DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO.: 13/2002

BETWEEN

STANLEY SIMPSON

COMPLAINANT

AND

BRIAN WALLACE

RESPONDENT

PANEL:

Mr. Christopher Bovell

Dr. Adolph Edwards Mr. Allan S. Wood, Q.C.

Hearing Dates: November 2003 & 4th December 2003

Awhile

- 1. This is a complaint against the Respondent supported by Affidavit of the Complainant dated 7th May 2002, which states as follows:
 - i. On May 15, 2000 my family engaged the legal services of Mr. Wallace for a real estate transaction. My family was selling Lot #52 Chantilly in the parish of Westmoreland to Osra Brown;
 - ii. The purchase price was J\$2.5 million. Mr. Osra Brown placed a deposit of J\$250,000.00 on the property, soon after the sale agreement;
 - iii. Mr. Wallace has not responded to repeated enquiries about the state of the transaction. After two years, he has yet to close the deal;
 - iv. Over the past 24 months, I have repeatedly called and written Mr. Wallace about the status of the transaction, including December 3, 2001, December 17, 2001 and January 21, 2002;
 - v. He 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;
 - vi. He has not dealt with my business with due expedition;
 - vii. He has acted with inexcusable negligence in the performance of his duties.
- 2. The Respondent was represented at the hearing by Mr. Ian Wilkinson. The facts are not in dispute. The Complainant who resides in the United States gave *viva voce* evidence on 1st November 2003 that the Respondent was retained to act in the sale of property, Lot 52 Chantilly in the parish of Westmoreland being lands registered at Volume 1196 Folio 387 of the Register Book of Titles. The sale agreement was entered into in May 2000 to sell the property to Osra Brown. The title for the property had been registered in the name of the Complainant's mother, Dorothy Simpson, and grandmother, Mary Laing as joint tenants and Mary Laing had died. Dorothy Simpson had entered into the sale agreement, a deposit of J\$250,000.00 was paid and in order to complete the sale, probate had to be obtained in respect of the

estate of Mary Laing, the death of Mary Laing had to be noted on the title and the title transferred to the purchaser. Rather than completing the sale by noting the death and transferring the title to the purchaser, the Respondent opted to advance the purchase money to the Complainant in the sum of approximately US\$40,000.00. The requisite duties and taxes were not paid.

- 3. Upon this remarkable sequence of events being disclosed in the course of the Complainant's evidence given on 1st November 2003, the matter was adjourned. The Responded attended on 4th December 20 103 with his Counsel and explained to the Panel that the main reason why the sale had been delayed was that the title was vested jointly in Dorothy Simpson and Mary Laing, who had died. The Respondent had tried to get exemption from the payment of transfer tax on death but the application had been refused and subsequently delay had been caused by the Stamp Commissioner having to assess transfer tax. That the purchaser had not paid the balance of the purchase price as the sale was subject to Mortgage and an adjournment was sought to allow the Respondent time to sort out the matter. An adjournment was granted on that basis.
 - 4. Subsequently, on 31st January 2004, Mr. Ian Wilkinson, Counsel for the Respondent reported that he had written to the Complainant to request the transfer tax and this had not been received and that he had also been in discussion with the purchaser's attorney to work something out regarding payment of the purchase price. A further adjournment was sought.
 - 5. Subsequently, the matter was mentioned on 3rd April 2004, 1st October 2005, 4th February 2006, 22nd March 2006, 14th June 2009 and 10th January 2009. On 10th January 2009, Mr. Wilkinson for the Respondent disclosed that a second complaint had been laid against the Respondent by the Purchaser, Osra Brown, which was partheard. Indeed a hearing of a complaint brought by Osra Brown No.140/2005 had commenced on 7th July 2007 which could not be completed due to the death of one member of that Panel and the resignation of another member of that Panel. Mr. Allan Wood who is a member of this Panel was also a member of that Panel. That complaint must recommence *de novo* and nothing further need be said about it.
 - 6. Subsequently, on 28th February 2009 there was a change in the representation for the Respondent whereby Mr. Lambert Johnson replaced Mr. Ian Wilkinson as Counsel. By this time it was disclosed that the Respondent had migrated and that the title might have been lost, in which event a lost title application would have to be made. A further adjournment was granted to accommodate the Respondent locating title. On 23rd January 2010, Mr. Lambert Johnson confirmed that the title was in fact lost as the Respondent had it in a safe which was stolen and thereafter again the complaint was

- mentioned on 24th April 2010, 24th July 2010 and 20th November 2010 when no representative was in attendance.
- 7. As a consequence, it was determined by the Panel on 20th November 2010 to conclude the hearing and to deliver judgment on this long outstanding matter which the Respondent had not brought to any conclusion despite the lapse of 7 years from the date of commencement of the hearing.
- 8. On the evidence, it is quite plainly established beyond reasonable doubt that as the attorney-at-law having conduct of completion of the sale of premises Lot #52 Chantilly in the parish of Westmoreland to Osra Brown, the Respondent has breached The Legal Profession (Canons of Professional Ethics Rules) 1978 Canon IV (r) and (s), respectively in that he has not dealt with his client's business with all due expedition and that he is guilty of inexcusable neglect in the performance of his duties.
- 9. That having been said, this matter has caused the Panel great difficulty in determining the appropriate sanction that ought to be imposed as a consequence of the Respondent's professional misconduct. The Panel is mindful that approximately 10 years has elapsed and in that time the sale has not been brought to completion. Further, notwithstanding the gross delay, there is no prospect of the sale being completed by the Respondent given the fact that he has migrated. The Respondent's dereliction is compounded by the fact that the title for the property has been lost when the Respondent's safe was stolen.
- 10. There are some mitigating factors in that the Respondent advanced the purchase price to the Complainant from his own pocket, yet he did so without reserving any sum to pay transfer tax and stamp duty on the transaction. Nonetheless, his client has been compensated for any loss that would have occurred during the intervening delay by reason of the devaluation of the Jamaican dollar as compared to the United States dollars and so too the purchaser would benefit by now having to find less United States dollars to pay the balance of purchase price that was fixed by the contract in Jamaican dollars. However, these are mitigating factors that cannot absolve the Respondent from the failure to discharge his professional duties to act with all due expedition. The Respondent cannot buy his way out of discharging his professional obligations to his client. Given the unusual nature of this case, and considering that the Respondent has migrated and is no longer carries on practise within the jurisdiction, we believe that the appropriate sanction is to impose the payment of a fine in the sum of J\$500,000.00, which fine is to be paid by the Respondent to the General Legal Council within 90 days of the date hereof.

12. As the Complainant will clearly have to incur additional costs in retaining other attorneys in order to make a lost title application and to complete the transaction, pursuant to <u>s 12(v)</u> of the Legal Profession Act, it is directed that upon payment of the said fine, one half of same, being the sum of \$250,000.00, is to be paid to the Complainant in satisfaction of any damage or expense caused by the Respondent's default.

DATED THE 4th DAY OF DECEMBER 2010

CHRISTOPHER BOVELL

DR. ADOLPH EDWARDS

ALLAN S. WOOD, O.C.