

JUDGMENT OF THE DISCIPLINARY COMMITTEE

COMPLAINT NO: 116 OF 2008

KENNETH CHUNG

COMPLAINANT

AND

CHANDRA SOARES

RESPONDENT

PANEL

PAMELA E BENKA-COKER Q.C.

BERYL ENNIS

CHARLES PIPER

HEARING DATES

THE 6TH MARCH 2010, 8TH May 2010,

THE COMPLAINT: By way of Form of Application and Affidavit in support dated the 1st October 2008 Mr. Kenneth Chung (hereinafter referred to as the complainant) initiated this complaint against Mrs. Chandra Soares (hereinafter referred to as the attorney).

In the affidavit in support of the complaint, the complainant alleges that "the attorney has not paid to me the full net proceeds from the sale of my property at 50 Barbican Road Kingston 6. She has not paid me the sum of \$7,985,424.76 having given me a cheque for \$14,000,000.00 from \$21,985,424.76.

The complaint I make against the attorney is that she has not accounted to me for all monies in her hands for my account although I have reasonably required her to do so."

THE EVIDENCE: at the commencement of the hearing of this complaint, the complainant was unrepresented, the attorney was represented by Sandra Johnson attorney-at-law.

The complainant stated that his name was Kenneth Roy Chung and that he lived at Apt 9 Christopher Court 25 Kings Drive, Kingston 6. He was now retired but he is a public accountant. He said that he knew the attorney and had known her since 1990. He first met her when he and his brother Alvin Chung were in property development.

His brother and he built Townhouses in Cleveland Avenue Kingston 6 and the attorney acted for them in the sale. She did all the legal papers , prepared conveyances , mortgages

and other documents. Their relationship with the attorney continued and they did everything through her.

The last transaction that the attorney did was the subject of the complaint. The complainant said that he sold a house situate at 50 Barbican Road, Kingston 6. The attorney acted for him in the sale. She was asked to act for him in the sale of this property sometime in 2008. An agreement for sale was prepared. (A copy of the agreement for sale was subsequently produced in evidence as exhibit 7).

At the time that the attorney conducted this transaction on his behalf, her offices were at 6A Collins Green Avenue, Kingston 5. He owned the property at 50 Barbican Road and he was the vendor. One Leslie Campbell was the purchaser. The property had a house on it. The purchase price agreed was thirty five million five hundred thousand dollars(35,500,000.00)

The sale was completed in September 2008. He was advised of this by the attorney and the purchaser. On the completion of the sale the attorney sent a statement of account to him.

The complainant identified letter dated the 22nd September addressed to him from the attorney. This letter was admitted in evidence as exhibit 1. The witness went on to say that a cheque was enclosed in this letter. The complainant also identified a copy of the cheque that was sent with exhibit 1.

A copy of the cheque numbered 5016166 in the amount of \$14,000,000.00 (fourteen million dollars) dated the 22nd September 2008 and payable to the complainant was admitted in evidence as exhibit 1A. This cheque was drawn on the RBTT bank.

A statement of account was also included in that letter. The statement of account dated the 4th September 2008 from the attorney was tendered in evidence as exhibit 1B.

The complainant was asked to look at the exhibit 1B and tell the panel the sale price stated in the statement of account. He responded that the sale price was \$25,500,000.00.

He was asked to explain the discrepancy between the sum of \$35,500,000.00 which he said was the sale price and the sum of \$25,500,000.00 stated in the statement of account.

He said that there was a promissory note but he did not draft it. He stated that there was a promissory note for \$10,000,000.00. This note formed a part of the whole deal. He confirmed that when \$10,000,000.00 was added to \$25,500,000.00 the total was \$35,500,000.00.

In further response to the panel he agreed that the sale price was the total sum of \$35,500,000.00. He did not remember ever having seen the promissory note.

The complainant said that the attorney took the cheque to his home. He should have received a balance of \$21,985,424.76, but he received only \$14,000,000.00. The amount due and owing to him representing the part of the balance of the net proceeds of sale was \$7,985,424.76.

He did not notice the deficiency in the net proceeds of sale until some time later. As soon as he did notice the deficiency in the amount of the funds, he wrote to the General Legal Council.

