

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

COMPLAINT NO. 79/2002

IN THE MATTER of LORNA JOHNSON,
the Complainant and DERRICK
DARBY, an Attorney-at-Law

A N D

IN THE MATTER of the Legal
Profession Act.

Before:

Miss Norma Linton, Q.C.
Mrs. Leila Parker-Robinson
Mr. David Batts

1. This matter came on for hearing on the 11th October, 2003. The complainant, Lorna Johnson was present but there was no answer from Mr. Derrick Darby, the Attorney-at-Law.
2. The panel satisfied itself that Mr. Derrick Darby had been properly served in accordance with the Fourth Schedule of the Legal Profession Act.
3. Mrs. Lorna Johnson then gave sworn evidence. She deponed that she consulted Mr. Derrick Darby in 2001 to act as her attorney in the sale of two (2) properties on behalf of herself and her husband, Mr. Garfield Johnson.
4. The sale of one of the properties, Lot 551 4th Trout Way, Braeton, St. Catherine was completed in March 2002 and Mr. Darby told her he had received the purchase price of \$1,710,000.00. He told her he was preparing the accounts. One week later on the 6th March, 2003 he told her he could not pay her the cheque until the title was transferred. A week later he told her to attend his office for the cheque, she said his office was by Consumers Plaza. He told her he was in "transition", by this we understood her to mean removal, and the cheque was in safekeeping. He told her to return at 3:00 o'clock and when she did his secretary said he had left for the day. On the following Monday she attended his office and he still did not let her have the cheque. He told her to return the following day.
On that Tuesday he called her at home and said that the cheque had been

lodged to his account in error. He admitted that the cheque had been made payable to Lorna Johnson. He promised to let her have a Manager's cheque and did not. She therefore went to the Constant Spring Police Station and complained to Inspector Morris. Mrs. Johnson also contacted Mr. Keith Smith the lawyer for the purchaser who handed her a copy of the cheque which had been sent to Mr. Darby and which was made payable to her. Mrs. Johnson says she took that copy cheque to the bank which showed her a copy of the lodged cheque which had been endorsed with her name. Mrs. Johnson stated that she had not signed that cheque.

She says she then went to the CIBC bank and the manager telephoned Mr. Darby. She then got two (2) cheques from Mr. Darby to cover the amount.

5. No money is now owed from Mr. Darby on that transaction.
6. The other property given to Mr. Darby for sale was 705 6 Marlin Way, Braeton, St. Catherine. Mrs. Johnson's name was not on that title only her husband's name. Mr. Darby collected the deposit of \$400,000.00.

In the course of the transaction the Johnsons changed lawyers and went to Mrs. Vendryes. Mr. Darby has not paid over the entire deposit to Mrs. Vendryes. The balance due is \$98,260.00.

7. The complainant applied to rely upon the Affidavit of Collen Vendryes. This was tendered and admitted as Exhibit 1. This Affidavit supported the allegations in respect of 705 Marlin Way, Braeton.
8. Such was the evidence from the complainant.
9. This committee bears in mind the fact that the attorney, Mr. Derrick Darby is absent. The committee bears in mind the duty on a complainant in these proceedings to prove these serious allegations beyond a reasonable doubt, we must at the end of the day feel sure, *Bhadarie v Advocates Committee [1956] 3 ALL 147* and *Re A Solicitor [1992] 2 ALL ER 335*.
10. The committee saw and observed the demeanour of Mrs. Johnson. Her certainty about time periods and incidents and their significance impressed us and we found her to be a witness of truth. The absence of documentary support, e.g. evidence of the copy cheque did not affect our acceptance of her evidence given the impression she made. Similarly, the Affidavit of Miss Vendryes although supportive of the complainant's evidence was not definitive or necessary as the committee as indicated before accepted Mrs. Johnson as a witness of truth.

11. We therefore find as follows:-

- (a) The attorney, Derrick Darby in respect of the sale of Lot 551 4 Trout Way collected a cheque made payable to the complainant and which was endorsed with a signature purporting to be that of the complainant. That cheque was lodged to Mr. Darby's account. He failed to pay same over to her. The complainant contacted the police and his bank before he repaid the money in two (2) cheques.
- (b) In respect of Lot 705 Marlin Way, Mr. Darby has failed to pay over the full deposit received although requested to do so. He has not accounted to the new attorney who was appointed.
- (c) There is no reason in law or fact to justify the mixing of funds or the failure and delay in paying over funds.

12. It is the considered view of this committee that Mr. Derrick Darby has acted with inexcusable or deplorable negligence in the performance of his duties, neither has he accounted to the client for the money in his hands although reasonably required so to do. The Attorney has also acted in breach of Canon 1(b) in that he has failed to maintain the honour and dignity of the profession and his behaviour is such as to tend to discredit the profession.

- 13. (a) The committee is of the unanimous opinion that the attorney should be struck from the roll of attorneys entitled to practice in the several courts of Jamaica..
- (b) The committee also orders that the attorney by way of Restitution pay to the complainant or her husband the sum of \$98,260.00 with interest thereon at a rate of 12% per annum.
- (c) Costs are awarded to the complainant in the amount of \$25,000.00

6 - Nov. 03

Norma Linton

NORMA LINTON

Leila Parker

LEILA PARKER

David G. Batts

DAVID G. BATTS

October 21, 2003