

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

COMPLAINT NO. 123/97

GUY AND LOIS HIBBERT

COMPLAINANT

AND

FREDDIE BROWN

RESPONDENT

PANEL: Hilary Phillips, Q.C.
Leila Parker
Lincoln Eatmon

Guy Hibbert appearing in person on his own behalf and on behalf of his wife.

No one appearing or representing the Respondent, but Respondent appeared on the 15th June 1998.

This matter has had a long drawn out history, merely because the Panel endeavoured to conduct hearings at a time when the complainant would be in Jamaica, at his convenience, and endeavoured to ensure that the Respondent was served as the secretariat was experiencing difficulties effecting the same. We none the less apologise for the late delivery of this decision by the committee.

THE PROCEEDINGS

The Application against the Respondent was duly filed on the 17th day of November 1997. The Application was stated to be on the ground that the matters of fact stated in the Affidavit of the Complainants constituted conduct "unbecoming his profession on the part of the said Freddie Brown in his capacity as an Attorney-at-Law."

The Affidavit in support of the Application was sworn to on the 18th day of November 1997 and filed with the Application. In the Affidavit, the Complainants deponed to the fact that they retained Mr. Freddie Brown in August 14, 1992 to act as their Attorney in the transaction of purchasing a parcel of land at Lot 11 Belgrade Heights. The Complainants stated in their Affidavit that they had paid Mr. Freddie Brown the sum of \$332,250.00 in instalments of :

- (i) JA\$125,134.70 on August 14, 1992
- (ii) CN\$4,100.00 on September 10, 1992
- (iii) CN\$2,000.00 on January 28, 1993
- (iv) JA\$60,000.00 on July 29, 1993
- (v) JA\$32,250.00 on August 11, 1994

Thereafter the Complainants deponed that they visited Mr. Brown's office on several occasions in an effort to obtain the status of the transaction. These visits covered a period of years from 1993, through 1997. The Complainants further deponed that although they attended on his office, they did not get to see Mr. Freddie Brown, but Mr. Brown did speak to the Complainant Guy Hibbert on one occasion on the telephone. There was an occasion in 1997 when the Complainants visited Mr. Brown's office and they learnt that Mr. Brown could no longer be found at the address they knew which was 60 Laws Street, Kingston. They were given no forwarding address. The status of the transaction remained unknown.

The Complainants further aver in the Affidavit in support of the complaint, that on August 11, 1994, having enquired about the amount of moneys being held in their account, information was given which tallied with their own understanding, however, with regard to the use of the funds, or where and how these funds were being held, there was no appropriate response.

As a consequence the letter of the complaint dated July 29, 1997 was sent to the Council which indicated inter alia, that the Complainants had entered into the transaction, had paid certain monies, had been promised the Title for the property on several occasions, but the Title had not been produced. That Mr. Brown had always given a different story. Further that they had visited Mr. Brown often, but recently since he could not be found at either office or home address known to them, or by telephone and other persons were then in his office but who had not given a satisfactory response, in their frustration of not being able to locate Mr. Brown, they had lodged this letter of complaint with the General Legal

Council.

Thereafter the Form of Application and Affidavit were filed. The Complainant reiterated in the Affidavit that Mr. Brown had vacated his address without leaving any forwarding address or telephone number, and the Complainants thus lodged the complaint supported by Affidavit against the attorney-at-Law and deponed that:

- (1) He had withdrawn from their employment without taking reasonable steps to avoid foreseeable prejudice with injury to their position or rights;
- (2) Having withdrawn from their employment he had not properly refunded such part of his fees paid in advance as may be fair and reasonable;
- (3) He had not provided all information as to the progress of their business with due expedition, although they had reasonably required him to do so.
- (4) He had acted with inexcusable or deplorable negligence in the performance of his duties;
- (5) He had not accounted for all monies in his hands, although reasonably required to do so.

