

c) The Attorney had not provided the Complainant with a copy of the Agreement for Sale nor with a Statement of Accounts.

d) Arising from (a) (b) and (c) the Complainant's ground of complaint was that the Attorney

“has not dealt with my business with all due expedition and she has acted with inexcusable or deplorable negligence in the performance of her duties.”

The Case for the Complainant

When the matter came up for hearing on October 11, 2008, Mr. Kirk Anderson, attorney for the Complainant, sought and was granted, leave to amend the Grounds of Complaint as follows:-

i) Amendment to paragraph 4 of the Complainant's Affidavit , so that it reads:

“ She has not dealt with my business with all due expedition contrary to Canon 4 (r) of the Legal Profession (Canons of Professional Ethics) Rules. (amendment underlined).

ii) Further amendment to paragraph 4 of the Complainant's Affidavit, so that it reads:

“ She has acted with inexcusable or deplorable negligence in the performance of her duties contrary to canon 4(s) of the Legal Profession (Canons of Professional Ethics) Rules .

In addition, a third ground of complaint was added as follows:

iii) She has not placed the monies received by her on the Complainant's behalf into a trust account, contrary to the Legal Profession (Accounts and Records) Regulations, 1999.

Mr. Ballantyne, attorney for Mrs. Haughton-Cardenas indicated that he had no objections to the amendments (i) and (ii) but that he had no instructions on (iii) all of which are set out above.

After a short adjournment to enable both counsel to discuss the amendments, the Complainant's case proceeded. The Complainant's attorney indicated that the case could proceed with all of the grounds as amended.

There was no objection from Counsel for the Attorney.

The Complainant's evidence.

Mrs. Avis Smith, the Complainant, gave viva voce evidence, in addition to the evidence stated in exhibits 1 and 2, Affidavits of Avis Smith, dated 19th September 2007 and 5th June 2008, in support of her complaint.

The facts elicited from the Complainant's evidence turned on instructions given by her to the Attorney sometime in 2004 to have carriage of sale of property registered in the names of herself and her brother, Eric Smith. A copy of the duplicate Certificate of Title, registered at Volume 412 Folio 76 was tendered into evidence. The civic address of the property is 3 Lyndale Avenue, Kingston 10 in the parish of Saint Andrew.

The Agreement for Sale dated April 25, 2006 (exhibit 4) was duly executed by the vendors and purchaser and the Complainant identified her own, and her brother's signatures and identified that the purchaser had also signed. She is referred to as Avis May Cooper on the Agreement for Sale and she confirmed that she was the same person as Avis Smith who was referred to and who had signed as Avis May Cooper on the Agreement for Sale.

The Sale price was \$ 2.8million.

The Complainant stated that despite her requests for a status report on how the transaction was proceeding, as well as for a statement of accounts setting out what were the expenses and the net proceeds, the Attorney failed to provide her with a timely response. Frustrated, she sought the assistance of the Public Defender and the Disciplinary Committee of the General Legal Council.

The Complainant claimed not to have received any correspondence relating to the sale of the property until she wrote to Mr. Delroy Chuck, attorney-at-law, who had represented Victoria

Mutual Building Society in the registration of the mortgage on behalf of the purchaser. She exhibited a copy of her letter to Mr. Chuck requesting that a copy of the Agreement for Sale be sent to her attorneys-at-law, DunnCox to the attention of Mr. Kirk Anderson. She also exhibited a copy of the Instrument of Transfer of Mortgage dated 14th June 2005 which showed that the purchaser had obtained a mortgage in the sum of \$ 1.45 million.

Also tendered into evidence on behalf of the Complainant was the Instrument of Transfer dated 25th April, 2006, duly executed by Vendors and Purchasers.

Counsel for the Complainant, Mr. Kirk Anderson, filed several affidavits on her behalf.

