

Given to Ms Walker
For meeting 28.2.01

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

COMPLAINT NO 148/2000

BETWEEN THE NATIONAL HOUSING TRUST COMPLAINANT

AND AUDREY HESLOP MENDEZ 1ST RESPONDENT

AND DAHLIA ALISON ALLEN 2ND RESPONDENT

PANEL PAMELA BENKA-COKER Q.C.
 ALLAN WOOD
 DAVID BATTS.

Persons present at the hearing: Anne Marie Smith instructed by Grant Stewart Phillips & Co. for the complainant, and on the 8th February 03 and 9th October 03 Denise Kitson.

John Graham for the respondent Audrey Heslop

Benita Chin-Witness for the complainant

Judith Larmond Henry-Witness for the complainant

The Respondent Dahlia Allison –Allen did not appear at the hearings nor was she represented. The Respondent Audrey Heslop-Mendez did not appear in person.

Dates of hearing 16th March 02, 8th February 03, 9th October 03.

THE COMPLAINT: The National Housing Trust (hereinafter referred to as the complainant) is a statutory Corporation with offices at 4 Park Boulevard, Kingston 5. The attorneys-at-law Audrey Heslop-Mendez and Dahlia Allison-Allen (hereinafter referred to as the respondents) were at all material times engaged in practice as attorneys-at law with offices at 14-16 Duke Street in the parish of Kingston. This practice was by way of a law partnership and was known as Allen, Heslop & Co. The respondent attorneys-at –law will hereinafter be referred to as Heslop-Mendez and Allen respectively.

Allen and her husband Garfield Allen were joint owners of property known as 11 Barnes Drive, Ensom City, Spanish Town, in the parish of St. Catherine and registered at Volume 1071 Folio 918 of the Register Book of

Titles. The said registered land was subject to mortgage No. 913452 dated the 11th January 1996. The mortgage loan was in the amount of \$1,200,000.00 and the complainant was the mortgagee. The complainant had the duplicate certificate of title registered at Volume 1071 Folio 918 in its possession.

Allen, and Garfield Allen, agreed to sell the subject property to one Doreen Williams. To facilitate completion of the sale, the firm of Allen, Heslop & Co, in or around November 1998, secured possession of the said duplicate certificate of title from the complainant and discharge of mortgage No. 913452 by undertaking to pay the sum due under the mortgage, on completion, and not to part with or deal with the certificate of title in any way prejudicial to the complainant's interest. This undertaking was signed by Heslop-Mendez.

As a consequence of this request, and the specific undertaking given by the firm of Allen, Heslop & Co., the complainant forwarded the said duplicate certificate of title and executed Discharge of Mortgage to the said firm of attorneys on the 2nd day of December 1998. On the 27th August 1999, the complainant's mortgage over the said property was discharged and the property transferred to the purchaser Doreen Williams at a price of \$3,000,000.00.

The firm of attorneys failed to satisfy the undertaking, and the complainant's mortgage was not settled from the proceeds of sale. Several written demands by the complainant have failed to secure the payment of the sum due under the mortgage, or any part of it. The complainant has lost the security it had under the mortgage, and has not been repaid the sums due.

As a consequence of the breach of the undertaking by Heslop-Mendez and Allen, the complainant instituted these proceedings by way of complaint No. 148/2000.

The application and the affidavit in support are in substance the history outlined in the within judgment. An important aspect of the affidavit are the alleged breaches of the Legal Profession (Canons of Professional Ethics) Rules. They are listed as Canon 1(b) V1 (d). Canon 1(b) reads as follows, " An attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may discredit the profession."

Canon VI(d) states " An attorney shall not give a professional undertaking which he cannot fulfill, and shall fulfill every undertaking which he gives." The complaint was filed in November 0f 2000 and hearing was commenced in March 2002.

THE EVIDENCE. Neither Allen, nor Heslop Mendez was present at the hearing of this complaint. Heslop- Mendez was represented by John Graham. Prior to the commencement of the proceedings the panel satisfied itself that both Allen and Heslop-Mendez had been properly served with the Notice of Hearing as required by Rule 8 of the Fourth Schedule to the Legal Profession Act, and determined that in the circumstances, it was appropriate to proceed in their absence.

Two witnesses gave evidence on behalf of the complainant. They were Benita Chin and Judith Larmond- Henry. Benita Chin stated that she was Legal Counsel at the offices of the complainant. By way of letter dated the 31st March 1998, the firm of Heslop, Bennett, Allen & Co. informed the complainant that they acted for the vendors Garfield and Dahlia Allen in relation to the sale of the premises 11 Barnes Drive. Attached to this letter was an authority from Allen, and Garfield Allen giving the complainant the authority to forward the statement of account to their attorney Audrey Heslop-Mendez of the firm of Heslop, Bennett Allen& Co. This letter and the authorization were admitted as exhibit 1A.

