

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

COMPLAINANT NO: 150/2004

IN THE MATTER OF COMPLAINT BY ERNEL COUSINS
AGAINST PAUL MILLER, AN ATTORNEY-AT-LAW

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT

PANEL: Leila Parker-Robinson
 Merlin Bassie
 Daniella Gentles

Hearing on the 12th day of November, 2005

Upon the Panel being satisfied that the Attorney-at-Law Paul Miller had been duly served with notice of this hearing pursuant to Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules, the hearing of this matter commenced with the evidence of the complainant Mr. Ernel Cousins.

EVIDENCE

The evidence of Mr. Ernel Cousins was that he retained Mr. Paul Miller many years ago, in or around 1978, to act on his behalf in the purchase of Lot 2 Mickleton District in the parish of Saint Catherine from one Madeline Lindsay Beckford now deceased. Mr. Miller was also to obtain a title for the lot which was part of a larger subdivision which had a registered title. According to Mr. Cousins he paid Mr. Miller the sum of \$25,000.00 for legal fees and \$700.00 to advertise. No documentary evidence was tendered by the complainant in support of his oral evidence as regards the purchase of this property. Mr. Cousins gave evidence that he paid these sums by way of a cheque but had mislaid it.

Sometime in 1995 Mr. Cousins retained Mr. Miller to act on his behalf in the purchase of Lot 1 Mickleton District in the parish of Saint Catherine, from the estate of Madeline Lindsay Beckford . This lot adjoins Lot 2 Mickleton District .The purchase price for Lot 1 was \$180,000.00 of which sum Mr. Cousins paid Mr. Miller \$150,000.00 being the deposit and executed an Agreement for Sale together with his wife Cislyn Cousins. The

Agreement for Sale was tendered into evidence as Exhibit 1. It is to be noted that the copy of the Agreement for Sale tendered into evidence was neither dated nor signed by the vendor. A receipt was issued by Paul Miller to Ernel Cousins as acknowledgment of the sum of \$150,000.00 paid on the 11 the January, 1995 as a deposit on the purchase price of property situate at Mickleton, Linstead in the parish of Saint Catherine containing by survey 4,180 square feet. The receipt is marked Exhibit 2.

It was an express term of the said Agreement for Sale that:

1. Completion would be within 90 days of the date of the agreement.
2. The balance would be paid on completion.
3. Possession would be given immediately upon the deposit being paid.
4. Paul Miller had carriage of sale.

Mr. Paul Miller represented the vendor and purchaser, Mr. Cousins, in the sale and purchase of both Lots in Mickleton District and was also the Attorney who obtained probate in the estate of Madeline Lindsay Beckford.

According to Mr. Cousins he has never received the titles for the either of the said lots and the last time he heard from Mr. Paul Miller was over two years ago. Mr. Cousins has tried to get in touch with Mr. Miller but this has proven to be futile. Mr. Cousins presently resides on Lot 2 Mickleton District on which he built a house and he pays the property taxes for the entire subdivision. He acknowledges that he owes \$30,000.00 on the purchase price for Lot 1 and costs.

COMPLAINT

The complaint of Ernel Cousins as set out in his Form of Affidavit sworn to on the 3rd March, 2004 is that:

1. The Attorney-at-Law withdrew from his employment without any form of notice or communication;
2. The Attorney-at-Law has failed to provide him with the necessary information as it relates to the progress of his business and has failed to refund fees paid over to him;

3. The Attorney-at-Law has failed to honor his commitment to complete the job and present him with a title within 3 months; and
4. The Attorney-at-Law has acted unprofessionally and negligent in the performance of his duties as after 26 years the Attorney-at-Law has failed to present the title or return the documents given to him or refund legal fees paid.