This letter is dated the 24th September 2010 addressed to the Secretary of the General Legal Council. **This letter was admitted in evidence as exhibit 2.** After being asked by the panel to read this letter the complainant stated that he informed the General Legal Council that the attorney had not given him the total sum due to him representing the net proceeds of sale from his property at 50 Barbican Road.

The complainant also confirmed that he in fact did receive the sum of \$9,906,400.00. This sum is reflected at the bottom of the statement of account, exhibit 1B under the heading "To: Payment to you from the purchaser."

The complainant went on to say that he did submit a formal complaint to the General Legal Council. He identified a copy of the Form of Application Against an Attorney -At-Law dated the 1st October 2010, which he had signed. **The Form of Application was admitted into evidence as exhibit 3. His affidavit in support of the complaint with the same date was admitted as exhibit 3A.**

He observed, having been asked to look back at exhibit exhibit 1, that in that letter the attorney had said that she was enclosing a cheque in the sum of \$14,000,000.00 which was "part payment" due to him as per the statement of account and that expected to pay the balance to him shortly.

He was asked to look at the promissory note dated the 22nd September 2008 and asked if he had ever seen that document. He said he had never seen it before. He saw the signature of the attorney at the bottom of the document. **This document was introduced into evidence as exhibit 4.** The complainant further stated that he never agreed to lend the sum stated in the promissory note to the attorney.

He continued and said that the attorney had asked him to give her six weeks to pay the amount outstanding and asked him to meet her at the car park. He had been asking her about the money and that is when she asked him to meet her at the car park.

He said that when he did meet the attorney at the car park, she told him that she was short of the sum of money. She did not have all of it. He told the attorney that he would think about it. He said that he called the attorney the following day and told her that he could not agree to her request.

After he complained to the General Legal Council he went to an attorney to handle the matter for him. The attorneys were the firm of Samuda & Johnson. He did get a letter from the manager of the RBTT bank dated the 7th November 2008. **The witness identified this letter and it was tendered in evidence as exhibit 5.**

The complainant admitted that he did receive the funds due to him from the attorney on the 19th December 2008. He produced a copy of the cheque which he said included interest and legal fees. **This cheque no. 1138496 was admitted in evidence as exhibit 6.**

This appears to be a manager's cheque in the amount of \$8,373,774.77 payable to Kenneth Chung, dated the 19th December 2008 drawn on the RBTT bank. The complainant said that he had intended to invest that money in government treasury bills. The sum includes interest at rate of 15.875%, plus legal fees.

The above is the substantive evidence on examination in chief

CROSS EXAMINATION: Under cross examination the complainant responded to questions as follows: he said that he had known the attorney since 1990 and during that time he had had no problems with her in relation to his business transactions. He confirmed that the work the attorney did for him was properly done as far as legal matters were concerned.

He admitted that he had first agreed with the purchaser to sell the property and then he turned over the transaction to the attorney for her to deal with it. He also admitted that he received a cheque in the amount of \$140,000.00 US from the purchaser. This sum represented an amount of \$10,000,000.00 Ja and a deposit on the purchase price.

There had been a disagreement between himself and the purchaser as to the exchange rate. He was asked to look at a document which he agreed was the Agreement for Sale and that it was dated the 7th February 2008. He agreed that the purchase price represented on the Agreement for Sale was \$25,500,000.00 but confirmed that the purchase price was indeed \$35,500,000.00.

In response to further questions by counsel for the attorney the complainant said that he met the attorney at her request in the UDC car park on the 19th September 2008. She requested a period of six weeks from him to settle the total sum due to him. He told her that he would think about it.

On the following day he called her and told her that he did not agree to her request. He denied that he agreed to give the attorney six weeks to pay the total sum due to him. In spite of the fact that he did not agree to give the attorney time to pay the additional sum due, she brought only a portion of the sum due on the 22nd September 2008. He did not remember requesting anything from the attorney in writing.

The above is an accurate recounting of the evidence given by the complainant.

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On the next date of the hearing of this complaint on the 8th May 2010 the attorney gave evidence:

She admitted that her name is Chandra Soares and that she is an attorney in private practice. She stated that she has been in practice for twenty five years.

She agreed that she had heard the complainant give evidence and that he had said that his premises were sold for 35.5 million dollars.