The Complainants therefore charged Mr. Brown with having acted in breach of Canons IV(n), (o), (p), (r)(s), VII(b)(ii) of the Legal Profession (Canons of Professional Ethics) Rules.

ORAL EVIDENCE OF THE COMPLAINANT

The oral evidence of Mr. Guy Hibbert was succinct and clear. He indicated that he was a Minister of Religion by occupation and that he gave evidence on behalf of himself and his wife. He said he had been introduced to Mr. Freddie Brown through Mr. Thompson who had shown him the property at Belgrade Heights and then took him and his wife to the offices of Mr. Brown in order to effect the purchase of the property. He attended on the offices of Mr. Brown at 60 Laws Street with his wife Lois Hibbert where he was shown some plans in relation to Belgrade Heights in particular Lot 11, which was to form the

subject of the transaction. The Hibberts were told the price and the tentative date the title would be ready, that was stated to have been about six (6) months time, hence, say December 1992 to January 1993.

They were required to bring in a deposit which Mr. Hibbert did in two (2) days time, to wit, August 14, 1992. He received a receipt Exhibit 1, for their cheque for J\$125,034.30 and cash of J\$100.00. The receipt does not mention the purpose of the payment, but it is issued on a receipt form bearing the name of "Mel Brown & Co."

Thereafter Mr. Hibbert said both he and his wife signed an agreement for purchase of the property from Mr. Bertram Alexander Watkis, but they did not then receive a copy of the agreement. They were told that Mr. Watkis was not available to sign the agreement at that time. The Complainant stated that he and his wife never ever met Mr. Watkis even up to the time of giving evidence.

Subsequent to the signing of the agreement, Mr. & Mrs. Hibbert returned to Canada where they reside, and later received a letter dated 17th November 1992 with a faxed copy of the agreement for sale which was undated but which was signed by Mr. Watkis and both letter and the agreement were tendered in evidence as Exhibit 2.

The letter which enclosed the agreement, which was on a Mel Brown & Co letterhead, and signed by A. Freddie Brown referred to the enclosed agreement for sale and indicated that "we will soon be in a position to issue your Title" and also requested a further deposit of money to wit CN\$5,900.00 and gave specific instructions as to where the money should be sent. Mr. Hibbert sent CN\$4,100.00 as directed, which is evidenced by Exhibit 3.

On January 28, 1993 a further CN\$2,000.00 was sent by way of cash remittance through Victoria Mutual Jamaica, which was tendered as Exhibit 4.

On July 29, 1993 Mr. Hibbert said he attended on the office of Mr. Brown and gave him a further J\$60,000.00 made up of cheque and cash. He was issued a receipt dated the 29th July 1993 bearing No. 067, and this receipt bore a reference thereon to "Re further deposit on Lot 11, Belgrade Height."

Mr. Hibbert deponed to the fact that he was given a Statement of Account by Mr. Brown. It is dated the 22nd July 1993. It was signed by Mr. Freddie Brown. It is to be noted that although the document is headed "Statement of Account" it bears no stated reference to Belgrade Heights, but it does state that the sale price was \$500,000.00 as set out in the agreement for sale and refers to sums paid by the Hibberts.

This Statement of Account was tendered by Mr. Hibbert as Exhibit 6. Mr. Hibbert referred to the handwritten notes on the Statement of Account with regard to the payment of \$60,000.00 which was made subsequent to the production of the Statement of Account and which was also deducted in the handwritten note from the amount stated in print to be outstanding. At this time according to Mr. Hibbert the amount of \$232,237.47 remained outstanding as the balance due on the purchase.

In August 1994 Mr. Hibbert stated that he paid a further sum of \$32,250.00, and tendered a receipt No. 171 in evidence which also bore reference to "further deposit on Lot 11 Belgrade Manor."

Exhibit 6 also had a handwritten note showing this payment being deducted signed the outstanding printed balance.

Subsequent to this the Complainants received a letter dated the 3rd May 1994 signed by Mr. Brown. This letter was tendered as Exhibit 8. The letter is set out in full below (with all the typographical errors and inaccuracies.