FINDINGS

26 years in relation to Lot 2 Mickleton District and 10 years as regards Lot 1 is more than ample time to have completed the transaction for which the Attorney, Paul Miller, was retained that being to complete the purchase of the said lots and obtain title for both of the lots. Indeed based on the Agreement for Sale for lot 1 (exhibit 1) it was obviously contemplated that the transaction would have been completed within 90 days. No evidence was given as to the status of this matter which the complainant did not appear to have any knowledge of which is probably due to the fact that he has not heard from his Attorney in over two years and his efforts to contact him has been to no avail. Further no reason was preferred for the delay no doubt due to the fact that the Attorney-at-Law did not pay the Panel the courtesy of attending the hearing. In summary the evidence before the Panel is that the complainant paid monies to the Attorney being (legal fees) part of the purchase price to represent him in the purchase of two (2) properties and legal fees. 26 years and 10 years later the transactions have not been completed and the Attorney has given no reason for same.

The failure of the Attorney to complete the transaction and obtain the certificates of title within a reasonable period and the failure to communicate with the client as to the progress of the matters is a breach of Canons IV ® and (s) of the Legal Profession (Canons of Professional Ethics). Canon IV ® provides that:

“An Attorney shall deal with his client’s business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client’s business with due expedition”.

Canon IV (s) provides that:

“In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect”.

The failure of Paul Miller to communicate with Ernel Cousins in over 2 years leaves the Panel to infer that he withdrew from employment without taking steps to avoid foreseeable prejudice to the position and rights of the complainant as he failed to give notice of his intention to withdraw or deliver any document or property to which Mr. Cousins is entitled which is a breach of Canon IV (o) which states that an Attorney shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of his client. The effect of the actions of Paul Miller is as regards Lot 2, Mr. Cousins is a purchaser in possession without a title and as regards Lot 1 he has paid most of the purchase price but is still without a title in circumstances where he signed an agreement for sale in which it was agreed that the matter would be completed within 90 days of the date of the agreement.

The breach by Paul Miller of Canons IV (o) ; ® and (s) constitutes misconduct in a professional respect as per Canon VIII and accordingly it is the decision of this panel that pursuant to section 12(4) of the Legal Profession Act the Attorney-at-Law, Paul Miller, is hereby ordered to:

1. Deliver to the General Legal Council at its offices at 76 Harbour Street, Kingston within twenty-one (21) days of the date hereof:
 - (a) Duly executed and stamped Agreement(s) for Sale for Lots 1 & 2 Mickleton District, Saint Catherine;
 - (b) Instruments of Transfer duly executed by the Vendor and/or the personal representative of the estate of the Vendor, Madeline Lindsay Beckford;
 - (c) Duplicate Certificates of Title for Lots 1 & 2 Mickleton District in the parish of Saint Catherine;
 - (d) Form 8 in the Vendor's estate showing that the estate duties were paid and the certificate from the Stamp Office evidencing payment of transfer tax and stamp duty in relation to each lot;

- (e) Transmission application duly executed by the qualified personal representatives of the estate and cross stamped;
 - (f) Grant of Probate or Letters of Administration duly sealed and certified by the Registrar of the Supreme Court;
 - (g) A statement of account of all monies received by the Attorney from the purchaser, Ernel Cousins, in relation to the purchase of both Lots of land.
2. In the event that the requisite stamp duty and transfer tax has not been paid on the Agreements for Sale for Lots 1 and 2 Mickleton District in the parish of Saint Catherine Paul Miller shall pay same forthwith together with any penalty charged thereon by the Stamp Commissioner.
 3. Costs of the proceedings in the amount of \$50,000.00 are to be paid by Paul Miller.
 4. If the Attorney fails to comply with the Orders at 1, 2, and 3 hereof he shall be suspended from legal practice for a period of 6 months and if upon the expiration of the 6 months period the Attorney has still not complied with the aforesaid orders the name of the Attorney, Paul Miller, shall be struck off the Roll of Attorneys-at-Law entitled to practice in the several courts of the island of Jamaica.

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DATED THE 11th DAY OF *March* DECEMBER, 2005

Paul Miller
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Cherubino
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LELIA PARKER-ROBINSON

M. H. Same
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MERLIN BASSIE

[Signature]
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DANIELLA GENTLES