

## DECISION ON SANCTION

### DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 88/2018

BETWEEN	SCOTT GRENIER	COMPLAINANT
AND	ARLENE ANN GAYNOR	RESPONDENT
AND		

**Panel:** Debra McDonald - Chairman  
Dane Marsh  
Althea Jarrett

**Appearances:** The Complainant, Mr. Scott Grenier

No answer for the Respondent

**Hearing Dates:** 12<sup>th</sup> August 2020 and 18<sup>th</sup> August 2020

#### Background

1. By its decision dated 29<sup>th</sup> August 2020 the Disciplinary Committee made the following findings of fact:
  - a. *“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;*
  - b. *The Complainant paid to the Respondent Attorney the sum of US\$40,000.00, being the full purchase price for the Apartments;*
  - c. *The Respondent Attorney purported to put the Complainant in possession in September 2003;*

- d. *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;*
- e. *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;*
- f. *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.”*

2. Arising from the aforementioned findings, the Panel concluded:

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

*(a) 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.”*

*(b) 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.”*

3. The Panel then set the Sanction hearing for the 12<sup>th</sup> August 2020 in order that the Attorney may have an opportunity to be heard in mitigation before a sanction was imposed.

4. On the date set for the Sanction hearing, the Attorney did not appear, and was not represented. The secretary had not received from the attorney an affidavit or any communication. The Complainant appeared.

5. In the circumstances, the Panel was obliged to proceed to hand down its decision on sanction.
6. The Panel is guided by the Judgment in **Bolton v Law Society (1994) 2 All ER 486** where

Sir Thomas Bingham MR said:

*'It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness.'*

*"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors' Disciplinary Tribunal. Lapses from the required high standard may of course take different forms and be of varying degrees. The most serious involves proven dishonesty."*

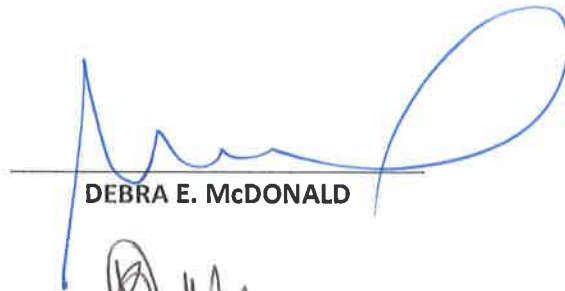
*"It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is in some of these orders a punitive element; a penalty may be visited on a solicitor who has fallen below the standard required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention "*

*"In most cases the order of the Tribunal will be primarily directed to one or other or both of two purposes. One is to be sure the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standard. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order for striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every member, of whatever standard, may be trusted to the end of the earth. To maintain the reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending reinvestment in another house, he is ordinarily entitled to expect the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession and the public as a whole is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."*

7. It is the duty of the General Legal Council to maintain the collective reputation of the profession and to protect members of the public.
8. The Complainant has been out of pocket since 2003. He received neither the titles to the properties which he intended to purchase, nor a full refund of the sums paid to the Attorney in pursuance of the transaction. The Complainant continues to be greatly prejudiced by the actions of the Attorney.
9. The Panel notes that :
  - (i)The Attorney has not formally responded to the complaint;
  - (ii)She has not sought to make any explanation for her actions ;
  - (iii) She has made no plea in mitigation for consideration by the panel.
10. In the circumstances, it is the Decision and Order of the panel that:
  - (i) The Respondent Attorney ARLENE ANN GAYNOR be struck from the roll of Attorneys -at -Law entitled to practice in the several Courts of the Island of Jamaica.
  - (ii) The Respondent Attorney is to make restitution to the Complainant by paying to him on or before the 30th day of September 2020 the sum of United States Currency, Twenty Nine Thousand, Five Hundred and Four Dollars and Twenty- Seven cents(US\$29,504.27) together with interest at the rate of three percent per annum (3%)from the 1<sup>st</sup> day of January 2015 until payment.

(iii) The Respondent Attorney is to pay costs of \$ 100,000.00 to the Claimant and of \$80,000.00 to the General Legal Council on or before the 30<sup>th</sup> day of September 2020.

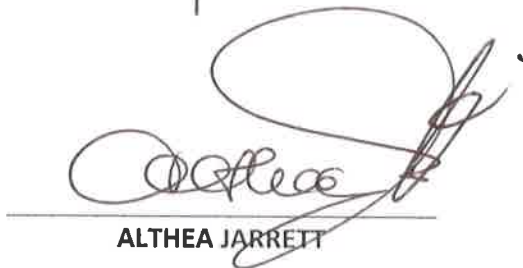
DATED the 18<sup>th</sup> day of AUGUST 2020



DEBRA E. McDONALD



DANE MARSH



ALTHEA JARRETT