3rd May 1994

Mr. & Mrs. Guy Hibbert
1221 Bircchmount Road
Scarborough
Ont. N1P 2C9
Canada

Dear Mr. & Mrs. Hibbert,

Re: Sale of Lot 11 Belgrade Heights
Kingston 19, Havendale,
Bertram Watkis to Guy Hibbert et ux

The above Sub-Division did give us a plenty of trouble to get through.

However, in March 1993, we finally have the Public Works Department to approve of the road plans which were the source of delay.

Molifications were made and the Town Planning Department of the Kingston and

Saint Andrew Co-operation has now approved this sub-division.

You can proceed to draw the necessary building plans as some of the other Purchasers have already done.

The expenses on this project has sky rocketed beyond our wildest dreams. We would, therefore, appreciate you paying the balance of purchase money to enable us to finish this project.

Thanking you.

Yours faithfully,
MEL BROWN, FREDDIE & COMPANY

Per:

A. Freddie Brown (Mr.)

AFB/cf

P.S. Please find enclosed State of Account as to the balance of your costs.

A Statement of Account was stated to be attached to this letter. Mr. Hibbert produced an undated Statement of Account which he indicated he could not recall whether that was the Statement of Account affixed to the letter but the said undated Statement of Account was tendered in evidence, in any event as Exhibit 10. In his view this statement was inaccurate.

Mr. Hibbert stated that subsequent to receipt of that letter the Complainants came to Jamaica and found that the subdivision had not been approved. They had asked for proof that the subdivision had been approved and had been told that the papers were with the surveyor, Mr. Hadeed. Mr. Hibbert tried to see Mr. Hadeed but did not achieve this, although he did speak to him on the phone before returning to Canada.

Thereafter Mr. Hibbert and his wife came to Jamaica once or twice a year and went to Mr. Brown's office. Sometimes he was there and they saw him, but not always. Mr. Brown maintained that they would soon get their Title, KSAC was working on it. They said it was Mr. Brown's position that you had to "give people money to get things done."

The Complainants did not pay any more to money to Mr. Brown. The balance at that time was \$200,000.00. The \$32,250.00 given to Mr. Brown was to cover costs and Mr. Hibbert said he told Mr. Brown that he was not going to give him any more money as they were being told so many stories; so they would retain the balance until they received their Certificate of Title for the property.

Mr. Hibbert said he had not spoken to Mr. Brown since 1995 or 1996. He stated further that he had visited his home once, after trying without success to find Mr. Brown at his office. He obtained the home address from a representative at Mr. Brown's office who gave him the home address very reluctantly. Having received the information Mr. Hibbert said he attended on Mr. Brown's home and spoke to a lady there whom he believed to be Mr. Brown's wife.

Later Mr. Brown called him. Mr. Hibbert said his report at that time was the same. The story related to Mr. Hadeed and also the fact that putting in a road in the development was holding up progress of the development. He also mentioned "Operation Pride" as a cause of the delay.

Mr. Hibbert said he returned to the office yet again, but the office was closed, but another lawyer was there, Ms. Taylor and he spoke with her, and she indicated that she would inform Mr. Brown that she had spoken with Mr. Hibbert.

Mr. Hibbert said that subsequent to that he spoke to Mr. Brown on several occasions and requested the return of the funds to which Mr. Brown responded that the vendor would be very happy if he took that route as the property was then worth twice as much. It was Mr. Brown's advice that Mr. Hibbert should not take back his money but proceed to conclude the transaction.

Mr. Hibbert said he has not been able to complete the transaction. He has not gone to another lawyer but had thought of going to the Police, instead he received advice to come to the General Legal Council.

Mr. Hibbert said he had not spoken to Mr. Brown since laying the complaint with the General Legal Council.

