

**JUDGEMENT OF THE DISCIPLINARY COMMITTEE**

COMPLAINT NO. 74 OF 2003

JOAN BURKETT POWELL                                 COMPLAINANT

AND

TREVOR RUDDOCK   RESPONDENT

PANEL                                 PAMELA E BENKA-COKER Q.C.

GLORIA LANGRIN

CHARLES PIPER

**COMPLAINT:** By way of Form of Application dated the 5th December 2005, and affidavit in support of the same date, Joan Burkett Powell (hereinafter referred to as the complainant) alleged the following against Trevor Ruddock, attorney-at-law (hereinafter referred to as the attorney).

The attorney was given the property at 117 Great Georges Street Savana-La- Mar in the parish of Westmoreland to be sold. Her brother Calvan Burkett signed the Agreement for Sale on the 29<sup>th</sup> April 2002. To date they have not received any information as to the status of the transaction and the attorney has refused to supply the information.

The complainant further alleges that the attorney has:

“(4) not provided me with all the information as to the progress of my business with due expedition, although I have reasonably required him to do so.

(5) He has not dealt with my business with due expedition

(6) He has acted with inexcusable or deplorable negligence in the performance of his duties.”

**THE EVIDENCE:** The hearing of this complaint commenced on the 3<sup>rd</sup> May 2008. At this hearing the complainant was represented by Ms. Simone Mayhew, and the attorney was represented by Mr. Patrick Bailey.

The following were produced in evidence by consent.

- Exhibit 1 Complainant’s list of documents
- Exhibit 1a Complainant’s supplemental list of documents
- Exhibit 2 Attorney’s list of documents

Other exhibits were admitted in evidence.

Exhibit 3 is a tax receipt No. 131616 indicates that the sum of \$14,730.00 was paid for taxes on the land for the tax period of 2001 and 2002.

Exhibit 3a is an official receipt indicating that the sum of \$14,730.00 was paid for taxes

Exhibit 3b is a receipt which indicates that a total of \$183,480.00 was paid for taxes for the years 2006-8.

Exhibit 4 is letter dated the 29<sup>th</sup> April 2008 from Patrick Bailey to Tavia Dunn of the firm Nunes, Scholfield, Deleon & Co. enclosing a manager's cheque in sum of Two million five hundred thousand dollars(\$2,500,000.00.)

Exhibit 4a is copy cheque in the amount of \$2,500,000.00) sent on behalf of the attorney to the attorneys-at-law from the complainant on the 29<sup>th</sup> April 2008.

Exhibits 1, 1a- and 2 are referred to as lists of documents but they are in fact bundles of documents on which the complainant and the attorney rely.

The complainant gave evidence. She said that her name is Joan Burkett Powell and that she lives at Lot 67 Greenvale Housing Scheme Mandeville, Manchester. She said that she is retired but she was a dietetic assistant in the Mandeville Hospital.

She related that she is the daughter of Charles Burkett and the sister of Calvin Burkett. Charles Burkett died and left a Will. She is a beneficiary under the Will. She is not the only beneficiary. Her father died on the 29<sup>th</sup> April 1969.

The land at 117 Great Georges Street was devised in the Will, and was left to all eight children. There was no registered title to the land but there was an old fashioned conveyance.

She said that she knows the attorney and that he acted for the complainant and her siblings in relation to the land at 117 Great Georges Street. Her brother and she had first given the papers to Mr. Hamaty, and he without their knowledge, handed the documents to the attorney. The attorney called her and told her that he had the documents. This took place in about 2001 or 2002.

The complainant wanted to retrieve the documents but the attorney did not return the documents. Sometime in 2001 the attorney called the complainant to inform her that he had a buyer for the land and asked her how much she wanted for the land. The complainant told the attorney that she wanted 22 million dollars.

She also advised the attorney that he should get in touch with her brother Calvin Burkett in Canada, and her sister Mrs. Mohammed in the Bahamas. The complainant wanted everybody to know what was going on.

Eventually it was agreed that the complainant and her siblings would take \$19,000,000.00 (19 million dollars) as the purchase price for the sale of the land. The attorney had advised that he could get that sum in cash.

The attorney said that the name of the purchaser was Mr. Nepaul. Having agreed to the sale at the price indicated, the attorney was retained to act for the vendor under the agreement for sale. The complainant subsequently discovered that the attorney also acted for the purchaser under the agreement for sale.

