

**DECISION OF THE DISCIPLINARY COMMITTEE OF
ON APPLICATION FOR REHEARING**

COMPLAINT NO.: 65 OF 2010

**IN THE MATTER OF DENNIS WHITE
-v- JOSEPH ALLEN**

AND

**IN THE MATTER OF THE LEGAL
PROFESSION ACT 1971**

**PANEL: MR. ALLAN S. WOOD, Q.C.
MR. DAVID BATTS
MR. JOHN GRAHAM**

24th September 2011

Appearance: Mr. Joseph Allen

These are the full reasons for the order made on 24th September 2011 on the Respondent's application for rehearing.

On 14th October 2010, this Panel struck off the Respondent, Mr. Joseph Allen and ordered that he make restitution to the Complainant, Mr. Dennis White in the sum of \$497,500.01, with interest. As recounted in that decision, the Respondent had acted for the Complainant and had negotiated a settlement with Advantage General Insurance Company Limited and collected payment on 23rd October 2009. The Complainant gave evidence that he was unable to collect the money from the Respondent and by letter of Complaint dated 26th November 2009 the matter was brought to the attention of the General Legal Council. On 21st December 2009, that letter was delivered to the Respondent by Fay Williams, a clerk employed to the General Legal Council and in her presence, upon reading the letter, the Respondent threw the letter into the garbage bin.

The Respondent has applied for a rehearing. The Respondent explained that at the date of hearing he was in custody as he was arrested on 31st December 2009 and was remanded until 2nd December 2010.

By reg. 9 of the Legal Profession (Disciplinary Proceedings) Rules, where the Committee has proceeded in the absence of any party, such party may apply for a rehearing within one month of the findings and order and such a rehearing ought to be granted if the Committee "is satisfied that it is just that the case should be reheard". Further, by reg. 22 of the aforesaid Rules, the Committee may extend or abridge the time for doing anything under the Rules. It is trite law that where any party seeks a rehearing that party must act promptly and expeditiously in making the application but there is a discretion given by the rules to extend time.

The application for rehearing was made by letter from the Respondent dated 4th July 2011. The Respondent states that he was incarcerated up to 2nd December 2010. The Respondent has also presented a medical certificate from Dr. Doreth Garvey, consultant psychiatrist dated 25th June 2011 which certifies that the Respondent was unfit to carry out duties for the period 2nd December 2010 to 17th June 2011 and that the Respondent suffers from bipolar disorder. These are good grounds for extending the time to make the application for hearing. Accordingly, notwithstanding that the application was made out of time, the Panel extended the time for making of the application for rehearing and has proceeded to consider same.

The Panel is not, however, satisfied that the Respondent has made out a good case for setting aside the order made on 14th October 2010. Although, the Respondent stated that the money owed to the Complainant had been repaid by his brother, the Respondent was unable to state when exactly the money was paid. The account given by the Respondent was that the money was paid to the Complainant by his brother, Hugh Allen. This suggests that the money that had been received by the Respondent was not kept in a client's trust account in keeping with the Legal Profession (Accounts & Records) Regulations 1999.

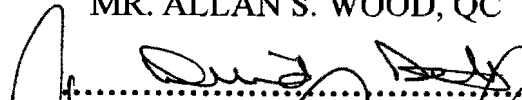
The Respondent was unable to produce any substantiating documentation to establish that the money that had been received by him from the Insurance Company had been paid into and maintained throughout in a client's trust account as required by the aforesaid

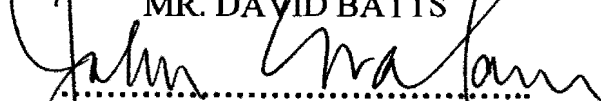
regulations. Indeed, the Respondent's reaction when he read the letter of complaint to the General Legal Council was to throw it into the garbage bin in the presence of the clerk in the office of the General Legal Council who had handed him the letter. That supports that the Respondent's attitude was dismissive and that he had no intention to account to his client for the money. Knowing of that complaint, the Respondent certainly took no step to pay the money to the Complainant or to the General Legal Council for same to be remitted to the Complainant. Further, the Respondent was arrested and charged with misappropriation of the Complainant's money. It is clear that he was not able to produce the money at the time of the arrest and as a result he remained incarcerated for almost 11 months.

Although, the Panel is extremely sympathetic having regard to the Respondent's challenges, insufficient material has been presented for the Panel to favourably consider the Respondent's application for a rehearing. The Panel is not satisfied that it is just to set aside the order of 14th October 2010 and to rehear the case. Accordingly, the Respondent's application for rehearing is refused. If the Respondent has further material to present and particularly to substantiate that restitution has been made in compliance with the Order of 14th October 2010 and that the money was maintained in a client's account, the Respondent is at liberty to renew his application.

Dated: 26th day of September 2011


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MR. ALLAN S. WOOD, QC


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MR. DAVID BATTIS


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MR. JOHN GRAHAM