

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

COMPLAINT No. 65/2003

BETWEEN HORTENSE STEWART THE COMPLAINANT

AND JONATHAN VERNON RICKETTS THE ATTORNEY

THE PANEL: ALLAN S. WOOD, MERLIN BASSIE, LILIEETH DEACON

MR. MANLEY NICHOLSON - appearing for the Complainant

The Attorney not appearing.

**Dates of hearing: 16th April 2005;
 17th & 25th June 2005;
 27th July 2005**

1. The hearing of this Complaint commenced on 16th April 2005. On that date Mr. Akin Adaramaja appeared for the Attorney, who was not present, and sought an adjournment on the basis of a medical certificate that the Attorney was suffering from hypertension. No prior notification of the application for an adjournment had been given to the Complainant or to the Complainant's attorney, Mr. Manley Nicholson with the result that the Complainant, who resides in Canada, had incurred the expense of travelling to Jamaica to give evidence at the hearing. Having considered the circumstances, the Panel refused the application and commenced hearing the Complaint on 16th April 2005, to take the Complainant's evidence, whereupon the matter was adjourned to give the Attorney the opportunity to answer the Complaint.

2. On 16th June 2005, at the next hearing of the Complaint, Miss Debbie Ann Robinson appeared for the Attorney who was not present. Miss Robinson sought an adjournment on the basis that the Attorney was involved in a Circuit Court matter in Westmoreland and could not attend. An adjournment was granted to the 25th June 2005, on which date there was no appearance by the Attorney, or any counsel on his behalf. Instead of proceeding on that date, in order to permit the Attorney a further opportunity to answer the Complaint, the hearing was adjourned to 25th July 2005. On that date there was again no appearance by the Attorney or Counsel on his behalf.

3. The complaint against the Attorney is that: -
 - i. He has not provided the Complainant with all information as to the progress of her business with due expedition, although she has reasonably required him to do so;
 - ii. He has not dealt with the Complainant's business with all due expedition;
 - iii. He has acted with inexcusable or deplorable negligence in the performance of his duties.

4. The evidence of the Complainant was that in September 1999, she engaged the Attorney to act on her behalf in the sale of three properties, namely a property registered at Volume 1257 Folio 614 on which property there was a dwelling house, an adjoining parcel of land registered at Volume 1014 Folio 250, and a third parcel of land registered at Volume 1058 Folio 656. The problem which arose concerned the property registered at Volume 1257 Folio 614 and the adjoining parcel of land, Volume 1014 Folio 250, which was sold to different purchasers.

5. In March 2000, an agreement for sale was entered into to sell the property on which there was a dwelling house (Volume 1257 Folio 614) to Errol Powell and Jennifer Powell for the sum of \$1.8 million and a copy of the agreement dated 30th ^{March} ~~May~~ 2000 was tendered in evidence as Exhibit "C". The agreement stipulated that a deposit of \$270,000.00 should be paid by the purchasers on signing. The Agreement also contained a special condition 12 that a 5% commission plus GCT was payable by the vendor to New World Realtors Limited upon completion. The agreement was also subject to the purchasers obtaining a mortgage commitment within fourteen (14) days. ms
PW
LW

6. The Complainant's evidence was that the Attorney assured her that the deposit had been paid by the Purchasers in March 2000. However, more than 4 years later, in July 2004 after the filing of the Complaint, she received from the Attorney copies of three receipts and a cheque stub, which were all tendered in evidence as exhibit 11. These documents revealed that the deposit was paid in instalments, with the last such payment being made on 4th July 2002, that is to say more than 2 years after the Agreement had been entered into. The receipts were as follows: firstly a receipt evidencing a payment to the Attorney from the purchasers in the sum of \$60,000.00 paid on 3rd May 2001, secondly a receipt evidencing a payment to the Attorney from the purchasers in the sum of \$70,000.00 paid on 21st September 2001, thirdly a receipt evidencing a further payment to the Attorney from the purchasers in the sum of \$180,000.00 paid on 4th July 2002. Presumably the purchasers had also made a payment of \$90,000.00 in 2000 as the copy of the cheque stub reflected that a payment of \$90,000.00 had been made to New World Realtors on the 23rd December 2000 equivalent to the real estate agent's commission.

