

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

COMPLAINT NO.57/2007

**In the matter of EDWARD GREEN v. HOWARD LETTMAN, an Attorney at Law
AND
In the matter of the Legal Profession Act 1971**

PANEL: CHRISTOPHER KELMAN (Chairperson)
MARJORIE SHAW,
KATHERINE FRANCIS.

HEARING DATES: April 28, 2018; May 26, 2018, July 29, 2018

The Application

An Application was initially filed on May 19, 2007 and was supported by an Affidavit sworn to on March 13, 2008.

An amended Affidavit was filed on November 1, 2016 and an amended Application was filed on February 2017.

The Grounds of Complaint

The grounds of complaint were that the Attorney--:

- i. Did not provide all information as to the progress of the business with due expedition although reasonably required to do so
- ii. Has not dealt with the matter expeditiously
- iii. Acted with inexcusable or deplorable negligence in the performance of his duty
- iv. Has not accounted for all monies in hand to the complainant's account of credit, although reasonably required to do so.

The Evidence

The evidence is that the Complainant jointly owns property with his children. Having secured subdivision approval, the complainant entered into discussion with a Purchaser to sell a lot of the land.

In 2003, the complainant and the proposed Purchaser went to the Attorney's office. He took with him the Certificate of title and the approved subdivision documents. The Attorney drafted an Agreement. The sale price was \$950,000.00. The Purchaser signed the Agreement and paid the sum of \$450,000.00 inclusive of Transfer Tax, Stamp Duty, and Attorney's fees, which were to be deducted. The balance purchase price of \$500,000.00 was subsequently paid to the Attorney. The Complainant was told that title would be ready within six (6) months

In 2003, the Attorney also advised the National Housing Trust that he would address the splintering of the parent Title and remit to them the splinter title in the name of the complainant's son, who was borrowing money against the security of that Lot, which was to be splintered.

The complainant also paid to the Attorney the sums of \$180,000.00 and the sum of \$280,000.00 to initiate, and pursue claims against two men in the civil Court. The summonses were never served and despite numerous promises to get the job done, nothing was done on the complainant's behalf.

In 2005, another Agreement was drafted with respect to the sale of two more lots and executed by the second Purchaser who paid to the Attorney, the sum of \$350,000.00, and to the Complainant, directly, the sum of \$500,000.00.

Between 2003 and 2009, the Attorney collected from the Purchaser the total sum of \$1,300,000.00 of which he paid out, or was entitled to, the sum of \$216,490.00. The sum of \$1,083,510.00 is due to the Complainant.

The complainant's evidence is that he visited the Attorney's office on at least 50 occasions and called him more than 130 times. The several promises to address the issues raised remain unfulfilled to date.

The original documents given to the Attorney, including the Duplicate Certificate of Title, have never been returned to the Complainant. In May of 2017, The Attorney admitted that he had not submitted any of the documents. As a consequence of the conduct of the Attorney, the Complainant has had to retain Counsel to complete the splintering of the titles and the stamping of one of the Agreements for Sale.

The hearing dates

The matter first came before the committee on June 3, 2017. On that date, and all subsequent dates, being November 11, 2017, March 24, 2018, April 28, 2018 and May 26, 2018, the Respondent was absent. On one occasion, he tendered a medical report.

Upon satisfying itself that the Attorney was properly served with Notice of Hearing in keeping with Regulation 5 of of the Fourth Schedule of the Legal Profession Act the panel commenced the trial on November 11, 2017 by taking the evidence of the Complainant. At the end of his evidence, the panel directed that a copy of the notes of evidence, and the exhibits tendered, should be sent to the Attorney and set a further trial date of March 24, 2018.

The Hearing of the matter was concluded on May 26, 2018. The notes of evidence were sent to the Respondent and the matter adjourned to July 28, 2018 for the Respondent to be notified and given an opportunity to cross-examine the Complainant.

On July 28, 2018, the Respondent was again absent.

The Ruling

The panel reminds itself that the burden of proof to establish the complaint rests squarely on the Complainant and so remains despite the fact that the Attorney has not defended the complaint.

The panel also reminds itself that in all complaints of professional misconduct, the standard of proof is the same as in criminal proceedings, that is, proof beyond a reasonable doubt. The panel recognizes that no doubt this is so because of the potentially severe consequences for Attorneys in cases where the evidence of the Complainant is accepted as proven and sanctions applied: See **Winston Campbell v David Hamlet** (2005) 66 WIR 346.

The panel is bound to evaluate the evidence led applying to it the standard of proof required.

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. The Complainant gave his evidence in a sincere manner. The Panel accepts the evidence of the Complainant, in its entirety.

As required by virtue of the provisions of section 15 of the Legal Profession Act the following are the findings of fact by the Panel:

1. The Attorney was retained by the Complainant to act on behalf for him in respect of sale transactions and the conduct of civil matters, in the Parish Court.
2. There is no evidence of the existence of any factor, outside of the control of the Attorney, impeding the procurement of Splinter titles
3. Two Purchasers paid deposits to the Attorney towards the purchase of Lots forming a part of Certificate of title registered at Volume 1302 Folio 169 of the Register Book of Titles.
4. The Attorney failed, from the proceeds held by him, to stamp one of the sale Agreements.
5. The Attorney despite collecting the balance sale proceeds for one of the Sale transaction, failed to advance the conclusion of either sale transaction, despite the repeated requests of the Complainant.

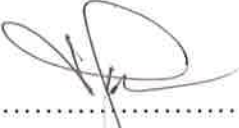
6. There was inordinate delay, on the part of Attorney, to address the matters for which he was retained.
7. The Attorney has failed to account to the Complainant with respect to the monies held by him to the credit of the Complainant's account.
8. The Attorney was unresponsive to the appeals of the complainant.
9. The Attorney has breached Canons 1(b) and 4.
10. The Complainant has suffered loss and put to expense because of the conduct of the Attorney.

Accordingly, the Attorney is guilty of professional misconduct.

The panel having found the Attorney guilty of professional misconduct will give him an opportunity to address the panel on the issue of the sanction that the panel shall impose on him. This is done in recognition of the directive of the Court of Appeal in the matter of Owen Clunie v The General Legal Council Miscellaneous Appeal No. 3 of 2013.

DATED THE 23rd DAY OF November, 2019


.....
CHRISTOPHER KELMAN (CHAIRMAN)


.....
MARJORIE SHAW


.....
KATHERINE FRANCIS