

**JUDGEMENT OF THE DISCIPLINARY COMMITTEE OF THE GENERAL
LEGAL COUNCIL**

COMPLAINT NO. 2/2011

PANEL

PAMELA E BENKA-COKER Q.C.
GLORIA LANGRIN
CHARLES PIPER

YVONNE MARIE CHIN

COMPLAINANT

CHRYSITINE WEDDERBURN BERNARD

RESPONDENT

HEARING DATES: 17TH September 2011, 4th February 2012.

THE COMPLAINT: By way of Form of Application dated the 15th February 2011, the Complainant Yvonne Marie Chin (hereinafter referred to as the Complainant) instituted this complaint against Chrystine Wedderburn Bernard(hereinafter referred to as the Attorney). The Form of Application was in fact signed by Maurice Thomson, brother of the Complainant who has power of attorney granted to him by the Complainant.

In her Affidavit in support, dated the 16th February 2012, also signed by Maurice Thomson, the Complainant alleged that in August 2010, she employed the Attorney to undertake carriage of sale of her house for the price of \$9,650,000.00.

The amount of \$1,447, 000.00 was paid to the Attorney on September 28th 2010 after the signing of the Agreement for Sale.

Since that date she has not been paid in full for her property. She has been paid \$8,376,375.00 but according to the Attorney's statement dated the 4th February 2011 the sum due is \$8,884,031.00.

All her efforts to obtain payment from the Attorney have failed. Several phone calls, e-mails, and visit to the Attorney's office have continued over a period of many months up to February 2011. The response was always "next week."

The Title has already been transferred to the Purchaser, but the Attorney has failed to pay over all the proceeds of sale to which she is entitled. The Attorney's conduct is at best negligent and at worst dishonest.

THE GROUNDS OF THE COMPLAINT ARE:

1 The Attorney has not dealt with my business with all due expedition

- 2 The Attorney has acted with inexcusable or deplorable negligence in the performance of her duties.
- 3 She has not accounted to me for all the monies in her hands for my account or credit although I have personally requested her to do so.
- 4 She is in breach of the Canon which states an Attorney shall at all times maintain the honour and dignity of the profession ---- of which he is a member.

THE HISTORY OF THE COMPLAINT: Prior to the complaint being heard, it was set for hearing on a number of occasions. It first came up for hearing on the 4th June 2011. The Records disclose that on that date, the Attorney was present, and she was represented by Attorney-at-law Mr. Linton Walters, Mr. Maurice Thompson brother of the Complainant was there representing her.

The panel, as constituted was unable to hear this complaint. The hearing of the complaint was adjourned to the 16th July 2011. On the 4th June 2011 the panel made orders as to disclosure, inspection and filing of bundles of documents.

On the 16th July 2011 the panel was not properly constituted as there were only two members. Present were the Complainant Mrs. Yvonne Marie Chin, Ms Angela Hunter and Ms. Christine Bernard. The Complainant indicated that the Attorney owed her the sum of \$507,656.06 from the proceeds of the sale of her home which proceeds had been paid to the Attorney.

The Attorney did not deny that this sum was due to the Complainant and agreed to pay the said sum. The complaint was put for mention on the 23rd July 2011.

On the 23rd July 2011 the Attorney was not present when the complaint was called. The hearing of the complaint was adjourned to the 17th of September. After the complaint had been dealt with by the panel, the Attorney arrived at the sitting at 2.10 p.m. The Attorney advised the panel that she would pay the sums due on or before the 5th August 2011.

On the 17th September 2011, Mr. Maurice Thomson, the brother of the Complainant and The Attorney were present. The Attorney sought an adjournment of the hearing because her Attorney Mr. Linton Walters was unable to be there.

Mr. Walters himself had not informed the Disciplinary that he would be absent from the hearing nor did he seek to explain his absence. Since his first appearance on behalf of the Attorney, the Attorney-at-law had not been back before the Disciplinary Committee nor had he at anytime formally indicated in writing that he continued to appear for the Attorney. The Attorney had also not complied with the disclosure and inspection orders made by the panel.

It was the view of the panel, on reviewing the history of the complaint that the Attorney had been given sufficient time within which to secure legal representation, and had failed

to do so, further when weighing the interests of the Attorney and those of the Complainant, the panel concluded that it was in the interests of justice that it commenced the hearing of the complaint.

THE EVIDENCE OF MAURICE COURTNEY THOMSON:

The witness said that he is a salesman and the brother of the complainant Yvonne Marie Chin, who is his eldest sister. The complainant lives in Fort Lauderdale in the United States of America. She commenced living there in the latter part of the year 2010.