The next letter that she received was the undated letter from Heslop-Mendez requesting from the complainant the duplicate certificate of title and a Discharge of Mortgage. To this letter was attached a second authorization from Garfield Allen and Dahlia Allen authorizing the complainant to deliver the duplicate certificate of title to the premises to their attorneys-at-law, Allen, Heslop & Co.

It is important to record the contents of the undated letter in so far as they impact directly on the allegations of professional misconduct. In the second paragraph of the letter written on the letterhead of Allen, Heslop & Co. the following is stated:

" We hereby give you our professional undertaking to pay you on completion the sum of one million four hundred and ninety three thousand two hundred and eighty nine dollars fifty eight cents (\$1,493,289.58) with interest. This represents settlement of the Mortgage Loan in exchange for

duplicate certificate of title registered at Volume 1071 Folio 918 and discharge of mortgage.

We also give you our undertaking not to part with or deal with same in any way prejudicial to your interest.”

This letter was signed by Heslop-Mendez. This letter was exhibited as 1B. The next letter from Allen Heslop & Co. is dated the 4th November 1998, and is signed by Heslop- Mendez. This was produced in evidence as exhibit 1C. This letter gives a second professional undertaking to “ settle full balance outstanding upon completion and not to part or deal with the same in any way prejudicial to your interest” and again requests the duplicate certificate of title and the discharge of mortgage. There is a letter of the 30th November 1998 also signed by Heslop-Mendez exhibited as 1D.

By letter dated the 2nd December 1998, the complainant forwarded the said duplicate certificate of title to the firm of Allen, Heslop & Co. This letter is exhibit 1E. This title was in fact delivered to one Susan Ellis on the authority of the firm of Allen Heslop-Mendez and Co on the 8th December 1998. The written authority is exhibit 1F.

By letter dated the 24th March 1999, the complainant wrote to the firm enquiring when the money in settlement of the loan would be received. This is exhibit 1G. By way of letter dated the 6th October 1999, exhibit 1H, the complainant again asked for the cheque to liquidate the mortgage loan, and told the firm that it had conducted a search of the certificate of title at the Office of the Registrar of Titles and noticed that the title had been transferred to Doreen Williams.

This is the substance of evidence of Benita Chin who then ceased to have conduct of the matter. She was not cross-examined by John Graham. During the giving of her evidence there had been interjections from John Graham who advised that the crux of the case of Heslop-Mendez was that she had not signed the documents requesting the title and giving the undertaking. This is now of very little moment evidentially, as Heslop-Mendez did not come to the hearing to give evidence to support that contention.

Judith Larmond-Henry then gave evidence. She stated that she was the company secretary of the complainant with responsibility for operations in the legal department. She said that the problem came to her attention in March 2000 and as a consequence she wrote to the firm by letter dated the

24th March 2000. This letter is exhibit 2A. The complainant demands the payment of the sum of \$1,901,090.21 which was due as of the 31st March 2000. The complainant also observed that the property was transferred 8 months after the firm had given its undertaking to it to pay the sum due, and not do deal with the title in any way prejudicial to the interests of the complainant.

There was no response to this letter by Heslop-Mendez to whom it had been directed. She further said that in March or April of 2000 she spoke on the telephone to Allen who identified herself as such. Allen said she had had problems with her firm, and she would seek to make good the funds. An arrangement was made for Allen to come in and speak to the manager, the director, and the witness herself. At the end of March beginning of April of that year Allen came in for the meeting with the representatives of the complainant.

Allen's husband accompanied her. She said at this meeting that she had no funds in hand, she had problems with the firm's accounting, the funds were compromised and she had a difficulty. She was also told that this was a criminal matter and that it would be referred to the General Legal Council and the Fraud Squad. Allen asked for more time. The witness also indicated that the complainant had sued the firm. The Writ and statement of claim were exhibited as 3, suit No. CLN 234/2000.

By letter dated 15th April 2000 and exhibited as 2B, Allen and her husband wrote to the complainant seeking to give an explanation for the inability to settle the sum owed to it, and also asking for time to pay. In this letter Allen, and her husband admit that "the funds the subject of the undertaking were compromised". The letter was submitted to the Board on the 15th April 2000 and was rejected. The decision of the Board was communicated to Allen on the 6th June 2000, see exhibit 2C. By letter dated June 20th 2000, the complainant wrote to Allen threatening to report her to the General Legal Council. This is exhibited as 2B. A formal complaint to the GLC was filed on the 29th November 2000.

The witness further stated that the title to the subject premises was transferred on the 27th August 1999, and copy of the duplicate certificate of title was admitted in evidence as 4. The complainant heard nothing more from Heslop-Mendez, nor Allen. The matter was also reported to the fraud squad.

