

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

COMPLAINT NO. 249/95

FESTUS AND ELITA HARRIS

COMPLAINANT

AND

NOEL WILLIAMS

RESPONDENT

PANEL: Miss Hilary Phillips, Q.C.
Mr. Crafton Miller
Mr. Bert Samuels

Festus and Elita Harris appearing in person.

Mr. Noel Williams not appearing nor being represented.

This matter commenced in 1997, had three (3) hearing dates, each one year apart, through some foul-up in the machinery of the secretariat. The committee must also apologise too for the late delivery of this decision.

THE PROCEEDINGS

The Affidavits of Service of Mrs. Mervalyn Walker indicating that the parties had been duly served on all occasions before Committee was read into evidence.

The Application against the Respondent was duly filed on the 1st day of April 1996. The Application was stated to be on the ground that matters of fact stated in the Affidavit of the complainants constituted conduct "unbecoming his profession on the part of the said Noel Williams in his capacity as an Attorney-at-Law."

The Affidavit in support of the application was sworn to on the 2nd day of July 1996. In the Affidavit, the Complainant deponed to the fact that they both bought a piece of land situate at Fairy Hill in the Parish of Portland from one Andrew Peart. They stated that they made payments to their lawyer Mr. Noel Williams.

They were to obtain Title for the land, but up until filing of the complaint they had not received Title for the premises. They said that they had paid costs in the sum of \$3,198.75. The Complainants further deposed that Mr. Williams had instructed them to call for the Title in July 1988, but from that time, they had been going to Sherwood Forest to Mr. Williams' office in Port Antonio without success.

As a consequence of the above, the Complainants claimed against Mr. Williams, that:

- (i) he had charged fees that were not fair and reasonable;
- (ii) he had not provided information as to the progress of their business with due expedition although he had been reasonably required to do so;
- (iii) he had not dealt with their business with all due expedition;
- (iv) he had not accounted for all monies in his hands for their account and credit, although he had been reasonably required to do so.

The Complainants therefore charged Mr. Williams, the Respondent with having acted in breach of Canons IV(f),(r) and VII(b)(ii) of the Legal Profession (Canons of Professional Ethics) Rules.

ORAL EVIDENCE OF THE COMPLAINANTS

Mr. Festus Harris gave evidence on his behalf and behalf of his wife. He deposed to the facts that he was a farmer and that they lived in Sheerwood Forest, Kemnay P.A., Portland. He indicated that he came to know Mr. Williams as his Attorney-at-Law, whom he went to see about the purchase of ¼ acre of land which he bought from Mr. Andrew Peart in 1986. He stated that both the Complainants attended on the offices of Mr. Williams and paid monies in two instalments, the first being \$39,000.00, the second \$14,500.00 as the total purchase price of the property was \$55,500.00. As the history unfolded, it appeared that the land was unregistered and Mr. Harris stated that Mr. Williams advised him that it would be easier if he (Mr. Harris) obtained the Title from Mr. Peart as it would be easier for Mr. Harris to get his own Title off the Certificate of Title of Mr. Peart's

once the Certificate of Title had been obtained for Mr. Peart. Mr. Harris stated that Mr. Williams promised to contact both Mr. Harris and his wife when he had obtained the Certificate of Title from Mr. Peart. They indicated that they paid Mr. Williams \$2,198.75 to do the work required of him which sum was duly paid on the 27th May 1986. Thereafter Mr. Harris said they visited Mr. Williams and were told that "he never got through" but when he did, he would send the Certificate of Title. Mr. Williams claimed to have been held up by the Office of the Registrar of Titles, then the Parish Council. Mr. Harris said, he himself had obtained documentation from the Parish Council to give to Mr. Williams which he had done but still without success. In fact Mr. Harris said that Mr. Peart had owed Mr. Williams money in connection with the matter, which Mr. Williams claimed had prevented him from completing the transaction. Mr. Harris therefore paid Mr. Williams on the 20th May 1991 the sum of \$1,000.00 owed to Mr. Williams by Mr. Peart.

Subsequent to having made this payment, although Mr. Williams then promised "all right Mass Festus, I will soon put you through",, nothing happened. Mr. Harris said he had been back to Mr. Williams' office, but had only been told that the Titles office continued to hold him up. Mr. Harris therefore lodged the complaint and has not since communicated with Mr. Williams.

On the second occasion of the hearing of this matter 14th February 1998, the Harris' produced and tendered into evidence their receipts which are set out hereunder:

Exhibit 1

Receipt dated 8th April 1986 for \$175.00 for drafting and typing sale agreement

Exhibit 2

Receipt dated 8th April, 1986 for the amount of \$39,000.00 being part deposit on purchase of land and house situate at Fairy Hill, which was signed by Andrew Peart.

Exhibit 3

Receipt dated 13th January 1987, for the amount of \$15,500.00 by way of cheque in the

amount of \$15,000.00 and \$500.00 cash, representing final payment of purchase of land and house at Fairy Hill, Portland and which was also signed by Andrew Peart.

Exhibit 4

The Agreement for Sale dated the 8th April 1986 between Andrew Peart and the Harris' which sets out the purchase price as \$55,000.00, deposit required and paid as \$40,000.00 and for the balance to be paid on the 1st May 1987 (see Exhibit 3).