7. The receipt for the last payment of \$180,000.00 reflected that it was broken down as follows, \$100,000.00 payable as rental, \$50,000.00 payable as a deposit and a further sum of \$30,000.00, which the receipt reflects was refunded to the Purchasers. The breakdown of these receipts taken with the payment of \$90,000.00 would therefore be equal to the deposit of \$270,000.00 stipulated by the sale agreement. However the sale agreement required the deposit to be paid on signing of the agreement in March 2000, which on those documents was not fully paid until 4th July 2002.
8. Further, the cheque stub for the payment by the Attorney to the real estate agent New World Realtors reflects that the Attorney had proceeded to pay the real estate agent's commission in the sum of \$90,000.00, notwithstanding that the agreement for sale had not been completed.
9. The reason for the non-completion of the agreement was that subsequent to the making of the agreement for sale, a survey of the title, Volume 1257 Folio 614 revealed that the house encroached on the adjoining parcel of land Volume 1058 Folio 656, which was to be sold to a purchaser named Mr. Goffe.
10. At the time of the discovery of the irregularity, the Complainant had delivered to the Attorney both duplicate Certificates of Title and she gave him instructions to have the boundaries rectified prior to completing the transfer of the parcel of land to Mr. Goffe. At that stage, such rectification would have been a fairly straightforward process as the Complainant was the registered proprietor of both properties and the Complainant's evidence was that the Attorney confirmed that he would take care of the matter. However, despite his assurance, nothing was apparently done by the Attorney and the Complainant later discovered that contrary to her instructions the parcel of land was transferred to Mr. Goffe without rectifying the boundaries. The sale of the property to the Powells was consequently stalled with no steps taken to rectify the boundary irregularity for a period of more than 5 years.
11. Further, the Attorney has not provided confirmation that stamp duty and transfer tax had been paid on the agreement for sale, it being customary to do so out of the deposit. Stamp duty and transfer tax if not paid within thirty (30) days of the making of the agreement for sale attract penalties. Further, the sale was subject to the purchasers delivering to the vendor's attorney a mortgage commitment within fourteen (14) days. The Complainant has been unable to ascertain from the Attorney whether such a commitment was ever delivered by the purchasers.

12. To compound the problem, in September 2000, the Attorney advised the Complainant that the Purchasers wished to move into the house and he pointed out that the house could be vandalised if allowed to remain vacant. The Complainant agreed to permit the purchasers to take possession on payment of rent of \$10,000.00 per month and in reliance upon his assurance that the deposit had been paid. Other than the payment of July 2002, which reflected that \$100,000.00 was paid towards rent, the purchasers have not paid rent and no steps have been taken by the Attorney to recover the rent from them. Subsequently in speaking to the purchasers after they had taken possession, it was discovered that the Attorney was also acting for the purchasers in the transaction without having obtained the Complainant's consent to do so and which plainly placed the Attorney in a position of conflict of interest making it difficult if not impossible for him to act in the Complainant's best interest.
13. The Complainant further gave evidence that she had made numerous calls to the Attorney with no response from the Attorney and she quantified the cost of such telephone calls from Canada at CD \$500.00 equivalent to J\$25,000.00. In addition, she travelled to Jamaica in 2003 to meet with the Attorney to no avail.
14. Further, prior to the commencement of the hearing, the complaint was mentioned on 20th November 2003, when it was recorded that the Attorney had given an undertaking to have a survey conducted by surveyor, Mr. Manderson and that he would also seek to recover outstanding rental. There was nothing forthcoming from the Attorney to demonstrate that any effort was made to comply with that undertaking. Further, on 16th June 2005 in the course of the hearing Mr. Manley Nicholson, Counsel for the Complainant, disclosed that the Complainant had instructed the Attorney to hand over the file on the matter to Mr. Nicholson. Up to the conclusion of the hearing on 27th July 2005, the Attorney had not complied with the Complainant's instructions to hand over the file to Mr. Nicholson nor has the Attorney participated in the proceedings or otherwise demonstrated that he has taken any steps to have the sale concluded and rental collected after the lapse of more than 5 years.
15. The Panel has given consideration to the evidence which has been adduced by the Complainant and it finds that the complaint against the Attorney has been established beyond reasonable doubt. The Panel finds on the evidence adduced that the Attorney has not dealt with the Complainant's business with all due expedition and that he has failed to provide the Complainant with all information as to the progress of the client's business in breach of Canon IV (r) of the **Legal Profession (Canons of Professional Ethics) Rules**. Further, that in the performance of his duty the Attorney has acted with inexcusable and deplorable negligence and neglect in breach of Canon IV (s) of the **Legal Profession (Canons of**

Professional Ethics) Rules.