On the 29<sup>th</sup> April 2002, the complainant's brother Calvin Burkett came down from Canada and signed the agreement for sale. Calvin Burkett is the executor of their father's estate.

The witness was shown the agreement for sale dated the 29<sup>th</sup> April 2002. **(This agreement is at pp 1-2 of Exhibit 1)** She agreed that there is provision in the agreement that the attorney-at-law having carriage of sale would apply for the land the subject of the sale to be registered under the Registration of Titles Act. **(See special condition 6 of the said agreement.)** The attorney was therefore responsible to apply for the land to be brought under the operation of the Registration of Titles Act. The witness confirmed that there was to be a further payment of 5 million dollars within 30 days and the balance of the purchase price on completion.

(It is to be noted that under the clause in the agreement headed "How Payable" a total sum of 10 million dollars ought to have been paid by the purchaser to the attorney as a deposit and further payments.)

There was a broken down house on 117 Great Georges Street.

The witness stated that the agreement for sale was signed in 2002, we are now in the year 2008 and the attorney has never paid over any money on account of the purchase price. Neither she nor her siblings have received a registered title to the premises in their names. She does not know if the purchaser Mr. Nepaul has paid over any sums of money to the attorney. She does know that Mr. Nepaul is still alive.

During the time she did visit the attorney's offices. On one occasion when they went to Savana-la-Mar he was not there. The attorney made an appointment which he did not keep. Her siblings went with her, the attorney telephoned and said he was in court in Lucea. The attorney made no further appointment to see her. Her siblings did not see the attorney before they left Jamaica. She is the only sibling residing in Jamaica now.

She did telephone the attorney, he was not in office, but he did tell her that he got some money and he had put it in Dehring Bunting and Golding. He did not say how much money and she did not ask him.

She did ask the attorney about the registered title. She was always asking about that. The attorney gave her an application number 1099005, when she called the Titles Office there was no title there. She enquired about the title on the 21<sup>st</sup> August 2002.

She did speak to the attorney on the 3<sup>rd</sup> April 2003 after she telephoned him, he told her that she should call Ms. Trowers. She did so, and it is at that time that Ms. Trowers told her that the title was for one George Thompson in St. Thomas. She did speak to Mr. Nepaul and all he said was that he gave the attorney a lot of money. She was referred to the agreement for sale and then said that she did not know if stamp duty and transfer tax were paid.

The witness did enquire of the Stamp Office if stamp duty and transfer tax had been paid. She spoke to Mr. Henry who told her that nothing was paid on the property. She contacted her brother in Canada and told him of her concerns about the agreement.

She was advised by her brother that the attorney called him in Canada. Her brother reported to her that the attorney had told him that he was taking care of everything. The witness was of the view the attorney was doing nothing.

She took a decision to get advice on the problems. She got advice from a friend to go to the General Legal Council so she did that. In August 2003 she wrote to the General Legal Council. **This letter is exhibited at pp 15-16 of the complainant's supplementary bundle and is dated the 11<sup>th</sup> August 2003.**

“Inter alia” this letter contends that the attorney is not speaking the truth in his response to the Council and she accused the attorney of being dishonest. She also expressed the opinion that the attorney was in financial trouble and had used up the deposit and was only buying time.

She contacted another attorney Mr. Clayton Morgan. He was retained to try and get the documents from Mr. Ruddock. He was unable to secure the documents from the attorney. The witness was referred to **pp 8-9 of exhibit 1 Letter dated the 15<sup>th</sup> March 2005** from Clayton Morgan to the attorney.

In this letter, Mr. Morgan enquires about a number of matters relative to the sale of land at 117 Great Georges Street. In particular, Mr. Morgan wanted to know where the transaction had reached in relation to the application to bring the land under the operation of the Registration of Titles of Act. He also wanted to know if the Agreement For Sale had been stamped with stamp duty and transfer tax. Mr. Morgan wanted the information verified by the attorney with a copy of the agreement and a copy of the transfer tax receipt. Mr. Morgan also wanted to know if the deposit referred to had been placed on an interest bearing account.

