

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

COMPLAINT NO. 101 OF 2003

**IN THE MATTER OF A COMPLAINT
BY GRACE PEART AGAINST
LORRAINE EARLE, AN ATTORNEY-
AT-LAW**

AND

**IN THE MATTER OF THE LEGAL
PROFESSION ACT**

BETWEEN	GRACE PEART	COMPLAINANT
AND	LORRAINE EARLE	RESPONDENT

**PANEL: Mrs. Gloria Langrin
Miss Beryl Ennis
Mr. Stephen Shelton**

The Complainant, Ms. Grace Peart appearing in person.

The Respondent not appearing nor being represented.

Hearing Dates: 18th June 2005, 29th October 2005, 18th March 2006,
21st April 2007 and 29th November, 2008.

This is a complaint which was brought by Ms. Grace Peart against Mrs. Lorraine Earle on or about the 13th day of November, 2003 on which date the Form of Application against AN ATTORNEY-AT-LAW and Form of Affidavit by Applicant were duly signed by the complainant.

The Grounds of the Complaint were as follows:

- (a) "She has not provided me with any information on my business and has acted with inexcusable or deplorable negligence in the performance of her duties
- (b) "Also, Mrs. Earle has not accounted to me for all moneys and documents in her hands for my account, although I have reasonably required her to do so.

The Respondent did not respond to this Complaint although invited to do so. The matter was considered by the Disciplinary Committee and the decision was taken that the matter should be set for trial.

The parties were duly and appropriately notified of all the hearing dates and on the first two occasions no parties attended. However on the third trial date (March 18, 2006) the Complainant attended and the matter proceeded in the absence of the Respondent who neither appeared nor was represented pursuant to Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules as contained in the Fourth Schedule of the Legal Profession Act.

Notwithstanding the service of the Notice of Hearing on the Respondent by registered post in accordance with the Legal Profession Act 4th Schedule, Rule 21 and the seriousness of the allegations against her the Respondent did not appear at the hearing. The Panel therefore referred to the Affidavit of Service of

Mervalyn Walker sworn to on the 16th March 2006, which deposed to the service by registered post of the Notice by Committee to Attorney-at-Law informing the Respondent of the date of the hearing and that if she failed to appear the Committee may proceed in her absence **and proceeded in her absence.**

The evidence of the Complainant was taken on that date and a transcript of the evidence was sent to the Respondent and the matter was set for continuation on the 21st April, 2007. The Complainant sent a Fax to the Secretary of the General Legal Council requesting another date as she now lives overseas and could not attend on that day. She further requested that the matter proceed if possible on the evidence she had given. The Respondent was neither present nor represented on this occasion.

The matter was then set for the 20th November 2008 and again the parties were properly notified of this date and on that occasion when neither of the parties attended the Panel decided that it would consider the matter on the evidence given by the Complainant and give its decision.

EVIDENCE

- (1) Ms. Grace Peart the Complainant was introduced by her then business partner to Mrs. Lorraine Earle, the Respondent in or about December, 2002 in relation to advice as to how to deal with their company

- (2) On December 13, 2002 the Complainant officially retained the Respondent by giving her a cheque for \$20,000.00 and cash of \$12,500.00 towards a retainer to register their company. She did not have the returned cheque or a receipt for this sum with her but believed she could find it among her "stuff". On the same day the Respondent was also given a business cheque for \$35,000.00 to make a visa application.
- (3) Scotiabank cheque no. 000021 for \$35,000.00 dated 13th December 2002 was tendered in evidence as **Exhibit 1B.**
- (4) The company was never incorporated.
- (5) The Respondent was also paid a further sum of \$35,000.00 by cheque on 20th December 2002 to make another visa application.
- (6) Scotiabank Cheque No. 000005 for \$35,000.00 dated 20th December 2002 drawn on the account of Tele Talk was tendered in evidence as **Exhibit 2.**
- (7) Nothing happened with these visa applications and there was no evidence that the Respondent ever lodged the visa applications.
- (8) On the said 20th December 2002 the Respondent was also paid the sum of \$100,000.00 as attorneys fees to change the names on two titles from deceased persons to living persons and to deal with probate and administration in relation to the deceased persons. The Respondent was earlier handed duplicate Certificates of Title registered at Volume 1127 Folio 314 and Volume 1203 Folio 682 of

the Register Book of Titles and she gave the Complainant receipts for the money and the titles.