The attorney was asked by her counsel to explain the difference in the purchase price of \$25.5 million in the agreement for sale and the sum of \$35.5 million dollars which the complainant says was the purchase price.

She responded that when the complainant approached her he requested an agreement for sale to be done for 25.5 million in relation to the premises that he owned at 50 Barbican Road. He indicated who the purchasers were, and that before he had come to her the purchasers had paid him a US draft in the sum of \$140,000.00.

The respondent attorney confirmed that this sum represented a part of the purchase price. She said that her instructions were that the agreement for sale should be prepared with a purchase price of \$25,500,000.00. She complied with his instructions.

In response to a question from the panel, the attorney said that she had a firm and that one Sonia Soares is a junior partner. She said that she realized that there would be a shortfall. She called the complainant to speak to him to explain what was happening because she had known him for so long.

She further said that she did request six weeks from the complainant to settle the shortfall as she would be seeking a bank loan, and he had told her that he would think about it. The complainant also told her that he had plans for the money because he was going to put it on government paper and he would have gotten 10-15%.

She says she told him that she would compensate him for the interest that he would have gotten or lost for not having placed the funds on deposit or government papers. She recalls that the complainant told her that it was okay but he needed something in writing. The meeting in the car park then ended.

The respondent attorney first heard that the complainant was not in agreement with that arrangement the following Monday when he called her offices and told her so.

The attorney confirmed that exhibit 4 the promissory note was prepared by her as the complainant had said that he wanted something in writing. She did this for the short term.

In response to a question from her counsel the attorney said that she went to see the complainant because she recognized that there was a shortfall.

She said that she had had problems with the office and it had affected the balance of the Clients' Account.

The attorney further stated that the matter was church related. She fell into a pit. She had gotten herself into a situation where demands were being made on her for funds and it led to the shortage.

In response to a question from the panel in which it enquired of the attorney what she met by falling into a pit, she said that she was demanded to "sow seed". She said that she was asked to do this by the Bishop. The Church is the "The First born Again Church of Christ in Linstead". The Bishop is a Mrs. Maragh.

The attorney said that unfortunately she was gullible and misguided and it led to a problem in the office.

In response to the panel the attorney admitted that she not only used her funds but funds that were entrusted to her. She used these funds to put in the church. She said that she paid over these sums to the Bishop between the period 2006 – 2008.

The attorney told the panel that she was not still sowing seeds she said she belonged to that church in 2006 and prior to that she belonged to the Apostolic church on Slipe Road.

She says that she kept accounts. When asked if her use of the funds of clients was a conscious decision on her part the attorney said this: "it was a build up that had happened and I had to pay up three clients at that time. I was looking for a loan because I knew that I would be short."

She said that she knew that she should not be short at all. The church to which she gave the seed money no longer exists, She is not still a member but she now attends "the Bible Jesus International" She said the members of her firm are her partner Charlene Soares and Tyna Walters an Associate.

She denied that she had personal problems which propelled her to join the church. The attorney stated that she had been practising since 1985. She said that she was reconciling her accounts every month. That is how she recognized that she would be short.

The above is an accurate account of the evidence in chief of the attorney.

CROSS EXAMINATION: The complainant, in a format that was not really cross examination, said that he did not agree to lend the attorney money. He said that he told her that he would think about it and then he called her and told her he would not go along with that agreement. The complainant says the fund is sacrosanct and it should never be short. He said he has a copy of the Regulations.

with that agreement. The complainant says the fund is sacrosanct and it should never be short. He said he has a copy of the Regulations.

The complainant did not have any further cross-examination but he said that he was sorry that it had to come to this.

The evidence ended there and the attorney was advised to put her closing submissions in writing.

THE WRITTEN SUBMISSIONS OF COUNSEL FOR THE ATTORNEY: on an examination of counsel's submissions, it is clear that they are really arguments in mitigation of the sanction that the panel should impose, rather than those which seek to allege that the attorney is not guilty of professional misconduct.

Counsel understands that the respondent attorney has indeed conducted herself in a manner that is inimical to the members of the public and the legal profession, but she asks that the panel extends mercy to the attorney in the circumstances of the case.

