

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

Complaint No. 2 of 2006

IN THE MATTER of a complaint
by DOTLYN GORDON against
ANTONNETTE HAUGHTON-
CARDENAS, an Attorney-at-Law

AND

IN THE MATTER of the Legal
Profession Act

Panel: Christopher Bovell, C.D.
Jeanne Robinson-Foster, C.D.
David Batts, Q.C.

8th December, 2012

1. This complaint was made on the 20th June, 2006 and was supported by an affidavit of the same date. The complaint was that the attorney:-
 - (a) has not dealt with the Complainant's business with all due expedition.
 - (b) acted with inexcusable or deplorable negligence in the performance of her duties.

2. The matter was first listed for hearing on the 3rd May, 2008. On that date the attorney was present but the Complainant was absent. The attorney told the panel that the claim was not statute barred and had been filed with an application for substituted service pending. On the 5th July, 2008 it was again mentioned. Both Complainant and attorney were present. The panel declined to allow withdrawal of the complaint and set it for Mention on the 1st November, 2008. On the 1st November, 2008 it was further adjourned to the 7th February, 2009 due to the illness of Mr. Ballantyne who represents the attorney. On the 7th February, 2009 the attorney was absent but her representative Mr. Ballantyne was asked to have her update the panel on the progress of the litigation on the next occasion. On the 21st March, 2009 the attorney was again absent and it was decided to commence the hearing.
3. The panel satisfied itself that the attorney had been properly served and commenced the hearing. A message from Mr. Ballantyne indicated he was ill. It was decided to take the evidence in chief and send the notes to the attorney.
4. The Complainant gave sworn evidence. Her name was Dotlyn Gordon and she was retired. She stated that she went to see Mrs. Antonnette Haughton-Cardenas (hereinafter referred to as the attorney) in 1994 or 1995. She went to see her in relation to an accident that occurred in 1993.
5. The Complainant further stated that Robert White, her common law husband and the father of her children died in that accident. He had been riding a motor cycle when he was hit off the soft shoulder by a motor car.
6. She said the attorney agreed to take the case but each time she went to see her only the secretary spoke to her. Eventually, herself and her son spoke to the attorney who told them it appeared she sued the wrong person. The witness said the attorney requested, and she got "in all six (6) police reports".

7. Her common law husband was 61 years old when he died. There were five (5) children and he supported them all. He was employed to Jamaica Gypsum Limited and normally gave her \$3,000.00 per week.
8. The witness then showed some documents to the panel and these were tendered in evidence as follows:-
 - Writ of Summons dated 8th September, 1999 tendered and admitted into evidence as **Exhibit #1(a)**.
 - Appearance dated 29th November, 1999 tendered and admitted into evidence as **Exhibit #1(b)**.
 - Defence dated 13th December, 1999 tendered and admitted into evidence as **Exhibit #1(c)**.
 - Statement of Claim dated 8th September, 1999 tendered and admitted into evidence as **Exhibit #1(d)**.
 - Police reports dated 15th September, 1999 tendered and admitted into evidence as **Exhibit #2**.
 - Collector of Taxes receipts tendered and admitted into evidence as **Exhibit #3**.
 - Letters of Administration dated 16th November, 1999 tendered and admitted into evidence as **Exhibit #4**.
9. The witness stated that she never got any money or compensation. The attorney told her to go and get another lawyer as she was too stressed.
10. The matter was adjourned part-heard to the 27th June, 2009. By Notice dated 10th June, 2009 all parties were advised of the postponement of the matter which had

been fixed for the 27th June, 2009. A further fixture for the 6th March, 2010 was also postponed by Notice to the parties. The matter was next listed for hearing on the 30th April, 2011. No parties were present on that date. The Complainant was telephoned and indicated that she had not received the Notice of Hearing. The matter was listed for 28th May, 2011 for continuation. In the event that date was also vacated due to the illness of one of the panelists before whom it was part-heard. On the 14th January, 2012 the matter was again listed. The Complainant was present. The attorney was absent and unrepresented. One panelist was also ill and absent. The matter was adjourned C.A.V. for judgment to be delivered.

11. This panel sincerely regrets the history of delay that has bedeviled the completion of this matter. In considering the evidence we bear in mind the duty on a Complainant to prove her case beyond reasonable doubt that is so that we are sure.
12. In this regard we carefully considered the documentary evidence tendered by the Complainant. They demonstrate that a claim was commenced by the attorney on the 8th September, 1999 against DRW Transport Limited and Bernal Freckleton. Appearance in the suit for the 1st Defendant was entered by Tenn Russell Chin Sang Hamilton & Ramsay on the 29th November, 1999. By Defence filed on the 13th December, 1999 the Defendant denied owning the motor vehicle which allegedly collided with the deceased Claimant. They further denied employing the 2nd Defendant, the alleged driver of the vehicle. The police report which is date stamped 27th August, 2002 states the owners of the vehicles involved to be RST Industry of 18 Arnold Road and Stanley Franks of 12 Roosevelt Avenue. This is borne out by the report on the licence numbers from the Collector of Taxes.
13. We therefore make the following findings of fact:
 - (a) The attorney was consulted by the Claimant in or about 1995.

- (b) The intended claim concerned a fatal accident on the 15th September, 1993 in which the Complainant's common law husband was hit from his bicycle due to a collision between two (2) motor vehicles.
 - (c) The attorney was provided with police reports and other information pertaining to the identity of the owners and drivers of the said motor vehicles.
 - (d) On or about the 8th September, 1999 the attorney commenced legal action correctly naming the driver but incorrectly naming the owner.
 - (e) The attorney also failed to commence action against the owner and driver of the other vehicle involved in the accident.
 - (f) The attorney failed to name RST Industries as a Defendant in the legal action.
 - (g) The attorney failed to amend her claim even after the Defendant filed a Defence denying he was the owner of the vehicle.
 - (h) The attorney failed to prosecute the claim.
14. The conduct of the attorney amounts to inexcusable and deplorable negligence or neglect and we therefore find the attorney to be in breach of Canon IV (s) of the Legal Profession (Canons of Professional Ethics) Rules.
15. In these matters it is difficult to assess the loss the Complainant has suffered. There is not much information save that the deceased was 61 years old at the time of death and had been a janitor who took good care of his family. He used to give the Complainant approximately \$3,000.00 per week. On the assumption that the deceased would have retired at 65 there would have been four (4) years of purchase. We therefore assumed four (4) years at \$3,000.00 per week (reduced for contingencies and a present lump sum payment) as the Complainant's loss. Damages will have approximated \$624,000.00 [52 x 4 x \$3,000.00].
16. We bear in mind the vagaries of litigation and that recovery was not guaranteed. We therefore order that the attorney be fined \$500,000.00 and direct that the

entire fine be applied towards compensation of the Complainant in her capacity as representative of the estate Robert Whyte (deceased). Costs of \$50,000.00 to be paid to the General Legal Council by the attorney.

Dated the 8th day of December, 2012

.....*Christopher Bovell*.....

Christopher Bovell, C.D.

.....*Jeanne Robinson-Foster*.....

Jeanne Robinson-Foster, C.D.

.....*David Batts*.....

David Batts, Q.C.