- (9) Receipt from the Respondent to the Complainant for \$100,000.00 for attorneys fees dated 20th December 2002 was tendered in evidence as **Exhibit 3.**
- (10) Receipt from the Respondent to the Complainant dated 11th December 2002 for duplicate Certificate of title registered at Volume 1127 Folio 314 in the name of Neville Washington Tulloch was tendered in evidence as **Exhibit 4.**
- (11) Receipt from the Respondent to the Complainant dated 11th December 2002 for duplicate Certificate of Title in the name of Sydney Lambert registered at Volume 1203 Folio 682 was tendered in evidence as **Exhibit 5.**
- (12) The titles were not processed, the names were not changed, nothing was done by the Respondent in relation to these titles
- (13) On the said 20th December 2002 the Complainant contends that she also gave the Respondent a further sum of \$10,000.00 cash for the work on the titles for which she was not given a receipt.
- (14) In February 2003 the Respondent came to the Complainant and asked them to cash a cheque dated 21st February 2003 for \$50,000.00 drawn to the business Tele Talk. They gave her the cash and when the cheque was presented to the bank, the bank refused to honour it on the basis that the account upon which the

cheque was drawn had been closed some time before. The Complainant has never recovered this money.

- (15) RBTT Bank Jamaica Limited Cheque No. 5890359 dated 21st February 2003 drawn to Tele Talk by the Respondent in the sum of \$50,000.00 was tendered in evidence as **Exhibit 6**
- (16) The Respondent had also received two passports in the names of H. Davis and Neville Tulloch in connection with the business. She was to hand over these passports to the Complainant at the Office of the Registrar of Companies where they were to meet. The Respondent never showed up and has never returned the passports.
- (17) The Complainant made contact with the Respondent on numerous occasions and arranged to meet her and she never showed up. The last occasion was the 13th June 2003. Since then she has not heard from her. She called her cellular number 490-5464 and her son answered and the Complainant has not heard from or seen her since.
- (18) The Complainant reported the matter to the Fraud Squad of the Jamaica Constabulary Force at 33 Duke Street, Kingston on the 14th July 2003. Mr. Phinn took her details and to date she has not heard from them.
- (19) The Complainant contends the Respondent and her husband operated a construction company called Fabtech Limited.

FINDINGS

The Panel having considered the evidence fully, makes the following findings:-

- (1) The Complainant properly retained the Respondent to carry out the following matters:-
 - (a) having their business incorporated as a limited liability company;
 - (b) making two visa applications
 - (c) doing such probate and administration work as was necessary to have the names of the two deceased registered proprietors of land changed to two living persons on the duplicate Certificates of Title.
- (2) The Complainant paid the Respondent various sums of money amounting to \$212,500.00 to carry out the abovementioned matters and the Respondent failed to diligently pursue or proceed with the Complainant's matters.
- (3) The Respondent has not carried out any of the jobs for which she was retained and has failed and/or neglected and/or refused to account to the Complainant for her money although she has been reasonably required to do so.
- (4) The Respondent fraudulently encashed a cheque for \$50,000.00 with the Complainant, when she well knew or ought to have known

that the account on which the cheque was drawn had some time previously been closed. The Respondent also failed or neglected or refused to reimburse the Complainant.

- (5) The Respondent failed to return the Complainant's valuable documents to her despite the Complainant's request for her to do so.
- (6) The Respondent has failed to meet and communicate with the Complainant despite being requested to do so.
- (7) The Respondent has acted with inexcusable and deplorable negligence in failing to act on any of the instructions which were given to her by the Complainant.

THE LAW

The Standards of Professional Conduct

The standards of professional conduct are governed by the Legal Profession (Canons of Professional Ethics) Rules (hereinafter called the Canons) made pursuant to Section 12 (7) of the Legal Profession Act.

The Complainant grounds her Affidavit of Complaint on the breaches by the Respondent of at least three Canons namely:-

CANON IV (r) 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 the information as to the progress of the client's business with due expedition.

CANON IV (s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.

CANON VII (b) An Attorney shall:-

(ii) 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.

The Panel is also of the considered view that the Respondent's behaviour also offends Canons 1(b) (e) and (f).