The cross-examination was brief. The witness said that no notes had been made of the meeting with Allen and her husband. Allen indicated at the meeting that Heslop-Mendez had been away, and that Heslop-Mendez had contributed to some of the problems. The witness did telephone Heslop-Mendez in the United Kingdom, she indicated that she knew nothing about the matter, that she was away at the time, but she planned to come to Jamaica to research her files, and then she would let the complainant know. In answer to further cross-examination, the witness said that she saw the firm as the responsible entity, and that Heslop-Mendez was a partner, and no steps had been taken to dissolve the firm. She said that she questioned the authenticity of the signature of Heslop-Mendez, not the undertaking itself. The sub-text of the cross-examination appears to have been a suggestion that Heslop-Mendez did not sign the undertaking, and she was not in Jamaica with the firm when the business was being transacted with the complainant. This was never expressly put to the witness.

On the 8th February 03 John Graham sought to have admitted in evidence an affidavit deposed to by Heslop-Mendez, as he then advised the panel that Heslop-Mendez would not be attending the hearing as her status in the United Kingdom did not permit it. Denise Kitson objected to the affidavit being produced inter alia on the basis that the complainant desired that she be cross-examined.

After giving the application due consideration, and after an examination of rule 10, of the Legal Profession(Disciplinary Proceedings) Rules, by majority decision, the Committee in exercise of its discretion declined to permit the production of the affidavit of Heslop Mendez into evidence.

On application of John Graham, the hearing of the complaint was adjourned to give Heslop Mendez one last opportunity to attend, She never did. Denise Kitson submitted written closing submissions; John Graham made no submissions, as he was left in the invidious position of having no evidence on which to rely on his client's behalf. The above is a fair account of the evidence adduced in this complaint.

BURDEN AND STANDARD OF PROOF. It is trite law, but which always bears repeating, that the burden of proof is on the complainant. The degree or standard of proof necessary in these complaints involving moral turpitude is that of the criminal standard, namely "beyond reasonable

doubt". That principle too has been confirmed in many decisions of the Disciplinary Committee with authorities cited.

THE LAW OF PARTNERSHIPS. It is our opinion that we should state the principles of law as they relate to partnerships, partners and disciplinary proceedings. It is the law that disciplinary proceedings may be brought against a firm of attorneys-at law. See section 2 in the Legal Profession (Canons of Professional Ethics) Rules of December 1978 which states as follows: " In these rules unless the context otherwise requires:-
" Attorney" includes a "firm" of attorneys."

Further, under the Partnership (Limited) Act section 3 it states, " such partnerships may consist of one or more persons, who shall be general partners, subject to the same liabilities and charges and shall be entitled to the same benefits and advantages as co-partners are now by law liable to, chargeable with, and entitled to". It follows therefore, that the disciplinary proceedings could have been instituted against the legal firm of Allen, Heslop & Co. In any event, as partners in the firm, both Heslop- Mendez and Allen would be liable jointly and severally for all the acts done within the scope of the legitimate operations of the firm.

We find it necessary to state these principles, because some of the documentation indicates, that at some point in the saga of events, both Heslop- Mendez and Allen were attempting to deny liability on the basis of each seeking to blame the other, or to behave as if what was done by one did not implicate the other. It is the opinion of the panel, that on the evidence, both Heslop-Mendez and Allen are personally implicated in the conduct of the transaction, and are also implicated as the partners in the firm at the time that agreement for sale was entered into, and the undertakings given to the complainant.

EVALUATION OF THE EVIDENCE: The Committee will therefore evaluate the evidence on the basis of the burden and standard of proof as adumbrated. This is indeed a case that could be largely decided on the basis of the documentary evidence, but we wish to state that both witnesses for the complainant gave credible oral evidence, which was substantiated in material particulars by the documentary evidence. Neither Heslop-Mendez, nor Allen appeared at the hearings although they had been properly notified of them.

There was no evidence on their behalf to counter and refute the evidence for the complainant. We therefore have to look at the evidence before us in order to determine if the charges as alleged have been proved to the required standard in law. The Committee is of the considered opinion that the alleged charges of professional misconduct against Heslop-Mendez and Allen have been proved to the required standard of proof, that is beyond reasonable doubt.

The Committee therefore makes the following findings of fact, and mixed law and fact, in keeping with section 15 of the Legal Profession Act.

