

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

COMPLAINT NO. 18 of 2018

**IN THE MATTER OF DENZIL WILLIAMS vs ANTHONY
PEARSON, an Attorney-at-Law.**

AND

**IN THE MATTER OF THE LEGAL PROFESSION ACT,
1971**

PANEL: Mrs Ursula Khan
Mrs Tana'ania Small Davis
Mr Kevin Powell

APPEARANCES: Mr Denzil Williams (by videoconference)
Mr Anthony Pearson

HEARING DATES: March 21, 2019, July 27, 2019 and September 24, 2019

Introduction

1. This is a complaint by Denzil Williams ("the Complainant") against Anthony Pearson ("the Respondent"). The Complainant alleges that the Respondent has acted with inexcusable or deplorable negligence in the performance of his duties (in breach of Canon IV(s)) and has failed to maintain the honour and dignity of the profession and behaved in a way to discredit the profession (in breach of Canon I(b)).

2. The complaint has had a long history with its genesis in a land transaction which the Complainant alleges has not been completed due to the fault of the Respondent. The Respondent denies responsibility for the incomplete transaction.

Findings of Fact

3. The Panel heard oral testimony from the Complainant, his wife and the Respondent and accepted into evidence certain documents. We will not repeat the details of evidence in this judgment save to the extent it is necessary to resolve the issues in dispute.
4. Having considered the evidence, the Panel makes the following findings of fact.
5. In October 1990, the Complainant entered into an agreement with Patrick Drake to purchase property registered at Volume 1009 Folio 151 of the Register Book of Titles located at 4 Parkland Close ("the Property"). However, after paying a deposit the vendor refused to complete the sale. This led to the Complainant commencing court proceedings for specific performance of the contract.
6. The Complainant did not retain the Respondent and the Respondent did not act as attorney for the Complainant in either the agreement to purchase the Property or the court proceedings for specific performance of that agreement. In relation to both matters the Complainant was represented by another attorney ("the Complainant's attorney"), who passed away prior to the filing of this complaint.
7. The court proceedings were brought against Mr Drake and the Respondent in his capacity as executor of the Estate of Ronald Hope Hanson. Mr Drake is the Respondent's brother-in-law. Ronald Hope Hanson was registered proprietor of the Property with his wife Beryl as joint tenants, and the uncle of Mr Drake. Mr Hanson has died. He was pre-deceased by his wife and was therefore the sole legal owner of the Property up to his death.
8. The Respondent acted for Mr Drake in the transaction and had carriage of sale.
9. The court proceedings were determined when the Complainant and the defendants entered into a consent order on November 18, 1998 ("the Consent Order"). The Consent Order granted specific performance of the agreement for

the purchase of the Property and provided for the Complainant to pay the balance purchase price in return for the registered certificate of title and a registrable transfer.

10. The Complainant paid the balance purchase price in December 1999. The Respondent handed over the cheque representing the balance purchase price to Mr Drake but the title to the Property has not been transferred to the Complainant.
11. The Respondent was in possession of the title to the Property after the Consent Order was made. The Respondent has failed to account for the title. The Respondent asserts that he sent the title to the Complainant's attorney and relies on a letter dated October 27, 2000. It is a short letter the relevant part of which states:

We spoke.

Enclosed herewith please find –

- 1. Duplicate Certificate of Title registered at Volume 1009 Folio 151.**
- 2. Instrument of Transfer for execution by your client Mr Denzil Williams.**

Kindly acknowledge safe receipt of the enclosures by signing and returning the enclosed copy letter.

12. Despite relying on the letter to say that the title to the Property was sent to the Complainant's attorney, the Respondent stated the following in his affidavit evidence:
 - 13. That it is possible that I gave Mr Drake the title but this would have been in the context of returning his file to him.**
 - 14. That it is unlikely that I gave the title to Mr Wesley Levy, but I may have given him the file on this matter to pass on to Mr Drake.**

13. In a letter written by the Complainant to the General Legal Council dated 6 March 2017 tendered by the Respondent and admitted in evidence as Exhibit 6, the Complainant said that his attorney had sent the title back to the Respondent so that his name could be put on the title. He further stated that he contacted the Respondent to find out whether his name had been put on the title and the Respondent told him that he gave the title back to Mr Drake. In cross examination the Respondent admitted that he had given the duplicate certificate of title back to Mr Drake.

