Ms. Lambert had insisted, pursuant to Rule 10, that she would wish Ms. Gordon to be present for cross-examination. As a result Mr. Bishop told the panel that having advised himself, he had decided that since there was no cross-examination on the complainants Affidavit, there should be none on his.

IN RE-EXAMINATION

Mr. Bishop referred to the Affidavit of Mr. Chen and stated that Mr. Chen accepted that he Mr. Bishop was always trying to protect the vendor. He maintained that this contention was stated in the Affidavit of Mr. Chen which had been discarded, and had not been relied on by the complainants. Mr. Bishop could not find the exact passage he wished to refer to however, and therefore closed his re-examination.

THE SUBMISSIONS

On behalf of the Complainants

As indicated previously the Complainants complain about the failure of the Respondent to complete the sale of Lot 416 Willowdene, St. Catherine, to provide information to them, and thereby (slightly amended) to provide the Complainants with a Statement of Account in respect of sums received by the Respondent from the purchasers and due to the estate. Canons (iv) r & s (vii) were referred to.

Ms. Lambert relied on the fact that the Agreement for sale stated *inter alia* that the Respondent was to have carriage of sale which she submitted in conveyancing practice meant that he would be the person responsible for ensuring that the vendor took all steps to proceed with the sale and transfer of the property.

Ms. Lambert pointed out that despite the fact that the Agreement for Sale and Instrument of Transfer and deposit were in the custody of the Respondent from May 1993, the Respondent did nothing, until March 1994 when he returned the Agreement for Sale with a new date endorsed thereon together with the Transfer neither of which had been stamped.

Ms. Lambert also pointed to the fact that Mr. Bishop admitted that he had not met the client, yet the Agreement for Sale was prepared in his office and given to the client for her signature and use. Ms. Lambert reminded the Panel of the fact that there was no evidence that Mr. Bishop had communicated his alleged concern about the "under value" of the property to his client to Mr. Chen or anyone else. If there had been any written communication on this alleged grave concern, it ought to have been in a file in Mr. Bishop's office which could therefore easily have been produced for use at the hearing. There is also no evidence that he advised the client of the Stamp Commissioner's assessment, or that the assessment went to the 'root of the contract', nor did he make any effort to advise the client of the consequences or implications of the assessment. This

Ms. Lambert submitted amounted to a dereliction of duty and negligence on his part both in common law and under the canons of professional ethics.

Ms. Lambert also commented on the casual manner in which the Respondent admitted to the Tribunal that he had changed the date on the Agreement in order, he says to avoid penalties.

Ms. Lambert submitted that the panel ought to accept that Mr. Bishop had not communicated at all with the English Solicitors. Ms. Lambert said that it was noteworthy that Mr. Bishop was in contact with the purchasers' attorneys, when he was also in receipt of communication from the English Solicitors and would therefore have been aware of the death of the deceased. Further, the fact that a notice making time of the essence had been served and bearing in mind his alleged concerns about the consideration stated in the Agreement, and his subsequent actions in this matter, Ms. Lambert submitted, that the evidence of Mr. Bishop should be viewed with suspicion.

Ms. Lambert referred to the Stamp Duty Act. She submitted that since the Stamp Commissioner is empowered to substitute the consideration stated in the transfer document for one which represents the market value of the property, Mr. Bishop ought to have inserted a provision in the Agreement for sale which would have permitted the vendor the option to either cancel the Agreement or proceed to complete the transfer.

The failure Ms. Lambert submitted, to share his concerns with the English Solicitors resulted in their inability to obtain an opinion from Jamaican counsel with regard to the effect of the consideration stated in the Agreement. This failure to act, or to inform the solicitors has resulted, submitted Ms. Lambert in the estate being exposed to a suit for specific performance.

In relation to Canon IV(r) Ms. Lambert relied on the case of *Groom v Crocker & Others* [1938] 2 All ER, 394

Canon IV(r) states as follows

“An Attorney shall deal with his client’s business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client’s business with due expedition.”

