

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

**COMPLAINT 197/1999**

<b>BETWEEN</b>	<b>BARRINGTON G. ROBINSON</b>	<b>COMPLAINANT</b>
<b>AND</b>	<b>DAHLIA ALLISON B. ALLEN</b>	<b>RESPONDENT</b>
<b>PANEL:</b>	<b>MR. LINCOLN EATMON MR. RICHARD DONALDSON MR. ALLAN S. WOOD</b>	

Date of hearing: 19<sup>th</sup> January 2002

**JUDGMENT:-**

The Complaint in this matter was made on 7<sup>th</sup> December 1999, and arises from an Agreement for Sale whereby the Complainant agreed to sell 8 acres of land at Longwood, in the parish of Saint Elizabeth to Douglas Bromfield and his wife for the price of \$2.3 million.

Initially when the agreement for sale was entered into in 1997, Audrey Heslop-Mendez of the firm, Heslop Bennet Allen & Company acted for the Complainant. In 1998 Mrs. Mendez left the island and conduct of the matter was taken over by the Attorney, Dahlia Allison B. Allen, who was a member of the firm.

The Complaint against The Attorney alleges that:-

- 1) she has acted with inexcusable and deplorable negligence in the performance of her duties.
- 2) she has failed to return the Complainant's file even though he has reasonably requested her to do so.
- 3) she has failed to account to the Complainant for monies in her hands for his account or credit although he has reasonably required her to do so.

The notice of the hearing had been duly served on the Attorney by registered post on 3<sup>rd</sup> December 2001, which was substantiated by Affidavit of Eulalee Steele sworn to on 17<sup>th</sup> January 2002.

The Attorney did not appear at the hearing and there was no explanation for her absence. Having regard to the fact the complaint has been outstanding since December 1999, and in all the circumstances the Panel decided to proceed with the hearing of the Complaint as is permissible by Rule 8 of the 4<sup>th</sup> Schedule of the Legal Profession Act,

In the course of the Complainant's evidence a number of documents were tendered by the Complainant, namely:-

- a) copy of a letter dated 20<sup>th</sup> April 1998, from Dahlia Allen to Robinsons' Enterprises Limited (exhibit 1);
- b) copy of statement of account dated 20<sup>th</sup> April 1998, to the Complainant and signed by the Attorney (exhibit 2);
- c) copy of letter from the Complainant to Audrey Heslop-Mendez and Dahlia Allen dated 14<sup>th</sup> April 1998 (exhibit 3);
- d) copy of letter dated 4<sup>th</sup> May 1998, from Complainant to the Attorney (exhibit 4);
- e) copy of letter from Complainant to the Attorney dated 1<sup>st</sup> February 2001; (exhibit 5);
- f) copy of receipts dated 19<sup>th</sup> June and 15<sup>th</sup> July 1997, issued to the Complainant for the sums of \$55,000.00 and \$19,680.00 respectively (exhibit 6);
- g) copy of letter from the Attorney to Robinsons' Enterprises Limited dated 1<sup>st</sup> March 2000 (exhibit 7) ; and
- h) copy of letter from the Attorney to the Complainant dated 5<sup>th</sup> April 2000 (exhibit 8).

The Complainant's oral testimony was substantiated by the aforesaid documents tendered in evidence. The Complainant's evidence was that he entered into the agreement for sale in 1997, and at that time he had retained the services of Audrey Heslop-Mendez. In February 1998, Mrs. Mendez wrote to the Complainant advising that she would be going to London for 12 months and that contact should be made with the Attorney. Following upon that communication the Complainant met with the Attorney and thereafter he wrote the Attorney requesting a statement of account, by letter to the Attorney dated 14<sup>th</sup> April 1998 (see exhibit 3). By letter dated 20<sup>th</sup> April 1998 he received from the Attorney a statement of account which confirmed that she held a deposit of \$850,000.00 (see exhibits 1 and 2 respectively). In addition to this sum, the Complainant had paid on account of fees and the costs of stamping the agreement \$94,680.00 by three payments of \$20,000.00, \$55,000.00 and \$19,680.00 and receipts were received for the two latter payments (exhibit 6).

Further by letter dated 4<sup>th</sup> May 1998, the Complainant instructed the Attorney to place the deposit being held by her in an interest bearing account with a reputable bank (exhibit 4). The Complainant never received confirmation from the Attorney that she had complied with his instructions.

Eventually, there being no progress with the completion of the sale, by letter to the Attorney dated 18<sup>th</sup> February 2000, the Complainant terminated the Attorney's retainer and instructed the Attorney to forward all files and money being held on his behalf to Paul A. Nembhard, Attorney-at-Law (exhibit 5). In response to those instructions the Complainant received a letter from the Attorney dated 1<sup>st</sup> March 2000 stating that she would be in no position before the next four weeks to peruse his files in order to advise of her final bill as she was involved with a Commission of Enquiry scheduled to commence on 1<sup>st</sup> March 2000 (see exhibit 7). By further letter dated 5<sup>th</sup> April 2000, the Attorney advised the Complainant that due to delay in the Commission of Enquiry she would not be able to peruse his matters by 28<sup>th</sup> April 2000, but that she should be able to revert to him no later than 15<sup>th</sup> May 2000 (see exhibit 8).

