

DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL
COMPLAINT NO.129/2017

AMELIA ANN ELLIS vs LOVERNE GEORGE

PANEL: TREVOR HO-LYN (Chairperson), KATHERINE FRANCIS MARJORIE SHAW.

HEARING DATES: 22 SEPTEMBER 2018*, 27 OCTOBER 2018. (*Evidence taken)

BACKGROUND HISTORY.

Amelia Ann Ellis (hereinafter called “the complainant”) by an agreement dated the 4th January 2017 contracted to purchase property situated at 35 Riverside Drive, Havendale Heights, Kingston 19 for the sum of Twenty Five Million Dollars (\$25,000,000.00). In this transaction the Complainant was represented by Robert Taylor of TaylorLaw. Loverne George (hereinafter called “the Attorney”) acted on behalf of the Vendor and had the carriage of sale. A deposit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) along with a signed contract was sent to the Attorney. The sale did not proceed and was cancelled. By cheque dated the 18 February 2017 the Attorney repaid the deposit to TaylorLaw. This cheque was dishonoured and to date the deposit has not been refunded by the Attorney.

THE COMPLAINT.

By way of Form of Application Against an Attorney dated 28th April 2017 and affidavit in support bearing the same date the complainant alleged that :

The Attorney is in breach of the following canons namely :- 1. She is in breach of Canon 1(b) which states that an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which she is a member.

THE EVIDENCE.

The hearing of this complaint commenced on the 22nd September 2018 at the Office of the General Legal Council before the panel of Trevor Ho-Lyn (Chairperson), Katherine Francis and Marjorie Shaw and present was the Complainant. The Attorney was absent and the tribunal records indicated that the Attorney had been duly served with notice of the proceedings by way of registered post directed to the address of the Attorney known to the General Legal Council, The Panel having been satisfied as to the service of the notice commenced the hearing in the absence of the Attorney as is permitted regulation 8 of the Fourth Schedule of the Legal Profession Act. The following sets out uncontroverted facts.

1. The Complainant resides at 9 Clydes Avenue, Pembroke Hall, Kingston 20 and is a managing director at Reach Financial Services.
2. In January 2017 the Complainant and Hubert Anthony Ellis entered into a contract of sale to purchase property located at 35 Riverside Drive, Havendale Heights Kingston 19 and registered at Volume 987 Folio 234 from Olasupo Olatunji Mathew (pursuant to a power of attorney from Valando Sterling) for the sum of Twenty Five Million Dollars (\$25,000,000.00)
3. The complainant was represented by Robert Taylor of TaylorLaw and the Attorney acted for Mr. Mathew and had the carriage of sale for the transaction.
4. The Complainant and Mr. Ellis signed the agreement and paid the deposit of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) directly to the account of the Attorney and Robert Taylor forwarded the agreement to the Attorney.
5. The agreement was tendered and admitted in evidence as exhibit 3 and the receipt for the deposit was tendered and admitted as exhibit 4.
6. The sale fell through and was not completed. The Attorney by cheque dated 18th February 2017 drawn on the National Commercial Bank repaid the deposit however this cheque was dishonoured by the bank.

7. The cheque having been dishonoured Robert Taylor reported the matter to the police. Between May and June 2017 a meeting was held at the office of Robert Taylor and attended by the complainant, the Police, Robert Taylor and the Attorney.

8. The attorney promised to repay the deposit but to date has not done so. Because of this failure the Complainant by complaint numbered 129/2017 and dated the 28th September 2017 filed a complaint against the Attorney along with an affidavit in support of the complaint. The complaint was tendered and admitted in evidence as exhibit 1 and the affidavit in support was tendered and admitted as exhibit 2.

9. The evidence in chief of the Complainant was then concluded and the matter adjourned to the 27th October 2018 to allow for the Attorney to be served with a copy of the notes of evidence and to attend on that date.

10. On the 27th October 2018 the Complainant attended the hearing but the Attorney did not. The records indicated that the Attorney had been served with the notice of the hearing and the notes of evidence.

11. The case for the complainant was thereafter closed and the matter adjourned for a judgment to be delivered.

RULING

Regulation 8 of the Fourth Schedule to the Legal Profession Act provides that :-

8. 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.

THE BURDEN OF PROOF: the panel recognizes that in law the burden of proof is on the Complainant to prove his complaint to the standard of proof required in law. It is immaterial that the Attorney never attended any of the hearings at which evidence was taken the legal responsibility remains on the panel to evaluate the evidence it has before it to the standard of proof required before it makes any findings that may be adverse to the Attorney.

THE STANDARD OF PROOF: The panel reminds itself that in law, the standard of proof in cases of professional misconduct is that of beyond reasonable doubt. This is the standard that must be applied by the panel in evaluating the evidence adduced before it.

The unchallenged oral evidence coupled with the documentary evidence in support thereof do not disclose any material dispute of facts and accordingly the panel accepts the evidence of the Complainant in its entirety.

There is no doubt that the Attorney received the deposit and to date has failed to return it upon the sale being cancelled. There is also no doubt that she tried to repay the deposit by issuing a cheque that was dishonoured by the bank .

It follows from the above findings of fact that the breach of the canon set out in the complaint which asserts that :-

1. An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which she is a member.

Has been made out to the requisite standard as required by law. In consequence therefore the Attorney is in breach of the specified canon and is therefore guilty of professional misconduct.

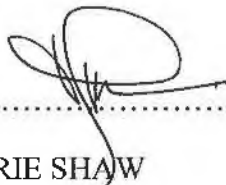
DATED THE 8th DAY OF December 2018



TREVOR HO-LYN (CHAIRPERSON)



KATHERINE FRANCIS



MARJORIE SHAW