Mr. Morgan gave the attorney 7 days to respond to his letter. The attorney responded to Mr. Morgan by letter dated the 19<sup>th</sup> April 2005. **This letter is at p 10 of exhibit 1.**

( it is important to note that in this letter the attorney admits that he has carriage of sale of the property and that he did receive the sum of \$10,000,000.00 ( ten million dollars) as a deposit in accordance with the sale agreement.)

In this letter the attorney states the expenses that have to be deducted from the \$10,000,000.00 the attorney said he received for and on behalf of the vendor. He also says that he had applied for the registration of the unregistered land. He indicated that because of the circumstances of the transaction it would take some time to be resolved. He also said “inter alia” that at the completion of the transaction he would provide the vendor and purchaser with a statement of account. He did not enclose any documents to Mr. Morgan.

The witness continued her evidence. She said that after seeking the assistance of Mr. Clayton Morgan she retained the services of the firm of Nunes Scholfield, Deleon & Co. She said that she and her siblings decided to terminate the services of the attorney, and sent a letter to him to that effect. **This letter is at p 20 of exhibit 1a and is dated the 1<sup>st</sup> February 2007 and signed by Calvin Burkett.**

This letter is of import in that it asks that all documents in relation to the transaction be sent to her new attorneys-at-law as well as “a detailed statement of account, the balance of the deposit and further payment on account of the purchase price.”

The attorney responded by letter dated the **26<sup>th</sup> April 2007 at p 22 of exhibit 1a.** The attorney says that he is enclosing the documents, he advises that the Agreement for Sale is not stamped. He also referred to a document which he calls a Notice of Change of Direction. The attorney did not send any of the \$10,000,000.00 dollars that he said he had received from the purchaser for and on behalf of the vendor.

The attorney also sent a document entitled Statement of Affairs. **This is at p 24 of exhibit 1a.** The witness was asked to look at this document, and in particular the figures which indicated that the attorney had paid from the sums received from the purchaser, the land taxes relative to the subject property for the years 2002-2005, 2001-2002,2005-2006.

The witness indicated that that she had paid all the land taxes for the years 2002-2008. A land tax receipt No. 131616 in relation to the premises at 117 Great Georges Street for the tax year 2001-2002 produced by her was admitted in evidence as exhibit 3. The witness did not agree with the amount claimed by the attorney for attorney’s fees.

The witness said that her attorneys-at-law had received a sum of 2.5 million dollars from the respondent attorney this week , that is to say by letter dated the 29<sup>th</sup> April 2008, cheque drawn on the Matilda’s Corner Branch of the National Commercial Bank No. 732306 was enclosed. Up to the date that the cheque had been received, the attorney had not forwarded any documents to the Registrar of Titles, nor had any further sum or sums been received from the attorney.

The attorney did send a copy of the Agreement For Sale to her attorneys-at-law. The Agreement for Sale had not been completed. The purchaser Mr. Nepaul had not contacted her with regards to the sale.

The above is a summary of the evidence given by the witness in examination in chief.

**CROSS EXAMINATION.** Mr. Patrick Bailey then cross-examined the witness. The witness was shown **p 5 of exhibit 1**. This document from the department of the Registrar of Titles is dated the 2<sup>nd</sup> December 2002 and is referred to as Application No.1099005 – pt 117 Great Georges Street Westmoreland Calvin John Burkett. This document also mentions copy letter from the Referee to whom the application was submitted. It seems to be directed to the attorney. Counsel also takes the witness to **p 6 of exhibit 1**. This letter refers to a title that had been issued in error.

The witness said that the letter from the Registrar did not mean anything to her. The witness agreed that the Application number was the same as that which the attorney had given her. She did not remember giving any evidence about Ms. Trowers.

**Cross –examination of this witness continued on the 31<sup>st</sup> May 2008.** At this sitting the cheque dated the 29<sup>th</sup> April 2008 sent to Nunes Scholfield DeLeon & Co. by the attorney was admitted in evidence as exhibit 4A, the cover letter was admitted as exhibit 4.

The witness was then asked to look at **p1 exhibit 1** which is in fact a copy of the Agreement for Sale. She was asked to look at the completion clause and she agreed that the sale could not be completed until the title was in the name of the purchaser. She agreed that the Agreement indicated that that the attorney acted for both vendor and purchaser but she did not agree to that.

She did agree that the Agreement was signed by Calvin Burkett and that she was not a signatory to the Agreement. The witness said that she did see special condition 6 of the Agreement and that it referred to Application No. 1099005.

