

DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**COMPLAINT NO.16/2016****In the matter of ANTHONY MORGAN and****HOWARD LETTMAN an Attorney at Law****AND****In the matter of the Legal Profession Act 1971**

PANEL: TREVOR HO-LYN (Chairperson), , MARJORIE SHAW, JEFFREY DALEY.

HEARING DATES: 28 APRIL 2018, 24 MARCH 2018, 10 FEBRUARY 2018*. (*Evidence taken)

BACKGROUND HISTORY.

Anthony Morgan (hereinafter called "the Complainant") on the 24th June 1994 engaged the services of Howard Lettman (hereinafter called "the Attorney") to represent himself and his wife Margiana Morgan in the purchase of property being part of Albion in the Parish of Manchester containing by survey 1 Rood and 8.3 perches for the purchase price of Two Hundred and Fifty Thousand Dollars (\$250,000.00) from Gladstone Richards. The sum of Two Hundred Thousand Dollars (\$200,000.00) was paid to the Attorney as a deposit and the completion date was set for twelve months after the signing of the contract.

This land is no longer available for sale as the Vendor has now built on it. The complainant has not been refunded by the Attorney of the deposit paid and as a consequence thereof the Complainant has laid this complaint against the Attorney.

THE COMPLAINT.

By way of Form of Application Against an Attorney dated 9th May 2016 and Affidavit in support bearing the same date the Complainant alleged that:

The Attorney is in breach of the following canons namely: -

1. He has not provided me with all information as to the progress of my business with due expedition although I have reasonably required him to do so. (Canon 4(r))
2. He has not dealt with my business with all due expedition i.e. property purchased since 1994.(Canon 4 (r))
3. He has acted with inexcusable or deplorable negligence in the performance of his duties . (Canon 4 (s))

He has not accounted to me for all moneys in his hands for my account or credit although I have reasonably required him to do so.(Canon 7 b (ii))

4. He 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 he is a member.

THE EVIDENCE.

The hearing of this complaint commenced on the 10th February 2018 before the panel of Trevor Ho-Lyn (Chairman), Jeffrey Daley and Marjorie Shaw. Whereas the Complainant was present the Attorney was absent and the tribunal records indicated that the Attorney had been served with notice of the proceedings by way of registered letter dated the 10th January 2018 directed to the address of the Attorney known to the General Legal Council to attend on the 10th February 2018. The Panel having therefore been satisfied as to the service of the notice commenced the hearing in the absence of the Attorney which it has the power to do under Regulation 8 of the Fourth Schedule to the Legal Profession Act which 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 following evidence was given which was uncontroverted.

1. The Complainant stated that he presently resides at 118 Barbican Road , Kingston 8 and he is a Minister of Religion.
2. In June 1994 he and his wife Margiana Morgan entered into a contract of sale with Gladstone Richards to purchase property located at Albion in the parish of Manchester containing by survey 1 Rood and 8.3 perches for the purchase price of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and a deposit of Two Hundred Thousand Dollars (\$200,000.00) was paid to the Attorney.
3. In support of this evidence a copy of a receipt dated 24th June 1994 was tendered and admitted in evidence as Exhibit 1 and the undated Agreement for Sale was tendered and admitted in evidence as Exhibit 2.
4. The Complainant kept in touch with the Attorney for the next two years but there was no progress in the sale subsequently he left Manchester and although the Attorney represented the Complainant in his divorce because of a falling out concerning the manner in which the Attorney represented him in the divorce there was little communication thereafter.
5. The complainant on two separate occasions asked other attorneys to informally speak to the Attorney on his behalf with regard to the return of the deposit. This was because it had come to his attention by speaking to the Vendor Gladstone Robinson that the land was no longer for sale. These informal talks had little success and to date he has not been refunded .

6. As a result of this development the Complainant filed a complaint with the General Legal Council. The Form of Application was tendered and admitted as Exhibit 3 and the affidavit in support of the Complaint was tendered and admitted as exhibit 4.

7. The Panel asked the Complainant what was the reason for this delay in pursuing the matter and he explained that the many changes in his personal life did not afford him the opportunity to do so until now.