He deponed that it was subsequent to his letter dated March 17, 2009, requesting correspondence in the matter, that he received from Mr. Delroy Chuck copies of letters to Mrs. Haughton Cardenas. Included among the letters was one dated April 11, 2005 requesting inter alia, the duplicate Certificate of Title registered at Volume 412 Folio 76 and the Instrument of Transfer, in which Mr. Chuck gave an undertaking "to pay to you the sum of \$ 1,450,000.00 upon completion of the registration of the Building Society's Mortgage and upon receipt of the said sum from the Building Society". It may be concluded that Mrs. Haughton-Cardenas complied with Mr. Chuck's request as there was also exhibited a letter dated August 10, 2006 from Mr. Chuck to Mrs. Haughton Cardenas enclosing the proceeds of mortgage, \$ 1,450,000.00 on which her firm's stamp appears, dated "10/8/06" with the words, "copy received".

Mr. Anderson also exhibited a copy of a letter from him dated June 6, 2008, in which he requested from Mrs. Haughton-Cardenas a Statement of Accounts and indicating that up to that date, the Complainant had not been provided with a statement, neither had she received the net proceeds of the sale. She responded by letter dated June 17, 2008, enclosing two Vendors' Statements one of which set out the Complainant's costs for professional services and the other setting out the net proceeds of sale in the sum of \$ 2, 221,345.00. In her letter dated June 17, 2008, the Attorney furnished an undertaking as follows:

"We undertake to pay your client all the monies due and owing to her even though we were only paid \$ 2,183,400.00 by the Purchasers, as it was our responsibility to obtain an undertaking from the Purchaser's attorneys in the first place".

The Case for the Attorney

The Attorney, Mrs. Haughton-Cardenas, did not respond to the Complainant's complaint, upon receipt of it from the General Legal Council. In fact, to date, there is no response from the Attorney. When Mrs. Smith, the Complainant, gave evidence, Mr. Ballantyne indicated that a response, by way of an affidavit, would have been forthcoming.

The following is a sequence of the events on each occasion when the matter was set for hearing:

March 1, 2008

Complainant's Attorney present on behalf of the Complainant, who lives overseas. Mr. Osvaldo Cardenas, husband of the Attorney attended and submitted a medical certificate on behalf of Mrs. Haughton- Cardenas. Matter adjourned to June 7, 2008.

June 7, 2008

Complainant and her Attorney present. Mrs. Haughton-Cardenas also present. Matter adjourned until October 4, 2008, to enable the parties to hold discussions.

October 4, 2008

Complainant and her attorney present. Mr. Ballantyne present on behalf of Mrs. Haughton-Cardenas. He submitted a medical certificate on her behalf.

Matter adjourned until October 11, 2008. (Point taken that the matter could not have proceeded before that Panel as one member was from the DunnCox law firm, as is Mr. Anderson, the Complainant's attorney-at-law.

October 11, 2008

The Complainant's evidence was taken with Mr. Ballantyne present for Mrs. Haughton -Cardenas and he pointed out that the medical certificate which had been tendered on the 4th October would have expired on October 21, 2008.

Mr. Anderson sought and obtained three (3) amendments to the Complainant's Grounds of Complaint. Mr. Ballantyne objected, then concurred after discussions with Mr. Anderson. He told the panel that he wanted Mrs. Haughton-Cardenas to give viva voce evidence, but subsequently indicated that he would submit an affidavit but that he had no instructions on the third ground of the Complainant's grounds of complaint.

Adjourned to December 13, 2008 (The records show that the notes of evidence were sent to the Attorney as well as to Mr. Ballantyne).

December 13, 2008

Mr. Anderson was present. Mr. Osvaldo Cardenas appeared and presented medical certificates on behalf of Mrs. Haughton-Cardenas and Mr. Ballantyne.

The matter was adjourned to February 28, 2009 .

February 28, 2009

Mr. Courtney Haughton, the Attorney's brother was present and tendered medical certificates for Mrs. Haughton-Cardenas and, Mr. Ballantyne. Mr. Anderson applied to begin his closing submissions and was permitted to do so by the Panel. Based on certain questions put to him by the Panel in respect of further particulars which would have been required, he requested and was granted, an adjournment.

The Panel noted that the affidavit which was promised by Mr. Ballantyne on behalf of Mrs. Haughton-Cardenas, had not been submitted.

Adjournment to July 11, 2009.