16. The Panel further agrees with the submission which has been made by the learned Counsel for the Complainant that the conduct of the Attorney has caused loss to the Complainant. The Attorney has not shown that he has utilised the deposit received under the sale agreement to pay stamp duty and transfer tax as is required within thirty days of the making of the agreement. Should penalties have been incurred by the failure to pay stamp duty and transfer tax on the agreement, the Panel finds that the Attorney is wholly responsible for such payment.
17. Further, as the Attorney has not demonstrated that he has taken any steps to recover outstanding rent owing by the Purchasers, who it seems are also his clients, the Attorney is liable to make good for such rent. Credit is given for the sum of \$100,000.00 (equivalent to 10 months rent) collected by the Attorney on 4th July 2002, as that sum was paid over by the Attorney to the Complainant. The sum awarded therefore amounts to 4 years 2 months rent for the period September 2000 to September 2005 at the rate of \$10,000.00 per month amounting to \$500,000.00. Further, the Complainant incurred charges of CD\$500.00 in making telephone calls to the Attorney and as well she incurred the sum of CD\$1270.00 amounting to J\$63,500.00 (at a rate of J\$50 to CD\$1.00) for travel to Jamaica in 2003 to see the Attorney.
18. The Complainant has also incurred legal expenses of CD\$1500.00 in Canada to prepare and register documents. As the Attorney has not completed the transaction, and therefore such documentation may have to be re-executed due to the Attorney's failure to either complete the transaction or hand over the file to the Complainant's new attorney, the Complainant is entitled to recover such wasted expenditure.
19. The total award by way of restitution payable to the Complainant therefore amounts to J\$663,500.00 as follows: -
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|-----|---------------------|--------------|
| (1) | Rent | \$500,000.00 |
| (2) | Air fare for 2003 | \$63,500.00 |
| (3) | Telephone charges | \$25,000.00 |
| (4) | Canadian legal fees | \$75,000.00 |
20. We further find that the Attorney has not furnished reasonable or justifiable explanation for his failure to take steps to complete the sale and to have the boundary for the property to be sold to the Powells rectified.

21. Further, we can see no justification whatsoever for the Attorney's failure to hand over the file for the transaction to the Complainant's new attorney after his failure to have the matter completed after a period of more than 5 years of delay. The Attorney's failure to heed the Complainant's instructions is in the circumstances wholly unwarranted and aggravates the breaches which he has committed in failing to deal with the Complainant's business with all due expedition.
22. It should be noted that section 12(4) of the Legal Profession Act empowers the Disciplinary Committee among other things to make an order suspending an attorney found guilty of professional misconduct from practice on such conditions as the Committee may determine
23. The Panel is of the view that a conditional suspension is warranted having regard to the Attorney's unreasonable delay for a period in excess of 5 years in taking steps to deal with the Complainant's business, failing to respond to her enquiries even after the laying of the Complaint, and failing to heed her instructions to hand over the file for her matter to her new attorney.
24. It is hereby Ordered as follows: -
 - 1). Pursuant to section 12(4)(c) of the Legal Profession Act, the Attorney Jonathan Vernon Ricketts is to pay to the Complainant by way of restitution the sum of \$663,500.00.
 - 2). Pursuant to section 12(4)(a) of the Legal Profession Act, should the Attorney, Jonathan Vernon Ricketts fail to comply with all the conditions hereinafter set out and stipulated in paragraph 3 of this Order, the Attorney Jonathan Vernon Ricketts is suspended from practice as an Attorney-at-Law for a period of six (6) calendar months commencing from the 1st day of October 2005; to avoid the aforesaid suspension from practice, the Attorney, Jonathan Vernon Ricketts must comply with and perform all the following conditions set out in paragraph 3 of this Order.
 - 3). The Attorney Jonathan Vernon Ricketts is required to deliver the following to the General Legal Council on or before the 30th September 2005, namely:
 - (a) the duplicate Certificate of Title for all that parcel of land with dwelling house thereon part of Crowder Commons (Geneva) in the parish of Westmoreland registered at Volume 1257 Folio 614 of the Register Book of Titles;

- (b) the original agreement for sale dated 30th March 2000 made between the Complainant Hortense Stewart and Errol Anthony Powell and Jennifer Patricia Powell for the sale of the said property registered at Volume 1257 Folio 614;
- (c) a receipt or other document from the Office of the Stamp Commissioner evidencing the payment of transfer tax, stamp duty and penalties (if any) on the aforesaid agreement for sale dated 30th March 2000 made between Hortense Stewart and Errol Anthony Powell and Jennifer Patricia Powell or failing which the Attorney, Jonathan Vernon Ricketts is ordered to pay to the General Legal Council on or before the 30th September 2005, a fine in the sum of \$450,000.00 which is to be applied and paid over to the Complainant Hortense Stewart towards defraying the statutory duties and penalties as aforesaid.
- 4). The Attorney Jonathan Vernon Ricketts is also ordered to pay the Complainant's costs in the sum of \$100,000.00.

DATED 7th DAY OF SEPTEMBER 2005


ALLAN S. WOOD


MERLIN BASSIE


LILIEETH DEACON