

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

IN THE MATTER of CLARIS RATTIGAN v  
MALCOLM ROWE, an Attorney-at-Law  
AND

IN THE MATTER of the Legal Profession Act.

Complaint No. 37/2008

Coram: Mrs Pamela Benka-Coker, Q.C.  
Mrs Gloria Langrin  
Mr David Batts

Hearings: February 21, 2009 & March 28, 2009

**Preliminary Matters**

This Complaint was filed by Claris Rattigan against Malcolm Rowe, Attorney-at-Law on February 18, 2008.

On the date on which the matter was set for hearing Mr Rowe was absent. Having been satisfied that Mr Rowe had been given adequate Notice of the hearing within Rules 5 and 21 of the Fourth Schedule of the Legal Profession Act, the panel commenced the hearing.

On the second date of the hearing Mr Rowe was again absent.

On the second date, Ms Jeanne McLeod, Records Clerk, testified that she had sent the notes of the first hearing to Mr Rowe. Letter to him dated March 10, 2009 was admitted as exhibit 5. Ms McLeod also stated that notice of the date of the second hearing was sent to Mr Rowe by registered post and the registered slip was admitted as exhibit 6.

**The Complaint**

Ms Rattigan's complaint was that:-

1. Mr Rowe had not accounted to her for all the money in his hands for her account although reasonably requested to do so and

2. That Mr Rowe had not dealt with her business with due expedition.

The crux of Ms Rattigan's complaint, contained in the Affidavit of 18<sup>th</sup>, February 2008, was that she had given Mr Rowe her sister's house to sell, in 2005, and to date, he had not accounted to her for the money that had come into his hands in the matter, although reasonably requested to do so.

### **The Evidence**

Ms Rattigan's evidence was that she had been given a power of attorney by her sister dated December 3, 2004 which was tendered as exhibit I.

She took a prospective purchaser to Mr Rowe's office and he prepared an Agreement for Sale for signature of the purchaser and Ms Rattigan. A copy of the Agreement was tendered as exhibit 2.

Mr Rowe told her that the purchaser had paid him a deposit of Three Million Six Hundred Thousand Dollars (\$3,600,000.00).

Several documents, including a death certificate were delivered to Mr Rowe as requested by him.

Ms Rattigan further testified that Mr Rowe had agreed to take the tenants in the subject house to court, but the tenants vacated the premises before the court date.

In Ms Rattigan's words, "the title was done and the purchasers were put in possession in 2005." However, the sale was not completed until the 12<sup>th</sup>, January 2007, when, pursuant to instructions from her sister, the bank paid the balance of the price to Ms Rattigan and not to Mr Rowe.

The bank's letter forwarding the amount of Five Million Six Hundred and Sixty Nine Thousand Nine Hundred and Ninety Five Dollars (\$5,669,995.00) in full and final settlement was tendered as exhibit 3.

Ms Rattigan finally tendered as exhibit 4, Mr Rowe's statement to her, which statement she said was inadequate to account for the expenditure of the \$3,600,000.00 that had been paid to the said Attorney.

The statement showed expenditure of One Million One Hundred and Eighty Six Thousand Two Hundred and Thirty Five Dollars (\$1,186,235.00) yet Mr Rowe has paid Ms Rattigan only One Hundred and Fifty Thousand Dollars (\$150,000.00). An amount of Twenty Thousand Dollars (\$20,000.00) paid by a tenant to Mr Rowe has also not been accounted for by him.

**Findings**

On hearing the complainant's evidence and examining her exhibits, the panel finds as a fact that:-

1. Ms Rattigan retained the services of Mr Rowe in 2005 to carry the sale of her sister's house.
2. Ms Rattigan had her sister's power of attorney for these purposes.
3. Mr Rowe prepared the Agreement for Sale in which the price of \$9,000,000.00 was agreed and it was signed by Ms Rattigan and the purchaser.
4. A deposit of \$3,600,000.00 was paid by the purchaser to Mr Rowe.
5. The purchaser is in possession of the house.
6. The balance of the purchase price was paid by the bank directly to Ms Rattigan in 2007.
7. Mr Rowe's statement does not account for the \$3,600,000.00 paid to him.

The panel bears in mind that when considering allegations of professional misconduct a high standard of proof is required. In other words, the evidence must satisfy the panel beyond a reasonable doubt of the culpability of the professional *A Solicitor 1992 2A11 Eng 335.*

The panel accepts Ms Rattigan as a witness of truth, who has satisfied us beyond a reasonable doubt, that Mr Rowe is in breach of

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

Canon VII b (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 resolute, that the public must be able to trust the profession with the handling of clients' affairs and in particularly with clients' money.

Where members of the profession are by their conscious and deliberate actions eroding the confidence of the public in the profession, that profession must reject such delinquent members from its body.

The panel therefore finds itself with no alternative but to apply the principle enunciated in Weston v Law Society (The Times July 15, 1998) that where a solicitor is found to have acted dishonestly in relation to clients' money, striking off must now be seen as all but automatic.

#### The Order

In reliance on the above decisions the panel is obliged to order:

1. That Malcolm Rowe pay restitution of Two Million Two Hundred and Sixty Three Thousand Seven Hundred and Sixty Five Dollars (\$2,263,765.00) to Ms Rattigan, with interest at 12% from the 12<sup>th</sup>, January 2007 (completion date) to date of payment.
2. That Malcolm Rowe be struck from the Roll of Attorneys-at-Law
3. That Malcolm Rowe pay Thirty Thousand Dollars (\$30,000.00) costs to the Complainant. .
4. That Malcolm Rowe pay Thirty Thousand Dollars (\$30,000.00) costs to the Council.

DATED THE 30<sup>th</sup> DAY OF October 2009

  
PAMELA BENKA-COKER, Q.C. (Mrs)

  
GLORIA LANGRIN (Mrs)

  
DAVID BATTIS (Mr)