July 11, 2009

Mrs. Haughton-Cardenas and Mr. Ballantyne were absent. Under cover of letter dated July 9, 2009 a medical certificate was sent by Mr. Ballantyne to the General Legal Council on behalf of Mrs. Haughton-Cardenas.

It was noted that the Notice of Hearing had been duly served on Mrs. Haughton-Cardenas at her address on record, as well as on Mr. Ballantyne.

Findings

Having reviewed the oral evidence, affidavits and documentary evidence, we make the following findings of fact

- 1) The Attorney acted on behalf of the Complainant and had carriage of sale in the conveyancing transaction.
- 2) The certificate of title registered at Volume 412 Folio 76 has been duly transferred to the purchaser, Leherd Duhaney registered on the 24th day of July, 2006, concomitant with the mortgage to Victoria Mutual Building Society in the sum of \$ 1,450,000.00 which was registered on the same date.
- 3) The mortgage proceeds in the sum of \$ 1,450,000.00 on behalf of the purchaser were paid to the attorney, by Mr. Delroy Chuck
- 4) The Complainant has not received any of the proceeds of sale, (including the mortgage proceeds) as stated by her in her affidavit dated 5th June 2008, paragraph 19, that “neither myself nor my brother have received any money whatsoever from Attorney Cardenas”, and stated subsequently in her viva voce evidence.
- 5) The Attorney undertook, by letter dated June 17, 2008, to pay to Messrs DunnCox, on behalf of the Complainant “all the monies due and owing to her even though we were only paid \$2,183,400.00 by the Purchasers as it was our responsibility to obtain an undertaking from the Purchasers’ attorneys in the first place.”

Two Statements of Accounts dated June 10, 2009 and letter of undertaking from the Attorney, of even date, are set out below, identified as A, B and C respectively

A.
VENDOR'S STATEMENT

HAUGHTON & ASSOCIATES

Attorney-at-law
30 Dumbarton Avenue
Kingston 10

BILL FOR PROFESSIONAL SERVICE RENDERED

As at June 10, 2008

To: Ms. Avis Smith
112 Clifton Avenue
Springfield, Massachusetts
01105
U.S.A.

Re: **Sale of Property located at 3 Lyndale Avnue
Kingston 5 in the parish of Saint Andrew
Volume 412 Folio 76 – Avis Smith et al to Leherd Duhaney**

Particulars	\$
Sale Price - \$2,800,000.00	
Attorney's cost for the Professional Responsibility of the matter.	84,000.00
Cost for preparing Agreement for Sale - \$30,000.00 Your ½ cost	15,000.00
<u>Cost of preparing:-</u>	
1. Letter of Possession	
2. Letter to Jamaica Public Service (J.P.S)	
3. Letter to National Water Commission (N.W.C)	
<u>\$6,000.00</u> Your ½ cost	3,000.00
Miscellaneous costs, ie., Courier, telephone calls, photocopying, and other incidentals not specifically herein.	
<u>\$5,000.00</u>	<u>5,000.00</u> 107,000.00

G.C.T.	17,655.00 <u>124,655.00</u>
Amount due from you	\$124,655.00

With Complements
HAUGHTON & ASSOCIATES

PER:.....(signed).....
ANTONNETTE HAUGHTON-CARDENAS

AH-C/rap

B.

VENDOR'S STATEMENT

HAUGHTON & ASSOCIATES
Attorney-at-law
30 Dumbarton Avenue
Kingston 10

STATEMENT OF ACCOUNT
As at June 10, 2008

To: Ms. Avis Smith
112 Clifton Avenue
Springfield, Massachusetts
01105
U.S.A.

Re: **Sale of Property located at 3 Lyndale Avnue
Kingston 5 in the parish of Saint Andrew
Volume 412 Folio 76 – Avis Smith et al to Leherd Duhaney**

Particulars	Debit	Credit
Sale Price - \$2,800,000.00		\$2,800,000.00
Transfer Tax - \$210,000.00	210,000.00	
Stamp Duty - \$154,000.00 Your ½ cost	77,000.00	
Registration Fee - \$14,000.00 Your ½ cost	<u>7,000.00</u> 294,000.00	

Bill for professional Service Rendered		
Property taxes paid by us	124,655.00	
5% Realtor's Commission	20,000.00	
	<u>140,000.00</u>	
Total	578,655.00	
Amount due from you to close	\$2,221,345.00	\$2,221,345.00

With Compliments
HAUGHTON & ASSOCIATES

PER.....(signed).....