**At p 23 exhibit 2** she did see stub of manager's cheque dated the 25<sup>th</sup> June 2004. She sees that the cheque was bought by the attorney. She agrees that this cheque was in the sum of \$478,930.00. She sees that the cheque is in favour of the Collector of Taxes.

The witness is asked to look at **p 25** of the said exhibit 2. This letter is dated the 25<sup>th</sup> July 2004 and is directed to the Registrar of Titles. The letter refers to the Application1099005. It purports to forward Certificate of Taxes paid to the 31<sup>st</sup> March 2005 for submission to the Referee of Titles.

She is taken to **p 26 of the said exhibit 2**. After being shown the exhibit, the witness agreed that the document was a Certificate of Taxes from the Collector of Taxes, she saw the address 117 Great Georges Street and that the taxes were paid in the name of

Kathleen Burkett. She agreed that it indicates that the taxes were paid up to 25<sup>th</sup> March 2005. She says that the Certificate was not obtained by her.

The witness was then shown the document headed Change of Direction which she agreed was signed by her brother Calvin Burkett. This documents indicates that the land the subject of the sale could be registered in a name other than that of the purchaser.

The witness also confirmed that she obtained a power of attorney from her brother in 2007. **This power of attorney is at p 17 of exhibit 1.** The witness agrees that the power of attorney was given to her long after the agreement for sale was signed.

There followed a sequence of questions by counsel for the attorney which appear to have been designed to demonstrate that the attorney had indeed applied for the land at 117 Great Georges Street to be brought under the operation of The Registration Titles Act.

There was also a suggestion that the taxes on the property may have been paid twice. The witness says that she did not know that to be so. She did not ask for a refund of taxes because she was advised about what was owed and she paid all that was said to be due.

The rest of the cross –examination does not really affect the issues to be determined on this complaint and so we will not recount it.

The above was the end of the oral evidence and it is important for the record to state the events that took place after the case for the complainant was closed. This is not recorded in the minutes taken by the Secretary to the panel.

At the close of the evidence for the complainant on the 18<sup>th</sup> April 2009 the following took place. This is reflected on the Minute Order for that day. When counsel for the respondent was asked to advise the panel of the course that the respondent intended to adopt. He advised that the attorney declined to give evidence.

This decision was made after the panel advised the attorney and his counsel of his legal rights now that the case for the complainant was closed. The attorney was advised that he had two options, either to remain silent or to give evidence. These proceedings did not give him the right to make an unsworn statement. He reaffirmed his intention not to give evidence. The attorney and his counsel were given the opportunity to retire from the hearing room and consult on the issue of the course the attorney would now adopt.

The attorney called no witnesses. As a consequence, there is no oral evidence from the attorney or on his behalf.

In those circumstances the hearing of the complaint was adjourned for the parties counsel to provide closing written submissions. This was done, all be it not in the time frame that had originally had been ordered.

**THE DOCUMENTARY EVIDENCE:** As already noted, three volumes of documents were admitted in evidence as well as exhibits 3, 3a, 3b, 4 and 4A. The effect of the documentary evidence will be incorporated into the panel's evaluation of the evidence and its findings.

**BURDEN OF PROOF:** Although we have stated and re-stated the burden of proof it bears repeating that the panel reminds itself that the burden of proof is always on the complainant to produce credible evidence in support of the complaint.

**STANDARD OF PROOF.** The panel is also mindful, that the law is that the standard of proof is that of the criminal standard of proof which is "beyond reasonable doubt." This is confirmed in a number of decisions which we need not cite here.

**EVALUATION OF THE Demeanour OF THE WITNESS:** The panel makes this important observation. The only witness who gave evidence in support of the complaint and in the hearing of this complaint, was credible and persuasive. Although she was cross-examined by counsel for the attorney, no material discrepancies emerged from this cross-examination as it related to the important evidence in support of the gravamen of the complaint.

On the other hand, there is no oral evidence from or on behalf of the respondent attorney to contradict the oral evidence given by the witness. In those circumstances the panel recognizes that it is its responsibility in law to satisfy itself in spite of the absence of oral evidence on the part of the attorney, that the complainant has proven her case beyond a reasonable doubt.

