

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

COMPLAINT No. 211/2017

In the matter of Diana Marie Sang-Scott
and G. Anthony Levy, an Attorney at law

AND

In the matter of the Legal Profession Act 1971

Panel : Ursula Khan (Chairman)
 Tana'ania Small Davis
 Kevin Powell

Hearing: July 28, 2018, February 19 and 28, 2019 and March 16, 2019.

Appearances: The Complainant by video link on all occasions.

The Attorney never appeared or sent an excuse.

COMPLAINT:

1. That “he has not accounted to me for all monies in his hands for the estate of Roy E. Sang, although I have reasonably required him to do so.”
2. That “he is in breach of Canon 1 (b) which states that an Attorney shall at all 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”.

EVIDENCE OF COMPLAINANT

3. The Complainant’s Form of Application against Attorney-at-Law dated June 21, 2017 and the Form of Affidavit by Applicant dated June 21, 2017 were admitted into evidence as Exhibits 1 and 2 respectively. The Complainant also produced a List of Documents which identified and attached 24 documents on which she

intended to rely and they were collectively admitted into evidence as Exhibit 3. Documents to which reference is made are within Exhibit 3 .

4. The Complainant also gave *viva voce* evidence. She told the panel that she is the daughter of Roy E. Sang, deceased and that the Attorney is the executor of her father's estate. She claims that he failed to account to the beneficiaries for the proceeds of sale of real property of the estate and other funds collected by him and has not distributed the inheritance to the said beneficiaries.
5. The Complainant's evidence was that the real estate comprised property situate at 27 Roehampton Drive, Kingston 19, that the certificate of title disclosed that the said property was transferred on June 3, 2016 for a consideration of Twenty Million Jamaican dollars (\$20,000,000.00) and that the Attorney acted as attorney-at-law for the vendor in that sale. A copy of the certificate of title discloses that the Attorney was registered on transmission on June 30, 2016 and the property was transferred on the same date for \$20,000,000.00.
6. The Attorney also received pension funds in the sum of \$880,624.40 from DunnCox, Attorneys at law on September 9, 2016. This was evidenced by a letter from DunnCox dated November 14, 2016.
7. As Executor, the Attorney exhibited non-action in the said estate and that she looked after the real estate which was tenanted from August 2005 until June 2016 when she handed over the keys to the said property to the Attorney on his first visit to the said property.
8. The Complainant said that there was "back and forth" between them and that she paid him \$5,000.00 in July 2015 to stamp the Grant of Probate.
9. The Attorney advertised for creditors in Jamaican newspapers without telling her, despite the fact that all the beneficiaries lived in the USA and in circumstances where he knew that she had a claim for money she had spent from her personal funds on the estate. Nevertheless, she submitted her claim to the Attorney in August 2016, but he refused to pay it.
10. The Complainant's evidence was that due to the difficulties she was encountering with the Attorney she retained another attorney, Miss Delrose Campbell, to write to him in October 2016. She said they held a meeting in which they agreed that Miss Campbell would send the Attorney notarized releases signed by all the beneficiaries releasing the Attorney from any liability in respect of rent collected by

the Complainant and authorizing the Attorney to reimburse the Complainant the sum of \$802,436.27. In exchange the Attorney would pay the Complainant's claim for \$802,436.27. The releases were provided to the Attorney but he reneged on the agreement.

11. That in Exhibit 7 – a letter dated 21 March 2017 from the Attorney to the General Legal Council copied to her, the Attorney stated that -
 - (a) probate was not granted until 2016 because he was not provided with funds to pay the relevant stamp duties until then; and
 - (b) he had made entitlement payments to a grandson of the deceased living in Florida, but that he disputed some of the items claimed by the Complainant as they were not proper expenses of the estate.
12. The Complainant further explained that her attorney, Miss Campbell, wrote several letters to the Respondent/ Attorney and these are included in Exhibit 3. In one reply from the Attorney on October 19, 2016 on the letterhead of his law firm "G. Anthony Levy & Co" the Attorney stated, inter alia, "*that it is up to me as Executor to decide whether to write directly to her or to you*" and complained that the Complainant had promised to send him the mailing addresses of beneficiaries and had not done so.
13. On February 28, 2019 the Complainant gave evidence that up to that date she had not received any monies from the estate or any account from the Attorney and based on her checks no monies have been paid and no account was given to any of the other beneficiaries.

DEFENCE

14. The Attorney did not file an affidavit in response to the Complaint as required by the Rules nor did he comply with an order of the Panel extending his time to do so. No excuse for his failure to attend any of the hearing dates has been received.

DISCUSSION OF THE EVIDENCE

15. The evidence adduced shows that the Attorney was acting as executor of the estate of Roy E. Sang and that where legal services were required his firm "G. Anthony Levy & Co" acted as attorneys-at-law. This fact was demonstrated in the "extraction clause" on the Grant of Probate and in the letters written to Miss Campbell.

