

DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO.96/2019

EARL DOUGLAS v H. CHARLES JOHNSON

PANEL: TREVOR HO-LYN (Chairperson), MISS ANNALIESA LINDSAY & MR. PIERRE ROGERS

HEARING DATES: 25 JANUARY 2020*, 7 MARCH 2020, 20 JUNE 2020 , 18 JULY 2020 (*Evidence taken)

BACKGROUND HISTORY.

Earl Douglas (hereinafter called “the Complainant”) in December 2018 engaged the services of H. Charles Johnson (hereinafter called “the Attorney”) to represent him with regard to the purchase of property situated in Negril. Based on the information received the Complainant wired a total of \$66,070.00 US to the account of the Attorney. This sum covered a deposit of 25% of the purchase price together with all estimated costs including the Attorney fees. The Attorney’s first obligation was to submit the agreement signed by the purchaser together with the deposit to the attorneys of the vendor. The Attorney submitted the agreement together with a cheque in Jamaican dollars for the deposit. In March 2019 the Complainant was advised by the attorneys for the vendor that the deposit cheque had been dishonoured for insufficient funds. This information was immediately communicated by the Complainant to the Attorney. Although the Attorney promised to have the issue rectified forthwith, this was not done. As a result on the 22 May 2019 the Complainant filed a Form of Application Against an Attorney at Law together with an Affidavit in Support with the General Legal Council.

THE COMPLAINT.

By way of Form of Application Against an Attorney dated 22nd May 2019 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 .(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 moneys in his hands for my account or credit although I have reasonably required him to do so.(Canon 7 b (ii))
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.

THE EVIDENCE.

The hearing of this complaint commenced on the 25th January 2020 before the panel of Trevor Ho-Lyn (Chairman), Annaliesa Lindsay and Pierre Rodgers. Both the Complainant and the Attorney were present.

The Complainant gave the following evidence which disclosed facts not in dispute:-

1.The Complainant stated that he was self employed and did consulting on energy costs with National One Energy and resided at 10043 Boyton Canyon Road, Frisco Texas 75035 in the United States.

2. In December 2018 he hired the Attorney to represent him in regards to purchase of property. He did not have the time to deal with it and so he hired the Attorney to handle the matter for him expeditiously.

3. The property was in Negril Westmoreland and was being sold for Two Hundred and Fifteen Thousand Dollars (\$215,000.00)(US) in United States currency.

4. It was being sold by Hart Muirhead and Fatta , attorneys at law, on behalf of their client.

5. Pursuant to this purchase the Complainant wired money from his bank to an account at First Global Bank in the name of the Attorney. Three wires were sent. The first in the sum of \$30,070 (US) the second was \$10,000 (US) and the final one was \$26,000(US) making a total of \$66,070 (US).

6. This total sum was to cover the total amount of money needed for the deposit towards the purchase including his attorney fee, the deposit and the money needed for certain closing costs. That dollar amount was for everything that needed to be paid to take care of the transaction the balance of the purchase price was to be paid by way of a mortgage.

7. On the 20 March 2019 the Complainant received a call from the vendor's attorneys. The purpose of the phone call was because the attorney for the vendor was trying to reach the Attorney in regards to the deposit cheque that he sent being dishonoured for insufficient funds. That cheque had been deposited in February. Since the cheque had been dishonoured the sale was put on hold because they couldn't go forward although at that time they were actually at the point of finalising the mortgage loan.
8. The following day during a three way conference call the Attorney promised to have the problem resolved by the following day.
9. The problem was not resolved and based on information received the Complainant hired another attorney to recover the funds from the Attorney. By a letter sent to the Attorney dated October 7, 2019 there was an agreed sum which the Attorney was to repay in the amount of \$44,875,91(US).
10. Of that sum about \$29,700 US has been paid however the date for the repayment of the balance had passed and there is roughly about \$15,000 US outstanding. However the Attorney requested further considerations and the Complainant asked his attorney to reduce the balance by a further \$2000 US.
11. At this point in the giving of the evidence the Panel asked the Complainant whether the complaint was to be resolved by the refund of the balance or whether the complaint was to proceed.
12. The Complainant then stated "as a businessman I just want to move on I don't really have the time to carry this matter further unless I have to but I feel like within the law what I asked for is really reasonable and it all depends on what Mr. Johnson decides to do in a reasonable time. "
13. Following discussions between the parties the matter was part heard and adjourned to the 7th March, 2020 and if it is not settled then the evidence would be continued..
14. On the 7th March 2020 when the matter resumed the panel was advised that the Attorney had suffered a stroke and was unable to attend. The stroke had actually occurred in the General Legal Council Building which when coupled with the medical certificate presented allowed the Panel to exercise its discretion to adjourn the matter till the 20th June 2020.
15. On the 20th June 2020 when the matter resumed the Attorney did not attend , no information was given to the Panel as to his health and he had not been in communication with the Complainant in an effort to resolve the matter. The Panel then adjourned the

matter to the 18th July 2020 and directed that the Attorney be sent the notes of evidence and be afforded the opportunity to cross examine the complainant.

