

DECISION ON SANCTION

DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

Complaint No. 136/2019

BETWEEN WADE MORRIS COMPLAINANT
AND EARL FERGUSON RESPONDENT

Panel: Mrs. Ursula Khan
 Mr. Michael Thomas
 Ms. Anna Gracie

Persons Present: Mr. Keith Bishop and Ms. Roxanne Daley, Attorneys-at-Law for the Respondent
Wade Morris – Complainant
Earl Ferguson – Respondent
Donnette McLean - Recording Secretary on the 21st January, 2022

HEARING DATES: 5 May, 2021; 9 June, 2021; 28 June, 2021; 11 October, 2021; 28 October, 2021; 3 November, 2021; 20 January, 2022; and 26 January 2022.

1. On the 21st January, 2022, following the Panel having satisfied itself that the stay of proceedings imposed by the Court of Appeal had been lifted on 16 December 2021 and that no further stay was in place; and following the dismissal of the Respondent's application for the adjournment of the sanction hearing pending the hearing of a Notice of Motion for Leave to Appeal to Her Majesty in Council requesting a stay of proceedings filed on 6 January 2022, which said Motion had neither been served on the General Legal Council nor was it accompanied by an Affidavit in Support, Mr. Keith Bishop lead Counsel for the Respondent was invited to make submissions on behalf of the Respondent in mitigation of any sanctions the Panel may impose.
2. Mr. Bishop directed the Panel to his written plea in mitigation filed on 3 November, 2021, and Affidavits of Joan Davis-Williams and Brenton Charlton, both filed on 2 November, 2021 and his bundle of authorities filed 27 October, 2021. He stated that he would rely on the above mentioned documents.
3. Both affidavits affirmed the good character and integrity of the Respondent, his diligence exhibited in professional work on their behalf, and their non-hesitancy in recommending him to anyone to represent their legal interests.

4. It is worthy of note that the Respondent filed no affidavit in mitigation on his own behalf, neither did he give any viva voce evidence where he would be subject to any possible questions posed by the Panel.

BACKGROUND

5. By its decision dated 31 March, 2021 the Disciplinary Committee made the following findings:
 - (a) The Attorney was employed by Rudolph Morris, father of the Complainant to have the Carriage of Sale of the property situate at 4 Norbrook Terrace, Kingston 8.
 - (b) The property was transferred in December 2016 for the sum of \$30,000,000.00 during the lifetime of Rudolph Morris and the proceeds of sale received by the Attorney in March 2017.
 - (c) Rudolph Morris died testate on 6th June, 2017 without receiving any of the net proceeds of sale.
 - (d) There were no instructions made in writing as to how or to who the net proceeds of sale should be distributed.
 - (e) Rudolph Morris told the Complainant the he was to ensure that Mr. Barton received \$5,000,000.00 plus the property at 21 Maiden Street named Sahara.
 - (f) It was not until the Complainant threatened to go to the Fraud Squad in connection with the Attorney disavowing any knowledge of having received the proceeds of sale that the Attorney transferred the sum of \$5,000,000.00 to the Complainant's account.
 - (g) The Complainant received the first payment in November 2017 in the sum of \$5,000,000.00 and received the second payment in August 2020 in the sum of \$4,760,009.00.
6. Counsel for the Respondent stated in his written submissions that "there is very little or no aggravating factors that the Complainant can properly put to this Panel, save for delay or any loss of interest that the amount due will attract".
7. The Panel is not in agreement with that statement and refers to paragraph 64 of its decision where it commented thusly:

"The Panel is also constrained to comment that all sums that the Attorney admitted to having paid out were done without the written authorization of

the deceased. To have done so on the alleged oral instructions of the deceased was improper, negligent and falls way short of best practices in the profession. There was no complaint filed against the Attorney for negligence therefore the Panel is not able to find him guilty of inexcusable or deplorable negligence or neglect”.

8. Further, the loss of interest arising from the Respondent's failure to place the net proceeds of sale into an interest bearing account would not in the Panel's view amount to an aggravating factor but moreso amounts to a breach of regulation 9 of the Legal Profession (Accounts and Records) Regulations 1999.
9. It is primarily for this reason that the Panel found that the Respondent has not accounted for monies he held on behalf of the deceased thus placing himself in breach of Canon VII (b) (ii) which is one of the Canons that is listed in Canon VIII (d), the breach of which shall constitute misconduct in a profession respect.
10. It is also the Panel's view that the conduct of the Respondent mentioned among its findings of fact at paragraph 52(f) on page 10 of the Decision of the Committee amounts to an aggravating factor.

“It was not until the Complainant threatened to go to the Fraud Squad in connection with the Attorney disavowing any knowledge of having received the proceeds of sale that the Attorney transferred the sum of \$5,000,000.00 to the Complainant's account”.


11. The Panel in its deliberations has taken note that based on the admission of the Respondent a substantial part of the net proceeds of sale which fell into the residue of the estate of Rudolph Morris, deceased, was improperly paid out to Keith “Headley” Barton and Roy “Tom” McFarlane by the Respondent. This will result in the Executor of the estate of the deceased (the Complainant herein) after having obtained a Grant of Probate being obliged at the expense of the estate to seek restitution from the Respondent and/or the above-mentioned payees on behalf of the estate.
12. Until that has been successfully done the two named beneficiaries under the Will of Rudolph Morris, deceased, namely Damion Morris and Sonia Joyce Morris remain deprived of their legacies.
13. The Panel is unable to find any evidence of remorse and willingness to apologize on the part of the Respondent as stated by his Counsel. Notwithstanding, the Panel is prepared to give credit to the Respondent on his previous good character as urged by his Counsel.
14. The Panel, however, has the primary duty to protect the public and to act in the interest of the profession to ensure that the collective reputation of the profession is maintained.

15. The Panel has taken careful note of the recommendations made by Counsel for the Respondent as to the appropriate sanctions to impose and has accepted most of them.
16. In all the circumstances of this case the Panel is of the considered view that the appropriate sanctions are that:
- a) The Respondent be reprimanded.
 - b) The Respondent is to undergo a prescribed course of training in the area of Probate & Administration highlighting the topic of the settlement of estate accounts.

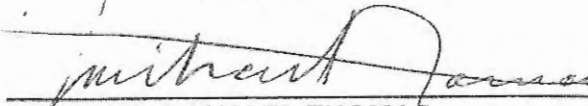
The Respondent is to make contact with the Department of Continuing Legal Professional Development (CLPD) of the General Legal Council within 60 days hereof to arrange for such training at his own expense and within the said time notify the Secretary of the Disciplinary Committee in writing of the arrangement made.

- c) The Respondent is ordered to pay a fine of \$400,000.00.
- d) The Respondent is ordered to pay costs in the sum of \$300,000.00 of which \$260,000.00 is to be paid to the General Legal Council and \$40,000.00 to the Complainant.
- e) The sums awarded at subparagraphs c) and d) to be paid within ninety (90) days of this Order.

DATED THE 26th DAY OF JANUARY 2022



URSULA KHAN



MICHAEL THOMAS



ANNA GRACIE