16. The evidence was also that the Attorney acted for the vendor in the sale of 27 Roehampton Drive.
17. The Panel accepts that the Attorney had a dual role in matters concerning this estate.
18. The Panel understands that it must distinguish his duties as executor from his duties as attorney-at-law.
19. The Attorney has not provided the Complainant or her attorney-at-law any accounts, nor has he paid her claim despite receipt of the releases as he agreed to do in exchange for the releases.
20. The Attorney's response to Miss Campbell cited above is contemptuous and arrogant to a colleague.
21. The Panel takes note of Section 5(1) (c) of the Legal Profession Act – that an Attorney at law on the Roll of Attorneys is subject to all the liabilities attached by law to an Attorney at law, and Rule 2 of the Legal Profession (Canons of Professional Ethics) Rules, 1978 which state, inter alia, that *an Attorney includes a firm of Attorneys*. Therefore, in his relations with the Complainant the Attorney completely ignored his responsibilities and obligations to her as Attorney at law.
22. In his capacity as Executor qua attorney at law as a result of his dual role of Executor and Attorney for the Executor, the Attorney was duty bound to account to the estate for the net proceeds of sale of the deceased's real estate after deduction of expenses and any fees incidental to the sale.
23. There is no evidence that he did so.
24. Because the Attorney failed to file an affidavit in response or to appear at the hearing, there was nothing to discredit the Complainant's evidence.
25. In any event, and on the totality on the evidence provided to it, the Complainant's evidence was credible and the Panel infers from the evidence before it that the net proceeds of sale are or would have been in the custody of the Attorney as attorney-at-law as gleaned from the said letter to the General Legal Council (Exhibit 7).

26. The Complainant's claim remains unsettled, the estate has not been accounted for and beneficiaries have not been paid. This is a matter that is properly dealt with in court proceedings as between the beneficiaries and the executor.
27. In the circumstances the Complaint that the Attorney has not accounted to the Complainant for all the monies in his hand has not been made out.

Canon I (b)

28. The unchallenged evidence is that the gross proceeds of sale of the real estate of the deceased, subject to accounting, have been in the hands of the Attorney since on and about June 30, 2016. This is more than two and a half years ago.
29. This state of affairs does not augur well for the reputation of the legal profession and contributes to the present deteriorating opinion of the public to this our honourable profession. This is especially case where the Attorney has failed (and in some cases refused) to provide any explanation for the delay in doing so.
30. As part of its consideration whether the Attorney has breached Canon I (b) of the Canons of Professional Ethics, the Panel takes into account whether or not the Attorney owes a duty to the Complainant.
31. There is no contractual relationship between the Complainant as beneficiary and the Attorney as Attorney at law.
32. Whether or not any duty arises between an Attorney at law and beneficiaries under a will is a much discussed question worldwide both in civil and common law jurisdictions.
33. This very question was considered at length in the House of Lords in **White v Jones [1995] 2 A C 207**. While this case dealt with intended beneficiaries, the Panel finds that it equally applies to actual beneficiaries. Mention must be made of the fact that decisions of the House of Lords are not binding in Jamaica, but they are of persuasive value since both jurisdictions are formerly common law jurisdictions and the rationale can easily be adjusted and used as guidance.
34. Lord Goff who gave one of the majority decisions stated that despite the hurdles posed by the conceptual difficulties, the trend appears to be moving strongly in favour of liability. Where there is no contractual basis the impulse to do practical

justice is gaining strength since (i) the lacuna in the law is of cardinal importance (ii) there is no injustice in rendering liability (iii) the public relies on Solicitors (in Jamaica Attorneys at law) to attend to probate matters and (iv) the Courts will have to fashion an effective remedy for solicitor's breach of professional duty.

35. **Ross –v Caunders** 1980 Ch 297 had to that point been followed for 15 years so the conceptual problem has faded away.

36. In any event, the Court of Appeal has given a wide meaning to the phrase “a person aggrieved” as used in the Legal Profession Act to include persons who do not fall within the attorney-client relationship. In **Arlean Beckford v The General Legal Council Civil Appeal No. 32 of 2005 delivered July 31, 2007** Marsh, J.A. (ag) (with whom Panton P and Smith JA agreed) made the following pronouncement (at pages 8-9):

“...that the words “aggrieved person” have a wide scope within the Legal Profession Act. It is not restricted to attorney-at- law/client relationships. It is of much wider scope. A mortgage company may complain if there is a breach of an undertaking given it by an attorney representing any party to a sale of land.”

37. It is of note that in the **Arlean Beckford** case the complaint involved the sale of property in which the complainant had no beneficial interest, but which was alleged to have been owned by his deceased relative. In those circumstances the court held that the person making the complaint “had a genuine grievance.”

FINDINGS

38. In all the circumstances, and taking into account the required criminal standard of proof, the Panel makes the following findings:

- 1) The Attorney acted as both Executor and Attorney at law in the estate of Roy E. Sang.
- 2) Though the capacities in which he acted are distinct, each carries obligations and responsibilities
- 3) This Panel is only concerned with his obligations and conduct as Attorney at law under the Legal Profession Act.

- 4) As Attorney at law the Respondent/Attorney has obligations to the Complainant as beneficiary especially because she supplied him with information and paid all the expenses incidental to a grant of probate.
- 5) In any event, the Complainant is a person aggrieved and entitled to bring this complaint to which the Attorney is required to answer.
- 6) The Attorney is in breach of Canon I (b) which states that "an Attorney shall at all 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".

DECISION

39. In the circumstances the Panel finds that the Attorney is guilty of misconduct in a professional respect contrary to section 12(1) of the Legal Profession Act.
40. Following the guidance of the Court of Appeal in Owen Clunie v. GLC, CA 3/2013 delivered on the 22nd of September, 2014, this Panel directs that a date be set to give the Attorney an opportunity to be heard in mitigation before a sanction is imposed.

March 16, 2019



Ursula Khan



Tana'ania Small Davis



Kevin Powell