ANTONNETTE HAUGHTON-CARDENAS

AH-C/rap

(C)
HAUGHTON & ASSOCIATES
Attorneys-at-Law

Antonnette Haughton-Cardenas, B.Sc.,LL.B.(UWI)

30 Dumbarton Avenue, Kingston 10

Telephone: (876)920-1561 | 920-3627
Telephone: (876)920-3660 | 920-4364
Fax: (876)920-6560

June 17, 2008

DunnCox
Attorney-at-Law
48 Duke Street
Kingston

Attention: Kirk B. Anderson

Dear Sirs,

**Re: Sale of 3 Lynford Avenue Kingston 5, Volume: 412 Folio: 76-Avis Smith et al to Leherd
Duhanev**

Reference is made to the captioned.

Please find attached Statement of Account and Bill for Professional Services Rendered,
We apologise for the delay in forwarding same to you.

We undertake to pay your client all the monies due and owing to her even though we were only paid
\$2,183,400.00 by Purchasers, as it was our responsibility to obtain an undertaking from the
Purchaser's Attorneys in the first place

Thank you for your forbearance in this matter.


Yours truly,
HAUGHTON & ASSOCIATES

PER:.....(Signed).....
ANTONNETTE HAUGHTON-CARDENAS

AH-C/rap
Encl.

6) That although the Attorney gave an undertaking since June 17, 2008, to Messrs DunnCox to pay the sum of \$ 2,221,325.00, to date over a year later, no payments have been received by the Complainant or her Attorney.

7) The Attorney has failed to furnish the Disciplinary Committee with any information that could assist in the deliberations of the Panel, which we find to be appalling conduct, bearing in

 mind the seriousness of the complainant^t.

The Burden and Standard of Proof

The burden of proof is on the Complainant to prove the allegations made against the Respondent. The Privy Council decision of *Wilston Campbell and Davida Hamlet* (Trinidad and Tobago) [2005] UKPC 19 (25 April, 2005) Privy Council Appeal #73 2001 endorsing the decision of *Re a Solicitor* (1992 2 All E.R. 35) makes it very clear that the criminal standard of proof is applicable in all disciplinary proceedings, no matter what the offence. The onus is on the Complainant, therefore, to prove her allegations of professional misconduct beyond a reasonable doubt.

The Panel has had to refer to the Complainant's evidence only in order to come to its conclusions as the Attorney has not responded in any manner or form.

We are mindful of the strenuous submissions of Mr. Anderson in support of the Complainant. He furnished written submissions for which the Panel was grateful.

We accept grounds 1 and 2 of the complaint, as set out above, and find that the Complainant has established her case against the Attorney who, we repeat, has not responded to the complaint. She was given every opportunity to do so.

Members of the Legal Profession are expected to uphold the honour and dignity of the profession. When members of the public seek the services of an attorney-at-law, they expect that their matters will be dealt with as expeditiously as possible and that the attorney's honesty and integrity will influence the conduct of those matters.

The well-known and often cited words of Sir Thomas Bingham, MR in *Bolton v. Law Society*

(1994) 1 WLR 512 are instructive here, where he said, speaking of lawyers in the United Kingdom, but applicable to lawyers everywhere in keeping with the ethics of our profession, at p.518:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. The requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers it is because this appeal concerns a solicitor, and where a client’s moneys have been misappropriated the complaint is inevitably made against a solicitor, since solicitors receive and handle clients’ moneys and barristers do not.


Any solicitor who is shown to have discharged his professional duties with anything 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.

In such cases the Tribunal has almost invariably, no matter how strong the mitigation advances for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years has it been willing to order the restoration to the Roll of a Solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation.

If a solicitor is not shown to have acted dishonestly, but shown to have fallen below required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.

Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension”.

His Lordship then went on to examine those circumstances when a mitigation of punishment is warranted.

 In the Complaint before us, we find Mrs. Haughton- Cardenas' conduct in not responding to the complaint and in attending on only one occasion before the Disciplinary Committee to be reprehensible and dilatory, especially as it is a fact of some notoriety that even when the Attorney failed to appear before the panel as outlined above, on the ground of illness, she had been seen in Court in the days prior, and subsequent to the dates of hearing.

We find the attorney to be guilty of professional misconduct in accordance with the provisions of the Legal Profession Act, in particular the Legal Profession (Canons of Professional Ethics) Rules.

With respect to the Legal Profession (Canons of Professional Ethics) Rules we find the Attorney to be in specific breach of the following:-

- (A) Canon I : An Attorney shall assist in maintaining the dignity and integrity of the Legal Profession and shall avoid even the appearance of professional impropriety :
- 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.
- 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 complaint being considered by the General Legal Council or the Disciplinary Committee
- f) An Attorney shall ensure his attendance at Disciplinary Committee proceedings when so requested by the Disciplinary Committee.

(B) Canon IV : An Attorney shall Act in the best interests of his client and represent him honestly, competently and zealously within the bounds of the law: He shall preserve the confidence of his client and avoid conflicts of interest:

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 information as to the progress of the client's business with due expedition .

s) In the performances of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.

Mr. Anderson made submissions on the third ground of complaint, that the Attorney had not placed on trust the funds received by her from the sale of the Complainant's property, contrary to the Legal Profession (Accounts and Records) Regulations, 1999. In the absence of a response from the Attorney, the inference may certainly be drawn, particularly since the attorney produced a statement of accounts which indicated the sums to the credit of the client and which did not include interest, and the attorney also gave an undertaking to the attorney representing the Complainant which did not include interest. However, these facts do not point to an inescapable inference that the sums were not placed in an interest bearing trust account as the information on interest could have been omitted in error. The failure to pay over the net proceeds of sale, however, is egregiously in breach of the above mentioned Canons. Since there is no sufficient evidence with regard to the third ground we make no finding under this head.

Both Mr. Anderson and the panel suffered from the handicap of not having had a response from the Attorney.

Section 12 (4) of the Legal Profession Act provides for the sanctions which may be imposed on an attorney-at-law who is found to be guilty of misconduct in a professional respect . These sanctions are set out at Section 4 (a) -(f).

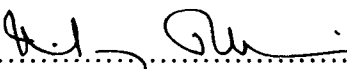
These include striking off the Roll, suspension, reprimand, restitution and fines. Canon VIII (d) states that the breach by an Attorney of certain canons indicated there (including Canon 4 (r) and

4 (s) “ shall constitute misconduct in a professional respect and an Attorney who commits such a breach shall be subject to any of the orders contained in sections 12(4) of the Principal Act” .

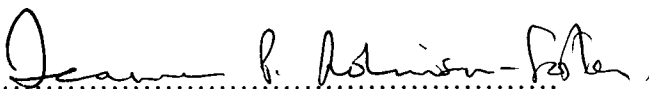
Based on the aforementioned findings, the Panel orders as follows:-

- (i) That Attorney-at-Law, Antonette Haughton-Cardenas be struck from the Roll of Attorneys-at-Law with immediate effect.
- (ii) That the Attorney pay to the Complainant , Avis Smith, the sum of \$ 2,221,325.00 with interest at the rate of 22.3%,per annum (being the average borrowing rate over the period) from the 15th September, 2006 to the date of judgment , and the rate of 6% per annum thereafter until payment.
- (iii) That the Attorney pay costs in the sum of \$ 120,000.00 to be apportioned as to \$ 80,000.00 for the Complainant and \$ 40,000.00 to the General Legal Council.

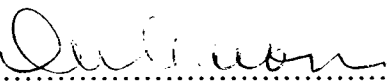
Dated the 31st day of July, 2009


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HILARY PHILLIPS ,Q.C.


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JEANNE P. ROBINSON-FOSTER


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LILIETH C. DEACON