

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

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**COMPLAINT NO. 231/2005**

In the Matter of LEILA VALENTINE and  
ANTHONY PEARSON an Attorney-at-  
Law.

AND

In the Matter of the Legal Profession Act,  
1971

Panel: Daniella Gentles-Silvera  
John Graham  
Ursula Khan

Appearances: The Complainant, did not appear in person. No one appeared for the  
Attorney nor did he appear.

Hearing: 19<sup>th</sup> January, 2013, 23<sup>rd</sup> March, 2013, 17<sup>th</sup> January, 2015, 24<sup>th</sup> January,  
2015.

**COMPLAINT**

1. The complaint against the Attorney-at-Law, Anthony Pearson, (hereinafter called “the Attorney”) is contained in the Form of Affidavit sworn to on the 17<sup>th</sup> April, 2006 by Leila Valentine (hereinafter called “the Complainant”). The complaint in effect is:
  - (a) that the Attorney has not provided the Complainant with information as to the progress of her business although reasonably required to do so; and
  - (b) has failed to deal with the Complainant's matter with due expedition.

2. The Panel commenced the hearing of this matter on the 19<sup>th</sup> January, 2013. Neither the Attorney nor the Complainant was in attendance. Both the Attorney and the Complainant had been duly served with notice of the hearing pursuant to **Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules** set out under the 4<sup>th</sup> schedule to the **Legal Profession Act**.
  
3. Prior to the hearing of this matter a medical report dated the 9<sup>th</sup> June, 2010 from Dr. Denise Eldermire-Shearer had been sent to the General Legal Council in which it was stated in relation to the Complainant's medical condition that the Complainant "could no longer function mentally and was unable to testify." By letter dated the 23<sup>rd</sup> July, 2010 the Attorney was sent a copy of Dr. Eldermire-Shearer's medical certificate and advised that the Panel would be considering whether to proceed with the complaint on the basis of the affidavit of the Complainant. The Attorney never responded to this letter but on the 23<sup>rd</sup> June, 2012 at a hearing (when the matter was listed for mention) he advised the Panel that he would not be making an application to cross-examine the Complainant. He was advised of the Panel's decision to proceed on the basis of the Complainant's affidavit. The Attorney advised that he had filed an Affidavit sworn to on the 28<sup>th</sup> November, 2011 which also contained his submissions.
  
4. In light of the age of the Complainant who at the time was 92 years old, together with the matters contained in the medical report and the fact that the Attorney had indicated that he was not going to cross-examine the Complainant, pursuant to **Rule 10 of the Fourth Schedule of the Legal Profession (Disciplinary Proceedings) Rules**, the Panel elected

to dispense with the verbal testimony of the Complainant and to instead rely on the evidence of the Complainant contained in an Affidavit of Leila Valentine sworn to on the 17<sup>th</sup> April, 2014 and letters attached thereto specifically:

- (a) letter dated the 7<sup>th</sup> September, 1998 from the Attorney to the Ministry of Finance and Planning;
- (b) letter dated the 2<sup>nd</sup> July, 1998 from the Stamp Duty and Transfer Tax Department to the Attorney;
- (c) letter dated the 27<sup>th</sup> July, 1998 to the Stamp Commissioner from the Attorney;
- (d) letter dated the 2<sup>nd</sup> November, 1998 from the Attorney to Headley Bryce;
- (e) letter dated the 10<sup>th</sup> December, 1998 from the Ministry of Finance and Planning to the Attorney;
- (f) letter dated the 29<sup>th</sup> September, 2000 from the Complainant to the Attorney;
- (g) letter dated the 21<sup>st</sup> April, 2002 from the Complainant to the Attorney;
- (h) letter dated the 10<sup>th</sup> July, 2005 from the Complainant to the General Legal Council; and
- (i) letter dated the 6<sup>th</sup> October, 2005 from the Complainant to the General Legal Council.

This Affidavit was put into evidence as Exhibit 1.

5. The Panel also elected to proceed on the basis of the affidavit sworn to by the Attorney on the 28<sup>th</sup> November, 2011 which was put into evidence as Exhibit 2.