Disposition

15. To find the Respondent guilty of professional misconduct the Panel must be satisfied on the evidence beyond all reasonable doubt - see Wilton Campbell v David Hamlet (as Executrix of Simon Alexander) Privy Council Appeal No. 7 of 2001.
16. The Canons import a stringent test of the degree of neglect or negligence that constitutes professional misconduct. In the case of *Earl Whitter v Roy Forbes [1989] 26 JLR at page 129* Carey, JA stated:

Specifically, Rule (s) of Canon 4 is concerned with professional misconduct for Attorneys. It is expected that in any busy practice some negligence or neglect will occur in dealing with the business of different clients but there is a level which may be acceptable or to be expected from beyond no reasonable competent Attorney would be expected to venture. That level is characterized as inexcusable or deplorable. A single act of negligence in the course of a matter therefore will not normally be regarded as inexcusable or deplorable negligence so as to amount to professional misconduct within Canon 4 paragraph (s)."

(Our emphasis)

17. In Gresford Jones v The General Legal Council (ex parte Owen Ferron) Miscellaneous Appeal No. 22/2002 (delivered March 18, 2005) Harrison, JA (with whom Panton, JA (as he was then) and Smith, JA agreed) considered that

a charge against an attorney for breaching Canon I(b) may be considered in this way:

The governing words of Canon 1 are: "An attorney shall assist in maintaining the dignity and integrity of the Legal Profession and shall avoid even the appearance of Professional impropriety." This standard of conduct required to be maintained by members of the legal profession is easily understood and perceived as basic good, upright and acceptable behaviour. Any deviation from this legal code is subject to scrutiny as it relates to the requirement of a particular canon. Consequently, "the honour and dignity of the profession ..." may be besmirched by a breach of a particular canon or "the behaviour (of an attorney) may tend to discredit the profession ..." and be a breach of a specific canon. Either conduct would not fail to contravene the requirements of the proper conduct demanded by Canon 1 (b). It is my view that the Canon is specifically widely drafted, in order to emphasize the ever prevailing high standard of conduct demanded by the profession and re-enforced by all the Canons in the Rules. The Committee was accordingly not in error to find that Canon 1 (b) relates to the conduct of an attorney "in relation to the Court, the regulatory body governing the profession, the law practice, the client, colleagues and certain other persons" and to find that the appellant was in breach thereof. The Canon may also be construed in light of the cumulative effect of the overall conduct of the appellant towards Ferron and the other beneficiaries from 1988 up to the filing of the complaint in 1996. Frequently, in legal proceedings, the same set of facts may point to several breaches of conduct. A tribunal is not for that matter precluded from making an adverse finding on each. The sole prohibition is that the offender may not be punished twice for the same breach..."

18. For completeness, the Panel expresses its view that the fact that the Respondent was not retained by or acted as the attorney for the Complainant is not an answer to the complaint.

19. The Court of Appeal has given a wide meaning to the phrase "a person aggrieved" as used in the Legal Profession Act to include persons who do not fall within the attorney-client relationship. In *Arlean Beckford v The General Legal Council Civil Appeal No. 32 of 2005 delivered July 31, 2007*, Marsh, J.A. (ag) (with whom Panton P and Smith JA agreed) made the following pronouncement (at pages 8-9):

...that the words "aggrieved person" have a wide scope within the Legal Profession Act. It is not restricted to attorney-at-law/client relationships. It is of much wider scope. A mortgage company may complain if there is a breach of an undertaking given it by an attorney representing any party to a sale of land.

