

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

COMPLAINT NO. 181/2006

ERROL CUNNINGHAM V GEORGETTE SCOTT

PANEL

PAMELA BENKA-COKER Q.C.

CHARLES PIPER

DAVID BATTS

HEARIN DATES

BACKGROUND HISTORY:

HEARING DATES: 31st January 2007, 13th October 2007, 31st October 2007

Mr Errol Cunningham (hereinafter referred to as the complainant) is a retiree who lived in England for many years and who now resides in Mandeville in the parish of Manchester. He was an engineer by profession. He was the owner of property known as Apartment 12, Block C, Sand Castle, Ocho Rios in the parish of St. Ann. Georgette Scott is an attorney-at-law in private practice and will be referred to herein as the attorney.

THE COMPLAINT: By way of Form of Application Against An Attorney-at-law dated the 9th August 2006, and affidavit in support, of the same date, the complainant stated the allegations as they relate to the sale of his property at Sand Castle and the attorney having carriage of sale, with particular reference to the fact that the attorney had received the proceeds of sale and sought to pay them by a cheque which was dishonoured.

The complainant further alleges that at the time of the signing of the complaint the attorney had failed to pay to him, the total amount of the proceeds of sale due to him and still owed him \$1,040,000.00 which did not include interest due to him.

The affidavit concludes with the statement that the attorney "has not accounted to me for all the money in her hands for my account or credit although I have reasonably required her to do so"

THE EVIDENCE: The hearing of the evidence in this case commenced on the 31st January 2007. On that date the attorney did not appear, nor was she represented. The panel satisfied itself that the attorney was properly served with the Notice of Hearing in keeping with Rules 5 and 21 of the Fourth Schedule to the Legal Profession Act. In those circumstances the panel determined to commence the hearing of the complaint as it is permitted to do pursuant to rule 8 of the Fourth Schedule to the Legal Profession Act.

The complainant said that in the year 2004 he entered into an agreement for sale with one

Ms. Smith, to sell his apartment known as apartment 12 Block C, Sand Castle, Ocho Rios in the parish of St. Ann. The sale price for the apartment was 2.2 million dollars.

He retained the services of the attorney to have caniage of sale of the apartment. He paid her up front for her costs in the amount of \$95,000.00. The sale was completed. The complainant received letter dated May 26th 2005 from the attorney. A copy of this letter was admitted in evidence as exhibit 1.

In exhibit 1 the attorney confirms to the complainant that she has received the following sums on his behalf, \$2,000,000.00 representing the mortgage proceeds, and \$28,595.00 being the balance due from the purchaser to close the sale.

The attorney also states that the sum invested by her was \$2, 028,595.00. The interest on that sum at a rate of 12% for a period of 40 days was \$26,677 .41. She does not deduct the tax due at the rate of 25% from the calculated interest. The attorney then adds a sum of \$50,000.00, which she represents to be a gratuity, and by adding all these figures arrives at a total of \$2,105,272.41.

The total sum was calculated by the attorney on the basis that she recognized in the said letter that she had delayed in disbursing to him the sums due to the complainant as a consequence of the sale of his apartment. It is to be noted that the attorney did not enclose in this letter the sum calculated or any sum at all.

The complainant went on to state that he later received a cheque dated the 6th June 2005 in the sum of \$2,105,272.41. A copy of this cheque was admitted in evidence as exhibit 2. This cheque, No. 01106, was drawn on the First Caribbean Bank on an account designated Scott & Associates Client Account, and made payable to Enol Cunningham. (The cheque appears to have two signatures, one of which is the attorney's. It is not a manager's cheque.)

The complainant lodged the cheque to his account at the Victoria Mutual Building Society in Mandeville.

Subsequent to lodging the cheque he was advised by Victoria Mutual that the cheque had been dishonoured by the Bank on which it was drawn. He got a letter dated 20th June 2005, from Victoria Mutual, advising him of that fact. This letter was admitted in evidence as exhibit 3.

The reason given in the letter for dishonoring the cheque was that the alteration required a signature.

On the return of the cheque, the complainant further gave evidence that he immediately telephoned the attorney and went in to see her. In the telephone conversation, the attorney said that she regretted what happened and asked if she could get some time to reimburse him. He agreed to give her one month.