Since receiving that letter dated 5<sup>th</sup> April 2000, the Complainant has had no further word from the Attorney; she has not handed over his files or accounted for the money held on his behalf and the agreement for sale has not been completed. The Attorney has provided no further explanation for her failure to account for the money in hand and her failure to hand over the Complainant's files since her letter of 5<sup>th</sup> April 2000, a delay of 20 months. The Complainant also testified that since receipt of the letter dated 5<sup>th</sup> April 2000, he has not been able to find the Attorney, despite every effort to locate her, including visits to her office where he was told that the Attorney is no longer associated with that office and that telephone calls to her home, which were answered by a voice mail message stating that the Attorney was off the Island. The Complainant also stated that by reason of the Attorney's failure to complete the transaction, the purchaser is insisting that the Complainant settle his legal bill amounting to \$41,000.00.

Where serious allegations of professional misconduct are made against an Attorney, it is incumbent that such charges be established beyond reasonable doubt: Bhandarie v Advocates Committee [1965] 3 ALL ER 147; Re a Solicitor [1992] 2 ALL ER 335. Having regard to the aforesaid evidence before us we find that the charges have been made out and that:-

- (a) In breach of Canon IV (s) of the Legal Profession (Canons of Professional Ethics) Rules, the Attorney has acted with inexcusable and deplorable neglect and negligence in the performance of her duties in completing the sale by the Complainant of property known as Longwood, St. Elizabeth.
- (b) that the Attorney held on the Complainant's behalf the sum of \$850,000.00, paid by the purchaser together with legal costs of \$94,680.00, paid by the Complainant, and she has failed to account to the Complainant for those sums in breach of Canon VII (b) of the Legal Profession (Canons of Professional Ethics) Rules.
- (c) Further, that the Attorney has failed to hand over the Complainant's files, papers and money consequent on the termination of her retainer and despite being reasonably required by the Complainant so to do and the Attorney's conduct has generally tended to discredit the profession of which she is a member in breach of Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules. *Maintain*

Having regard to the aforesaid findings, it is clear that the Attorney ought to make restitution to the Complainant in respect of the sums held on the Complainant's behalf, namely, the deposit of \$850,000.00 together with the sums paid by the Complainant on account of the costs which amount to \$94,680.00, making a total \$944,680.00. Further interest ought to be paid on the aforesaid sums from 4<sup>th</sup> May 1998, when the Attorney was instructed by the Complainant to place the fund held by her on an interest bearing bank account. Further having regard to the Attorney's failure to account to the Complainant for the sums held on his behalf and to hand over his files and money upon being required to do so by letter from the Complainant dated 18<sup>th</sup> February 2000, we are of the view that the evidence has established a matter of grave dishonesty and, therefore, in addition to the order for restitution, it would be inappropriate for this Attorney to remain on the Roll as a member of the Legal Profession and in that regard we rely upon and apply the guidelines laid down by sir Thomas Bingham M.R in Bolton v The Law Society (1994) 2 ALL ER 486 at 492 and we also adopt the reasoning contained in the judgment of the Disciplinary Committee in Complaint 94/2000 Grant v Nancy Tulloch-Darby delivered on 29<sup>th</sup> November 2001 and particularly at page 15 where it is stated:-


"It is implicit from the foregoing and from the very provisions of the Legal Profession Act, that the Disciplinary Committee, and its parent body, the General Legal Council have been entrusted with their powers to act in the interests of the public, and, that it is by so acting that the best interests of the legal profession will in turn also be served, for thereby public confidence in the integrity of the profession is maintained. We are satisfied that public confidence in the integrity of the members of the legal profession will not be maintained without the assurance that there will be no possibility of the repetition of the misconduct and the injury perpetrated by this Attorney.

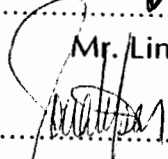
Parliament, by promulgating the Legal Profession Act, thereby delegated the jurisdiction to discipline members of the profession who are found guilty of acts of professional misconduct to persons who are also members of the same profession. This is an expression of utmost trust and confidence that there are persons within the legal profession who are prepared to act faithfully in the protection of innocent members of the public..."

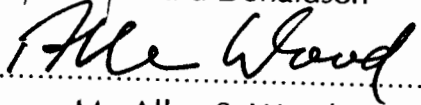
We accordingly order as follows:-

- 1) Pursuant to section 12 (4) (a) of the Legal Profession Act, the name of Dahlia Allison B. Allen is struck off the Roll of attorneys-at-law entitled to practice in the several Courts in the Island of Jamaica .
- 2) Pursuant to section 12 (4) (c) of the Legal Profession Act, Dahlia Allison B. Allen is to pay to the Complainant by way of restitution the sum of \$944,680.00 with interest thereon at the rate of 12 percent per annum from 4<sup>th</sup> May 1998 until the date of payment.
- 3) Costs in the sum of \$50,000.00 are to be paid to the Complainant by Dahlia Allison B. Allen

Dated the *9<sup>th</sup>* day of *March*, 2002

  
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Mr. Lincoln Eatmon

  
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Mr. Richard Donaldson

  
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Mr. Allan S. Wood