Before living in Ft. Lauderdale the complainant lived at Lot 30, Westbury Crescent, Portmore. She owned the home in which she lived. She decided to sell the home. She entered into an agreement to sell that home. The witness produced the said agreement for sale to the panel, identified the complainant's signature who is named as the vendor in the agreement. **The agreement for sale was admitted in evidence as exhibit 1.**

The witness said that, in the agreement, which is dated the 18th September 2010 the complainant is the vendor and one Colleen Shaw is the purchaser. Christine Wedderburn Bernard is named as the Attorney having carriage of sale. He knew the Attorney because he visited her on behalf of the complainant. He identified the Attorney as being the person whose offices he visited.

The witness further said that the sale price of the property was \$9,650,000.00. The witness stated that he knew as a fact that the sale was completed and that the purchaser's name is registered on the title as the owner.

The witness then identified the Form 1 of Application instituting the Complaint signed by the witness for and on behalf of the complainant dated the 15th February 2011 **which was admitted in evidence as exhibit 2.**

The affidavit in support dated the 15th February 2011 was admitted in evidence as exhibit 2A. It was necessary to file a complaint against the attorney because they were making no headway in getting the money from the Attorney. The Complainant was owed a balance of \$506,000.00 from the proceeds of sale.

He made no headway in getting this sum. He would visit her, call her, and all the Attorney would tell him, was next week, next week. There was no end to it. These efforts took place in 2010-2011.

The witness said that he would see the Attorney on occasion. He kept trying to find out from the Attorney why the transaction was not being completed because it was a cash transaction. Indeed, the witness discovered that a sum of \$48,000.00 was owed to the Titles Office. One of The Attorney's employees accompanied him to the Titles Office and he paid the sum. The sum was later reimbursed by the Attorney.

This payment by the witness enabled the transaction to be completed, and the purchaser was able to wire the balance of the purchase price to the Complainant. This direct transfer of funds was made at the request of the Complainant. This took place at the end of 2010, the beginning of 2011.

The Attorney continues to owe the sum of \$506,656.06 to the Complainant. The witness said that that is the sum "we agreed that she owed." He has specifically asked the Attorney for this sum. She promised to pay the full sum, but to make payment nonetheless. The Attorney said she would make some kind of arrangements to pay the Complainant. To this date the Attorney has failed to pay any of this sum.

The Complainant gave the witness two Powers of Attorney. The Attorney objected to the Powers of Attorney being produced in evidence on the basis that they were not recorded. The panel overruled the objection, and **the Power of Attorney dated the 31st January 2011 was admitted in evidence as exhibit 3.**

The Power of Attorney dated the 15th August 2011 was admitted in evidence as exhibit 4. The witness continued that even before the complainant granted him Powers of Attorney he had been integrally involved in the entire transaction and is familiar with it.

At this point on this hearing date an Attorney –at-law, Mr. Franklyn Halliburton intervened and advised the panel that he was appearing on behalf of the Attorney as he was asked to do so by Mr. Linton Walters who was unable to be attend today. Mr. Halliburton was seeking an adjournment on behalf Mr. Walters who was unable to be there today.

The Hearing of the complaint was then adjourned to the 19th November for completion. On that date the panel was not properly constituted and the continuation of the Hearing of the complaint was adjourned to the 4th February 2011.

The hearing of the complaint continued on the 4th February 2012. On this date the Attorney indicated that her Attorney-at-law Mr. Linton Walters could not be there as his wife was ill. Mr. Walters had not contacted the Disciplinary Committee to indicate his problem, nor had he ever indicated in writing that he appeared for the Attorney. Indeed since his last appearance, the attorney-at-law, Mr. Linton Walters has not appeared again on behalf of the Attorney. The panel did not agree to adjourn the continuation of the complaint.

THE WITNESS MAURICE COURTNEY THOMSON: The witness was sworn. The witness indicated that since the last hearing date, the Attorney had paid on account of the sum due, the amount of \$50,000.00. This was about three weeks after the last Hearing date. The balance owed was therefore \$457,656.06. No interest has been paid by the Attorney to the Complainant. That was the end of the examination in chief of the witness.

When the Attorney was asked if she wished to cross examine the witness, The Attorney said that she could not cross examine the witness without her Attorney as she was too emotionally involved in the matter. Good Attorneys do not defend themselves.

In the light of the Attorney's refusal to cross examine the witness, the Complainants case was closed.

The panel then asked the attorney if she wished to give evidence. The Attorney then said that she would give evidence only if her attorney were present.

The panel advised the Attorney that she had the right to either give evidence or remain silent. The Attorney insisted that she would only give evidence if her attorney were present.

The panel formed the opinion that taking into account all the circumstances, namely, the ample opportunity given to the Attorney to secure legal representation, the fact that Mr. Linton Walters had failed to represent the Attorney on more than one occasion that the complaint had been set for Hearing, that he had never formally reduced into writing his representation of the Attorney and so advise the Disciplinary Committee, he had never complied with the disclosure orders, it was appropriate to complete the Hearing of the complaint.

