

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

**Complaint No. 168/2007**

**IN THE MATTER** of a complaint  
by ALFONS KLEM against EARL  
MELHADO, an Attorney-at-Law

A N D

**IN THE MATTER** of the Legal  
Profession Act

Panel:            Norman Linton, Q.C.  
                     Stephen Shelton  
                     David Batts

1.            This undated complaint is supported by an Affidavit dated the 6<sup>th</sup> January, 2006.

The breaches alleged are:

- “(a)    The attorney withdrew from my employment without taking reasonable steps to avoid foreseeable prejudice or injury to my position and rights as his client.**
- (b)    Having withdrawn from my employment the attorney has not promptly refunded such part of the fees paid in advance as may be fair and reasonable.**
- (c)    The attorney has not provided me with all information as to the progress of my business with due expedition, although I have reasonably required him to do so.**
- (d)    The attorney has not dealt properly with my business with all due expedition.**
- (e)    The attorney has acted with inexcusable or deplorable negligence in the performance of his duties.”**

2. The complaint first came on for hearing on the 19<sup>th</sup> July, 2008, however, no parties appeared and it was adjourned to the 13<sup>th</sup> December, 2008. On that date again no parties appeared and it was further adjourned to the 6<sup>th</sup> June, 2009.
3. The matter came on for hearing on the 6<sup>th</sup> June, 2009 before this Panel. On that date the complainant was present but the attorney Mr. Earl Melhado was absent. The committee satisfied itself that the Notice of hearing had been posted to Mr. Melhado on the 27<sup>th</sup> April, 2009 in accordance with the Rules. This panel therefore commenced the hearing of the matter.
4. The complainant gave evidence and stated that he consulted Mr. Earl Melhado in March 2004. He stated that he instructed Mr. Melhado to wind up the company, Hygrow Ltd. which owed him money. He paid Mr. Melhado a total of \$25,000.00. His affidavit dated 6<sup>th</sup> January, 2006 was put in evidence as **Exhibit 1**. The complainant stated that he requested the return of his documents from Mr. Melhado. He stated that Mr. Melhado did file some papers on his behalf and he begged him to file the final papers but he did not do so. The complainant has consulted another attorney Mrs. Mulendwe. The complainant was asked by the Panel whether his complaint relates to delay and he responded as follows:

**“His delay and I wanted to get my money back because he was not doing his job. He promised to do it and filed papers in court on the 8<sup>th</sup> June 2006 and we went in court. It was a hearing but when the judge asked for an affidavit of service, Mr. Melhado said he never had any. Mr. Melhado never served the papers and I offered to bring the papers to Mandeville bailiff.”**

When asked what was the arrangement for fees the complainant said it was \$25,000.00 up front and total cost would be \$95,000. A document consisting of emails passing between the complainant and Mr. Melhado was admitted into evidence as **Exhibit #2**.

5. **Exhibit 1** is an affidavit of the complainant which gave further details. Paragraph 2 of that affidavit stated that on the 11<sup>th</sup> March, 2004 the complainant instructed Mr. Melhado to act in the winding up of Hygrow Company Ltd. because:

**“the fifty percent company shares which we bought on the 1<sup>st</sup> November 2003 wasn’t ever transferred. I and my partner Dieter Psootka paid US\$2,000.00 for the shares.”**

6. The details of his efforts to contact his attorney and the level of response is worth setting out in full and is to be found in paragraph 2(c ) of the Affidavit:

**“That on the 26<sup>th</sup> of July 2004, I visited the office of Mr. Melhado but he wasn’t in. On the 3<sup>rd</sup> day of August 2004, I had a meeting with Mr. Melhado and he promised me a copy of the filed papers in court. On the 16<sup>th</sup> day of October, 2004 I sent an e-mail to the attorney asking him to send me copies of the Court filing papers.**

