

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

Complaint No. 45/2000

Hearing on the 9th day of February 2002

In the Court Room of the Supreme Court

NORMA ENNIS

COMPLAINANT

AND

DONALD BERNARD

RESPONDENT

PANEL: RICHARD DONALDSON
 BERYL ENNIS
 LEILA PARKER-ROBINSON

Norma Ennis appearing in person on her own behalf

No one appearing or representing the Respondent.

The Respondent was served at 4 Tower Street, Kingston on the 9th day of
January 2002.

THE PROCEEDINGS

The application against the Defendant was filed on the 22nd day of December
1999.

The application spoke to the fact that the matters stated in the affidavit of the complainant
constituted conduct unbecoming of his profession on the part of the said Donald Bernard
and in his capacity as an Attorney-at-Law.

The affidavit in support of the application was sworn to on the 22nd day of
December 1999 and filed with the application. In the affidavit the complainant deponed
to the fact that Mr Donald Bernard is her lawyer and in 1992 she engaged his services as
the Attorney having the carriage of sale for property she owned at Airy Castle in the
parish of St. Andrew. At the completion of the sale, he furnished her with a Statement of
Account which showed an amount of over \$119,000.00 due to her. She however did not

take all the sums but left \$91,000.00 to be placed on investment so that interest could accrue thereon for her benefit.

In the affidavit she stated she was in some financial difficulty, requested the principal and interest from the Attorney but she has not yet received same despite the fact that she has made her request twice by mail, several times by telephone, and she has attended at his office the last time was on the 18th January 1999.

As a consequence she lodged the letter of complaint with the General Legal Council and swore to the fact that

- (1) he has not provided her with all information as to the progress of her business with due expectation although she has reasonably required him so to do.
- (ii) he has acted with inexcusable or deplorable negligence in the performance of his duties
- (iii) he has not accounted to her for all monies in his hands for her account or credit although she has reasonably required him so to do.

The Complainant therefore charged Mr. Bernard

with having acted in breach of Canons (iv) (r) not dealing with his client's business with all due expedition and not providing her with all the information as to the progress or otherwise of her business as he would be reasonably required so to do and iv(s) in the performance of his duties acting with inexcusable and deplorable negligence.

of the Legal Profession (Canons of Professional Ethics) Rules

ORAL EVIDENCE OF THE COMPLAINANT

The oral evidence of Ms Ennis was succinct and clear. She indicated that she was a Housewife and engaged the services of Donald Bernard in 1997 to act for her in the sale of property. She reiterated the facts as set out in the affidavit. She had left the proceeds from the sale as an investment the interest from which she could get for her use. She got this for a while but it ceased. As a consequence of this she visited his office at 58 Laws Street where she got certain information. Mr Bernard was there then. She demanded the

interest from her savings and one half of whatever money he had for her. He invited her to return on Tuesday the following week when he committed himself to leave "my money at his office for me". She attended at the office which was open but the Attorney was not there neither was there any money left for her.

She gave evidence that she saw the Attorney subsequently and he said business is slow, he is not collecting but as soon as he got money he would call her. She has received no call. She telephones his Secretary but she had nothing to tell her. She has not seen him since; she has not heard from him. He is indebted to her in the sum of \$91,000.00 plus interest. That was the end of the Complainant's case.

The Panel was satisfied that on the 9th January 2002 the Attorney was served with the Notice to attend the hearing of the Disciplinary Committee on the 9th February 2002. He did not attend he was not represented and there was no apology for his absence. The hearing was therefor concluded.

SUMMARY

Miss Ennis' case was short and straight forward. Mr Donald Bernard was her Attorney at Law and acted for her in other matters ending with the sale of property at Airy Castle. She took a part of the proceeds of Sale and left about \$90,000.00 to be invested by her Attorney at Law the interest from which she would withdraw from time to time. But then came a time when the complainant was in some financial difficulty required all her money principal and interest but to date despite making all efforts possible, she has not received same.

The issues therefore were

- i) had Mr Bernard provided her with all information as to the progress of her business with due expedition as to the progress of her business although she had reasonably required him so to do.
- ii) Had he acted with inexcusable or deplorable negligence in the performance of his duties
- iii) Had he accounted to the Complainant's for all monies in his hands for the Complainant account or credit although he had reasonably been required to do so.

FINDINGS OF FACT

There are no disputed facts in this case we therefore find.

- i) Mr. Bernard was engaged to act as an Attorney-at-Law having the Carriage of Sale in respect to property owned by the Complainant at Airy Castle, St. Thomas.
- ii) That the property was sold and Mr. Donald Bernard received the proceeds of sale
- iii) That the Complainant received a part thereof and left the other part approximately \$90,000.00 to be invested.
- iv) That to date the Complainant has not received the balance of the amount due her and the Attorney has not accounted to her for all the monies in his hands.

We find that these allegations ground the charges made in Canon iv (n) (r) and ~~(s)~~ v2 (b)(ii) of the Legal Profession (Canon 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 Act we order

- (1) that the Respondent be struck off the Roll of Attorneys-at-Law commencing from the date of this decision.
- (2) that the respondent pay the costs of this application to the complainant as agreed or taxed.

(3) *that there should be payment by the Respondent to the applicant of the amount of \$90,000.00 plus interest as agreed by way of realisation.*
Dated the 22nd day of February 2003

[Signature]

[Signature]

ca. Paul