The panel also considered the gravity of the allegations made and how the interests of the complainant may be adversely affected by any undue delay in the completion of the hearing of the complaint.

The panel closed the evidence.

Mr. Thomson made brief submissions on the evidence and said that the Attorney had no defence to the complaint.

When the Attorney was asked if she wished to address the panel, she said that she did not wish to say anything without her attorney.

The panel found the Attorney's conduct in relation to her defence of the complaint, very unusual and was of the considered opinion that it should explain the reasons for its rulings in every material particular and recite the facts that were relevant to those decisions. It has endeavoured to do so.

THE BURDEN OF PROOF: The burden of proof is on the Complainant to establish the facts alleged in the complaint. The panel recognizes that although the Attorney declined to say anything in response to the complaint, the legal burden of proof remains on the complainant throughout the proceedings.

THE STANDARD OF PROOF: It is the law that the standard of proof of proof in all cases of alleged professional misconduct is that of "beyond a reasonable doubt," namely

the criminal standard of proof. The panel, in evaluating the evidence is obliged in law to apply that standard.

EVALUATION OF THE EVIDENCE: The only evidence presented to the panel is that of the witness Mr. Maurice Courtney Thomson. The witness' evidence is credible and the panel is persuaded that he spoke the truth. Not only did he speak the truth but the witness has persuaded the panel to the standard of proof required, that is to say his evidence rises to the standard of "beyond reasonable doubt."

After careful consideration of the evidence, the panel makes the following findings as it is mandated to do pursuant to the section 15 of the Legal Profession Act.

- 1 At the material time the Attorney was in private practice with offices at 3 Lockett Avenue Kingston 4.
- 2 In or around September 2010, the Complainant retained the Attorney to act on her behalf in the sale of her home at lot 30, Westbury Crescent, Portmore in the parish of St.Catherine.
- 3 The Attorney had carriage of sale of the agreement.
- 4 Under the agreement for sale the purchase price was \$9,650,000.00.
- 5 The Sale was completed in or around the beginning of 2011.
- 6 The Attorney failed to pay over the sum of \$507,656.06 to the Complainant representing the balance of the proceeds of sale owed to the Complainant by the Attorney.
- 7 The Sum of \$507, 656.06 remained unpaid when the Complaint was filed against the Attorney on the 15th February 2011.
- 8 The Complainant and her witness Mr. Maurice Thomson had made many efforts to collect the sum due to the Complainant.
- 9 In spite of these efforts the Attorney had failed to pay over to the Complainant the sum of \$507.656.06.
- 10 The Attorney never denied owing this sum to the Complainant.
- 11 After the commencement of the Hearing of the complaint by the panel, the Attorney paid to the Complainant the sum of \$50,000.00 on account in or around November 2011.
- 12 The above payment of \$50,000.00 leaves a balance of \$457, 656.06 owed to the Complainant by the Attorney.
- 13 The Attorney failed to account to the Complainant for the sum of \$507,656.06 when reasonably required to do so.
- 14 The Attorney converted to her own use and benefit or to the use and benefit of persons other than the Complainant the sum of \$507,656.06.
- 15 The attorney acted dishonestly and breached the trust of the Complainant when she wrongly converted the sums entrusted to her to be dealt with for and at the directions of the Complainant only.
- 16 The panel makes no findings as to the charges by the Complainant contained in paragraphs 1 and 2 of the grounds of her complaint as these have not been proven.

In this Complaint with which this panel is now dealing, the panel would have imposed a sanction of striking the Attorney from the Roll of Attorneys-at-law entitled to practise in the several courts in the Island of Jamaica if this had not already been imposed. The proven conduct of the Attorney warrants such a sanction

However, in light of the above, the panel makes the following orders pursuant to section 12(4) of the Legal Profession Act as amended:

- 1 The Attorney Chyrstine Wedderburn Bernard is to make immediate restitution of the sum of \$457,656.06 to the Complainant Yvonne Marie Chin with interest at the rate of 6% per annum from the 1st February 2011 until payment.
- 2 The Attorney -at-law Chyrstine Wedderburn Bernard is to pay interest on the sum of \$50,000.00 at the rate of 6% from the 1st February 2011 until the 19th December 2011 at around which time the sum of \$50,000.00 was paid by the Attorney to the Complainant.
- 3 Costs of \$75,000.00 to the General Legal Council
- 4 Costs of \$50,000.00 to the Complainant.

Dated the 27th day of July, 2012


PAMELA E BENKA-COKER


GLORIA LANGRIN


CHARLES PIPER