He stated further that prior to laying the complaint he had attended on the offices at 60 Laws Street and had been unable to find Mr. Brown. He said when he went there he found the office closed and on three (3) different occasions he had spoken with Ms. Taylor; but even after speaking with Ms. Taylor, he has not been able to locate Mr. Brown.

His complaint was that Mr. Brown had vacated his place of business, without leaving any address or telephone number. In these circumstances, he stated that he had no idea whether Mr. Brown was still concerned with effecting his business. He certainly did not believe that he was protecting his interests as he knew how to contact Mr. Hibbert and he had not done so.

Mr. Hibbert therefore stated his complaint to be as follows:

- (i) He had hired Mr. Brown to do this land transaction for him and his wife. He had paid him money yet Mr. Brown had left his place of business with no forwarding address and so he (Mr. Hibbert) did not know where to find him or to find out what had happened to the transaction.
- (ii) He had no information concerning the progress of his business.
- (iii) He considered that Mr. Brown's handling of his affairs was deplorable. Mr. Hibbert stated that he was familiar with Real Estate in Canada, but it was a little different from how Real Estate business is conducted in Jamaica, for in Canada, deposits are placed in trust accounts and the deposits cannot be touched until the transaction is completed.
- (iv) He did not know what had happened to his money. He did not know if it was placed in a trust account. He said it was sent to a Bank of Nova Scotia account as a trust account. He had no reason to believe that the treatment of his funds should have been any different here as is done in Canada.

- (v) He expected that since his funds should have been held in trust, then he would get back his money or his Title. Mr. Hibbert said that the reason why he did not act before even though he had been getting so many stories was that he had dealt with lawyers before and one has to develop a certain amount of trust so "I gave him space as I was not ready to build."

Mr. Hibbert closed his evidence by saying that Mr. Brown was acting as the lawyer for the development, but had some lots to sell on behalf of Mr. Watkis. He maintained however, that throughout the entire transaction, Mr. Brown had been acting on behalf of himself and his wife and Mr. Watkis.

That was the end of the Complainants case.

As indicated earlier, special efforts were made for the Respondent to be served, to be given the notes of the Complainants' evidence and for him to attend to cross-examine Mr. Hibbert if he so wished, who was therefore requested to attend the hearing from Canada.

On the 15th June 1998, Mr. Brown attended and apologized for not being present on the last occasion and indicated that there was a confusion with his office address, but confirmed that he had received the Notice for the hearing on that day.

He indicated that he had attended to give his side of the story, but he did not know what the Complainant had said.

The Panel indicated that he could take time to read the notes and cross-examine the Reverend, the Complainant who was present, if he so desired.

Mr. Brown requested an opportunity to make a general statement to the effect that he had shown the Complainants a lot, but that he had not yet received the Certificate of Title. He stated to the Panel that he had four (4) lots.

The Panel indicated that he was to read the notes of evidence and decide what he wished to do and whether he wished to proceed or to make any other application.

Mr. Brown read the notes of evidence and stated that he would have to go through the documents and conduct some research. He tried to state that Mr. Hibbert had received a letter of possession and the "land was in his name" which Mr. Hibbert denied.

In answer to the panel, he stated that the subdivision had been approved, but he merely wished the time to read through his documents and to satisfy the Panel after doing so. He indicated to the Panel, that Mr. Watkis was the original owner of the land but that he Mr. Brown had four (4) lots to sell and Ms. Elsie Taylor had three. None of this however, was said on oath and Mr. Brown thereafter requested an adjournment to be able to properly put his case before the committee.

Throughout the following year, the matter had five (5) fixtures in an effort to conclude the same, but for one reason or another, no hearings were conducted.

On the 20th December 1999, when all members of the Panel were present, with Mr. Hibbert in attendance and the Respondent properly served, but not in attendance, the matter was adjourned *cur. adv. vult.*

The Respondent therefore never gave any evidence in this matter.

Mr. Hibbert's case was very straightforward.