#### **WRITTEN SUBMISSIONS ON BEHALF OF THE COMPLAINANT:**

In these submissions, counsel on behalf of the complainant reviewed the evidence adduced by the complainant, oral and written, and then urged that on the evidence as reviewed, the attorney, by his conduct, was in breach of canons 1V and V11(b) of the Legal Profession Canons of Professional Ethics) Rules and was therefore guilty of professional misconduct.

These submissions also raised sanctions that the panel could impose if the panel were to find that the attorney was indeed guilty of professional misconduct. A number of legal authorities were referred to in support of the arguments posited on behalf of the complainant. The Legal Profession Act and the Canons made there under were referred to. So too were the Legal Profession (Accounts and Records) Regulations 1999.

One case was cited, that is the English Court of Appeal case of **Bolton v Law Society reported at 1994, 2 All England Law Reports, 486**. This is a case of which the panel is aware, and the importance that it places on the need for probity, honesty and integrity in the conduct of an attorney in the performance of his duties to his client.



**WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT ATTORNEY:**

The initial submission of counsel for the attorney was as follows: since the complainant was given a power of attorney by the executor only on January 19<sup>th</sup> 2007, time should be computed not from the date of the complaint, but from the time the power of attorney was given.

There is evidence that there were two complaints filed by the complainant one on the 12<sup>th</sup> September 2003 and one on the 5<sup>th</sup> December 2005. It was never explained as to why two complaints were sworn to by the complainant but the panel relies on the later complaint of the 5<sup>th</sup> December 2005.

The panel does not find any merit in counsel's submission as to time and that it should run from the date of the power of attorney. The panel fails to see its relevance. The relevant time in our view, in examining the conduct of the attorney, is that time at which he was retained to perform the services for the client.

The panel agrees with counsel for the attorney that although the attorney gave no oral evidence, all the documentary evidence must be considered in evaluating this complaint including, and in particular, any evidence which is supportive of the attorney's case.

Counsel for the attorney reviews some of the provisions of the Agreement For Sale and is correct when he observes that Application No. 1099005 appears to have been made to the National Land Agency to bring the land, the subject of the sale, under the operation of the Registration of Titles Act.

Counsel then seeks to explain the reasons for the delay in completion of the sale on the fact that the Office of Titles had issued the wrong title in relation to the land and that error was not attributable to the attorney. Indeed he outlines the steps taken by the attorney in an effort to complete the sale. Sometime in 2006 the Office of Titles discovered that the land the subject of the sale had already been brought under the operation of the Registration of Titles Act. Nothing further appears to have occurred in relation to the vexed question of this title.

The panel disagrees that there was no duty on the attorney to divulge details of the transaction to the complainant. This assertion is not a natural conclusion from the preceding submissions and is incorrect in law. The complainant is a beneficiary under the Will of her late father Charles Burkett, under which Will, the land the subject of the sale, was devised to her and her siblings and was being sold to permit the fulfillment of the devise. Besides she was the only sibling residing in Jamaica and was the point person to contact the attorney for information.

It is also argued by counsel for the respondent that since the complainant was not a party to the agreement there was no duty on the attorney to account to her for funds received in relation to the sale. He argues that the complainant if not a stranger to the transaction could even be considered an "interloper."

The panel does not agree with that submission, we repeat our observation that the complainant was a beneficiary under the her father's Will, further, the evidence discloses that the attorney contacted the complainant from time to time re the sale of the subject premises.

The attorney telephoned her and discussed the price for which the land should be sold, the attorney had called her to tell her that he had found a buyer for the property, he told her the name of the purchaser, and she visited the offices of the attorney with her brother and sister Mrs. Mohammed and was present when her brother signed the agreement for sale. Her evidence is that on one occasion she telephoned the attorney and he told her that he had got some money and he placed it with Dehring Bunting and Golding.

In light of the above, the complainant cannot be regarded as either a stranger or interloper to the sale, but as one who was intimately involved in the transaction, and whose interests could be prejudiced if the transaction were not appropriately and professionally handled.

Counsel refers to the **letter dated the 15<sup>th</sup> March 2005** written by attorney-at-law Clayton Morgan in which he seeks information from the attorney about the sale. In this letter Mr. Morgan expressly states that he was instructed by Mr. Burkett to make the enquiries from the attorney.

