

- (5) He is in breach of Canon I (b), which states that, ‘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’.”
2. The Complainant, aged 82, testified that she had signed an agreement to sell property at 16 Marine Terrace, Harbour View, Kingston 17 to her nephew, Robert Farr and her niece Susan Watson. As her evidence unfolded, it appeared that the Complainant’s nephew and niece had attended a family function at her home in New York, took her away from the rest of the family and convinced her to sign an agreement to sell her property in Jamaica. The Complainant later reconsidered and decided to challenge the sale. The Respondent acted for the Complainant in the ensuing lawsuit. She lost the case and in 2009 the Respondent advised her that an appeal had also been lost. She heard nothing further from the Respondent with the consequence that by letter 6th March 2010 (**Exhibit 1**) she terminated his services and instructed that no further action be taken. She stated that during the course of the Respondent’s representation of her, whenever he asked for money she would send it to him. After the Respondent stopped working for her, she expected he would send a bill, take his portion from any amount he had in hand and send her the balance. That on termination of his services, she received no further communication from the Respondent. In cross-examination the Complainant denied that she ever instructed the Respondent not to deal with her niece, Jacqueline Jervis.
3. Jacqueline Jervis testified that she acted under power of attorney dated 14th November 2012 (**Exhibit 2**) given to her by the Complainant who is her aunt. She recounted that in 2012 on her enquiry, the Complainant informed her that she had received nothing from the sale of the premises in Jamaica. As a consequence, sometime between late July 2012 and early August 2012 she telephoned the Respondent and enquired about her aunt’s money. In that conversation, the Respondent stated that he did not know anything about any money and told her not to call him again and he then hung up. In her view, the Respondent was quite disrespectful. She then spoke to her cousin Robert Farr and then

contacted the Victoria Mutual Building Society (VMBS) and she received copies of two letters:

- (i) Letter dated 8th December 2012 from VMBS to Myers Fletcher & Gordon to the attention of Mr. Ethan Sinclair forwarding a number of cheques including a cheque dated 7th December 2009 in the amount of J\$3,906,505.00, made payable to the Respondent (**Exhibit 5**), and
- (ii) Letter dated 9th December 2009 from Myers Fletcher & Gordon bearing the signature of Ethan Sinclair to the Respondent (**Exhibit 4**) forwarding the cheque drawn in the Respondent's favour for J\$3,906,505.00, and which stated, as follows:

"Re: Mortgage on 16 Marine Terrace, Kingston 17, Harbour View, St. Andrew – Robert Farr to the Victoria Mutual Building Society

We refer to the captioned matter, and enclose NCB cheque No 0224939 made payable to you for \$3,906,505.00 being amount due to you as indicated in letter from the purchaser's attorney, Andrew Irving, dated October 16, 2009 and confirmed by you in letter dated November 18, 2009.

Please acknowledge receipt of the enclosed cheque by signing and returning the attached copy hereof."

- 4. The evidence of Jacqueline Jarvis continued that upon receipt of said letters (**Exhibits 4 and 5**), she called the Respondent again in early September 2012 and told him that it was in his interest to hear what she had to say. She testified that in that conversation she recounted to him that she had the letters establishing that he had received received money from the sale of her aunt's property. The Respondent then admitted to her that he had taken the money, that he had suffered financial problems because a secretary had stolen \$6 million from him and that was why he had kept the money. She then asked him if he thought this money was a gift, to which he repeated that he was having problems. The Respondent then in the course of that conversation agreed to repay the money by making three payments on 18th and 30th September 2012 and mid-October 2012. He also agreed

to pay lost interest and she researched this and found that the interest rate was 3 per cent. Ms. Jervis then went to New York and set up an account at TD Bank where the Respondent could wire the money.

5. On 19th September 2012, Ms. Jervis faxed to the Respondent's office a letter dated 18th September 2012 (**Exhibit 6A**) and a cover sheet dated 19th September 2012 (**Exhibit 6B**). The cover sheet explained that she had been unable to contact the Respondent by email as his email was not working and she requested him to promptly wire the first payment in accordance with the wire details set out in the accompanying letter of 18th September 2012. The letter of 18th September 2012, in addition to giving the bank wire details gave the conversion rate as of December 2009 at J\$83 to US \$1.00 which converted the sum of J\$3,906,505.00 to US \$47,066.32 and added interest from December 2009 to September 2012 at 3 per cent to bring the sum due to US \$48,478.00. With additional expenses for bank wire fees, telephone calls and faxes, the sum due was stated to be US \$48,630.00. The letter advised the Respondent that his first instalment of US \$16,210.00 should be deposited by the close of business, 20th September 2012. Nothing was received with the result the Complainant granted power of attorney to enable Jacqueline Jervis to lay the Complaint on her behalf. The Complaint was then made on 15th February 2013.
6. Significantly in his cross-examination of Jacqueline Jervis, the Respondent never challenged her account of the conversation with him in September 2012 in which she testified that he had admitted taking the money; he never suggested to her that he had not made such an admission or that her account of what was said by him in that conversation was in any way incorrect.
7. The evidence of the Respondent was that he was admitted to practice as an attorney-at-law in Jamaica in 2000. In 2008 the Complainant approached him to act on her behalf in a suit brought by her nephew and niece to enforce an agreement to sell them 16 Marine Terrace, Kingston 17; her defence was undue influence. When the Complainant first came to see him she was accompanied by another nephew, Delroy Farr. The Complainant

had instructed him to deal with only herself and Delroy. In 2009 he informed the Complainant that her appeal was lost. She was not happy and said she would be coming to Jamaica when they could discuss the matter further. Fees were owed to him for the appeal. He kept Delroy Farr informed of developments. As the Complainant had said to him she would be visiting Jamaica, he was waiting for her to come to Jamaica to inform her of the sum he had in hand and to settle the account with her. He was reluctant to deal with Jacqueline Jervis in light of the Complainant's instructions that he should only deal with Delroy Farr or herself. He did not believe that he should pay over money to Jacqueline Jervis and Delroy Farr had indicated that he would be unwise to do so. Delroy Farr died in late 2012. The Respondent agreed that he had received a copy of the Complaint by letter dated 4th March 2013 from the Secretary of the Disciplinary Committee and that he had never responded to same.

