

SU2020CU01032



**FORMAL ORDER
OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**

COMPLAINT NO: 61/2019

**IN THE MATTER OF LATOYA SPENCER VS DONOVAN
MALCOLM**

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT 1971

PANEL: Mrs. Daniella Gentles-Silvera
Ms. Delrose Campbell
Miss Anna Gracie

DECISION DELIVERED ON 29TH FEBRUARY 2020

UPON THE APPLICATION made under section 12(1) (a) of the Legal Profession Act and dated 19th March, 2019 as amended with leave of the Panel on the 18th January 2020 and Affidavit in support thereof dated 19th March 2019 and coming on for hearing before the Disciplinary Committee on the 18th January 2020, 1st February 2020 and 15th February, 2020.

AND UPON the Complainant Latoya Spencer appearing and having given evidence on oath

AND UPON the Respondent Attorney-at-law, Donovan Malcolm, not appearing

AND UPON DUE CONSIDERATION of the sworn evidence of Latoya Spencer

AND UPON the Committee having found the Attorney-at-law, Donovan Malcolm, guilty of professional misconduct on 1st February 2020

AND UPON the Attorney having been given the opportunity to make submissions in mitigation of sanction on 15th February 2020 but not appearing nor sending any written affidavit or submissions in mitigation.

THE COMMITTEE FINDS THAT:

The Attorney Donovan Malcolm, is guilty of professional misconduct, in that the Complainant entered into an Agreement dated September 27, 2018 to purchase property at Braeton, New Town, St. Catherine. The terms of the agreement included the payment of a price of Eight Million, Two Hundred Thousand Dollars (\$8,200,000.00) and the payment of a deposit of Eight Hundred and Twenty Thousand Dollars (\$820,000.00) which deposit was paid to the Respondent Attorney, Donovan Malcolm, who represented the vendor and a receipt given for the sum dated August 3, 2018.

The Complainant was not able to secure the loan required to complete the purchase. In keeping with the terms of the agreement, the deposit of \$820,000.00 was refundable to the Complainant. The Complainant's Attorney wrote to the Respondent Attorney, Donovan Malcolm, requesting a refund of the 10% deposit which she paid. The Respondent Attorney, Donovan Malcolm, promised to make the refund by way of his email of January 26, 2019. Up to the date of the hearing, the Respondent Attorney, Donovan Malcolm, has failed to refund the deposit paid by the Complainant.

The Attorney has breached Canons IV4(r), I(b) and VII(b) (ii) of the Legal Profession (Canons of Professional Ethics) Rules.

PURSUANT TO THE FOREGOING FINDINGS, THE COMMITTEE UNANIMOUSLY HEREBY ORDERS THAT:-

Pursuant to section 12(4) of the Legal Profession Act as amended:

1. That the Respondent Attorney, Donovan Malcolm be struck off the Roll of Attorneys entitled to practice in the several courts of Jamaica
2. That by way of restitution, the Respondent Attorney, Donovan Malcolm, shall pay the sum of Eight Hundred and Twenty Thousand Dollars (\$820,000.00) to the Complainant on or before the 31st March 2020.
3. The Respondent Attorney, Donovan Malcolm, shall pay to the General Legal Council costs in the sum of \$100,000.00 and shall pay \$30,000.00 to the Complainant as costs, both payments are to be made on or before the 31st March 2020.



CHAIRMAN OF THE PANEL

29th February 2020