Counsel for the attorney then refers to the attorney's response dated the 19<sup>th</sup> April 2005, quotes from the letter, **see quotation at pp 10-11 of exhibit 1**. Counsel urges that the position adopted by the attorney in relation to the information requested was consistent with "professional courtesy and custom."

The attorney failed to state if the deposit was in an interest bearing account, and he did not state the balance in the account. The panel does not understand the submission that the attorneys' response was consistent with professional courtesy and custom. Mr. Morgan had instructions from Mr. Burkett, the executor to provide specific information to Mr. Morgan. The panel is of the view the attorney was obliged to supply the information requested by Mr. Morgan acting for Mr. Burkett who was in fact the person seeking the information. This submission has no merit.

We do not see the need to explore the law relative to whom a deposit is payable after it has been paid over by the purchaser, although we are of the opinion that the deposit is usually payable to the vendor unless it is otherwise agreed.

The next submission by counsel for the attorney is that failure to stamp an agreement is not in itself professional misconduct. The panel agrees that to the extent that it is its duty to determine on the facts whether or not an attorney is guilty of professional misconduct, all the evidence has to be examined and no single factor should be extrapolated from the evidence to determine alleged professional misconduct.

However, the agreement for sale should have been stamped by the attorney in keeping with the provisions of the Stamp Duty Act. The panel also agrees that where the failure to

stamp the agreement for sale within the legally required period under the Stamp Duty Act, is that of the attorney, the penalty ought to be paid by the attorney.

In concluding his submissions, counsel for the attorney argues that the complaint as filed makes no allegation of misappropriation of funds, and that in any event "it is premature to pay over the Purchaser's funds if same is on deposit with a financial institution and the vendor is unable to give good title.

He adds that there was no application for an amendment to the complaint so the complaint remains as filed. The panel assumes that this submission relates particularly to the fact that there is no allegation against the attorney that he misappropriated the funds entrusted to him.

He also says that the attorney will pay over the funds in hands as soon as completion occurs.

These submissions when examined sequentially have no merit in law or on the facts.

Firstly, the fact that no allegation of misappropriation of funds has been made in the complaint does not disable the panel from finding that such misappropriation did take place. It is the duty of the panel in these complaints of alleged professional misconduct, to look at the evidence in its entirety and determine whether or not the alleged conduct of the attorney is proven in law to amount to professional misconduct.

Even if there had been no formal charges included in the complaint identifying breaches of specified canons of the **Legal Profession (Canons of Professional Ethics) Rules**, it is still open to the panel to find that the conduct of the attorney amounted to professional misconduct. **See canon VI11(b) of the Legal Profession( Canons of Professional Ethics)Rules of 1978.**

Secondly, if the client instructs the attorney to hand over the funds collected on behalf of the client and entrusted to the attorney, to a third person, in this case another attorney-at-law who is acting on the instructions of the client, the attorney has no right to hold on to the funds on the basis that the funds are placed in a financial institution and that the funds should only be paid over when the sale is complete.

This with respect is not law, it is the duty of the attorney to act on the legitimate instructions of his client and certainly it is the panel's opinion, that the attorney has no legal right to refuse to turn over the funds according to the instructions of his client unless there are other legal concerns which could defeat the client's right. In those circumstances the appropriate course of action perhaps would be to seek the directions of the Court when there are conflicting claims. Those circumstances do not exist here.

In any event, the attorney did indeed pay over the sum of 2.5 million dollars to Nunes Scholfield Deleon & Co. under cover of letter dated the 29<sup>th</sup> April 2008. The sending of this sum to the new attorneys-at-law for the complainant is an implicit admission on the

part of the attorney that it was indeed his duty to pay over the sums collected on the instructions of his client.

The satisfaction or dissatisfaction of the purchaser is not a relevant consideration on the facts of this complaint.

Having reviewed the evidence, the submissions and the law the panel now makes its Findings as it is obliged to do pursuant to section 15 of the Legal Profession Act.