The attorney did not pay him his monies as she had agreed to do. He then went to her office to see her face to face. He enquired about his money. She gave him many excuses including an allegation that she had lodged the money in a special account. She provided no proof of the alleged lodgment. The complainant then secured the services of an attorney-at-law, Mr. Glen Cruickshank, to contact the attorney by letter and by telephone.

After that Mr. Cruickshank, contacted the attorney, the attorney said that she would sell her car to reimburse him. She paid him two cheques but still owes him one million dollars. The complainant further said that he had created a special account for the attorney to lodge his monies. She was the only one to lodge money to this account. This account is numbered 20479325. Statement dated the 15th June 2005-31st December 2005 was tendered in evidence as exhibit 4.

The complainant never went to the police.
The hearing of the complaint was then adjourned.

The hearing of this complaint resumed on the 13th October 2007. On that date the attorney appeared represented by Mr. Christopher Townsend. On this occasion the complainant indicated to the panel that he wished to withdraw the complaint he had made against the attorney. After due consideration of the issues involved and the request by the complainant, the panel declined to give the complainant leave to withdraw the complaint.

The hearing resumed and the complainant continued his evidence. He said that as of that date the attorney now owed him, \$750, 000.00.

CROSS EXAMINATION: Mr. Townsend then cross- examined the complainant. He said that the sum of \$750,000.00 included principal of \$300,000.00 and the rest was interest. He admitted that after the sale was completed, he did make an arrangement with the attorney with regards to the payment to him of the proceeds of sale but he did not loan the funds to the attorney.

There was much cross-examination about a written agreement, which the complainant is alleged to have entered into with the attorney, but this agreement was never produced in evidence. The complainant said that he never received a copy of the agreement but he saw the attorney receive a copy of the agreement. There was further cross-examination as to when the complaint was filed, and as to whether the complainant benefited from the payment by the attorney of interest on the funds due.

The rest of the cross-examination did not materially affect the issues to be determined by the panel and will not be recounted. The hearing of the complaint was then adjourned to the 31st October 2007.

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On that date Mr. Townsend continued his cross-examination of the complainant. The complainant confirmed that the attorney did give him a cheque which was dishonoured. He said that the attorney did not tell him that she was ill at that particular time. He said that she did tell him that she was ill some time after.

He said that she told him that during the period that she had given him the cheque, she was ill. He sympathised with her position. He said that he had entered into an agreement with the attorney in order to secure the balance of the money due to him. This sum is \$760,000.00. Mr. Townsend ended his cross-examination and then made a submission.

He submitted that no prima facie case of professional misconduct had been made out against the attorney. The panel rejected this submission and the panel called on the attorney to answer to the complaint.

THE EVIDENCE OF THE ATTORNEY: In her examination in chief the attorney stated

she was admitted as an attorney-at-law in 2000. She has been an attorney for seven years. She had first been with the firm of John Graham. She left there for personal reasons. She then practiced under the name of Georgette Scott and Associates. She did not remember the exact date on which she started to practise on her own but it was sometime in 2004. She admitted handling a conveyancing matter for the complainant. In answering further questions from her attorney, she said that she operated her practice first from her home, but she saw her clients at the Terra Nova hotel.

She met with the complainant at home and at 59 Molyne's Road. When asked by her attorney if she collected the proceeds the attorney said that she did not remember collecting it, but this was during the time when she was having a mental breakdown. She said her mental state was still in a state of disrepair.

There was no paid staff in her practice but her adopted mother assisted her with typing and administration. The firm has a general account and a clients' account. Her adopted mother and herself could sign on the accounts. She did not really complete the answer as to whether the signatures on the account had to be joint or could be either. The bearer would do the lodgments and sometimes her adopted mother Ms. Marcie Tulloch would do them. Her adopted mother kept the cheques.

The attorney then said that she was being treated for some type of mental illness by Dr. Aggrey Irons. She was put on anti-depressant tablets and she had sessions with Dr. Irons. The sessions started about three or four months ago. She also stated that she had paid out the cheque to the complainant because she thought she had the money in place.