6. The General Legal Council wrote to the Attorney on the 31<sup>st</sup> January, 2013 and advised that the Panel had decided to proceed on the basis of the affidavits and invited him to make written submissions on or before the 9<sup>th</sup> February, 2013. The matter was adjourned to the 23<sup>rd</sup> March, 2013. On the 23<sup>rd</sup> March, 2013 the Attorney attended and advised that he had not provided written submissions and felt his affidavit was sufficient. The matter was therefore adjourned to the 1<sup>st</sup> June, 2013 for judgment to be delivered. The judgment was however not delivered on that day and we apologised for the delay.

## **EVIDENCE**

7. The evidence of the Complainant was that the Attorney represented her in the sale of her house at 26 Hart Boulevard, Kingston 8 in the parish of St. Andrew to Mr. Justice Lloyd Ellis and Mrs. Ellis (hereinafter called “the Purchasers”) in 1998. The sale was completed on the 2<sup>nd</sup> November, 1998. Prior to the completion of the sale, the Attorney gave the keys to the house to the Purchasers for them to view the property. This was done in April 1998. Upon getting the keys, the Purchasers without the consent of the Complainant, entered into possession of the property. Upon completion of the sale on the 2<sup>nd</sup> November, 1998, the Attorney wrote to the Purchasers’ Attorney, Mr. Headley Bryce, sending him the TR1 Form and requesting a cheque for One Hundred Fifty Nine Thousand Four Hundred Fifty Two Dollars and Five Cents (\$159,452.05) being interest on the balance purchase price from the date of possession of the property by the Purchasers to the date of completion of the sale at a rate of 20% per annum.

8. It is to be noted that in the said letter to Mr. Headley Bryce, the Attorney does refer to a letter of the 21<sup>st</sup> April, 1998 to the Purchasers' Attorney sending a letter of possession. That letter was not tendered into evidence and although it was mentioned in one of the letters by the Complainant that she did not consent to giving the Purchasers early possession, in another letter dated the 29<sup>th</sup> September, 2000 to the Attorney she stated:

“As you are aware, the sale of this property was not completed until November 2, 1998 and as you are also aware, Judge and Mrs. Ellis took possession of the property in April 1998 with the knowledge and understanding that the final purchase of the property had not yet taken place. This was a decision made by Judge Ellis, Mrs. Ellis and yourself and agreed to by me in order to accommodate him and at no time had I agreed verbally or in writing to allow my house to be occupied before it its sale was completed without adequate compensation.

All parties including Judge and Mrs. Ellis and their legal representative, were aware that interest on the balance of the purchase price would have been accruing between the time they took possession and when the sale was completed.”

9. Even if the Complainant did not initially consent to the Purchasers taking early possession of the house, she eventually agreed to it thereby ratifying the Attorney's actions in agreeing. This issue was however not raised for determination in the complaint laid as the grounds of complaint were limited to the Attorney not providing information as to progress of the Complainant's business with due expedition and not dealing with her business with all due expedition. We therefore make no finding on this issue.

10. The further evidence of the Complainant was that on the 2<sup>nd</sup> July, 1998 the Stamp Commissioner assessed estate duty payable on the sale of the said house at Two Hundred Eight Thousand Eight Hundred and Twenty Dollars (\$208,820.00) and demanded payment on the Complainant's instructions which the Attorney paid under protest. He appealed the ruling of the Stamp Commissioner. The appeal was denied on the 10<sup>th</sup> December, 1998 and the Attorney indicated that he would then be suing the Stamp Commissioner to recover the amount paid.
  
11. On the 12<sup>th</sup> November, 1998 the Attorney wrote to the Complainant advising that the sale was complete and that he would be pursuing the outstanding matters which he advised were:
  - (a) payment of interest on the balance purchase price during the period from possession to completion; and
  - (b) refund of payment made under protest.
  