### **FINDINGS:**

- 1 The attorney-at-law Trevor Ruddock operates a private practice at Great Georges Street in the parish of Westmoreland.
- 2 The complainant is a retiree and one of eight siblings who inherited the property at 117 Great Georges Street under the Will of their father Charles Burkett who died in April 1969.
- 3 The complainant is a beneficiary under this Will.
- 4 The executor named in the Will is Calvin Burkett, brother of the complainant. He resides in Canada.
- 5 The complainant Joan Burkett Powell is the only sibling of the children of Charles Burkett who resides in Jamaica.
- 6 The complainant, her brother Calvin Burkett and by extension their siblings, retained the attorney to act on their behalf in the sale of the property at 117 Great Georges Street in or around the year 2002.
- 7 The complainant was integrally involved in the making of the arrangements for the sale of the land with the attorney and the agreed purchase price was arranged with her.
- 8 An Agreement for Sale dated the 29<sup>th</sup> April 2002 was signed by Calvin Burkett the executor of the estate of Charles Burkett as vendor and one Z Nepaul as purchaser.
- 9 The attorney is designated as having carriage of sale and the said Agreement indicates that the attorney also acts for the purchaser.
- 10 The purchase price agreed is nineteen million dollars(\$19,000,000.00)
- 11 A clause in the Agreement intituled “ How Payable” indicated the manner in which the sums due were to be paid in installments.
- 12 Completion is set to take place within ninety(90) days of the date of the Agreement “in exchange for the abovementioned certificate for the said property in the name of the purchaser.”
- 13 At the time the Agreement for Sale was signed, all persons involved were of the opinion that the land, the subject of the sale, had not been brought under the operation of the Registration of Titles Act and consequently did not have a registered title.
- 14 Special condition (6) states that the attorney had applied for the registration of the aforesaid land under the Registration of Titles Act and the Application was No. 1099005.

- 15 Special Condition (3) permits the Vendor's Transfer Tax and half costs Stamp  
Duty Registration fee to be paid from the initial deposit paid by the purchaser.
- 16 The evidence discloses that there was an application to bring the land under  
the operation of the Registration of Titles Act.
- 17 There is correspondence between the attorney and the National Land Agency  
which indicates that the attorney was pursuing the application.
- 18 The land was not brought under the operation of the Registration of Titles Act  
pursuant to the Application.
- 19 The attorney never paid transfer tax on the Agreement for Sale, nor was the  
Stamp Duty Paid.
- 20 The attorney did pay land taxes on the land at 117 Great Georges Street
- 21 The complainant did pay taxes due on the said land at 117 Great Georges  
Street.
- 22 The attorney in the document entitled " Statement of Affairs" admits having  
received the sum of \$10,000,000.00 ( ten million dollars) pursuant to the  
Agreement For Sale.
- 23 This document is not a statement of Account as some of the purported  
expenditures were never paid by the attorney, and does not accurately reflect  
the amount of money that the attorney ought to have on trust for the vendor.
- 24 If credit is given to the attorney for his entitlement to \$40,000.00 for the  
preparation of the agreement for sale, miscellaneous expenses of \$5,000.00,  
payment of all the sums paid for property tax, and the sum for the pre checked  
Plan, all these sums would total \$619,841.00.
- 25 If the sum of \$619,841.00 is deducted from the sum of \$10,000,000.00, which  
is the sum that the attorney acknowledges that he received from the purchaser  
under the sale, there is left a balance of \$9,380,159.00 which the attorney  
should have held on trust for the vendor up to the 29<sup>th</sup> April 2008 when the  
attorney paid over the sum of \$2,500,000.00 to the Nunes, Scholfield, Deleon  
& Co. .
- 26 On deduction of the \$2,500,000.00 from the sum of \$9,380,159.00, there  
remains a balance of \$6,880,159.00 which ought to be held by the attorney in  
trust for the vendor.
- 27 The attorney has not accounted to the complainant for the sum of  
\$6,880,159.00.
- 28 The attorney has produced no evidence that this sum is held by him in trust for  
the complainant, the vendor, and other beneficiaries under the Will of Calvin  
Burkett.
- 29 The attorney has produced no evidence to show that the said sum is held by  
him for and on behalf of the complainant, the vendor and the other  
beneficiaries in any financial institution.
- 30 The attorney has not paid over this sum to the present attorneys-at-law for the  
complainant.
- 31 It is reasonable to conclude on the evidence that the attorney has dishonestly  
misappropriated the sum of \$6,880,159.00 and converted it to his own use and  
benefit or for a purpose other than that related to the completion of the sale  
entered into between the parties.