8. Further, in the course of his evidence the Respondent did not deny that the conversation of September 2012 as recounted by Jacqueline Jervis had not occurred nor did he state that Jacqueline Jervis' account of that conversation was incorrect.
9. The Panel accepts the evidence of the Complainant and Jacqueline Jervis and we find that the complaint has been established beyond reasonable doubt. The Respondent has not given any good reason for having taken the Complainant's money which he received on 9th December 2009. Indeed, on the evidence it is clear that the Respondent was perfectly content to conceal from the Complainant the fact he had received proceeds from the sale of her property and he made no disclosure of having same until he was confronted by Jacqueline Jervis with the fact that he had received the amount of J\$3,906,505.00. It is plain from the evidence that the Respondent misappropriated the Complainant's money which ought to have been paid over to her after deducting any sum which he considered due for fees.
10. The findings of the Panel are:

- (i) The Respondent was retained to act for the Complainant in defending a claim by Robert Farr and Susan Watson to enforce a contract for the sale of property at 16 Marine Terrace, Kingston 17. The challenge was unsuccessful.
- (ii) On 9th December 2009, the Respondent received the proceeds of sale amounting to J\$3,906,505.00 which was then equivalent to US \$47,066.32 at the prevailing rate of exchange of J\$83.00 to US\$1.00.
- (iii) The Respondent made no attempt to communicate with the Complainant that he had received the proceeds of sale and he has held on to the Complainant's money.
- (iv) The Respondent failed to disclose having received the money when first contacted by Jacqueline Jervis on behalf of the Complainant.
- (v) In the course of a subsequent telephone conversation in September 2012, when confronted by Jacqueline Jervis with the information that he had received the money, the Respondent admitted that he had taken the Complainant's money.
- (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.

11. In matters such as this where an attorney has violated his client's trust 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, which has been affirmed and applied in Jamaica by the Court of Appeal in Georgette Scott v The General Legal Council, SCCA 118/2008 judgment 30th July 2009. In the Bolton Sir Thomas Bingham M.R. stated 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.”

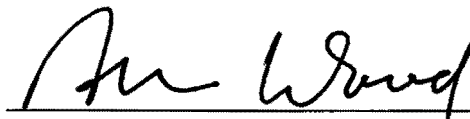
12. The Respondent’s misconduct and dishonesty is particularly egregious as he abused the trust and took advantage of an elderly client, aged 82, who resided in the United States. It is clear from the evidence that he concealed from the Complainant the fact that money was received on her behalf putting her to the difficulty of having to lay complaint through her agent, Jacqueline Jervis and then having to travel to Jamaica to give evidence. In the intervening period of 4 years, since the Respondent took the Complainant’s money, the Jamaican dollar has declined from J\$83.00 to approximately J\$104.80 to US\$1.00.
13. It is plain from the foregoing that it is necessary in the public interest to ensure that the Respondent should not have the opportunity to repeat such conduct and so, to protect the public and to maintain the collective reputation of the Profession, it is necessary to strike off the Respondent from the Roll of Attorneys-at-Law entitled to practice in the Island of Jamaica.
14. Further statutory power has been conferred on the Disciplinary Committee by s. 12 (4)(g) of the Legal Profession Act, to order that restitution be made to the Complainant for all losses suffered. That loss would include the loss caused by the devaluation of the Jamaican dollar in the intervening period since the Respondent took the Complainant’s money in December 2009. Accordingly, it is appropriate to order that restitution be made to the Complainant either in the sum of US \$47,066.32 or the equivalent in Jamaican dollars at the rate prevailing at the date of payment. Similarly, in order to give evidence at the hearing of the Complaint, the Complainant and her agent, Jacqueline Jervis incurred travel costs for airfares totalling US \$1,732.93. That sum should also be restored in

United States currency or the Jamaican dollar equivalent at the rate prevailing at the date of payment.

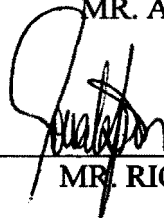
15. Having regard to the foregoing, it is hereby ordered that:

- (1) Pursuant to s. 12 (4)(a) of the Legal Profession Act, the name of the Respondent, Akin Adaramaja is struck off the Roll of Attorneys-at-law entitled to practice in the Island of Jamaica.
- (2) Pursuant to s. 12 (4)(g) of the Legal Profession Act, by way of restitution the Respondent, Akin Adaramaja is pay to the Complainant the sums of US\$47,066.32 and US \$1,732.93 together with interest accruing on the sum of US \$47,066.32 at the rate of 3 per centum per annum from the 9th December 2009 to the date of payment and interest accruing on the sum of US \$1,732.93 at the rate of 3 per centum per annum from the 12th October 2013 to the date of payment. The aforesaid sums inclusive of interest may be paid in Jamaican Dollars computed at the Bank of Jamaica's weighted average rate for selling United States Dollars in exchange for Jamaican Dollars prevailing on the date of payment.
- (3) The Respondent, Akin Adaramaja is also to pay costs to the Complainant in the sum of J\$40,000.00.

Dated the 2nd day of November 2013



MR. ALLAN S. WOOD, QC



MR. RICHARD DONALDSON



MR. WALTER SCOTT, QC