

DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

Complaint No. 29/2014

IN THE MATTER of a
complaint by PETITIA
COOPER and NEVILLE
FEARON against DAIMIAN
MASTERS, An Attorney-at-
Law

AND

IN THE MATTER of the
Legal Profession Act.

Panel:

Mr. Walter Scott, Q.C.
Mr. Michael Thomas
Mrs. Debra McDonald

Present: The Complainants, Neville Fearon and Petitia Cooper. No one appeared for the Attorney nor did he appear.

Hearing: 25th September, 2015

The Complaint

This complaint against the Attorney-at-Law, Daimian Masters, (hereafter "the Attorney") is contained in the Form of Affidavit sworn to on the 24th day of February, 2015 by Neville Fearon and Petitia Cooper (hereafter "the Complainants"). The complaint is particularized as follows:

1. He has not provided us with all information as to the progress of our business with due expedition, although we have reasonably required him to do so.
2. He has not dealt with our business with all due expedition.
3. He has acted with inexcusable or deplorable negligence in the performance of his duties
4. He has not accounted to us for all moneys in his hands for our account or credit, although we have reasonably required him to do so

5. He is in breach of Canon 1 (b) which states that, "An Attorney shall at all material times maintain the honor and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which he is a member."

On the 4th July, 2015 the Panel adjourned the matter to the 25th September, 2015 for trial.

On the 25th September, 2015 the Complainants were present and the Attorney absent. The Panel satisfied itself that adequate notice had been sent to the Attorney as required by Rules 5 and 21 of the Fourth Schedule of the Legal Profession Act (hereafter referred to as the Fourth Schedule). This is evidenced by an Affidavit of Service sworn to by Wayton Henry on the 24th September, 2015 who on the 31st July, 2015 posted a Notice of Hearing dated the 30th July, 2015 to Mr. Daimian Masters.

The Panel exercised its discretion to proceed with the hearing in the absence of the Attorney. In doing so the Panel acted pursuant to Rule 8 (amended) of the Fourth Schedule.

EVIDENCE

The Complainants agreed that Complainant Petitia Copper would give the evidence.

The Complainant Petitia Cooper (hereafter "Cooper") was sworn. She deponed that she lives in James Hill District, James Hill P.O. in the parish of Clarendon and she is a Quality Assurance Officer employed to the National Works Agency. She knows the other Complainant Neville Fearon (hereafter "Fearon") who she says also works at the National Works Agency in Mandeville, Manchester. She and Fearon retained the Attorney in their purchase of a piece of land.

She paid the Attorney money and got a receipt. She said that she filed a complaint and an Affidavit in support of her complaint. Both the complaint and the Affidavit were shown to Cooper and she said that the application was filed by both herself and Fearon. The Form of Application was admitted as Exhibit 1. The Form of Affidavit was admitted in evidence as Exhibit 2.

Cooper further stated that two sets of money was paid to the Attorney and she was shown two receipts, one for \$485,000.00 and one for \$950,000.00. She identified them as the receipts she received. Receipt dated September 12, 2013 for \$485,000.00 was admitted into evidence as Exhibit 3A. Receipt dated De ember 24, 2013 for \$950,000.00 was admitted as Exhibit 3B.

She stated that the transaction was not completed. Cooper said that she never received the \$950,000.00 from the Attorney and both herself and Fearon made a report to the Police. They both gave statements to the Police in Mandeville. The statements are dated 14th February, 2014. The statements were shown to Cooper who identified them as the statements given to the Police.

The statement of Cooper was admitted into evidence as Exhibit 4 and that of Fearon admitted as Exhibit 5.

Cooper further stated that she remembered the 18th February, 2015 when the Attorney said he would pay the \$950,000.00 with interest to her and that was the same Daimian Masters to whom she paid the \$950,000.00.

She said the \$950,000.00 is still due to her with interest amounting to \$56,505.05 to the 25th September, 2015.

Cooper then showed the Panel the updated interest statement bearing Fearon's signature. The undated up to date calculation of interest was admitted into evidence as Exhibit 6.

The Panel then advised Cooper that no one was there to cross-examine her so the decision of the Panel would be written. The matter was then part-heard and adjourned for a decision in writing.

FINDINGS

The Panel makes the following findings as it is obliged to do by virtue of section 15 of the Legal Profession Act.

The Panel reminds itself that the Complainants have a duty to satisfy us beyond reasonable doubt, that is so that we are sure. (Winston Campbell v David Hamlit [2005] UKPC 19).

Having viewed the evidence of the Complainant Cooper we find her to be a witness of truth. The allegations contained in the Affidavit (Exhibit 2) sworn to by both Complainants, not having been disputed by anyone, left the Panel with no choice but to accept as the truth.

We make the following findings of fact:

- (a) The Complainants retained the Attorney in or about September 12, 2013;
- (b) They instructed the Attorney to represent them in their purchase of land, lot 2 part of Knockpatrick., Manchester;
- (c) On September 12, 2013 a payment of \$485,000.00 was made to the Attorney being deposit and purchasers' one-half cost and General Consumption Tax on purchase of land at Knockpatrick, Manchester.
- (d) A further payment of \$950,000.00 was made on account of the purchase of lot 2, part of Knockpatrick, Manchester

- (e) On the 14th February, 2014, not having received the \$950,000.00 from the Attorney and the purchase not having been completed, the Complainants made a report to the Police in Mandeville.
- (f) On the 24th February, 2014 the Complainants filed a complaint against the Attorney and Affidavit in support with the General Legal Council.

CANONS

We find that the Attorney has breached Cannon IV (r) (s); VII (b) (ii) and 1(b) of the Legal Professional Ethics Rules and for ease of reference set out below the said Canons:

The Complaint alleges that the Attorney is in breach of various canons which are set out hereunder:

Canon IV (r) provides that:

“An Attorney shall deal with his client’s business with all due expedition and Shall when reasonably so required by the client provide him with all information as to the progress of the client’s business with due expedition”.

Canon IV (s) provides that:

“In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect”.

Canon VII (b) (ii) provides that:

“An Attorney shall –

- (ii) account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so.

Canon 1 (b) provides 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”.

CONCLUSION

- a) The Attorney was retained from September 2013 to represent the Complainants in the purchase of land in Knockpatrick, Manchester. Since December 24, 2013, (the date when the second payment was made to the Attorney) the Attorney has provided no information as to the progress of the Complainants’ business and to date the business for which the Attorney was retained has not been carried out. The Attorney has also proffered no explanation for the delay.

The Complainants are entitled to be advised as to the progress of their affairs and the failure of the Attorney to do so constitutes misconduct in a professional respect.

- b) There is no evidence that after two years the business (or any aspect of the business) for which the Attorney was retained has been carried out and we therefore find that the Attorney did not deal with the Complainants' business with all due expedition.
- c) Given the facts of the instant complaint where after a period of two years the Attorney has failed to deal with the Complainants' business, avoided and ceased all communication with them, the Panel has no hesitation in finding that the Attorney acted with inexcusable and deplorable negligence in the performance of his duties.
- d) The Attorney has to date failed to repay the Complainants the sum of \$950,000.00 which he promised to do. In so doing the Attorney has failed to account to the Complainants for the sums which were entrusted to him for a specific purpose.
- e) It is the Panels' view that all of the breaches committed by the Attorney and referred to above can only have the effect of discrediting and bringing the legal profession into disrepute.

SANCTIONS

As is presently required a date will be fixed on which there will be a separate hearing for Sanctions to be imposed.

DATED THE 6 DAY OF April, 2016.