He engaged the services of an attorney-at-Law to conduct certain business on his behalf. He did not think it was complicated. He merely wished to purchase a lot at Belgrade Heights. He was shown plans. Mr. Brown was acting on behalf of both the vendor and the purchasers. He received a signed though undated agreement for sale. He paid his moneys over a two (2) year period. He received two (2) Statements of Account, although a balance remained outstanding, which he says was being withheld for the production of

the Certificate of Title. This transaction started in 1992, and in 1999 when the matter was completed, Mr. Hibbert was no further forward in the transaction.

He said, he could not locate Mr. Brown, for either the return of his monies or for the production of the Title for the property. He was unable to get any information from Mr. Brown.

The issues therefore were:

- (1) had Mr. Brown withdrawn from representation of the Complainants without prejudice to their interests;
- (2) had Mr. Brown acted with due expedition and had Mr. Brown provided information having been requested to do so;
- (3) had Mr. Brown acted with inexcusable or deplorable negligence or neglect;
- (4) had Mr. Brown accounted for all monies in his hands to the account of the Complainants when called upon to do so.

THE BURDEN AND STANDARD OF PROOF

The burden of proof is on the Complainants to prove the allegations made against the Respondent. The standard of proof applicable once there is any element of deceit or moral turpitude is a high standard of proof and not a mere balance of probabilities.

In this case, the Complainants allege that they have given sums of \$303,857.78 to the Respondent, without any information as to the progress of the matter and without any accounting of the sums so provided. In this case therefore, the Panel should apply the criminal standard of proof, that is to say proof to the point where the members feel sure that the charges are proved or proved beyond reasonable doubt.

See *Bhandari & Associates [1956] All ER, 742 and 744*

See *Re a Solicitor [1992] 2 All ER, 35*

FINDINGS OF FACT

There are no disputed facts in this case. The Complainants gave oral evidence, supported by documentary evidence and the Respondent chose not to give any evidence at all.

It is therefore not disputed and we find:

- (1) Mr. Brown was engaged by the Complainants Guy and Lois Hibbert to act as Attorney-at-Law in the purchase of Lot 11, Belgrade Heights, Kingston 19 in the Parish of Saint Andrew. In this purchase, Mr. Brown acted for the vendor and the purchaser.
- (2) The Complainants duly paid into the offices of Mr. Brown at various times various sums totalling \$303,857.78.
- (3) The Complainants were issued receipts from the offices of Mr. Brown for the sums so paid two (2) of which indicated that the sums being paid were relative to the purchase of Lot 11 Belgrade Heights.
- (4) With regard to the sums in which receipts were not issued, the Statement of Account issued out of the offices of Mr. Brown indicated the said sums had been received.
- (5) That the Complainants received an undated, faxed copy of an Agreement for Sale in respect of the abovementioned property duly signed by Mr. Watkis.
- (6) That on the 3rd May 1994, Mr. Brown issued a letter to the Complainants indicating inter alia that the Public Works Department had approved the roads, which had been causing the delay of the subject subdivision and requested the balance purchase money to enable him to finish the project which sums he did not receive.
- (7) Either the project has not been finished or has not been started. No credible information was provided in this regard. Suffice it to say, the Complainants have not received registrable transfer and/or the duplicate Certificate of Title for the property, the subject of the purchase.
- (8) Further, to date, no stamped Agreement for Sale has been produced to the

Complainants.

In relation to Canon IV(n) with regard to the withdrawal of employment, we find that the only provision which may have been applicable which would have permitted the withdrawal of representation in these circumstances may have been Canon IV(n)(v) in relation to the provisions dealing with an attorney acting for clients whose interests may be in conflict with each other, or with his own. Canon IV(o) however sets out the procedure to be followed, which includes inter alia, the giving of due notice, submitting all relevant documents to the client allowing time for the client to obtain alternate representation, and by Canon IV(p) to refund promptly any fees paid in advance, as may be fair and reasonable in the circumstances.