Exhibit 5

Receipt dated 27th May 1986 for the sum of \$2,198.75 representing the full cost of transfer of land from Andrew Peart.

On this occasion the 14th February 1998, the Harris' indicated that they were now in possession of the premises at Fairy Hill, and that they resided therein. Thereafter the complainants set out in their oral evidence, the real complaint which was that they had attended on the office of Mr. Williams so many times and had only been told a lot of lies, sometimes it was Spanish Town that was holding up Mr. Williams, sometimes it was the Parish Council. Mr. Williams had not conducted their business with due expedition and had not effected what he had been required to do, which was to obtain Certificate of title for the premises. Further, they stated that he had not accounted to them for all their money.

Mr. Harris stated that he had attended on Mr. Williams' offices on May 20, 1989, March 10, 1990, February 23, 1991, November 22, 1992, August 17, 1993, November 8, 1994, June 27, 1995, December 9, 1996 all to no avail.

In essence that was the evidence of the Complainants.

Mr. Williams did not attend, nor did he give any evidence.

The Complainants case is clear.

They retained the services of Mr. Williams to act on their behalf as a lawyer to effect

purchase of a part of premises Fairy Hill in the Parish of Portland. They paid the full purchase price, the costs of transfer, and a small sum owed by Mr. Peart to Mr. Williams. It was a part of land transfer.

The Harris' produced receipts in respect of the funds paid over by them to Mr. Williams and the Agreement for Sale duly signed by all the parties referable to the transaction. The Complainants also produced a receipt for the costs of the transfer.

We accept their evidence. There was no dispute at the hearing in relation to the facts as Mr. Williams, who was properly served in respect of each occasion when the matter was set for hearing before the Committee did not attend, did not send any representative on his behalf and further provided no response to the committee with regard to any communication sent to him.

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 to the Respondent sums of \$55,500.00 in relation to the purchase price of the property, and \$3,198.75 in respect of costs of transfer, 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 and did 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

With regard to Canons IV(f), (r) and VII(b)(ii)

Re Canon IV(f)

The only evidence submitted with regard to this complaint was the evidence given in the Affidavit by the Complainants, to wit that the Complainants had paid \$3,198.75, and this was later clarified in the oral evidence, which made it clear that that amount was made up of the \$2,198.75 paid to Mr. Williams for costs of transfer which is represented in Exhibit 5, and then there was the oral evidence given in relation to the amount of \$1,000.00 payable to Mr. Williams on Mr. Peart's behalf, representing monies owed to Mr. Williams by Mr. Peart, which payment was supposed to have expedited the process.

Canon IV(f) sets out several factors which are to be taken into account in deciding whether the fees charged by an Attorney-at-law are fair and reasonable.

We find in the circumstances of this case, that the work required to be done (excluding the drafting and typing of the sales agreement (see Exhibit 1 - \$175.00)) was to obtain a part of land transfer, which would have involved a subdivision application, and perhaps ensuring that the land was registered under the Registration of Titles Act, and/or that Mr. Peart was registered on the Certificate of Title, before the transfer could be effected to the Complainants (although the evidence is not clear in this regard, for Mr. Peart signed all the receipts and the Agreement for Sale). As a consequence, for the work required to be effected, the fees appeared to have been fair and reasonable. However the only aspect of the work which was required to be effected which seems to have been effected, was the preparation and production of the Agreement for Sale, which was not included in the sums paid as the costs of transfer, and thus monies have been paid under an agreement for which the only benefit which has been received by the Complainants, is that they have been put in possession but without any apparent plan from the attorney to complete the transaction.

Re Canon VII(b)(ii)

As stated above, aside from providing the Harris' receipts for fund received from them, no other accounting has been produced. There is no Statement of Account, no stamped agreement, no indication how those funds received by Mr. Williams have been held, utilised, whether they have been paid over to Mr. Peart, whether Mr. Williams still has those funds in some interest bearing account for or on behalf of the Complainants. There has been no accounting.

Mr. Williams is therefore also in breach of this Canon.

CONCLUSION

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

We find the Respondent in breach of Canons IV(f), (r) and VII(b)(ii) of the Legal Profession (Canon of Professional Ethics) Rules. Accordingly 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 following sums be paid by way of restitution.
 - (a) Payment by the Respondent of the purchase price of \$55,500.00 plus costs of transfer, paid to him, into an escrow account, nominated by the Complainants or their attorneys-at-Law, to facilitate completion, failing production of proof of payment of these sums to the vendor.
 - (b) In the event that the agreement for sale has not been stamped, payment by the Respondent for any penalty, transfer tax, stamp duty occasioned by such failure of the Respondent to pay the same within the requisite time frame.
 - (c) Payment by the Respondent of any increase in registration fees which


may have occurred subsequent to the date when the registration fees ought reasonably to have been paid.

- (2) \$10,000.00 payment by the Respondent to the General Legal Council by way of fine.
- (3) Costs of \$10,000.00 to be paid to the Complainants by the Respondent.

Dated the 31st day of October, 2001


Hilary Phillips, Q.C.


Craffon S. Miller


Bert Samuels