- 1 Heslop-Mendez and Allen were at all material times partners in the law firm of Allen, Heslop & Co.
- 2 Allen, and Garfield Allen were the registered proprietors of land registered at Volume 1071 Folio 918 of the Register Book of Titles.
- 3 This land was subject to mortgage No. 913452 dated the 11th January 1996 in favour of the complainant.
- 4 In the year 1998, Allen and Garfield Allen entered into an agreement to sell the said land subject to the mortgage.
- 5 The firm of Allen, Heslop & Co. by an undated letter under the signature of Heslop-Mendez, requested the duplicate certificate of title and discharge of mortgage No. 913452, on their professional undertaking to pay to the complainant on completion of the sale the sum of \$1,493,289.58 along with the interest due.
- 6 Attached to the letter referred to above, was written authority signed by Allen and Garfield Allen, authorizing the complainant to deliver the duplicate certificate of title of the subject premise to the firm of Allen, Heslop & Co.
- 7 The firm of Allen, Heslop & Co made a second request to the complainant for the duplicate certificate of title and discharge of mortgage on the firms undertaking not to deal with the title in any way prejudicial to the complainant's interest. This was by way of letter dated the 4th November 1998 under the signature of Heslop-Mendez.
- 8 The complainant sent the duplicate certificate of title and discharge of mortgage to the firm of Allen, Heslop & Co. under cover of letter dated the 7th December 1998 and was received in the offices of Allen, Heslop & Co on the 8th December 1998.

- 9 The premises were transferred to the purchaser Doreen Williams on the 27th August 1999, after the discharge of mortgage No. 913452 in favour of the complainant.
- 10 The complainant made various efforts to collect the sum outstanding under the mortgage.
- 11 The complainant through its agent Judith Larmond-Henry, telephoned Heslop- Mendez in the United Kingdom and made enquiries about the sum due to it.
- 12 She said she did not know anything about the matter but that she would be coming to Jamaica to deal with it.
- 13 Judith Larmond- Henry spoke to Allen on the telephone in or around March or April 2000.
- 14 Allen said that she had had problems with the firm but she would make good the funds.
- 15 Allen came to a meeting at the offices of the complainant, and in that meeting, admitted that she was unable to pay the sum due to the complainant as she had problems with the firms accounting and that the funds had been compromised.
- 16 Allen also admits that funds due to the complainant were compromised in letter dated the 15th April 2000 and asked for time to pay.
- 17 The complainant did not agree to give time to pay.
- 18 The complainant has never received the sum due to it either from Allen, Heslop & Co, Heslop-Mendez or Allen.
- 19 Heslop-Mendez is in breach of her undertaking given to the complainant, in that she parted with the title and used it in a manner prejudicial to the interests of the complainant by securing the discharge of the mortgage without paying over the sum due to the complainant on the completion of the sale.
- 20 Allen is in breach of the undertaking given by Heslop-Mendez in that she was a partner in the firm of Allen, Heslop & Co.
- 21 Further, Allen was personally involved in the transaction and must have been aware when the sale was completed, she signed the Transfer, and yet she made no effort to satisfy her loan obligations under the mortgage.
- 22 Neither Heslop-Mendez nor Allen ever initiated contact with the complainant with a view to satisfying their professional undertaking.

CONCLUSIONS: In the light of our findings, we are of the view that Heslop- Mendez and Allen are guilty of Professional misconduct in that they

have both breached the following canons under the Legal Profession (Canons of Professional Ethics) Rules. They are in breach of Canons of Canons VI(d) and I(b). They failed to honour their professional undertaking given to the complainant, and by their conduct they have undoubtedly brought the legal profession into disrepute.

The conduct in which Heslop-Mendez and Allen have indulged is dishonest, and grossly dishonourable. Such conduct could destroy the trust that is necessary to the proper functioning of the system of conveyancing in Jamaica; it taints the reputation of the entire legal profession.

SANCTION: the Committee is of the unanimous opinion that the only appropriate sanction is for the names of Audrey Heslop-Mendez and Dahlia Allison-Allen be struck from the Roll of Attorneys-at-Law entitled to practice in the island of Jamaica. We are aware that both these attorneys-at-law have already been struck from the Roll of Attorneys-at-Law, both of them having been found guilty of prior acts of professional misconduct, but this is to ensure that these attorneys are not permitted to practice in Jamaica again without seeking the approval of the General Legal Council.

The Committee also orders that Allen, & Heslop-Mendez pay by way of restitution the sum of \$1,493,289.58 with interest at the rate of 12% from the 27th August 1999 until payment. The committee makes this order, being well aware of the fact that there are concurrent proceedings by the complainant in the Supreme Court seeking to recover the sum due under the mortgage, which was discharged.

These orders are made pursuant to section 12(4)(a) and 12(4)(c) of the Legal Profession Act. *Costs of \$50,000 are to be paid by the Respondents to the Complainant.*

Dated the 6th day of Dec 03


PAMELA E BENKA-COKER Q.C.


ALLAN WOOD


DAVID BATTS.