12. The Complainant's evidence is that she was not aware if the Attorney ever collected this sum. She has not heard anything from the Attorney. The last time she heard from the Attorney was on the 5<sup>th</sup> April, 2002 when he verbally advised her son that he would be suing the Stamp Commissioner in relation to the money paid over under protest and that "he was waiting for the case to be placed on docket to be heard in Court." She sent many letters to the Attorney and attempted to telephone him for a status report including, asking that he take steps to obtain a court date. She received no response to her letters.

13. The Attorney admitted in his affidavit sworn to on the 28<sup>th</sup> November, 2011 that:
  - (a) He acted on behalf of the Complainant in the sale of premises at 26 Hart Boulevard to the Purchasers.
  - (b) He wrote to the Purchasers' Attorney, Mr. Headley Bryce, on the 2<sup>nd</sup> November, 1998 requesting payment of interest.
  - (c) Prior to completion of sale, the Stamp Commissioner assessed and demanded payment of Two Hundred Eight Thousand Eight Hundred and Twenty Dollars (\$208,820.00) for estate duties to clear off the name of the co owner, Clifford Valentine, from the title to the premises.
  
14. The Attorney also relied on various letters, the important ones being:
  - (a) Letter dated the 12<sup>th</sup> November, 1998 to the Complainant advising that the sale was completed but the payment of interest on the balance purchase price and the refund of payment made under protest were outstanding and he would still be pursuing same.
  - (b) Letter dated the 2<sup>nd</sup> November, 1998 to Mr. Headley Bryce requesting payment of interest in the amount of One Hundred Fifty Nine Thousand Four Hundred Fifty Two Dollars and Five Cents (\$159,452.05).
  
15. Where the Complainant and the Attorney part ways in the evidence is that the Attorney says he received no instructions to sue to recover the interest on the balance purchase price or to recover the estate tax paid although he told them that the only way to recover the sums was by filing suit.

16. No evidence was produced by the Complainant to demonstrate that the Attorney was in fact ever instructed by her to file suit or that the Attorney was indeed filing suit although the Complainant appears to have been under that impression based on the fact that in relation to the interest payable on the balance purchase price and the refund of estate duties, the Attorney in his letter to the Complainant dated the 12<sup>th</sup> November, 1998 stated that he would be pursuing the outstanding matters and he did in fact write to the Purchasers' Attorney on the 2<sup>nd</sup> November, 1998 demanding payment of \$159,452.05 being interest on the balance purchase price. This letter was copied to the Complainant. No evidence was before the panel from either party that anything else was done by the Attorney to recover the interest. Similarly, after appealing the decision to assess estate duties of \$208,820.00 and paying it over to the government and receiving the decision dismissing the appeal on the 10<sup>th</sup> December, 1998, there is no record of the Attorney doing anything further.
  
17. The general rule is that an Attorney should only file suit on the express instructions of the client. He has no authority to file suit without these expression/special instructions although if he does so it can be later ratified by the client.(See **James v Ricknell [1887] 20 Q B D 164**).
  
18. By letters dated the 29<sup>th</sup> September, 2000, 21<sup>st</sup> April, 2002 and 10<sup>th</sup> July, 2005 the Complainant wrote to the Attorney imploring him to take steps to get the money from the Purchasers as soon as possible. She did not however instruct him to file suit. In her final



letter to the Attorney the Complainant states that the Attorney has not replied to her letters aforesaid and requested an up-to-date status report. The subject matter of this letter is outstanding interest and estate duties. The Attorney answered none of the letters. Further the statement by the Attorney that he would be pursuing outstanding matters did not necessarily mean that he was filing suit without more.

19. One must not however lose sight of the complaint which is that the Attorney has not dealt with the Complainant's business with all due expedition and has not provided her with information as to progress of her business. Having read the affidavits and exhibits, the Panel finds the following has been established beyond reasonable doubt (Winston Campbell v David Hamlet [as Executrix of Simon Alexander] Privy Council Appeal No. 7 of 2001).
  - (a) The Complainant retained the services of the Attorney to represent her in the sale of premises at 26 Hart Boulevard, Kingston 6 to the Purchasers.
  - (b) The Purchasers were given early possession in April 1998.
  - (c) Although the Complainant did not initially consent to giving the Purchasers' early possession, she eventually agreed to accommodate them expecting them to pay rent/interest.
  - (d) The sale was completed November, 1998 and the Attorney wrote to the Purchasers' Attorney on the 2<sup>nd</sup> November, 1998 for interest for the period from the Purchasers took possession to completion of the sale.
  - (e) The Purchasers paid neither rent nor interest to the Attorney.

