

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

COMPLAINT NO. 88/2018

In the matter of **SCOTT GRENIER** and **ARLENE
ANN GAYNOR** an Attorney-at-Law.

AND

In the Matter of the Legal Profession Act, 1971

Panel: Debra McDonald - Chairman
Dane Marsh
Althea Jarrett

Appearances: The Complainant, Scott Grenier
No answer for the Respondent

Hearing Dates: 1st June 2019, 6th July 2019, 4th March 2020, 20th May 2020 & 29th July
2020.

COMPLAINT

The complaint is contained in the Form of Application signed by the Complainant and dated 13th March 2018, supported by the Form of Affidavit by Applicant sworn to on the said date. These documents were tendered into evidence as **Exhibit 1** and **Exhibit 2** respectively.

In his Affidavit, the Complainant outlined the facts. He said that he retained the Respondent Attorney in September 2003 to act on his behalf in the purchase of Apartments 22 & 25 Montego Gardens, Montego Bay, Saint James for US\$40,000.00. He paid the full purchase price and received a receipt from the Respondent Attorney for US\$40,000.00 which was tendered into evidence as **Exhibit 3**. He waited for some time and did not get the titles. However, in or about September 2003 the Attorney purported to put him in possession of the Apartments pending completion. He only remained in possession for three (3) months, as due

to the fact that the titles were not forthcoming, the tenants refused to recognize him as the owner of the properties. He consistently requested updates and information from the Respondent Attorney which were not forthcoming.

In or about 2015, the Complainant retained the services of an Attorney, Miss Jacqueline Ann Hamilton to assist him in his communication with the Respondent Attorney. She made telephone calls, sent emails and letters to the Respondent Attorney, however, no monies were paid. In or about 2016, the Complainant reported the matter to the Fraud Squad and subsequently the Respondent Attorney informed him that the sales had been cancelled. Since then she made several payments to him of small Jamaican dollar amounts over a period of time however, at the time of filing the complaint and to date, the Complainant has given evidence that the sums due to be refunded to him is US\$29,504.27.

EVIDENCE

The Complainant gave oral evidence on the 1st June 2019 and completed his evidence in chief. The matter was adjourned to the 6th July 2019, neither party attended, therefore the Panel adjourned the matter for a Decision. The Respondent Attorney subsequently communicated with the secretary of the Disciplinary Committee in July 2019 indicating that she wished for an opportunity to cross-examine the Complainant. She was granted time to file an Affidavit in Response within fourteen (14) days. To date the Respondent Attorney has not filed an Affidavit in response to the complaint.

On the next date fixed for hearing, the 4th March 2020 no parties attended. Mr. Grenier subsequently informed the Panel that he had not received his Notice. There was no correspondence from the Respondent Attorney explaining her absence. The matter was set for the 20th May 2020. The Respondent Attorney through the Secretary requested an adjournment due to a conflicting engagement. The Panel granted the adjournment and set the matter for the

24th June 2020. On that date, the Panel was not properly constituted so the matter was adjourned to the 29th July 2020. The Respondent Attorney received the Notice of the Hearing set for the 29th July 2020 by email on the 23rd June 2020. By email dated the 26th July 2020, she communicated with the Secretary of the Disciplinary Committee requesting another adjournment. The Panel declined to grant the further adjournment. In fact, the Panel notes that since the complaint was filed and the matter first set down for hearing, the first time we heard from the Respondent Attorney was in July 2019 and that to date, she has not filed an Affidavit nor has she presented herself to cross-examine the Complainant.

In the circumstances, we believe that the Respondent Attorney has been given every opportunity to respond to the complaint and to place her side of the story before us, but she has failed to do. Therefore, we believed that we are justified in proceeding in her absence.

STANDARD OF PROOF

The standard of proof in disciplinary proceedings is the criminal standard which is beyond all reasonable doubt (**Campbell v Hamlet [2005] UKPC 19**).

FINDINGS OF FACT

The Panel makes the following findings as it is obliged to do by virtue of section 15 of the Legal Profession Act.

1. That the Respondent Attorney represented both the vendor and purchaser, the purchaser being the Complainant in the transaction to purchase two Apartments for US\$40,000.00;
2. The Complainant paid to the Respondent Attorney the sum of US\$40,000.00, being the full purchase price for the Apartments;
3. The Respondent Attorney purported to put the Complainant in possession in September 2003;

4. The Complainant has received no titles to the properties and all requests for information and a refund made to the Respondent Attorney were ignored for several years;
5. In 2006, after the Complainant reported the matter to the Fraud Squad, he was contacted by the Respondent Attorney who informed him that the sales had been cancelled. He then proceeded to request his refund;
6. To date, after making certain small payments to the Complainant, the Respondent Attorney still owes to the Complainant the sum of US\$29,504.27.

CONCLUSION

Having carefully considered the oral and affidavit evidence of the Complainant and the exhibits, the Panel finds that the evidence presented by the Complainant has met the requisite standard of proof, that is proof beyond a reasonable doubt in relation to two of the grounds complained of, i.e. that the Respondent Attorney has not provided the Complainant with all information as to the progress of his business with due expedition, although he reasonably required her to do so and that she has not accounted to the Complainant for all monies in her hands for his account or credit.

The Panel finds that the Complainant has proven his claim against the Respondent Attorney with respect to complaints made regarding breaches of:

1. Canon IV (r) *“An Attorney shall deal with his client’s business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client’s business with due expedition.”*
2. Cannon VII (ii) *“An Attorney shall account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so.”*

In accordance with the procedure recommended by the Court of Appeal in Owen Clunie v General Legal Council CA 03/2013, the Panel directs that the matter be fixed on 12th August 2020 at 3 p.m. to give the Respondent Attorney an opportunity to be heard in mitigation before a sanction is imposed.

Dated the ^{29th}~~31st~~ day of July 2020



DEBRA MCDONALD



DANE MARSH



ALTHEA JARRETT