The attorney was then asked questions by the panel in an effort to understand the system that was employed in her practice. She said that the funds would have come from the purchaser's attorneys-at-law Dunn Cox, and that it would have come by way of cheque. The cheque would have been made payable to Scott & Associates. The cheque would have been lodged by her secretary. There was a secretary there or the lodgment would have been done by Marcie or herself. She was asked by the panel if she kept records of transactions. The attorney said that in the beginning she did, but "after everything started heating up with her family" she lost them.

She conceded that she did not have a proper system in place when she received the funds relative to the sale of the complainant's apartment. She started with "a proper system but when everything started up she did not have a proper system in place. She was far gone."

She did call the bank to see if the funds were there in place for the complainant, she discovered that they were not. She realized that something was wrong and she immediately called the complainant to meet her at the Terra Nova hotel. The attorney continued by saying that she did meet with the complainant and she spoke to him.

The attorney further said that at that meeting she told the complainant that when she checked with the bank, the money was no longer in place. She told him that she was going to do her best to find out what had happened. In the meantime she did not want him to think that she was unscrupulous and she would give him a cheque to hold.

The attorney said that the money was not there when asked by her counsel what had happened to the money.

She said that she later found out that her adopted mother was trying to secure some money for her because she was in great financial debt because of certain situations with her father which put her in serious financial debt.

This answer really did not correspond to the question and when pressed she gave a long explanation and it is worth quoting in full the answer the attorney then gave.

"I was expecting some money from overseas and I was hoping that those funds would clear the financial debt. What happened was that Mr. Cunningham's cheque was lodged in the general account which was there to clear other things and when that cheque came I thought it was the money she was expecting so the funds were used to pay person whom I had owed. That fund I was expecting never came.

I explained to him that initially the money was not in place, but I was giving him the cheque as a promissory note and I would investigate what had happened. As soon as I had found out I communicated with him what happened, he was sympathetic with me. I told him I was expecting some funds and he should work with me and I tried to get some money from family and friends."

When asked by the panel if she was able to get the money from family and friends. The attorney she said she had not. She said that she did give back the complainant some of the money.

She had given back 1.3 million dollars including interest which was at a rate of 4%.

There had been an agreement entered into between the complainant and the attorney at the offices of Ms. Cruickshank who is herself an attorney-at-law. Ms. Cruickshank reduced the agreement into writing. (It is to be noted that this agreement was not produced in evidence).

She also explained that in 2005 she had a problem collecting funds due to her, and so she made no payments to the complainant in 2005. It was only after the intervention of Mr. Townsend that she was able to collect funds. It was Mr. Townsend who recognized that she had a mental problem and advised her to seek treatment.

The attorney said that she intended to pay the balance, she did not give the complainant a time frame within which she would pay him but she had matters which were coming through.

Counsel for the attorney then asked her why she was moving so frequently. This is what he she said in response to that question.

"During my latter years at John Graham and Co., I stried recalling several abusive acts done by my father which started from when I was eight. Those recollections did not start until I was at John Graham and Co.

I was moving constantly because he kept following me and telling me what he would do ifI told anybody and I had to keep moving just to not let him find me"

In response to a question from the panel she denied that she had said that she owed her father money but stated that he caused her to incur debt. He kept sending people to her because he said he made her into an attorney so she should cover his debt. Her father was very disruptive at the offices of John Graham & Co. She had to tell Mr. Graham what was

happening. He said that he would kill her if she told anybody what was happening and based on the type of person he was, she knew he would do it.

The attorney went on to say that she had to practice in such a way that she was not always there. She was not moving her residence from place to place.

In response to further questions from her attorney, the attorney said that she never made a formal report to the police about her father.

In ending her evidence in chief she admitted hurting the complainant, and that it was not the fault of the complainant for what she was going through, and so she has to take responsibility for what she has done.

CROSS EXAMINATION OF THE ATTORNEY: the complainant declined to cross examine the attorney and in fact gave a statement saying the following: "I am very sympathetic to Miss Scott, and I hope the panel will be lenient with Ms. Scott because she admitted what she did and that is why I did not bother her for one year."