The information before the Committee is scant, but what we do know is that the Hibberts seemed ready, willing and able at all times to complete this transaction and did not do so only because the vendor did not appear to be either ready and/or able. Mr. Hibbert's evidence that Mr. Brown advised him not to demand the return of his money but to pursue the transaction in order to get the benefit of the increased price of the property is instructive. That advice may have been advantageous to Mr. Watkis to hold the sale, but not to the Hibberts if the Title to the property was not going to be available in the foreseeable future. Equally, Mr. Watkis may not have wished to have been held to a price the full amount of which he may not receive the benefit of in the foreseeable future as registrable documents may not be available to complete the transaction.

There is no indication that Mr. Brown informed the Hibberts of any or any potential conflict and thereafter obtained their informed consent to proceed. There is also no information that Mr. Brown acted pursuant to the Canons in following the procedure laid out therein. Indeed there is much credible evidence that Mr. Brown appears to have had very little indication of completing the transaction for and on behalf of the Hibberts.

In any event, another issue which arises simpliciter is, was Mr. Brown additionally in breach of his fiduciary duty not to accept inconsistent engagements. In the leading Privy Council case of *Clarke Boyce v Mouet [1994] 1 AC, 428 & 435-H*, it was held that a solicitor may continue to act despite a potential conflict if both clients give informed consent to his acting. As indicated above, this was not done in this case. Mr. Brown did say to the Panel although not an oath, that Mr. Watkis was the original owner but he, Mr. Brown had four (4) lots to sell. If the latter were true then Mr. Brown would have owed an even greater duty of care to Mr. & Mrs. Hibbert as he would have been acting with a fiduciary responsibility in circumstances where he stood to gain a personal benefit. The reason for the informed consent is so that the clients are aware that circumstances may arise, which because of the conflicting interests the attorney may be disabled from disclosing to each party the full knowledge he possesses or for giving certain advice. In the instant case the Hibberts' were entirely unaware of the full facts and/or potential pitfalls, which eventually did arise. To close this transaction, it required the purchaser to serve a notice, making Time of the Essence and then to proceed to act thereon accordingly. Mr. Brown could not do so as this would prejudice the interests of Mr. Watkis, or alternatively, if he owned the property, even worse, would prejudice his own self interest. In this case he acted in certain breach of the duty owed the Hibberts', his clients.

Mr. Brown, having moved from his place of business and it appears residence, and not having provided Mr. Hibbert with any information as to his whereabouts having not contacted him, in spite of the fact that an attorney remained at his office, and who appeared to be familiar with the project, appears to have withdrawn from the representation of the Hibberts without any indication that he was doing so or without having taken any steps to protect their interest, and we so find.

We find that it was unreasonable for the Hibberts to commence a purchase transaction in 1992, and up to 1997 when the complaint was laid, and throughout the hearing, there was no information and/or explanation given the committee, either in writing or orally from Mr.

Brown with regard to the claim that he had withdrawn from representation of the Hibberts.

With regard to the claim at paragraph 4(2) in the Form of Affidavit, there was no evidence that any request was made for, or any expectation of refund of fees paid in advance. There was no evidence of what could be considered fair and reasonable in the circumstances and we so find.

With regard to Canon IV(r), the attorney owes a duty to inform the client of the progress of the transaction which he is handling on the clients' behalf, for if he fails in this duty the client could suffer loss, and in such circumstances it is unlikely that any defence to an action for negligence would succeed. A client needs to know the status of his matter so that he can decide whether he should give further instructions, modify or vary instructions already given or depending on the information received take an entirely different course of action.

Mr. Brown was clearly in breach of this duty as in the evidence disclosed, apart from the obvious difficulty in obtaining information when Mr. Brown's whereabouts were known, the difficulties increased when Mr. Brown left the office at Laws Street, and became worse thereafter when all communication ceased.

Canon IV(r) refers also to acting with due expedition. As the Hibberts first attended on Mr. Brown and duly paid the deposit and signed the Agreement for Sale in 1992, seven years having passed before the complaint was filed, would support the claim that Mr. Brown was in breach of this aspect of Canon IV also.