Ms. Lambert submitted that Mr. Bishop had breached Canon IV(r), as

- (a) He failed to stamp the agreement within the 30 days of its date, March 3, 1993 and in fact did not present it for stamping until one year after it had been signed and the deposit paid to him.
- (b) He failed to advise the client of the Stamp Commissioner’s refusal to accept the purchase price for the purpose of assessing transfer duties.
- (c) He failed to complete the sale in a timely manner.
- (d) He failed to respond to the six letters sent to him by the Executors.

Ms. Lambert submitted that the Respondent was also in breach of Canon IV(s), which reads as follows:

“In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.”

She relied on Volume 44(1) Halsburys Laws of England 4th Edition, page 155.

She also relied on the leading text Corderay on Solicitors, 6th Edition, page 195, on *Otter v Church, Adams, Tatham & Co. (a firm)* [1953] 1 All ER, 168, on *Robins v Meadows and Moran* [1991] 29 EGLR, 137, and *Goody v Baring* [1956] 2 All ER, 11.

Although these cases merely dealt with negligence, resulting in liability of a solicitor, Ms. Lambert relied on them notwithstanding to support a case of ‘inexcusable or deplorable negligence or neglect’.

These cases in our view supplied only some assistance in our determination of the issues herein.

However under this Canon IV(s), Ms. Lambert submitted that Mr. Bishop was at fault in that he

- (1) Failed to include an express provision in the Agreement to deal with the Stamp Commissioner’s assessment.

- (2) Failed to prepare any documents to note the death of one of the joint tenants of the property.
- (3) Failed to stamp the Agreement within 30 days.
- (4) Changed the date on the Agreement for Sale from March 1993 to April 1994 without the authority or consent of any of the parties (N.B. the vendor died on November 17, 1993).
- (5) Failed to complete the sale once the purchaser had satisfied all her obligations under the Agreement.
- (6) Failed to advise the Vendor or the Executors of the Notice to complete or the threat of specific performance.
- (7) Conducted the sale in such a manner as to expose the estate to litigation.

With regard to Canon VII(ii)(b), Ms. Lambert submitted that Mr. Bishop owed a duty to provide a Statement of Account to the executors in respect of the sums which came into his hands on her behalf, and if those funds were subsequently paid out to the purchasers attorney, then he ought to confirm that he no longer held funds to the credit of the vendor or the vendor's estate.

In closing Ms. Lambert submitted that Mr. Bishop was in breach of all the Canons adumbrated to the Tribunal and she submitted that the Committee should order that Mr. Bishop contribute to the costs of the complainants and further pay a sum of \$150,000.00 towards settlement of legal fees, registration fees, stamp duty. The estate Ms. Lambert submitted may also have to pay to note the death of Mr. James Francis and to achieve this the English Grant of Probate will have to be resealed.

Ms. Lambert asked for an order of interest at the rate of 18% to be paid on the \$41,706 from March 3, 1993 to the date of payment.

On behalf of the Respondent

In response Mr. Bishop said that on perusal of the Certificate of Title for the relevant premises, one would observe that in 1986, the vendor had purchased

the premises for £2,000.00, which was more money than \$60,000.00 in 1993. This he said was one of the first things that had led him to the honest belief that there had been a mistake in the exchange rate and the consideration itself. He maintained that nobody could question his *bona fide*.

The mistake he said was on the part of the vendor. He insisted that he was dealing with substance as against procedure.

He maintained that at all times his concern was that at the price of \$60,000.00 the vendor would only receive about \$40,000.00. He said that the estate would be better off with the sale not proceeding as the loss in those circumstances would be minuscule.

He said the interest of the vendor and the purchaser were different. Mr. Chen on behalf of the purchaser wished the documents to be stamped urgently and the sale completed, that however, he submitted was not in the best interests of the purchaser. In his view, he submitted, the Commissioner's assessment was a modest assessment. He could see no basis on which the complainants could claim \$150,000.00 or \$41,000.00. He maintained the cheques submitted to Mr. Chen were good cheques. There was no evidence that the cheques had been submitted for encashment and that the bank had stated that they were stale.

