

DECISION OF THE DISCIPLINARY COMMITTEE OF THE
GENERAL LEGAL COUNCIL

COMPLAINT NO. 48/2009

In the Matter of GARNETT DAWKINS and
JERMAINE R. SIMMS an Attorney-at-Law.

AND

In the Matter of the Legal Profession Act,
1971

Panel: Dr. Adolph Edwards
Miss Beryl Ennis
Mrs. Daniella Gentles-Silvera

Present: The Complainant, Garnett Dawkins, appeared in person. The Attorney-at-Law was represented by Arlene Harrison Henry and Dennis Daley Q.C. on one occasion each for the sole purpose of applying for adjournments.

Hearing: 2nd October 2010, 4th November 2010, 30th November 2010, 26th September 2012, 21st September, 2017.

COMPLAINT

1. The complaint against the Attorney-at-Law, Jermaine R. Simms, (hereinafter called "the Attorney") contained in the Form of Affidavit sworn to on the 17th March 2009 by Garnett Dawkins (hereinafter called "the Complainant") is that:
 - (a) "He has breached Canon 1(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.'
 - (b) 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.
 - (c) He has misappropriated my monies from the sale of my property."

2. Upon the Committee being satisfied that the Attorney had been duly served with notice of this hearing pursuant to **Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules** set out under the **4th schedule to the Legal Profession Act** and, in exercise of its discretion to proceed with the hearing in the absence of the Attorney, which is provided for under **Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules**, the Committee commenced the hearing of this matter on the 2nd October 2010 with the evidence of Mr. Garnett Dawkins which was completed. The Complainant was advised to bring a copy of the statement of account and a receipt for \$23,000.00 of which he gave evidence that he received from the Attorney. The matter was adjourned to the 4th November 2010 for continuation and the notes of the proceedings and notice of the date of the adjourned hearing were served on the Attorney. The hearing for the 4th November 2010 was postponed to the 11th November 2010. On the 11th November 2010 the Complainant and the Attorney attended the hearing together with Mrs. Arlene Harrison Henry who applied for an adjournment on behalf of the Attorney so that he could retain legal representation as she stated that she was not representing him. The application was granted and the matter was adjourned to the 30th November 2010. On the 30th November 2010 Mr. Dennis Daley Q.C., attended the hearing on behalf of the Attorney and applied for an adjournment on the basis that he had just received the notes of evidence in the matter and needed time to prepare. The Complainant did not attend. The matter was therefore adjourned to the 15th December 2010. The Attorney attended on the 15th December 2010 without his Attorney Mr. Daley, Q.C whom he advised was ill. The Complainant did not attend. The matter was adjourned to the 11th January 2011. The Attorney attended and advised that Mr. Daley, Q.C was again ill but that he was also being represented by Mr. Howard Hamilton Q.C. and Mr. Michael Lorne, Q.C. who were not present. The Complainant did not attend. The matter was adjourned to the 8th March 2011. Notices of the adjourned hearing were sent to Mr. Howard Hamilton Q.C. and Mr. Michael Lorne, Q.C. Both gentlemen responded to the General Legal Council by letters dated 8th February 2011 and 28th January 2011 respectively in which they advised that they did not represent the Attorney. The General Legal Council subsequently received two letters from Daley Thwaites & Co. both dated 4th March 2011 under the signatures of

Ronald Thwaites and Mary J. Thwaites-Whittingham. Mr. Thwaites and Mrs. Thwaites-Whittingham advised that the Attorney could not attend the hearing fixed for the 8th March 2011 as he would be in the Court of Appeal in a matter in which he was personally involved and he had a medical condition. The matter was therefore adjourned on the 8th March 2011 to the 8th October 2011 when it was then adjourned to the 26th September 2012. The General Legal Council received a letter dated 31st August 2012 on the 7th day of September 2012 from Mr. Dennis Daley Q.C. saying he no longer represented the Attorney. On the 26th September 2012 neither the Attorney nor the Complainant attended. The evidence of the Complainant having been completed the panel adjourned the matter for Judgment to be written.

EVIDENCE

3. The evidence of the Complainant was that in 2007 he retained the Attorney to represent him in the sale of his house at Lot 200, 10 Aloe Place, Ebony Vale, St. Catherine to Jeovani Heslop for the purchase price of \$2,100,000.00. The Complainant paid the Attorney \$23,000.00 on the same day on which he retained him, to prepare the Sale Agreement.
4. The Agreement for Sale (Exhibit 1) was signed and a deposit of \$300,000.00 was paid directly to the Complainant by the Purchaser (Exhibit 5). The Agreement for Sale was subject to the Purchaser obtaining a mortgage from a reputable financial institution. Completion was 120 days from the date of the Agreement for Sale on payment of all sums in exchange for the duplicate Certificate of Title registered in the name of the Purchaser. In the Agreement for Sale the Attorney was described as having carriage of sale and the Purchaser's Attorney was described as Loretta Reid-Pitt.
5. The Attorney sent a statement of account to the Purchaser, Jeovani Heslop, showing how much he was to pay which was \$1,865,600.00 (Exhibit 2A). National Housing Trust sent the Attorney a cheque for the balance payable by the Purchaser in the amount of \$1,865,600.00 drawn in favour of Jermaine R. Simms, the Attorney. The cheque was

dated 17th December 2007 (Exhibit 2B). The sale was completed in 2007 and the Attorney sent the Complainant a statement of account. The Attorney kept the balance purchase price of \$1,865,600.00 in his account until the Complainant returned to Jamaica in 2008. The Complainant had to leave the island for the USA so he left his bank account number with the Attorney for him to lodge the net proceeds of sale into when the sale was completed. The Attorney subsequently advised the Complainant that he was not able to lodge the money into his account as the Complainant never signed an agreement for this to be done so he would put it in his client's account.