She cites the cases of *Georgette Scott v the General Legal Council Supreme Court Civil Appeal No.118/2008* and *Bolton v Law Society (1992) 2 All ER 486*. These are two authorities that clearly enunciate the ethical responsibilities of attorneys-at-law in circumstances very similar to the facts of the complaint before this panel.

THE BURDEN OF PROOF: The panel accepts and recognizes that the burden of proof is on the complainant to establish the complaint to the required standard of proof on the evidence presented to the panel.

THE STANDARD OF PROOF: The standard of proof in complaints alleging professional misconduct is that of the standard of proof in criminal cases which is that of "beyond reasonable doubt". That is to say the evidence adduced must be such as to make the panel feel sure that the complainant has established the complaint as alleged. There is ample authority to support this statement of the law. We need not repeat them here.

EVALUATION OF THE EVIDENCE: The panel is bound in law to evaluate the evidence applying the standard of proof required.

THE DOCUMENTARY EVIDENCE: the following exhibits were produced in evidence: Exhibit 1 letter dated the 22nd September 2008 Soares to Chung, exhibit 1A cheque in the sum of \$14,000,000.00 payable to Kenneth Chung, exhibit 1B statement of account Soares to Chung, exhibit 2 letter dated the 23rd September 2008, Chung to Althea Richards, Exhibit 3 Form of Application against the attorney, Exhibit 3A affidavit in support of the Form of Application, exhibit Promissory dated the 22nd September 2010 signed by C Soares, Exhibit 5 letter dated the 7th November 2008, RBTF to Chung, exhibit 6, cheque dated the 19th December 2008, payable to Chung, exhibit 7, Agreement For Sale dated the 7th February 2008.

THE DEMEANOUR OF THE COMPLAINANT: The complainant was a much understated witness who spoke softly and without embellishing his evidence with any kind of drama or exaggeration. He gave his evidence in a restrained and muted fashion which conveyed to the panel that he was speaking the truth. The panel accepts the evidence of the complainant.

THE ATTORNEY: The attorney too was a quiet and soft spoken witness but the substantive effect of her evidence is that she admitted all the material allegations in the evidence by the complainant save one. She was of the impression that the complainant had agreed to lend her the shortfall in the proceeds of sale of 50 Barbican Road. The complainant was on the other hand adamant that he did not agree to lend the attorney these funds.

The consequences of the admissions of the attorney are that there were not many disputed facts.

THE UNDISPUTED FACTS:

- 1 The attorney is in private practice with offices at 6A Collins Green Avenue, Kingston 5.
- 2 The complainant is a retired accountant and the former registered proprietor of premises 50 Barbican Road in the parish of St. Andrew registered at Volume 495 Folio 12 of the Registered Book of Titles.
- 3 The attorney had previously done legal work for the complainant and had known the complainant since 1990.
- 4 In 2008 he entered into an agreement for the sale of the premises to Leslie Roy Campbell and Suzette Esther Campbell.
- 5 The complainant retained the services of the attorney to act on his behalf and so the attorney had carriage of sale.
- 6 The agreement for sale indicates that the attorney had carriage of the sale.
- 7 This agreement is dated the 7th February 2008.
- 8 The agreed purchase price was thirty five million, five hundred thousand dollars (\$35, 500,000.00).
- 9 The purchase price represented on the agreement for sale is twenty five million five hundred thousand dollars (25,500,000.00).
- 10 A sum of one hundred and forty thousand dollars (\$140,000.00) in United States currency was paid by the purchasers directly to the complainant prior to the attorney being retained to represent the complainant in the sale.
- 11 This sum of \$140,000.00 US added to the purchase reflected in the agreement for sale amounts to \$35,500,000.00.
- 12 The costs stated by the attorney on the statement of account are computed on the basis of a purchase price of \$25,500,000.00.
- 13 The sale was completed in September of 2008 and the balance proceeds of sale paid over to the attorney. This is confirmed in the statement of account Exhibit 1B prepared by the attorney and dated the 4th September 2008.

