



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.

AW 3. Upon this remarkable sequence of events being disclosed in the course of the Complainant's evidence given on 1<sup>st</sup> November 2003, the matter was adjourned. The Respondent attended on 4<sup>th</sup> December 2003 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. CB

4. Subsequently, on 31<sup>st</sup> 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 3<sup>rd</sup> April 2004, 1<sup>st</sup> October 2005, 4<sup>th</sup> February 2006, 22<sup>nd</sup> March 2006, 14<sup>th</sup> June 2009 and 10<sup>th</sup> January 2009. On 10<sup>th</sup> 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 part-heard. Indeed a hearing of a complaint brought by Osra Brown No.140/2005 had commenced on 7<sup>th</sup> 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 28<sup>th</sup> 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 23<sup>rd</sup> 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 24<sup>th</sup> April 2010, 24<sup>th</sup> July 2010 and 20<sup>th</sup> November 2010 when no representative was in attendance.

7. As a consequence, it was determined by the Panel on 20<sup>th</sup> 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 s 12(v) 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 4<sup>th</sup> DAY OF DECEMBER 2010



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CHRISTOPHER BOVELL



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DR. ADOLPH EDWARDS



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ALLAN S. WOOD, Q.C.