

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

**COMPLAINT No. 66/2000**

**BETWEEN** **VELMA RHODEN** **THE COMPLAINANT**

**AND** **LORRAINE A. EARLE** **THE ATTORNEY**

**THE PANEL:** **CHRISTOPHER BOVELL**  
**DR. ADOLPH EDWARDS**  
**ALLAN S. WOOD**

**Hearings:** **4<sup>th</sup> February & 22<sup>nd</sup> March 2006**

1. Velma Rhoden (the Complainant) commenced this Complaint on 10<sup>th</sup> December 1999 alleging that Lorraine Earle (the Attorney) had not accounted for all moneys in her hands for the Complainant's account or credit and that "she has defrauded me of \$700,000.00 and has caused me to lose the property which is worth much more today."
2. Despite the gravity of the allegations, inexplicably the Complaint did not come up for hearing until 4<sup>th</sup> February 2006, a delay of more than five (5) years. On the date of hearing the Attorney did not appear but the Panel was referred to an Affidavit of Service sworn to by Mervalyn Walker on 1<sup>st</sup> February 2006 which deposed to service of the notice of hearing upon the Attorney by registered post in accordance with the Legal Profession Act 4<sup>th</sup> Schedule Rule 21 and accordingly the hearing of the Complaint was commenced and evidence taken from the Complainant. The hearing was then adjourned to the 22<sup>nd</sup> March 2006 to give the Attorney the opportunity to attend. The Attorney failed to do so despite service of the notice of the adjourned date of hearing accompanied by the notes of evidence.
3. The Complainant gave evidence that her husband (now deceased) was introduced to the Attorney in 1993. The Complainant and her husband wished to purchase property known as 24 Bronze Road, Hughenden, being the land registered at Volume 1050 Folio 962 of the Register Book of Titles. The Complainant and her husband told the Attorney about the transaction and she agreed to act on their behalf. The Attorney also agreed to act for the Vendor. The price of the property was \$700,000.00 and an initial payment was made to the Attorney in the sum of \$350,000.00 on 11<sup>th</sup> February 1993 and a second payment of \$378,000.00 was made on 22<sup>nd</sup> February 1993. The first payment was withdrawn from the Complainant's account at Victoria Mutual Building Society (VMBS) and a counterfoil of the cheque was produced by the Complainant and admitted into evidence as exhibit 1. The Complainant gave evidence that she was accompanied to VMBS by the Attorney who waited in the car while she got the cheque. The Attorney then requested a second payment of \$378,000.00 which was made at the Bird Cage Restaurant on the 22<sup>nd</sup> February 1993. The Complainant explained that the Attorney had

given receipts for these payments which were kept by the Complainant's husband in his wallet. In 1994, the Complainant's husband met in a fatal accident and the receipts were lost.

4. Despite having paid the purchase price in full to the Attorney, the Vendor for whom she also acted got no money and sold the property to someone else. The matter was reported to the Fraud Squad prior to the death of the Complainant's husband and subsequently after his death this Complaint was also instituted. After the bringing of the Complaint, the Attorney met with the Complainant on 5<sup>th</sup> October 2001 and at that meeting the Attorney proposed that she would repay the sum of \$728,000.00 in two instalments with interest to be agreed and that the Complainant should withdraw the Complaint. A document was drawn up to that effect which The Attorney required the Complainant to sign and she did so. A copy of that document was admitted into evidence as Exhibit 3. It is to be observed that the Attorney did not sign that document, no doubt being aware that such a document bearing her signature would be a clear admission that she had misappropriated the Complainant's money. Thereafter payments totalling approximately \$330,000.00 were made between November and August 2002. The Complainant kept a handwritten note of the payments as follows: -

November	2001	\$70,000.00
December	2001	\$200,000.00
March	2002	\$10,000.00
April	2002	\$10,000.00
June	2002	\$2,000.00 & \$3,000.00
July	2002	US\$100.00 (J\$ equivalent \$5,000.00)
July	2002	\$10,000.00 & \$15,000.00
August	2002	\$10,000.00

Since August 2002, no further payments have been made by the Attorney.

5. It is relevant to note that although the Complainant had agreed to withdraw the Complaint on payment of the full amount of \$728,000.00 together with interest to be agreed, the Attorney failed to fully repay the Complainant and there remained an outstanding balance due to the Complainant of \$398,000.00. However, even if full repayment had been made, the agreement of the Complainant to withdraw the Complaint would not have *ipso facto* put an end to the Complaint. Once a complaint under the Legal Profession Act is laid same cannot be simply withdrawn by the Complainant. An application for leave has to be made to the Disciplinary Committee pursuant to the Legal Profession Act 4<sup>th</sup> Schedule Rule 15. Where the complaint involves allegations of dishonesty, failure to account for money or other serious misconduct in a professional respect, the Disciplinary Committee is not inclined to grant leave to withdraw the complaint at the whim of the parties and will decline to grant such an application taking into account all the circumstances including the serious nature of the allegations warrants a hearing. This is because the Disciplinary Committee must be mindful of the fact that its paramount duty is to act in protection of the public including other persons not party to the complaint who may be at risk of suffering loss at the hands of the unscrupulous member of the profession.