Panel: How long ago did you have a mental breakdown, did anybody diagnose you at that time?

Attorney: The mental breakdown started about 2003. I was not able to fully practice after leaving John Graham & Co. I saw Dr. Irons, he prepared a medical report. I did not speak to him specifically about Mr. Cunningham.

Panel: Do you have that report?

Attorney: Yes

Panel: Are you tendering the report as an exhibit?

Attorney: Yes

The Report was admitted in evidence as exhibit 5

Panel: The concern is that you are telling us that you had a mental breakdown about 2003 and 2004 but you saw Dr. Irons in 2007.

Attorney: Just in terms of what was happening to me I was not able to function at that time. No financial reason to go for treatment,

Panel: You refer to other debts, do any of those relate to other clients?

Attorney: Yes

Panel: How much other debt involving clients?

Attorney: I am not sure in terms of money but in terms of clients it is not much.

Panel: Did you ever find out who lodged the money to the general account

Attorney: It was lodged by Marcie

Panel: Do you know about the Legal Profession (Accounts and Records) Regulations 1999?

Attorney: Yes

Panel: Were you keeping that when the incident occurred?

Attorney: No, I was unable to function?

Panel : You do know that you are not to practice with someone who is not an attorney-at-law?

Attorney: I was not

Panel: But Exhibit 1 has her name on it (attorney's letterhead)!

Attorney: I have made modification because someone pointed it out to me so I did clarify that point."

That marked the end of the evidence as the attorney did not call any witnesses.

The hearing of the complaint was then adjourned to 17th November 2007 for continuation.

Subsequently written submissions on behalf of the attorney were presented by Mr. Christopher Townsend and he was permitted to speak to those submissions and produce authorities.

It is important for this panel to examine the thrust of these submissions.

SUBMISSION NO.1

Counsel lists facts which he says are not in issue. The panel does not accept that all the facts listed are not in issue, and in its findings having evaluated the evidence presented, will list its own undisputed issues of fact.

SUBMISSION 2

In submission 2 counsel submitted that the for the "attorney's conduct to have breached the Legal Profession(Accounts and Records) Regulations 1999, the attorney would have had to have breached canon vii of the Legal Profession (Canon of Professional Ethics)Rules, dealing specifically with the failure to account, he stated that Canon vii has not been breached as the attorney gave the complainant an account by way of explanation as to why his cheque was dishonoured . Having accounted to the complainant, the complainant, then agreed to enter into a written agreement to secure the proceeds of sale and interest thereon."

In support of this contention, Counsel sought to rely on regulation 14 of the Legal Profession (Accounts and Records) Regulations 1999 which reads as follows:

"Nothing in these regulations shall-

- (a) Affect any arrangement in writing whenever made between an Attorney and his Client as to the application of the client's money or interest thereon."

The submissions of counsel on these issues are misconceived and without merit in law.

The provisions in canon vii of the Legal Profession (Canons of Professional Ethics) Rules paragraph VII (ii) state "An attorney shall account to his client for all monies in the hands of the attorney for the account or credit of the client whenever reasonably required to do so."

This rule does not mean that the attorney fulfills those requirements when the attorney gives an explanation to the client as to why the funds were not paid over.

It does not mean that the attorney can supply a written statement of account to the client without paying over the funds due to the client when reasonably required to do so.

It means that the funds held on account of the client by the attorney, must be paid over to the client when the client reasonably requires that they be paid over.

It must be borne in mind that at common law, the relationship between the attorney and the client is a fiduciary one. The attorney is a trustee of the monies received for and on account of the client and holds those funds to the account of the client.

Legal authority for what must be a trite proposition of law is not always easy to find but a definition of the word account in the fifth edition of the Shorter Oxford English Dictionary is of assistance. In this text there are various meanings given to the word "account", which may be used as a noun or a verb. One of these meanings is "account for, give a reckoning of money held in trust (answer for conduct performance of duty etc"

In any event once the complaint has been laid it is for the Disciplinary Committee to determine whether or not the attorney has "accounted to the client for all the money in her hands for the client's account or credit.