16. On the 18th July 2020 the Attorney was again absent. He had failed to communicate either with the Council or the Complainant. The records indicated that the notice of hearing and the notes of evidence had been properly served. The Panel was then constrained to set the matter for a decision based on the evidence heard on the 25th January 2020.

DISCUSSION AND ANALYSIS

1. There is no factual dispute in this matter. The Attorney does not deny issuing a cheque that was dishonoured. He had agreed to the reimbursement to the Complainant of part of the money entrusted to him. He had pursuant thereto paid some of the money outstanding.
2. From March 2019 the Attorney had been aware that the cheque had been dishonoured and to date there are still sums outstanding some eighteen months later.
3. The Panel had because of the known circumstances regarding the health of the Attorney allowed an adjournment. Since then no effort has been made by the Attorney to ensure that the Panel is informed of the Attorney's circumstances. In addition he had not contacted the Complainant who had offered him the opportunity to resolve the matter.
4. The Panel is aware of the fact that the evidence before it is untested by cross examination. This situation while novel is not unheard of and the panel guides itself in this regard by relying on the authority of which Regina vs D [2002] EWCA Crim 990 which indicated in clear terms that the absence of cross examination by the Defendant is not an absolute bar to the reception of evidence by the Tribunal of fact. It becomes a matter of discretion for Tribunal of fact as to whether the evidence, though untested can be received and acted upon. In this instance the Tribunal is minded to receive the contested evidence for the following reasons; -
5. The witness who gave the untested evidence has made himself available for cross examination on each and every occasion he has been required to do so; it is the Respondent Attorney-at-Law who eschewed the opportunity to cross examine in favour of attempting to negotiate a settlement.

6. The Respondent Attorney-at-Law having forgone the initial opportunity to cross examine has simply whether personally or through his agents failed to either complete the negotiation process or communicate with the Disciplinary Committee of the General Legal Council.
7. Having determined that the untested evidence will be allowed to stand, the Panel reminds itself of the standard and burden of proof
8. 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. 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.
9. 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.
10. In the circumstances there is no evidence that can refute the breach of the canons specified in the complaint.

In light of the foregoing the Panel therefore finds that the Attorney is in breach of the following canons namely: -

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))

He has not dealt with my business with all due expedition .(Canon 4 (r))

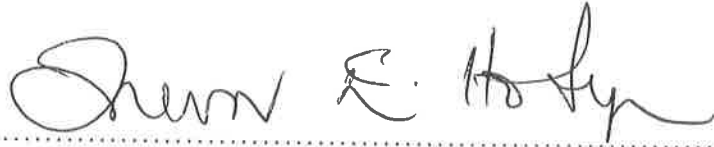
He has acted with inexcusable or deplorable negligence in the performance of his duties. (Canon 4 (s))

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))

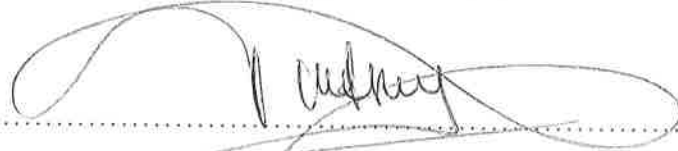
He is in breach of Canon 1(b) which states that an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behavior which may tend to discredit the profession of which he is a member.

The Attorney is therefore guilty of professional misconduct .

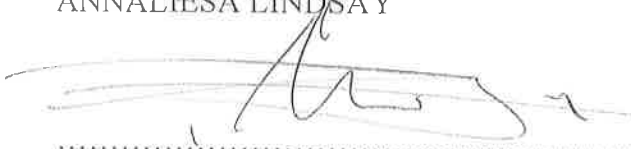
DATED THE 5th DAY OF September 2020



TREVOR HO-LYN (CHAIRPERSON)



ANNALIESA LINDSAY



PIERRE ROGERS