Mr. Bishop further submitted that he would leave this trial feeling good about himself, in that he hadn't taken anybody's land or money, nor their documents. He said he had not even been paid for the work done by him. The deal, he said, was not at arms length and he had not facilitated it. He reiterated that he had done nothing wrong and acted at all times in good faith.

In answer to certain questions from the panel with regard to specific allegations which had been made against the Respondent which formed the basis of the complaints, the following emerged.

Mr. Bishop said he thought the documents sent to him in 1993 were sent back to Mr. Chen before a period of one year. He said he did not know that they had not been returned before that time.

Mr. Bishop also submitted that he did not know of the document bearing any other date than April 1994. He said he merely inserts the dates on documents when the document is being submitted to the stamp office for assessment and stamping.

Mr. Bishop submitted further, that he had given instructions for communication to be made to his client and Mr. Chen and he verily believed that his instructions had been followed.

He accepted that the Agreement for Sale which bore the consideration of \$60,000.00 was prepared in his office, but he said that preparation of the document had been done in his absence and he maintained that he had given instructions to his secretary to try to contact the client for further instructions.

He said he did not know exactly when his client had died. Further, he did not think it was fraudulent to affix a date on a document 12 months after preparing it, without contacting the client. He did not think it was fraudulent to interfere with the date on the document, for he submitted, he was not aware that there was any other date on the document.

He said that although he followed up on instructions that he gave his secretary, in this case he had been told that they had been carried out.

He also maintained that although he thought that the consideration stated in the Agreement of \$60,000.00 was a mistake, he proceeded to submit the document to the Stamp office "because he knew it wouldn't pass." He continued "it was the very reason why I sent it to the purchaser's attorney with the cost of the stamping."

THE BURDEN AND STANDARD OF PROOF

It is trite law that the burden of proof is on the complainants to prove the allegations made against the Respondent, to the standard of proof required in law.

In this case, there is no allegation of defalcation, but there is allegation of conduct unbecoming his profession on the part of the Respondent in his capacity as an Attorney-at-Law which is based on the allegation of failure to act pursuant to instructions received and in a manner consistent with that of a reasonably skilled professional, as set out in paragraphs 8 & 9 of the Affidavit of the Complainants [See page 3 Supra]. In setting out the facts before the committee evidence in relation to falsification of documents emerged which though not a specific charge were some of the facts on which the Complainants relied to ground the charges before us.

In our view, the words of the Court of Appeal in the Bhandari v Advocates Committee cases, [1956] All ER, 742 & 744 are relevant to ascertain the required standard of proof applicable, to the instant case.

“We agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities.”

It is clear a high standard of proof is required in the instant case. The Committee is also mindful of the words of Lord Lane in the case of Re a Solicitor [1992] 2 All ER, 35, when she stated at page 344 after referring to the abovementioned quote that it is not altogether helpful if the burden of proof is left somewhere undefined between the criminal and civil standards. Thus if the facts alleged are tantamount to a criminal offence, the tribunal should apply the criminal standard of proof, that is to say proof to the point where they feel sure that the charges are proved, or proof beyond reasonable doubt. We therefore proceed accordingly and shall apply the criminal standard of proof.

FINDINGS OF FACT

There are not many disputed facts in this case. The crucial issue is the evaluation of the facts, such as they are and the consequences of the actions or omissions of the Respondent.