Further, counsel for the respondent attorney at law has also misinterpreted rule 4 of the Legal Profession (Accounts and Records) Regulations 1999. Regulation 8 imposes the obligation on the attorney to account to the client for interest earned on funds held by the attorney for the client.

Regulation 14 imposes a restriction on regulation 8 in the event that, the client gives the attorney written instructions as to the manner in which the client's money or interest earned thereon should be applied.

The alleged written agreement (which was not produced in evidence) purporting to have been entered into between the attorney and the complainant, is certainly not contemplated by the provisions of regulation 4.

The panel does not agree that for there to be a breach of the Legal Profession (Accounts and Records) Regulations 1999, there has to be a breach of canon vii of the Legal Profession

(Canons of Professional Ethics) Rules. Both pieces of legislation provide for different breaches of an attorney-at-law's professional obligations, and are not interdependent. Regulation 17 expressly states the "Failure by an attorney to comply with any provision of these Regulations shall constitute misconduct in a professional respect for the purposes of section 2 of the Principal Act."

PROFESSIONAL MISCONDUCT: Counsel for the attorney submitted that there had been no professional misconduct. We are of the opinion, that it is for the panel to determine on the evidence adduced whether or not the conduct of the attorney amounts to misconduct in a professional respect. The annals of professional misconduct are never closed. The case of **Campbell v Hamlet 2005 (3 All ER)** and the passage quoted although helpful is not dispositive of the question when and how professional misconduct may arise. This case did not decide that "only conduct which may undermine public confidence in the profession will amount to professional misconduct."

The attorney also argues that the conduct of the attorney was not deliberate, and that she paid the funds belonging to the complainant in the general account by mistake, that she immediately contacted the complainant and drew his attention to the fact that the funds were not in her account to satisfy the cheque paid by the attorney to the complainant. It was not a premeditated effort on the attorneys' part to permanently deprive the complainant of the funds due to him.

Counsel for the attorney adverted to the complainants' desire to withdraw the complaint against the attorney. All these were raised as evidence that the attorney was not in these circumstances guilty of professional misconduct, as her conduct was not such as to undermine public confidence in the profession.

SUBMISSION NO.3 THE EXISTENCE OF EXCEPTIONAL CIRCUMSTANCES:

Counsel attempted to argue that the alleged mental illness of the attorney, should be a consideration of the panel in determining whether or not the attorney is guilty of professional misconduct. He admitted that there was a dearth of authority in Jamaica for such a proposition and he then referred to an English case in support of this contention.

The facts of this case are that a solicitor sought to have his name restored to the Roll of Solicitors. The Solicitors' Tribunal used the application to state its policy towards such Applications.

The Tribunal quoted from the judgment of Lord Donaldson in Application 5 of 1987 "However sympathetic one may be towards an individual member of either branch of the legal profession, if you fall very seriously below the standards of that profession and are expelled from it there is a public interest and the interest of the profession itself in hardening its heart if any question arises of your rejoining it. .. There must be cases where in the view of Parliament, a solicitor should be admitted to the Roll, but I am bound to say that I regard that as a very exceptional situation"

The tribunal applying that dictum refused the application and then gave an example of the exceptional circumstances which might justify the restoration of a solicitor to the Roll. : mental illness or overwhelming stress resulting in a moment of complete and utter aberration which was totally out of character and which might be lived down by

subsequent conduct to such an extent that any reasonable minded member of the public knowing the facts might be expected to say that the profession would be proud to readmit the applicant.

With respect, the facts of this case are distinguishable from those of the present case and it is our opinion that this case is not helpful to the attorney. The case cited is one in which apparently the solicitor was struck from the roll for misconduct and sought to be readmitted to the Roll after the expiration of a period of time. The Application was refused, and in "obiter dicta" the tribunal gave an example of circumstances which may overcome the strict standards that are applied when a solicitor has been struck from the Roll and is seeking re-admission.

In the case before us, the panel is yet to determine the effect of the allegations against the attorney, and has to attach what weight it thinks fit to the evidence adduced by the attorney as to the alleged mental illness from which she suffered and the effect it may have had on her conduct. The case is not authority for the proposition that mental illness may be a defence to professional misconduct. Indeed it may reasonably be argued to the contrary, that an attorney with a mental illness which could cause him or her to commit unethical acts ought not to be allowed to practice.