- (f) After the appeal to the Ministry of Finance and Planning over the estate duties was dismissed in December 1998, the Attorney said nothing to the Complainant about the matter notwithstanding her letters requesting updates.
- (g) The Attorney was not retained to file suit to recover the interest or to challenge the decision on the appeal of the estate duties.
- (h) The business for which the Attorney was retained, that is, the sale of the property was dealt with, with due expedition.
- (i) Apart from the letter dated the 2<sup>nd</sup> November, 1998 to the Purchasers' Attorney, the Attorney took no further steps to recover the outstanding amount.
- (j) The Attorney failed to advise the Complainant of the progress of the matter after the 2<sup>nd</sup> November, 1998 when he wrote to Mr. Headley Bryce for the sum representing the interest which letter was copied to the Complainant.
- (k) The Attorney never responded to the Complainant's letters of the 29<sup>th</sup> September, 2000, 21<sup>st</sup> April, 2012 and 10<sup>th</sup> July, 2005 requesting updates.

#### CANONS

20. It is our view that the Complainant has not established that the Attorney did not deal with her business with due expedition as the business of which the Attorney was retained, that is, the sale of her house was dealt with, with due expedition. Instructions were never given to the Attorney to sue for the outstanding rent/interest or to challenge the appeal in relation to the estate duties paid, hence one cannot use this failure to ground the complaint that the Attorney did not deal with her business with due expedition. It does however appear that the Attorney failed to advise the Complainant as to the progress of

the matter. The Complainant is entitled to be advised as to the progress of her affairs and the failure of the Attorney to do so constitutes misconduct in a professional respect. None of the Complainant's three (3) letters to the Attorney enquiring about the status of the two (2) outstanding issues were ever responded to by the Attorney. Even if he had not been successful in his letter to the Purchasers' Attorney asking for the interest, the Attorney was under a duty to advise the Complainant of the status especially as he led her to believe, by his letter of the 12<sup>th</sup> November, 1998, that he was pursuing this outstanding matter and the challenge to the appeal in relation to the assessment of estate duties.

21. We therefore find that the Attorney has breached Canons IV (r) of **The Legal Profession (Canons of Professional Ethics) Rules**. For ease of reference we set out below the said Canon:

*"An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition."*

22. On the 17<sup>th</sup> January, 2015 this matter came up for hearing. The Attorney was present. The Panel advised him of our findings contained herein and invited him to make submissions or bring evidence in support of a plea in mitigation before we imposed a sanction. The Attorney declined our invitation on the basis that he did not feel our findings in relation to his breach of Canon IV (r) of The Legal Profession (Canons of Professional Ethics) Rule appeared serious and therefore he was prepared to accept the final decision of the Panel. The Panel thereupon adjourned the matter to the 24<sup>th</sup> January, 2015 to consider the matter further.

23. Having considered the matter we find that the Attorney is guilty of professional misconduct as per **Canon VII of the Legal Profession (Canons of Professional Ethics of Rules)** in that he has breached Canon IV (r). However the Panel is mindful of the fact that the matter for which the Attorney was retained that is, the sale of the house, was dealt with due expedition and that the Complainant did not in fact instruct the Attorney to file suit. Accordingly, it is the decision of this Panel that pursuant to Section 12 (4) of the **Legal Profession Act:**

- (i) The Attorney, Anthony Pearson, is hereby reprimanded for failing to advise the Complainant as to the progress of the matter.
- (ii) The Attorney should also pay the costs of these proceedings in the amount of \$20,000.00 on or before the 31<sup>st</sup> day of January, 2015.

Dated the 24th day of January, 2015

  
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**DANIELLA GENTLES-SILVERA**

  
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**JOHN GRAHAM**

  
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**URSULA KHAN**