20. It is against this legal background and having considered all the evidence, both oral and documentary, that the Panel determines this complaint as follows.
21. The Respondent was fully aware that the title to the Property would be required to complete the sale of the Property to the Complainant. The Respondent was a party to the court proceedings and was also the executor for the estate of the registered proprietor.
22. In reply to a letter from the Complainant's attorney, the Respondent wrote on November 6, 2006 that he was unable to find any Transfer on his file but concluded that he must have returned it to the Complainant's attorney and expressed willingness to execute a new one.
23. In reply, by letter dated November 7, 2006 the Complainant's attorney sent the Instrument of Transfer to be executed on behalf of the vendor. The Complainant's attorney followed up in a letter dated November 14, 2006 enquiring after the executed transfer and in offering to assist, requested copies of the grant of probate in estate Ronald Hope Hanson, stamped agreement for sale, executed Instrument of Transfer and Form 8 verifying that estate duties had been paid up. It does not appear there was ever any response by the Respondent.

24. The Panel accepts the contents of Exhibit 4, which is the letter dated May 7, 2007 from Mr Gayle Nelson, the Complainant's attorney to Mr Dennis Morrison QC, the attorney representing the Respondent and Mr Drake in the civil proceedings as an accurate reflection of the chronology between December 1999 and May 7, 2007. The Respondent admitted that he did not have anything showing that he had responded to the Complainant's attorney's several letters.
25. In response to questions from the Panel, the Respondent said that although he was the executor of the Estate of Ronald Hope Hanson, he could not say whether the Will had been probated and that although he had prepared the documents, he had not filed them prior to handing over the file to Mr Drake. He said his services were terminated between 2006/2007. The Respondent had no explanation for the lack of action to comply with the Consent Order between December 1999 when the balance purchase price was received and 2006 when his retainer was terminated.
26. The Respondent had carriage of sale of the transaction between the Complainant and Mr Drake. He must have known the steps that he was required to take to comply with the Consent Order; in addition, specific and repeated requests were made of him by the Complainant's attorney. In the circumstances, the Respondent knew or ought to have known that the Complainant would be greatly prejudiced if the necessary steps were not taken to transfer the title to the Property to him.
27. The Panel takes notice of the fact that the Respondent is a senior attorney and should be aware of the steps that would be required before he could, in any event, have parted with possession of the title. As the Executor of the Estate of the deceased proprietor and a party to the court proceedings he was ordered to deliver a registrable transfer along with the title. So long as the deceased proprietor's will was not probated, it was not possible to deliver a registrable transfer.
28. The Respondent offered no excuse as to why he sent the title to the Property to the Complainant's attorney without a registrable transfer or why he parted

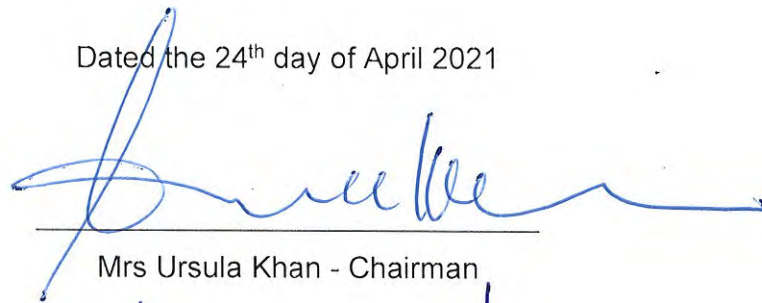
with it by sending it to Mr Drake. In either case, it would be inexcusable to do so given what the Respondent knew of the Complainant's entitlement to the Property by Court Order, the full payment of the purchase price and his role and duty as executor of the Estate of the deceased proprietor.

29. The Panel finds the Attorney's conduct in these circumstances to constitute inexcusable and deplorable negligence and represents a failure to maintain the honour and dignity of the profession and his behavior was of the level that was a great discredit to the profession of which he is a member.

CONCLUSION

18. In all the circumstances, the Panel finds that the Attorney has breached the Canons as alleged in the complaint and is guilty of misconduct in a professional respect.
19. Following the guidance of the Court of Appeal in *Owen Clunie v. GLC, CA 3/2013 delivered on September 22, 2014*, the Panel directs that a date be fixed to give the Attorney an opportunity to be heard in mitigation before a sanction is imposed.

Dated the 24th day of April 2021



Mrs Ursula Khan - Chairman



Mrs Tana'ania Small Davis



Mr Kevin Powell