With regard to Canon IV(s), the obligations placed on an Attorney-at-Law once retained, is to exercise that reasonable care and skill which could be expected from a normally competent and careful practitioner. If one were to set out the obligations in this case which Mr. Brown assumed, once engaged to act on behalf of the Hibberts in the purchase

transaction, in our view those would have been

- (1) to draw up and have executed a proper Agreement for Sale in respect of the property;
- (2) to take such steps as are necessary to ensure that the agreement was binding, and the subject matter available for purchase; and
- (3) to carry out the work with the skill and care which a normally competent practitioner would bring to it.

See Midland Bank Trust Co. Ltd v Hett, Stubbs & Kemp [1979] Ch, 384

In the Canadian case of *Tiffin Holding Limited v Millican 49, DLR (2nd) 216*, the following general obligations with regard to the duty of care and skill owed by the attorney were enunciated, and those were approved by the Supreme Court of Canada *[1967] 60 DLR (2nd)*

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"The obligations of a lawyer are, I think, the following: (1) To be skilful and careful; (2) To advise his client on all matters relevant to his retainer, so far as may be reasonably necessary; (3) To protect the interest of his client; (4) To carry out his instructions by all proper means; (5) To consult with his client on all questions of doubt which do not fall within the express or implied discretion left to him; (6) To keep his client informed to such an extent as may be reasonably necessary, according to the same criteria."

Of course the extent and scope of the duty of care must depend on the particular circumstances of each case.

The issue therefore would be has Mr. Brown exercised that reasonable skill and care that a normal practitioner would. But in order to ascertain if the particular Canon has been breached one must go further and ascertain whether Mr. Brown has shown inexcusable or deplorable negligence or neglect.

We find that the Hibberts having paid sums on deposit from as far back as 1992 and the transactions not having been completed, without any credible information or explanation

from the Respondent, would in our view result in a finding that the Respondent has shown inexcusable or deplorable negligence or neglect, pursuant to Canon IV (s).

With regard to Canon VII(b)(ii) two (2) Statements of Account have been provided to the Complainants, Exhibit 6, which was not up to date and Exhibit 10, which was undated. Mr. Hibbert in giving evidence stated that he expected to receive his Certificate of Title or that his funds would be refunded.

There is evidence that the Hibberts requested return of the moneys but Mr. Brown advised Mr. Hibbert that he should not take back his money but proceed to conclude the transaction.

It appears that Mr. Hibbert elected to go that route, and there is, therefore, no evidence of Mr. Hibbert requesting a refund and not being paid. He was unable to complete the transaction, however, as stated hereinbefore. He also elected to lay the complaint and has not spoken or dealt with Mr. Brown since.

Accordingly, we are not satisfied that a breach of Canon VII(b)(ii) has been committed.

Finally, we wish to state that 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, adopting the dicta of Lord Esher's judgment in *In Re Cooke* [1889] 5 TLR, where the Master of the 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."

CONCLUSIONS

In this case we find that the Complainants have proved their case beyond reasonable doubt as set out herein.

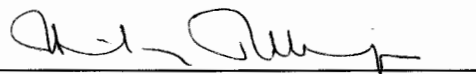
We accept the principles adumbrated above and find that the Respondent is guilty of misconduct alleged in the Affidavit of the Complainants at paragraphs 4 (1), (3) and (4).

We find that these allegations ground the charges made in Canon IV (n) (r) and (s) of the Legal Profession (Canons of Professional Ethics) Rules. In the circumstances we find that the Respondent has acted in breach of s.12(1) of the Legal Profession 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 be suspended from practice for a period of six (6) months commencing from the date of this decision.
- (2) That the Respondent pay the costs of this application to the Complainants, as agreed or taxed.

Dated the 10th day of August 2001



Hilary Phillips, Q.C.



Leila Parker



Lincoln Eatmon