CANON 1(b) An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member

1(e) An Attorney shall as far as possible comply with a request from the General Legal Council or the Disciplinary Committee for comments or information on any aspect of a complaint being considered by the General Legal Council or the Disciplinary Committee.

1(f) An Attorney shall ensure his attendance at Disciplinary Committee proceedings when so requested by the Disciplinary Committee.

THE STANDARD OF PROOF

The panel is well aware that for a complainant to succeed on a complaint of professional misconduct we must be satisfied on the evidence so that we are sure, that is beyond a reasonable doubt that the attorney is guilty of breaches of the Canons.

**See: Winston Campbell v Davida Hamlet [2005] 66 WIR 346 or
[2005] ALL ER 1116**

CANONS IV (r) and (s)

Firstly in relation to Canon IV(r) it is the view of the Panel that the Respondent's conduct in failing to diligently pursue or proceed with the Complainant's matters or at all and in failing to provide the Complainant with any information as to the progress of her business after being reasonably required to do so, is in breach of this Canon.

Secondly the Panel is also of the view that the Respondent is in breach of Canon IV(s) in that her conduct in failing to act on the Complainant's instructions at all without any reasonable explanation for failing to do so, thereby causing the Complainant to suffer loss, amounts to inexcusable or deplorable negligence or neglect.

CANON VII (b) (ii)

The Panel is of the view that the Respondent is also in breach of this Canon in that she received sums amounting to \$212,500.00 to carry out work on several matters on behalf of the Complainant and she has failed to carry out any of the

work for which she was retained and has failed to account to the Complainant for all monies in her hands for the account or credit of the Complainant.

CANON I (b)

The Panel found that the Respondent having fraudulently encashed a cheque for \$50,000.00 with the Complainant when she well knew or ought rightly to have known that the account on which the cheque was drawn had some time previously been closed and having failed or refused to reimburse the Complainant, was a breach of Canon I(b). This is behaviour which discredits the profession of which the Respondent is a member. Further this behaviour falls far short of maintaining the honour and dignity of the profession.

CONCLUSIONS

- (1) The Panel finds the Respondent guilty of Professional Misconduct for her breaches of Canons IV (r) and (s), VII (b) (ii) and I (b) contrary to Section 12 of the Legal Profession Act.

SANCTIONS

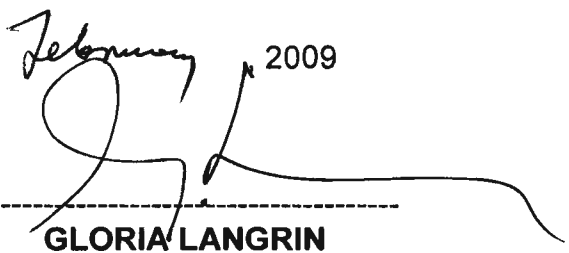
By virtue of the powers given to us under Section 12 of the Legal Profession Act we hereby Order the following:-

1. Pursuant to Section 12 (4) (a) of the Legal Profession Act the name of the Attorney-at-Law Lorraine A. Earle be struck off the Roll of Attorneys-at-Law entitled to practice in the Island of Jamaica. The Panel is aware of

the fact that on the 22nd day of March, 2006 the Respondent was already struck off the Roll of Attorneys-at-Law, but as the misconduct committed by the Respondent in this case related to behaviour when the Respondent was on the Roll of Attorneys-at-Law, the Panel was of the view that the sanction should be imposed.

2. Pursuant to Section 12 (4) (c) of the Legal Profession Act the Respondent make restitution to the Complainant of the sum of \$262,500.00 being the sum of \$212,500.00 paid by the Complainant to the Respondent for work which was not performed by the Respondent at all and \$50,000.00 for reimbursement of the cheque which was drawn on the closed account.
3. That interest be paid by the Respondent to the Complainant on the sum of \$262,500.00 from February 21, 2003 to the date of the payment.
4. The Respondent is to pay costs to the Complainant of \$20,000.00.

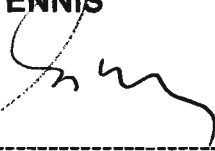
DATED THE 5th DAY OF February 2009



GLORIA LANGRIN



BERYL ENNIS



STEPHEN SHELTON