**On the 30<sup>th</sup> of October 2004, e-mail for reminder.**

**On the 9<sup>th</sup> day of November 2004, e-mail reminder.**

**On the 30<sup>th</sup> day of November 2004, e-mail reminder**

**In December 2004, meeting with the attorney and promising to sent me the court files.**

**On the 14<sup>th</sup> day of January 2005, e-mail reminder.**

**On the 16<sup>th</sup> day of February 2005, e-mail reminder.**

**On the 24<sup>th</sup> day of March 2005, e-mail and claiming of the bad service, that I was phoning many times to his office without any return call.**

**On the 8<sup>th</sup> day of September 2005, e-mail reminder.**

**On the 5<sup>th</sup> day of October 2005, e-mail reminder.**

**On the 18<sup>th</sup> day of October 2005, e-mail reminder.**

**On the 3<sup>rd</sup> day of November 2005, e-mail reminder**

**On the 21<sup>st</sup> day of December 2005, e-mail reminder.**

**On the 17<sup>th</sup> day of January 2006, e-mail reminder.**

**On the 19<sup>th</sup> day of January 2006, meeting at the attorneys office with the result that he promised me to complete the Court filing papers after I requested before the \$25,000.00 retainer fee back.**

**On the 8<sup>th</sup> day of March 2006, e-mail reminder.**

**On the 8<sup>th</sup> day of June 2006 was the matter B14/2005 in Supreme Court without any result. The attorney couldn't prove that he served the Petition to the Defendant Mr. Cross.**

**Mr. Melhado promised me that he w ant to prepare a new Summons in Supreme Court to sue Mr. Cross for the sum of US\$42,000.00 plus interest what we paid for buying the shares of Hygrow Company. But until now he wasn't preparing anything and I couldn't receive a copy of the Court filing papers.**

**On the 14<sup>th</sup> day of June 2006 sending letters to the attorney per e-mail**

**On the 19<sup>th</sup> day of June 2006 again.**

**On the 25<sup>th</sup> day of June 2006 reminder.**

**On the 10<sup>th</sup> day of July 2006 visit the office.**

**On the 18<sup>th</sup> day of July visit the office before every 14 days I visit the office without any result, attorney was always absent.**

**On the 20<sup>th</sup> day of October 2006, visit the office but no attorney there.**

**On the 10<sup>th</sup> day of November 2006 visit the office but no attorney there.**

**On the 22<sup>nd</sup> day of November 2006 visit the office but no attorney there. Spoke with another attorney Mrs. Small and she told me that Mr. Melhado isn't in office since at least 6 weeks.**

**On the 24<sup>th</sup> I spoke with Mr. Melhado on the phone and he hand up the phone on me after telling him that he isn't doing his job.**

**After I tried many times to reach him but he refused to take my calls.**

**On the 30<sup>th</sup> day of November 2006 visit the office and tried to get my court papers back, but they refused to hand them over.**

**On the 4<sup>th</sup> day of December 2006, I visit the office and tried to get my court papers back, but they refused to hand them over.**

**On the 15<sup>th</sup> day of December 2006, I visit the office and tried to get my court papers back, but they refused to hand them over.**

**On the 21<sup>st</sup> day of December 2006, I visit the office and tried to get my court papers back, but they refused to hand them over.**

**On the 3<sup>rd</sup> day of January 2007, I phoned the office an asked if I could collect the court papers, but the secretary had no order from the attorney, until now. I was phoning before nearly every second day to the office to find out if I could collect the court papers, but without any result.**

**And herewith copies of the e-mail to the attorney are exhibited hereto as "AK1".**

7. **Exhibit 2** consisted in part of an e-mail from Mr. Earl Melhado dated 1<sup>st</sup> April, 2004 in reply to e-mail dated 14<sup>th</sup> March, 2004 from the complainant. Mr. Earl Melhado's e-mail of the 1<sup>st</sup> April, 2004 is as follows:

**"Hi Mr. Klem:**

**This is my third attempt to reply to you. My record shows that we agreed to an overall fee of \$95,000.00 to have your company wound up. I said that I would accept a retainer of \$25,000.00 and you paid \$4,000.00 of this. Immediately upon paying the remainder of the retainer, I will commence legal action to achieve the outcome we agreed.**

**I look forward to beginning the suit as early as possible."**

8. The complainant's evidence in chief having been completed the matter was adjourned part heard to the 7<sup>th</sup> November, 2009. The office was directed to send the typed notes of the evidence to Mr. Earl Melhado.
  