Counsel for the attorney then urged the panel to take the following into account in determining the outcome of this complaint.

- 1 All the circumstances including the exceptional circumstances.
- 2 The attorney's regime to recovery by obtaining psychiatric treatment from Dr. Aggrey Irons, Consultant Psychiatrist, and is committed to continue her treatment for general rehabilitation until full recovery is attained and should be given an opportunity to continue in the legal profession.
- 3 That the attorney is fully committed to make full restitution to the complainant, who himself in his evidence has asked for leniency, now having been fully apprised of all the circumstances:
- 4 That the attorney has appointed a Senior Counsel as Consultant to supervise the firm's operation.

BURDEN OF PROOF AND STANDARD OF PROOF:

The panel accepts, as a correct statement of the law that the burden is on the complainant to prove the charges leveled against the attorney to a standard of proof "beyond reasonable doubt"

THE Demeanour OF THE Complainant: The panel found the complainant a credible witness who spoke the truth. He was moderate in his tone, restrained, without any guile, or a desire to settle scores with the attorney. In fact he was sympathetic to the attorney and had indeed indicated that he did not wish to pursue the complaint. We accept his evidence as being true in all material particulars.

THE Demeanour OF THE Attorney: there are some aspects of the attorney's evidence that were not coherent. It is difficult to understand what exactly she is saying caused her to conduct herself in the way she did. Further, her initial evidence as to whether or not she had received the proceeds from the sale of the complainant's apartment was contradictory. She admitted handling the conveyancing transaction for the complainant sometime in 2004, but she did not remember whether or not she received the proceeds of sale as this was during the time when she was suffering from a mental breakdown.

In spite of not remembering whether she had received the proceeds of sale she went on to say that the cheque representing the proceeds was mistakenly paid into her general account by her adopted mother.

There were instances of incomplete answers from the attorney or answers that really did not respond to the questions. Her evidence as to the alleged abuse by her father which she says caused her to move frequently is difficult to understand as she says several abusive acts started from she was eight and she did not start recollecting them until she was at John Graham and Company.

1 The attorney is a sole private practitioner.

2 She acted for the complainant and had carriage of sale in relation to the sale of his apartment, 12, Block C, Sand Castle Ocho Rios.

3 The apartment was being sold in 2004 for 2.3 million dollars 4
Dunn Cox were the attorneys-at-law for the purchaser

5 The complainant paid costs of \$95,000 to the attorney prior to the completion of the sale.

6 The sale was completed and the attorney was paid the proceeds of sale by the purchaser's attorneys.

7 The attorney did not, on receipt of these funds pay them over to the complainant. 8 The attorney wrote letter dated the 26th May 2005(exhibit 1) to the complainant 9 This letter purports to be a statement of account from the attorney.

10 In exhibit 1 the attorney acknowledges that the sale was completed and that she had received the proceeds of sale.

11 The attorney does not state when the sale was completed.

12 The attorney acknowledges that she has delayed in paying over the sums due to the complainant.

13 No cheque for the funds due was sent to the complainant by the attorney.

14 In the said exhibit 1 the attorney advises the complainant that the money will be sent to him at "the soonest".

15 Cheque dated the 6th June 2005 in the amount of \$2,105,272.4, drawn on the first Caribbean International Bank, made payable to the complainant, signed by the attorney and another person, was sent to him by the attorney.

16 The cheque was lodged to the complainant's account with the Victoria Mutual Building Society.

17 The cheque was dishonoured.

18 This is confirmed by Victoria Mutual by letter dated the 20th June 2005 directed to the complainant and admitted in evidence as exhibit 3.

19 The complainant told the attorney that the cheque had not been honoured. 20
The complainant did not receive replacement funds due from the attorney.

21 There was an agreement entered into between the attorney and the complainant in which the attorney agreed to pay the sums due to him from the sale of his apartment.

22 The attorney did pay some of the monies due to the complainant.

23 The attorney still owes the complainant monies due to him under the sale

24 The attorney did not at the material time keep books of Account as required by the Legal Profession (Accounts and Records) Regulations 1999. She admitted this.