6. The Attorney sent the Complainant a cheque No. 5949680 dated 24th December 2008 for \$1,400,000.00 drawn on the Attorney's client account (Exhibit 3) which the Complainant lodged into his account at Clarendon Co-operative Credit Union Limited. The Complainant was permitted to withdraw \$450,000.00 from the proceeds of the cheque before it cleared. The credit union subsequently called the Complainant and told him there was no money in the Attorney's account to clear the cheque.
7. The Complainant obtained a copy of the cheque which was stamped "Refer to Drawer" and also received a letter from Clarendon Credit Union Limited dated 30th January 2009 addressed "To Whom It May Concern" signed by one Karl Maye, Delinquency & Projects Officer. In the letter Mr. Maye stated:

"This is to certify that we are in possession of RBTT cheque #5949680 in the sum of One Million Four Hundred Thousand Dollars (1.4M) issued by Jermaine R. Simms (Attorney-at-Law) of which, Four Hundred and Fifty Thousand Dollars (\$450,000.00) was paid to the recipient Mr. Garnett Dawkins and was returned by RBTT for insufficient funds.

We intend to report this matter to the Fraud Squad in order to have the matter resolved."

(Exhibit 4)

8. The Complainant called the Attorney and told him that the cheque had bounced. The Attorney told him among other things that he had lost all of his money in Cash Plus. He asked the Complainant for more time. The Complainant was never paid the said money by the Attorney and after a while he was unable to speak to him as whenever he called and introduced himself the Attorney would hang up the phone. The Complainant reported the matter to the Fraud Squad.
9. The Complainant now owes the credit union \$400,000.00 having withdrawn money from the account before the cheque from the Attorney had cleared. He did however have some money in the account before the cheque from the Attorney was lodged.

FINDINGS OF FACT

10. Having seen and heard the evidence of the Complainant and having perused the exhibits, the Committee accepts the evidence of the Complainant as a witness of truth and finds that the following has been established beyond reasonable doubt:
 - (a) the Complainant retained the Attorney to act for him in the sale of his premises at Lot 200, 10 Aloe Place, Ebony Vale, St. Catherine in 2007;
 - (b) the Attorney received \$1,865,000.00 from National Housing Trust being the balance proceeds of sale of the said property on account for the Complainant;
 - (c) the Attorney issued a cheque to the Complainant in the amount of \$1,400,000.00 drawn on the Attorney's client account which when presented for payment was returned marked "refer to drawer" and the credit union where the cheque was lodged indicated by letter dated 30th January 2009 that there was insufficient funds in the account to clear the cheque;
 - (d) the Complainant advised the Attorney that the cheque bounced but to date the Attorney has neither replaced the cheque nor paid the Complainant the amount due and payable to the Complainant;
 - (e) the Complainant has made attempts to contact the Attorney to get his money but has not been successful.

CANONS

11. In breach of Canons I(b), VII(b) and VIII(b) of the **Legal Profession (Canons) Professional Ethics Rules** the Attorney has failed to account to the Complainant for money received by him on account of the purchase price for the property sold by the Complainant and payable to him as the cheque paid to the Complainant was dishonoured for insufficient funds in the Attorney's account and the Attorney has not replaced the cheque. The inescapable conclusion is that the Attorney has misappropriated the moneys paid. For ease of reference we set out below the aforesaid Canons:

Canon I (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."

Canon VII (b) provides that:

"An Attorney shall –

- (i) ...
- (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; and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council."

Canon VIII (b) states that:

"Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

12. The Complainant placed all trust and confidence in the Attorney in retaining him in the sale transaction of his property and in collecting the purchase price for him. The relationship of Attorney/Client is a fiduciary one and therefore the Attorney owes a fiduciary duty to the client to act in his best interest which the Attorney has not done.

The Attorney has instead betrayed this trust and confidence by collecting monies due and payable to the Complainant and misappropriating same. We find this conduct of the Attorney reprehensible.

13. The standard of proof in these disciplinary proceedings is that of the criminal standard that being beyond all reasonable doubt (**Winston Campbell v David Hamlet** (as executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001) and we find that the applicable standard of proof has been established and the Attorney as he then was, was guilty of professional misconduct.

DATED the 21st day of September, 2017



DR. ADOLPH EDWARDS



BERYL ENNIS



DANIELLA GENTLES-SILVERA