9. At the resumed sitting on the 7<sup>th</sup> November, 2009 the complainant was present but the attorney was absent. The panel satisfied itself that notice of the hearing had been posted to Mr. Earl Melhado on the 11<sup>th</sup> August, 2009 and that the typed notes of evidence had been sent by letter dated 7<sup>th</sup> September, 2009. The complainant indicated that he had no further evidence to call and as such the matter was adjourned without a date being fixed for the Panel to consider its decision.
  
10. This Panel reminds itself that in these matters the complainant has a duty to prove his case beyond a reasonable doubt, that is, before making a finding of professional misconduct this Panel must be sure, *Campbell v Hamlet [2005] 3 AER 1116*.
  
11. The Panel heard and saw the complainant give evidence and we accept him as a witness of truth. We make the following findings of fact:-
  - a) That the complainant retained the attorney in or about March 2004 and paid a total retainer of \$25,000.00.
  - b) That the retainer was paid in two (2) parts - \$4,000 on the 11<sup>th</sup> March, 2004 and \$21,000.00 on the 4<sup>th</sup> May, 2004.

- c) That in the period May 2004 to December 2005 and notwithstanding several written reminders the attorney failed to commence legal action.
  - d) On the 19<sup>th</sup> January 2006 the attorney in a meeting with the complainant promised to complete the filing of court papers after the complainant requested a refund of his retainer.
  - e) The papers were filed and the matter came on before the court in June 2006. On that date the attorney failed to establish service of the originating process.
  - f) Thereafter the complainant made several efforts by telephone, e-mail and visits to the office to obtain information from the attorney but was unsuccessful. On the 30<sup>th</sup> November 2006 the complainant asked that his papers be returned. The complainant again visited on the 4<sup>th</sup> December, 15<sup>th</sup> December and 21<sup>st</sup> December 2006 but was unable to secure the return of his papers. He eventually retrieved the documents in 2008 and has retained new attorneys.
12. It is clear on the aboverferenced finding of facts that the attorney failed to provide his client with all information as to the progress of his business. The attorney has also not dealt with the business of the client with all due expedition. Indeed, the client has in effect received no professional service from the attorney.
13. This Panel therefore finds the attorney to be in breach of the following Canons:-

- (a) Canon IV (r): In that he failed to deal with his client's business with all due expedition and failed with due expedition to provide his client with all information as to the progress of his business.
- (b) Canon IV (s): In that he acted in the performance of his duties with deplorable negligence and neglect.

14. In the circumstances the Panel orders as follows:-

- (a) That the attorney grant full restitution of the fees paid in the amount of \$25,000.00.
- (b) That the attorney pay a fine of \$50,000.00 on or before <sup>25<sup>th</sup> February</sup> ~~31<sup>st</sup> December,~~ <sup>2010</sup> ~~2009.~~ *Set*
- (c) That pursuant to Section 12 (5) \$25,000.00 of the fine of \$50,000.00 be paid to the complainant as compensation for the loss of interest and inconvenience caused by the attorney's delay. The remainder of such fine to be paid into the funds of the Council. *Set*
- (d) That the attorney pay costs to the General Legal Council of \$10,000.00

Dated the <sup>23<sup>rd</sup></sup> day of *January* 200~~0~~<sup>10</sup> *Set*

*Norman Linton*  
.....  
Norman Linton, Q.C.

*Stephen Shelton*  
.....  
Stephen Shelton

*David G. Batts*  
.....  
David G. Batts