6. The Panel finds that the Complainant is a witness of truth and that her evidence is to be accepted. Having considered her evidence, the Panel is of the view that the Complaint against the Attorney, Lorraine A. Earle is established beyond reasonable doubt. In the circumstances, we find as follows: -
- a). That the Attorney collected from the Complainant sums amounting to \$728,000.00 in the month of February, 1993 which was to be used for the specific purpose of purchasing the property registered at Volume 1050 Folio 962;
  - b) Despite having sufficient funds in hand to pay the full purchase price of \$700,000.00, the Attorney failed to pay over same to the Vendor and as a consequence the Complainant lost the property which was subsequently resold;
  - c) During the period November 2001 to August 2002, the Attorney repaid the sum of \$330,000.00 to the Complainant leaving a balance of \$398,000.00;
  - d) In breach of Canon VII (b) of the Legal Profession (Canons of Professional Ethics) Rules, the Attorney has failed to account to her client, the Complainant for moneys in hand for the account or credit of the Complainant when she was reasonably required so to do;
  - e) In breach of Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules, the Attorney (Lorraine A. Earle) has behaved in a manner which has discredited the Legal Profession.
7. The Legal Profession (Canons of Professional Ethics) Rules 1978, which were promulgated pursuant to sections 12(1) (a) and (7) of the Legal Profession Act prescribes the general duty of an attorney-at-law to account to the client. Canon VII (b) (ii) provides as follows:-
- “An Attorney shall-
- ... (ii) Account to his client for all moneys in the hands of the attorney for the account or credit of the client, whenever reasonably required to do so and he shall for these purposes keep the said account in conformity with regulations which may from time to time be prescribed by the General Legal Council.”
8. Further, Canon VII (b) has been supplemented by the Legal Profession (Accounts and Records) Regulations 1999 Rule 4, which requires the Attorney to maintain a client trust account into which all trust money collected or received by the Attorney must be paid. Rule 2 (1) of the aforesaid 1999 Regulations defines trust money to include:
- “money received by an attorney that belongs in whole or in part to a client or that is held on a client’s behalf or to his or another’s direction or order...”
9. The Attorney in the present case was always but a trustee of the money received from the Complainant,

which money was paid to her by the Complainant for the specific purpose of purchasing the property registered at Volume 1050 Folio 962. The obligation of the Attorney to account to the Complainant, who was her client, meant that the Attorney was not entitled to use the Complainant's money for any other purpose than that for which it was paid to her and certainly not for her own use and benefit. If the Attorney was not able to comply with the Complainant's instructions as to how the money should be utilised, that money ought to have been refunded to the Complainant with interest. We therefore find that the Attorney has not accounted to the Complainant for the money entrusted to her for the purpose of acquiring the property and misappropriated same. The failure to account for client's funds and the misappropriation of same is a grave act of misconduct in a professional respect and in the circumstances we believe that the appropriate sanction for the Attorney's misconduct is that she be struck off from the roll of Attorneys-at-Law. This is necessary in protection of the public.

10. In addition, an order for restitution ought to be made for the balance of \$398,000.00. The Complainant gave no evidence as to the value of the property which was lost as a consequence of the Attorney's failure to pay the purchase price to the Vendor. So an order for repayment of the money coupled with interest is the only possible form of restitution. The Complainant is to have interest at the rate of 12% per annum from 22<sup>nd</sup> February 1993 to 1<sup>st</sup> November 2001 on the sum of \$728,000.00. Thereafter we give the Attorney allowance for the payments made during the period November 2001 to August 2002 amounting to \$330,000.00. As the Complainant was unable to provide the specific dates on which such payments were made for the purpose of computing interest on the reducing balance, we have, in a rough and ready manner, given the Attorney the maximum benefit by treating the repayment as having occurred from the earliest possible date, i.e. from 1<sup>st</sup> November 2001 so that interest is computed at the rate of 12% per annum on the balance of the principal sum of \$398,000.00 from 1<sup>st</sup> November 2001 to date. The total sum awarded by way of restitution inclusive of interest for the period 22<sup>nd</sup> February 1993 to the date hereof is as follows: -

Payments made to the Attorney up to 22 <sup>nd</sup> February 1993	\$728,000.00
Less: Sums repaid by the Attorney to the Complainant during the period November 2001 to August 2002	<u>\$330,000.00</u>
Principal balance due	\$398,000.00

Interest from 22 <sup>nd</sup> February 1993 to 31 <sup>st</sup> October 2001 on the full amount of \$728,000.00 at 12% per annum	\$759,672.99
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Interest on the balance of \$398,000.00 from 1 <sup>st</sup> November 2001 to 22 <sup>nd</sup> March 2006 at the rate of 12% per annum	<u>\$ 209,489.75</u>
<b>Total Due inclusive of interest</b>	<b><u>\$1,367,162.74</u></b>

11. It is accordingly hereby ordered as follows: -
- i. Pursuant to section 12 (4) (a) of the Legal Profession Act, the name of the Attorney, Lorraine A. Earle is struck off the Roll of Attorneys-at-Law entitled to practice in the Island of Jamaica;
  - ii. Pursuant to section 12 (4) (c) of the Legal Profession Act, by way of making restitution to the Complainant, Lorraine A. Earle is ordered to pay to the Complainant Velma Rhoden the sum of \$1,367,162.74 together with continuing interest accruing on the sum of \$398,000.00 at the rate of 12% per annum from the 22<sup>nd</sup> March 2006 to the date of payment;
  - iii. The Attorney, Lorraine A. Earle is to pay costs to the Complainant in the sum \$20,000.00.

Dated the 22<sup>nd</sup> day of March 2006



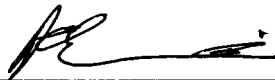
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CHRISTOPHER BOVELL



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ALLAN S. WOOD



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DR. ADOLPH EDWARDS