Facts not in dispute

It is therefore not disputed

- (i) That the deceased, Mrs. Theresa Francis was the client of Mr. Bishop;
- (ii) That she attended on his offices and an Agreement for Sale was prepared, given to her for signing and which ultimately bound her, without Mr. Bishop ever having come into contact with her.
- (iii) That the Agreement was sent to Mr. Bishop in March 1993 and the Instrument of Transfer in May 1993, duly executed by all the relevant parties.
- (iv) That Mr. Bishop was in receipt of the deposit and put in funds in order to put him in a position to stamp the Agreement for Sale.
- (v) That he returned the documents to Mr. Chen, the purchasers attorney in March 1994, and they were not yet stamped.
- (vi) That at that time the Agreement for Sale bore a different date, to wit April 1994.
- (vii) That the new date was affixed to the document by Mr. Bishop.
- (viii) That in returning the documents, Mr. Bishop was not acting in compliance with the terms of the Agreement which required him to have carriage of sale of the Agreement.
- (ix) The documents, when returned to Mr. Chen were then subject to penalties under the Stamp Duty Act.
- (x) The Agreement for Sale bore no provision which permitted the vendor to exercise any option to rescind the Agreement if the Stamp Commissioner ascribed a higher value to the property than the consideration stated in the Agreement for Sale.

The issues of fact are as follows:

- (i) Was Mr. Bishop aware that the Agreement for Sale bore a different date, before he affixed the new date thereto?
- (ii) Did Mr. Bishop delay returning the documents to Mr. Chen due to the difficulties he envisaged would occur if the vendor persisted in the completion of a transaction which bore a consideration, which he says must have been a mistake?
- (iii) Was he ever, at any material time, genuinely of that view?
- (iv) Did he communicate this concern to his client or the purchasers' attorneys?
- (v) Did he provide any information when reasonably required to his client or the Complainants, her executors in respect of the progress of the sale or at all? Did he act with due expedition?
- (vi) In the completion of the sale, was there inexcusable or deplorable negligence on the part of the Respondent?
- (vii) Did he provide any information to Ms. Francis or to the Complainants, her executors in respect of monies received on her behalf?

Findings

We find that the correspondence submitted to the Committee clearly discloses that when Mr. Bishop returned the documents to Mr. Chen he was of the view that the vendor had entered into a binding agreement with the purchaser to sell Lot 416 Willowdene in the Parish of St. Catherine. There is no evidence to indicate that Mr. Bishop had any concerns at that time about the mistake of the stated consideration in the agreement. We view this as a contrivance of Mr. Bishop to explain the delay experienced in the transaction and other actions which we shall refer to herein.

We find that Mr. Bishop was well aware that the Agreement for Sale bore the date March 1993. We find the fact, as Mr. Bishop stated to the Panel, that his insertion of the date on the Agreement was due to his alleged modus operandi

that the document is dated on presentation to the Stamp Commissioner, regardless of when the transaction took place, a most unfortunate way to conduct his professional obligations. We find that Mr. Bishop knew he was falsifying the document, and this is reprehensible and dishonourable conduct, and we find that this was due to the unfortunate and inordinate delay of submitting the documents to the Stamp Commissioner for assessment, and in order to avoid the payment of penalties which could be imposed. This was therefore a deliberate act taken to defraud the government of revenue, but for which Mr. Bishop is not charged. We also agree with the submissions of Ms. Lambert, that changing the date on the document amounts to a deliberate misrepresentation, for at the time Mr. Bishop affixed the new date to the Agreement, Ms. Francis, although maybe not to his knowledge, had already died. This too however, regrettably does not form the basis of any specific charge before us.

We find however, that Mr. Bishop did not ever therefore genuinely hold the view that the consideration stated in the Agreement for Sale was a "mistake" and so did not communicate any such matter to his client. [See "VC13" page 13, Supra]

Mr. Bishop appreciated his negligence in the delay in submitting the documents to the Stamp Commissioner and that is why

- (i) he altered the date on the Agreement for Sale;
- (ii) he endeavoured to circumvent the duty imposed on him in the Agreement of Sale to take the matter to completion.

We find also that the fact that Mr. Bishop did not know that Mr. James Francis' death had not been noted on the Certificate of Title was also negligent. We also find that Mr. Bishop exercised inordinate neglect in his representation of the client in failing to communicate with the English solicitors of Ms. Francis' estate when they were trying so persistently to contact him to inform him of her death, and to warn him to act accordingly in the protection of the rights of the deceased.

