

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

COMPLAINT NO: 187/2012

BETWEEN
COMPLAINANT

FABIAN ALLEN

AND

OWEN K. CLUNIE

RESPONDENT

PANEL: Mr. Allan S. Wood Q.C.
Mrs. Ursula Khan
Miss. Lilieth Deacon

Hearing Dates and Appearances:

21st September 2013 - Fabian Allen (Complainant).

28th September 2013 - Fabian Allen, Owen K Clunie (Respondent) and Lynden Wellesley for the Respondent.

The Complaint

1. In this matter, Fabian Allen, the Complainant has made a complaint against the Respondent, Owen K. Clunie that:
 - “(a) he has not accounted to me for all monies in his hands for my account or credit although I have reasonably required him to do so.
 - (b) he is in breach of Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules, which states “An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.”

The Evidence

2. The Complainant gave evidence on 21st September 2013. He is a man of humble means who has carried on a meat and grocery business. He was living with his baby mother and 3 children in rented accommodation and received a notice to quit.

He decided it was better to pay a mortgage and identified a house at 183b Windward Road, Kingston that was available for price of \$3.5m. He contacted the vendor's attorney, Mrs Green, who advised the Complainant that he should get a lawyer to act on his behalf. A friend referred him to the Respondent. He met with the Respondent at his office at Oxford Road, New Kingston. The Respondent agreed to act and indicated what the Complainant should pay. The Complainant obtained a manager's cheque made payable to the Respondent for \$600,000.00 to cover the deposit and part of the legal fees and duly paid same to the Respondent on 17th February 2012 and he received a receipt (**Exhibit 1**). Thereafter, he could hear nothing from the Respondent. He began to worry about his money which he could not afford to lose; he could not sleep at night. The Complainant eventually learnt that the house at 183b Windward Road, Kingston had been sold to someone else.

3. The Complainant maintained that he had not given the Respondent permission to use the money for any purpose other than to pay it over to the vendor's attorney. The Complainant called the Respondent and threatened to report him to the General Legal Council. The Respondent promised to repay the \$600,000.00, together with an additional sum of \$100,000.00 to cover the expenses which the Complainant had incurred. The Respondent provided the Complainant with signed document entitled "Payment Agreement" dated 4th July 2012 in which he promised to pay the Complainant the aforesaid sum by 31st July 2012 (**Exhibit 2**). That promise was not met.
4. In September 2012, the Complainant again contacted the Respondent and he received a second "Payment Agreement" whereby the Respondent promised to pay the \$600,000.00 together the sum of \$100,000.00 to reimburse the

Complainant's expenses by 30th September 2012, (Exhibit 3). Again, that promise was not met with the consequence that the Complainant laid his complaint against the Respondent on 30th September 2012.

5. The Complainant's mother died and he needed money to bury her and he again contacted the Respondent. The Respondent told him that he was sorry, that he was awaiting payment of some money and the Complainant would be paid when that was received. Having lost the house he had intended to purchase, the Complainant has been forced to reside in his mother's house while his baby mother and the children live elsewhere.

Findings

6. On 28th September 2013, the Respondent appeared and indicated through his Counsel that the facts were not in dispute and requested an adjournment of 4 weeks to repay the money. The application for an adjournment was denied. The Panel finds that the Complainant is a witness of truth, we accept his evidence and we find his complaint established beyond reasonable doubt. Our findings are:
 - (i) The Respondent was retained to act for the Complainant in the purchase of premises 183b Windward Road, Kingston.
 - (ii) The Complainant paid the Respondent the sum of \$600,000.00 to be paid to the vendor's attorney to cover the deposit and part of the legal fees for the purchase of the premises.
 - (iii) The Respondent failed to pay the aforesaid sum over to the vendor's attorney with the consequence that the Complainant lost the premises, which was sold to some one else.
 - iv. The Respondent misappropriated the Complainant's money which ought to have been paid over to the vendor's attorney.

- v. Having misappropriated the Complainant's money, the Respondent defaulted on his repeated promises to refund same with an additional sum of \$100,000.00 to reimburse the Complainant's expenses.
- vi. In breach of Canon VII (b) of the Legal Profession (Canons of Professional Ethics) Rules the Respondent has failed to account to his client for monies in hand for the account or credit of his client and has misappropriated same.
- vii. The Respondent has acted dishonestly and has thereby failed to maintain the honour and dignity of the profession and his behaviour has discredited the profession of which he is a member in breach of Canon I (b) of the aforesaid Rules.

Applicable Guidelines

7. In matters such as this where an attorney has violated his client's trust and confidence, and has acted dishonestly by misappropriating his client's money, the Panel is guided by the decision in Bolton v The Law Society ([1994] 1 WLR 512, applied by the Court of Appeal in Georgette Scott v The General Legal Council, SCCA 118/2008 judgment 30th July 2009. We find particularly applicable the guidelines of Sir Thomas Bingham M.R. at page 518 as follows:

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon 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. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors....

It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for

what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

Conclusions and Order

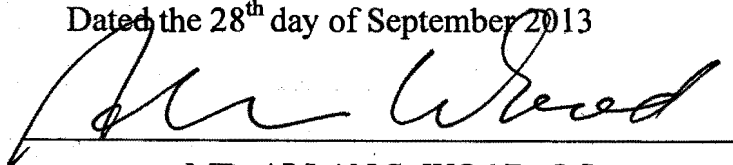
8. The \$600,000.00 which has been misappropriated by the Respondent is a significant amount to the Complainant. The loss of that sum has deprived the Complainant of the house which he had hoped to acquire to secure himself and his family with the result that he has been forced to reside in his mother's house while his family lives elsewhere. It is disheartening that any attorney would so abuse the trust and confidence reposed in him by a client. It follows that this Panel must act

in the interest of the public to ensure that this conduct can never be repeated, that the public is protected from the Respondent and that the collective reputation of the Profession is maintained. An order for restitution should also be made for the amount of \$700,000.00 being the sum of \$600,000.00 misappropriated plus the expenses of \$100,000.00 incurred by the Complainant which the Respondent had agreed to repay.

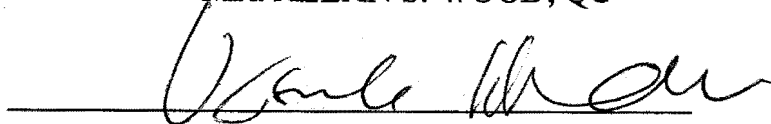
9. Having regard to the foregoing, it is hereby ordered that:

- (1) Pursuant to s. 12 (4) (a) of the Legal Profession Act, the name of Owen Kirkwood Clunie is struck off the Roll of Attorneys-at-Law entitled to practice in the Island of Jamaica.
- (2) Pursuant to s. 12 (4) (f) of the Legal Profession Act, by way of restitution, Owen Kirkwood Clunie is to pay to the Complainant the sum of \$700,000.00 with interest thereon at the rate of 6% per annum from the 31st July 2012.
- (3) Costs in the sum of \$20,000.00 are to be paid to the Complainant by Owen Kirkwood Clunie.

Dated the 28th day of September 2013



MR. ALLAN S. WOOD, QC



MRS. URSULA KHAN



MISS. LILIETH DEACON