

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

COMPLAINT NO. 50/2011

BETWEEN	VICTOR BROWN	COMPLAINANT
AND	HUMPHREY MCPHERSON	RESPONDENT

PANEL

MISS BERYL ENNIS
MRS DEBRA MCDONLAD
MR. PETER CHAMPAGNIE

HEARING DATES:

JUNE 15, 2013
NOVEMBER 16, 2013

APPEARANCES

Mr. Victor Brown

THE COMPLAINT

1. In this matter the complainant Mr. Victor Brown, by way of Form of Application and Affidavit to the General Legal Council dated the 7th day of April, 2011 made a complaint against the Respondent, Mr. Humphrey McPherson, that:
 - a. Mr. McPherson withdrew from his employment without taking reasonable steps to avoid foreseeable prejudice or injury to the Complainant's possession and rights as his client.
 - b. Having withdrew from his employment he has not promptly refunded such part of the fees paid in advance as which is fair and reasonable.
 - c. He has not provided him with all information as to the progress of his business with due expedition although he has reasonably required him to do so.

- d. He has not dealt with his business with all due expedition.
- e. He has acted with inexcusable or deplorable negligence in performance of his duties
- f. He has not accounted to him for all monies in his hands for his account or credit, although he has reasonably required him to do so; and
- g. He is in Breach of Canon 1 (b) which states that "an Attorney 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"

EVIDENCE

2. On the 15th day of June, 2013, the complainant, Mr. Victor Brown who is a retired Counselor, currently residing in the state of New York, United States of America attended upon the General Legal Council for the hearing of this matter. The Respondent, Mr. Humphrey McPherson was not in attendance and the panel having satisfied itself that the requisite notice of the hearing for this date was duly served by Registered Post from the 14th day of May, 2013 upon the said Respondent commenced the hearing of the matter.
3. The complainant gave evidence that he was a dual citizen and had his address at #4 Kehoe Street, Albany, NY 12209, USA and was a retired Addiction Counselor. He gave evidence that between the period 2006 and 2007 he met the Respondent and engaged him to act on his behalf in respect of:

- a. A personal injury matter
 - b. The sale of Lot 60 Penwood Crescent
 - c. The sale of Lot 50 Penwood Crescent
 - d. The transfer of two (2) lots of land
4. The complainant testified that he paid a retainer fee of One Hundred Thousand Jamaican Dollars (J\$100,000.00) and on subsequent occasions another One Hundred Thousand Jamaica Dollars (\$100,000.00) and another Thirty Thousand Jamaican Dollars (\$30,000.00). It should be noted that the latter amount of Thirty Thousand Dollars was an amount forwarded from the Complainant's Attorney, Dr. Marshall, now deceased.
 5. The complainant testified that the transaction concerning the Conveyance of 60 Penwood Crescent and 50 Penwood Crescent, it was agreed between himself and the Respondent that his fee would be 3% and 5% respectively of whatever the Purchase price would ultimately be.
 6. Based on the evidence adduced, the Complainant's personal injury matter which was the subject of litigation in the Supreme Court ended without the Respondent ever attending to contest the matter on his behalf. The result of this was that the complainant had to obtain other Counsel. On his own, the complainant sought to retrieve documents in respect of the personal injury matter from the Respondent and sought also to get from him an account as to his representation in the matter. The complainant testified that his response was unsatisfactory as his response was ~~nothing more than he had quit.~~

7. The complainant subsequently asked the Respondent for a Statement of Account in respect of the Conveyancing matters which he was handling. He did not receive one. The complainant testified that the Respondent told him that if he did not withdraw his complaint against him, he would not be giving him a Statement of Account since the Complainant had by then reported him to the General Council. The complainant reduced in writing his request for a Statement of Account. This letter was subsequently tendered into evidence and admitted as exhibit 3.
8. Admitted into evidence as exhibit 1 and 2 respectively were the Form of Application and Affidavit by the complainant.
9. The complainant testified that the Respondent did not give him any information about the progress of his business nor did he respond to him in a timely manner or deal with his business in an expeditious way.
10. At the close of his evidence, the complainant stated that he had incurred travelling expenses from the United States and that this amount was Six Hundred and Fifty-Four United States Dollars (US\$654).
11. The complainant having completed his evidence in chief, the hearing of this matter was adjourned until the 16th day of November 2013 and the panel then directed that the Respondent be notified of the continuation date.
12. On the 16th day of November, 2013 the panel resumed the hearing of this matter. In attendance was Mr. Victor Brown. The Respondent was again absent. The panel having satisfied itself that the Respondent was given due notice by way of

Registered posting (pursuant to Rule 21 of the 4th Schedule of the Legal Profession Act) on the 22nd of August, 2013 elected to determine this matter in the absence of the Respondent, since the Respondent had consistently failed to attend, and had not provided any excuse for his absence and in circumstances where it has been proven that he was duly notified of the hearings of this matter. The basis of this decision to proceed to the determination of this matter is based on Rule 8 of the 4th Schedule of the Legal Profession Act which states:

"If either or both of the parties fail to appear at the hearing the Committee may, upon proof of service of the notice of hearing, proceed to hear and determine the application in his or their absence."

13. The panel bears in mind the standard of proof is that is required in all these matters to come to a conclusion of guilt in respect of any Respondent. The standard of proof is beyond a reasonable doubt. We bear in mind the Complainant's evidence which was unchallenged and find as a fact that he is a witness of truth in relation to his evidence against the Respondent. We find as a fact that the Respondent did receive the total sum of Two Hundred and Thirty Thousand Jamaican Dollars (\$230,000.00) and withdrew from the employment of the complainant resulting in the prejudice of the complainant's case. We find as a fact that the Respondent has failed to provide a reasonable refund and has acted with delay in the matter concerning the complainant's business. We find that the Respondent has acted in a manner unbecoming of the profession of which he is a part.

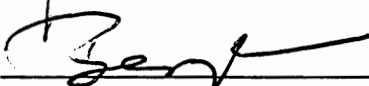
14. In the circumstances, pursuant to Sections 12 (4) (c), (e) and (f) of the Legal Profession Act, we hereby order the following:

- I. Full restitution to the complainant of Two Hundred and thirty Thousand Jamaican Dollars with interest of 6% per annum from the date of receipt of such sum paid over to the Respondent.
- II. A fine of Two Hundred Thousand Dollars payable to General Legal Council
- III. Cost to the complainant of US\$1418 being reimbursement for air fares from the US to Jamaica on two occasions.
- IV. All fines, restitution fees and cost to be paid on/or before the 18th day of December, 2013.

DATED the 16th day of November, 2013



Mrs. Debra McDonald



Miss Beryl Ennis



Mr. Peter Champagne