DISPUTED FACTS:

- 1 Did the complainant loan the proceeds of sale to the attorney?
- 2 Did the attorney mistakenly misuse the funds of the complainant?
- 3 Did the attorney misappropriate the proceeds of sale due to the complainant? 4 Did the attorney suffer from mental illness at the time that she had carriage of sale?
- 5 Did this mental illness cause her to misuse or misappropriate the complainant's funds?

The panel now makes its findings of fact and mixed law and fact as it is obliged to do pursuant to section 15 of the Legal Profession Act. The panel as it is mandated in law to do, makes the following findings applying a standard of proof of "beyond reasonable doubt."

FINDINGS:

- 1 The panel finds all the facts listed as undisputed proved.
- 2 The panel finds that the attorney used the proceeds of sale entrusted to her for and on behalf of the complainant to her own use and benefit or to the benefit of others. 3 The panel finds that the attorney acted dishonestly in her use of the complainant's funds.
- 4 The panel finds that the complainant did not loan the proceeds of sale of his apartment to the attorney.
- 5 The panel finds that the complainant made a concerted effort to persuade the attorney to hand over his funds to him including seeking the services of an attorney-at-law before laying the complaint.
- 6 The panel finds that there is no credible evidence that the attorney suffered from any mental illness at the time she had conduct of the sale in the year 2004 and 2005. Exhibit 5 does not speak to when her alleged psychiatric problem began.
- 7 The said medical report says that the attorney suffers from "reactive depression" but does not relate the attorney's problems to her conduct in 2005. It is to be noted that Dr. Irons saw the attorney on two occasions in September 2007 and once in October 2007.
- 8 To date, the attorney has still failed to account to the complainant for the sum of \$750,000.00 representing principal and interest in relation to the balance proceeds of sale of the complainant's proceeds of sale.
- 9 The attorney admits that she has similar problems with funds belonging to other clients.
- 10 There is nothing disclosed in the evidence that persuades this panel that any alleged abuse by the attorneys' father contributed to her misappropriation of the complainant's funds.

CONCLUSIONS: The very existence of the legal profession depends on the collective integrity of all its members. The custom of conveyancing practice depends on the reliance on and complete trust in the integrity of all attorneys-at-law. The public's interests must be protected at all times.

We quote here from the judgment of the Master of the Rolls in the English Court of Appeal cas of Bolton v The Law Society reported at (1992) 2 All E R 486 and at p. 491 paragraph h:

"It is required of Lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness ... Any solicitor who is shown to have discharged his professional duties with less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors' Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees.

The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties"

On p 492 Sir Thomas Bingham went on to say "If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not and has never been seriously in question, Otherwise the whole profession and the public as a whole is injured"

We find that the respondent attorney-at-law has breached canon VII(b) (ii) of the Legal Profession(Canons of Professional Ethics) Rules in that "she has failed to account to the complainant Mr. Errol Cunningham for all the monies in her hands for his account or credit although reasonably required to do so."

The respondent attorney-at-law has also breached canon I(b) of the Legal Profession (Canons of Professional Ethics)Rules in that by her conduct "she has failed to maintain the honour and dignity of the profession and has not abstained from behaviour which may tend to discredit the profession of which she is a member."

In light of the findings and conclusions of the panel, the respondent attorney at law is guilty of professional misconduct contrary to section 12 (4) of the Legal Profession Act as amended" by The Legal Profession (Amendment)Act 2007.

SANCTIONS: On the evidence adduced in this case and based on the findings made, the panel is impelled in the interests of the public and the legal profession to make the following orders:

- (1) That the Attorney Georgette Scott do make restitution of the sum of \$750,000.00 to the complainant Errol Cunningham with interest thereon at the rate of 12% per annum from May 2005 until payment.
- (2) That the attorney-at-law Georgette Scott be struck from the roll of attorneys-at-law entitled to practice in the several courts in the island of Jamaica.
- (3) That costs of \$50,000.00 are awarded to the complainant against Georgette Scott.

Dated 14th October 2008

PAMELA BENKA-COKER, Q.C.

CHARLES PIPER

DAVID BATTS