We also find that Mr. Bishop did not make any or any serious effort to contact Ms. Francis, his client, to inform her of the progress of the transaction or to obtain any further or other instructions, bearing in mind what Mr. Bishop says was the focus of his concern.

We find that it was only when the Stamp Commissioner ascribed the value of \$260,000.00 to the subject property and the duties imposed were considerable that Mr. Bishop attempted to suggest that the agreement reached between the parties could be changed. Further that letter of July 22, 1994, VC10, closed with the question "what are your new instructions in this matter?" This was the first time that there was any indication that the terms agreed required variation and even then did not relate to the fact that the consideration stated in the agreement was a 'mistake' as Mr. Bishop had endeavoured to allege before the Committee. All these actions were to conceal the fact that the Respondent had acted with inexcusable delay and neglect in the completion of the sale. We find that the Respondent did receive the amount of \$41,706.00 but we also find that these funds were sent by him to Mr. Chen although ultimately two (2) years later. We further find that at no time at all did the Respondent indicate to the vendor his client and later the Complainants representing her estate, that he had returned those funds to Mr. Chen. As a consequence, he did fail to account for monies received on behalf of the deceased.

THE LAW

We rely on the principles enunciated in the Jamaican Court of Appeal case Leslie L. Diggs-White v George R. Dawkins [1976] 14 JLR, 192, to ensure that our findings relate only to and specifically to the charges preferred by the Complainants. Further as enunciated in that case in Lord Esher's judgment in In Re Cooke [1889] 5 TLR, the Master of Rolls stated

"But in order that the Court shall exercise its penal jurisdiction on a solicitor it was not sufficient to show that his conduct had been such as could support an action for negligence or want of skill. It must be shown that the solicitor had done something which was dishonourable to him as a man and dishonourable to his profession. A professional man whether he were a solicitor or a barrister was bound to act with the utmost honour and

fairness with regard to his client. He was bound to use his utmost skill for his client..... A solicitor must do for his client what was best to his knowledge, and in the way which was best to his own knowledge, and if he failed in either of those particulars, he was dishonourable.”

In the Court of Appeal case of *Re a Solicitor*, [1972] 2 All ER, 811, Lord Denning said that negligence in a solicitor may amount to professional misconduct if it is inexcusable and is such as to be regarded deplorable by his fellows in the profession..... Neglect can amount to professional misconduct..... The negligence can be reprehensible.

In relation to the Respondent's preliminary point that the Complainants had no *locus standi*, the law is clear that the executor derives his title and authority from the will of the testator and not from any grant of probate. The property of the deceased, including any right of action, vests in the executor, on the testator's death and the executor can institute any action, as executor before he proves the Will. In this case probate was already granted, and therefore the Respondent ought to have treated with the executors acting in the shoes of the vendor, his client.

CONCLUSIONS

In this case, we find the Complainants have proved their case beyond reasonable doubt.

We accept the principles adumbrated above and find that the Respondent is guilty of misconduct alleged in paragraph 9 of the Affidavit of the Complainants at paragraphs (a), (b) & (c).

We find that these allegations ground the charge made in Canons IV(r) & (s) and VII(ii)(b). In the circumstances we find that the Respondent has acted in breach of s.12(1) of the Legal Professional Act and is guilty of misconduct in a professional respect.

Pursuant to s.12(4) of the Legal Profession Act we order

- (1) That the Respondent pay to the Complainants the sum of \$150,000.00 by way of a fine.
- (2) That the Respondent pay to the complainants costs on the scale pursuant to the Rules of the Supreme Court (Attorneys-at-Law's Costs) Rules, 1998 (published in Jamaica Gazette of August 5, 1998).
- (3) That interest at the rate of 18% be paid to the Complainants on the sum of \$41,706.00 from the 3rd day of March, 1993 until the 23rd day of March, 1995.

Dated the 23rd day of *September* 1999



Hilary Phillips, Q.C.



Leila Parker



Merlin Bassie