

**REASONS AND ORDER OF THE DISCIPLINARY
COMMITTEE OF THE GENERAL
LEGAL COUNCIL
COMPLAINT 224 of 1997**

BETWEEN FRANCIS THATCHER & CO (MICHAEL
ANTHONY FRANZ NEHAMMER) **COMPLAINANTS**

AND DONALD BERNARD **RESPONDENT/ATTORNEY**

PANEL MRS. PAMELA BENKA-COKER QC
MR. JEROME LEE
MR. ALLAN S. WOOD

Heard the 7th June, 2001

REASONS FOR JUDGEMENT:

This complaint was made by Francis Thatcher & Co, a firm of Solicitors practicing in the United Kingdom. Mr. Michael Anthony Franz Nehammer, a Solicitor of the High Court of the United Kingdom and a partner in the aforesaid firm, gave evidence in support of the Complaint by Affidavits sworn to on the 12th October, 1998 and 30th January, 2001.

The latter Affidavit exhibited all relevant correspondence in support of the Complaint and in exercise of its discretion under Rule 10 of the Fourth Schedule of the Legal Profession Act, the Panel permitted the Complaint to proceed on the evidence given by the Affidavits.

The Attorney, Mr. Donald Bernard did not appear at the hearing.

Having reviewed the uncontested evidence the Panel finds as follows:

- (i) The Complainant is a firm of Solicitors, practicing in the United Kingdom and at all material times the said firm acted for the Personal Representative of the estate of Mrs. Adeline Wheeler, deceased, the owner of premises 9a Mackville Terrace, Kingston 10.
- (ii) By letter dated the 28th August, 1990, Mr. Donald Bernard of Donald Bernard & Co confirmed to the Complainant that they would be willing to act on behalf of the estate to deal with the legal formalities in effecting the sale of the property.
- (iii) By letter dated the 5th July, 1991 the Complainant gave the Respondent written instructions to conclude a sale of the property on behalf of the estate.

- (iv) Following upon a valuation of the premises which was accepted by the Personal Representative of the estate, the duly executed Agreement for Sale was forwarded to the Respondent, by the Complainant by letter dated the 5th July, 1991.
- (v) Thereafter up to July, 1993 correspondence ensued between the Respondent and the Complainant concerning the sealing of grant of Letters of Administration and the preparation of necessary revenue documentation in order to conclude the sale. Up to the month of July, 1993 the Respondent reported on the progress of the transaction sporadically but since that month the Respondent ceased to respond to the Complainant's letters enquiring about the transaction.
- (vi) The Complainant has exhibited copies of several letters to the Respondent written during the period since August, 1993 which have gone unanswered and particularly a letter dated the 23rd May, 1995 from the Complainant to the Respondent requesting information as to whether the Respondent was holding proceeds of sale, to which the Respondent has not responded.
- (vii) The Complainant retained the firm Myers, Fletcher & Gordon in 1993 to investigate the matter and that firm assisted in providing reports on the progress of the matter until 16th January, 1997 when that firm reported by letter to the Complainant that they had tried without success to obtain further information from the Respondent.
- (viii) It is now almost 10 years since the executed Agreement for Sale of the premises was forwarded to the Respondent and the Respondent has not completed the sale or provided information as to the status of the transaction.

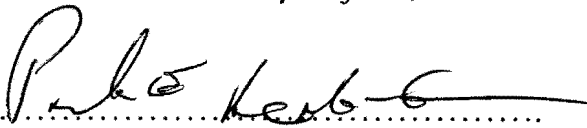
The Panel finds that the charges against the Respondent have been established and that:-

- (a) In breach of Canon IV (r) of the Legal Profession (Canons of Professional Ethics) Rules 1978 the Attorney has not provided the Complainant with all information as to the progress of its business with due expedition although he has been reasonably requested to do so.
- (b) Also in breach of Canon IV (r) of the aforesaid Rules the Attorney has not dealt with his client's business with all due expedition.
- (c) In breach of Canon IV(s) the Attorney has acted with inexcusable or deplorable negligence in the performance of his duties.
- (d) In breach of Canon VII (b) the Attorney has not accounted for all moneys in his hands for his Client's account or credit, although he has been reasonably required to do so.

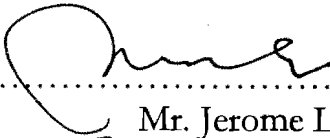
As the Attorney has already been struck off the Roll of Attorneys by order made on January 15, 2000 in unrelated proceedings, the Panel finds that it is appropriate to impose a fine. Regrettably the Panel has no power under the Legal Profession Act to order the delivery up of the Complainant's documents and the Complainant must therefore pursue such remedies in appropriate legal proceedings.

Pursuant to section 12 (4)(a) of the Legal Profession Act it is ordered that a fine be imposed on the Attorney Mr. Donald Bernard in the sum of \$650,000.00 and pursuant to section 12 (5) of the Legal Profession Act it is directed that the sum of \$550,000.00 be paid over to the Complainant for the benefit of the estate of Adeline Wheeler and \$100,000. 00 be paid to the General Legal Council when the fine is collected from the Attorney, Donald Bernard.

Dated the 11th day of June, 2001



Mrs. Pamela Benka-Coker QC



Mr. Jerome Lee



Mr. Allan S. Wood