- 15 There was a shortfall of \$7,985,424.76.
 16 The attorney acknowledged in her letter of the 22nd September 2008 that the sum of fourteen million was a part payment of the balance proceeds of sale.
 17 The complainant noticed the short fall in the proceeds of sale some time later.
 18 The complaint asked the attorney about the shortfall.
 19 The attorney asked the complainant to meet him in the UDC car park.
 20 The parties met and the attorney asked him to give her six weeks to pay the balance of the proceeds sale.
 21 The complainant never saw the promissory note executed by the attorney in which she alleges that she borrowed the sum of \$7,985,424.76 from the complainant.
 22 The attorney converted the sum of \$7,985,424.76 to her own use and benefit and or to the use of others without the consent of the complainant.
 23 The attorney refunded to the complainant, the said sum with interest and legal costs on the 19th December 2008 by way of cheque in the amount \$8,373,774.97.

DISPUTED FACTS: There is one disputed fact and that is did the complainant agree to lend the sum of \$7,985,424.76 to the attorney?

FINDINGS: the panel makes the following findings as it is obliged to do in compliance with section 15 of the Legal Profession Act.

- 1 The panel finds all the undisputed facts to be proven to the standard of proof of beyond reasonable doubt.
 2 The panel finds that the attorney knowingly and wrongly computed the costs payable on the sale on a purchase price of \$25,500,000.00 instead of \$35,500,000.00.
 3 The panel finds that the complainant did not agree to lend the sum of \$7,985,424.76 to the attorney
 4 The panel finds that the attorney knowingly converted that sum to her own use and benefit and/or to the use and benefit of persons other than the complainant and without his consent.

CONCLUSIONS: The panel repeats the statements that were made in the Disciplinary Decision of **Errol Cunningham v Georgette Scott** which has been cited previously in this judgment.

“The very existence of the Legal Profession depends on the collective integrity of all its members. The custom of conveyancing practice depends on the reliance on and the complete trust in the integrity of all attorneys-at-law. The public’s interest must be protected at all times.”

The panel also cites and quotes from the English Court of Appeal case of **Bolton v Law Society** reported at 1992 2 All E R 486 and at p 491 paragraph h

"It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness....Any solicitor who is shown to have discharged his professional duties with less than complete integrity probity and trustworthiness must expect severe sanctions to be imposed on him by the Solicitors' Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties."

On P 492, Sir Thomas Bingham went on to say "If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor is a person whose trustworthiness is not and has never been seriously in question, otherwise the whole profession and the whole public as a whole is injured."

All attorneys-at-law do the public and themselves a disservice when they act inappropriately and dishonestly, the public is prejudiced by our unprofessional conduct and we expose ourselves to severe disciplinary sanctions and the loss of the very means of our livelihood.

We find the respondent attorney-at-law Chandra Soares by her conduct, has breached canon V11 (b)(ii) of the Legal Profession (Canons of Professional Ethics (Rules) in that she " failed to account to the complainant Kenneth Chung for all the monies in her hands for his account or credit although reasonably required to do so."

The attorney-at-law has also breached canon 1(b) of the Legal Profession (Canons of Professional Ethics) Rules in that by her conduct "she has failed to maintain the honour and dignity of the profession and has not abstained from behaviour which may tend to discredit the profession of which she is a member."

In light of the findings and conclusions of the panel based on the evidence adduced, the attorney-at-law Chandra Soares is guilty of professional misconduct contrary to section 12(4) of the Legal Profession Act as amended by the Legal Profession (Amendment) Act 2007.

SANCTION: The panel is mindful of the fact that counsel for the respondent attorney has asked that we show mercy to her, we are also mindful of the fact that the respondent refunded the total sum misappropriated with interests and costs and that she did not seek to deny that she had wrongly used the sums belonging to the complainant.

It is very unfortunate that by her own conduct the attorney has placed herself in this position. Whatever sympathy the panel may feel for the attorney is subject to its overriding duty to protect the integrity of the legal profession and most importantly the interests of the public.

That being said, the conduct of which the attorney has been found guilty is egregious. She breached the trust reposed in her by the complainant, her client, and brought the reputation of the profession into disrepute. Her conduct is unacceptable and inexcusable.

The only sanction that would be appropriate in these circumstances is this:

- 1 The panel orders that the attorney-at-law Chandra Soares be struck from the Roll of attorneys -at-law entitled to practise in Jamaica.
- 2 There is no order as to costs.

Dated the 12th day of Feb. 2010


PAMELA E BENKA-COKER Q.C.


BERYL ENNIS


CHARLES PIPER