32 The attorney has not accounted for any interest payable on the amount of  
 \$2,500,000.0 from the time when the deposit was paid to him until payment of  
 the said sum to the attorneys-at-law for the vendor on the 29<sup>th</sup> April 2008.  
 33 During the time that the attorney represented the complainant, he failed to  
 provide the complainant with all information as to the progress of the  
 complainant's business with due expedition and he failed to deal with the  
 complainants business with all due expedition.  
 34 **CONCLUSIONS:** In the light of the foregoing findings, the panel concludes  
 that the evidence establishes beyond a reasonable doubt that that the attorney-  
 at-law is guilty of professional misconduct contrary to section 12(4) of the  
 Legal Profession Act. The panel finds that:

- (a) The attorney failed to carry out the complainant's business with all due expedition contrary to Canon IV(r) of the Legal Profession (Canons of Professional Ethics) Rules.
- (b) The attorney failed to provide the complainant with all information as to the progress of the complainant's business with all due expedition, when reasonably required to do so contrary to Canon IV( r) of the Legal Profession (Canons of Professional Ethics) Rules
- (c) The attorney failed to account to the complainant for all the monies in the hands of the attorney for the account or credit of the complainant when reasonably required to do so contrary to Canon V11(b) (ii) of the Legal Profession (Canons of Professional Ethics) Rules.
- (d) The attorney, by his conduct has failed to maintain the honour and dignity of the profession and has indulged in conduct that tends to discredit the profession of which he is a member contrary to Canon 1(b) of the Legal Profession (Canons of Professional Ethics) Rules.
- (e) The panel finds the attorney not guilty of having discharged his duty to his client with inexcusable and deplorable negligence, as we do not find that that allegation has been proven to a standard of proof of beyond reasonable doubt.

**SANCTIONS:** The panel is of the opinion that the attorney-at-law Trevor Ruddock has been found guilty of very serious professional misconduct in that he was entrusted with funds which were to be used for the benefit of the client/complainant and has dishonestly misappropriated these funds.

He has failed to account for these funds to the client and has failed to hand over these funds to the persons entitled to these funds or to the attorneys-at-law designated to receive these funds.

He has not produced any evidence to this panel to prove that he still holds these funds on trust for the complainant and her siblings. Such conduct by the attorney is unacceptable and inexcusable.

All of us as attorneys-at-law must recognize that very high standards are demanded of us in our conduct of our clients' affairs and those of third parties whose interests may be prejudiced by our unprofessional conduct. The responsibilities are onerous. We cannot handle funds belonging to our clients or third parties other than with the highest probity and integrity. We cannot use money that belongs to a client or third party for purposes other than those for which it was entrusted without the consent of the client or third party.

We go further, it is in the interests of the attorney and the client not to have any financial dealings with each other outside of the parameters of the client/ lawyer relationship and indeed in any instance where the situation goes beyond the scope of that relationship the client should always be advised that he/she should get independent legal advice prior to entering into any such transaction with his/her attorney.

We occupy positions of trust, the relationship between attorney-at-law and client is a fiduciary one. In these circumstances we would be failing in our statutory duty if we permitted the attorney Trevor Ruddock to continue to practise and to be placed in a position to repeat what we consider to be egregious professional misconduct against any other member of the public.

For the reasons stated we impose the following sanctions:

- 1 The attorney-at-law Trevor Ruddock is ordered to pay interest on the sum of \$2,500,000.00 at the rate of 12% from the 1<sup>st</sup> August 2002 to the 29<sup>th</sup> April 2008 when this sum was sent by way of manager's cheque to the attorneys-at-law for the complainant.
- 2 The attorney -at-law Trevor Ruddock is ordered make restitution to the complainant of the sum of \$6,880,159.00 with interest at the rate of 12% from the 1<sup>st</sup> August 2002 to the date of repayment.
- 3 The attorney-at-law Trevor Ruddock is hereby struck from the Roll of Attorneys-at-law entitled to practise in Jamaica with immediate effect.
- 4 The attorney Trevor Ruddock is ordered to pay the sum of \$100,000.00 as costs to the complainant.

This is the unanimous decision of the Panel.

Dated the 13<sup>th</sup> day of FEBRUARY, 2010

  
 PAMELA E BENKA-COKER Q.C.

  
 GLORIA LANGRIN

  
 CHARLES PIPER