8. The Complainant to date had not received a refund of the deposit paid to the Attorney despite his request to be repaid.

11. The hearing of the complaint was then adjourned to the 24th March 2018 for continuation with the Attorney to be advised and supplied with a copy of the notes of evidence.

12. On the 24th March 2018 the hearing resumed. The Complainant was present but the Attorney was absent however a medical certificate was tendered on his behalf explaining his absence and the matter was adjourned to the 28th April 2018 for the doctor who issued the medical certificate to attend if the Attorney did not attend.

13. On the 28th April 2018 the matter resumed . The Attorney did not attend and again the records indicated that he had been properly served with the notice of the hearing. The doctor did not attend and no information was advanced to the Panel to explain the absence of the Attorney. The Panel was therefore constrained to consider the evidence completed and the matter was adjourned for a judgment to be delivered.

FINDINGS

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 beyond reasonable doubt. This is the standard that must be applied by the Panel in evaluating the evidence adduced before it. (Winston Campbell v David Hamlet (as Executrix of Simon Alexander) Privy Council Appeal No. 73 of 2001).

The Attorney having failed to attend any of the hearings and having failed to file an affidavit in response as is required by section 4(2) of the Fourth Schedule of the Legal Profession Act the Panel had no other evidence to consider except that given by the Complainant and accordingly the Panel accepts the evidence of the Complainant in its entirety .

The following therefore are the findings of fact by the Panel:

1. The Attorney was retained by the Complainant to act on behalf of himself and his wife with respect to the purchase of property being part of Albion in the Parish of Manchester containing by survey 1 Rood and 8.3 perches for the purchase price of Two Hundred and Fifty Thousand Dollars (\$250,000.00) from Gladstone Richards.
2. The Complainant and his wife paid a deposit to the Attorney of Two Hundred Thousand Dollars (\$200,000.00) towards the purchase of the property on the 24th June 1994.
3. The sale was never perfected and the Vendor Gladstone Robinson is still in possession.
4. Despite repeated requests The Attorney has not refunded the deposit paid to the Complainant and this is now almost 14 years after the deposit was paid.
5. Although the Complainant was not cross examined and gave unchallenged evidence in assessing his demeanor and the manner in which he gave the evidence the panel concluded that he was a credible witness and therefore there was no reason to doubt his veracity.

It follows from the above findings of fact and we so find that the Attorney has breached the following canons set out in the complaint which assert that :-

1. He has not provided me with all information as to the progress of my business with due expedition although I have reasonably required him to do so. (Canon 4(r))
2. He has not dealt with my business with all due expedition i.e. the deposit was paid in 1994.(Canon 4 (r))
3. He has acted with inexcusable or deplorable negligence in the performance of his duties . (Canon 4 (s))
4. 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 (Canon 4
5. He 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 he is a member.

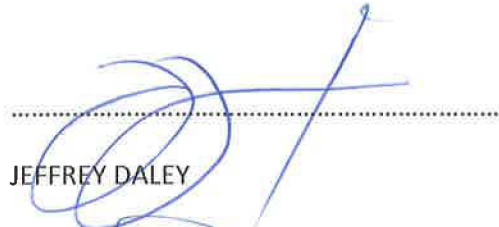
Accordingly the Attorney is guilty of professional misconduct.

DATED THE 25TH DAY OF MAY 2019



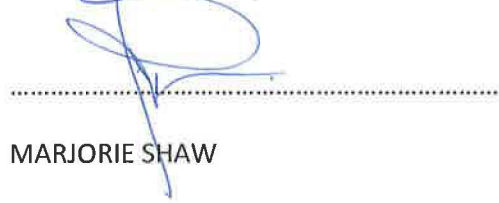
A handwritten signature in black ink, appearing to read "Trevor Ho-Lyn", written above a horizontal dotted line.

TREVOR HO-LYN (CHAIRMAN)



A handwritten signature in blue ink, appearing to read "Jeffrey Daley", written above a horizontal dotted line.

JEFFREY DALEY



A handwritten signature in blue ink, appearing to read "Marjorie Shaw", written above a horizontal dotted line.

MARJORIE SHAW

