

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

**Complaint No. 176/2018**

<b>Between</b>	<b>Michael Anthony Kelly</b>	<b>Complainant</b>
<b>And</b>	<b>Tanya Latoya Walters Powell</b>	<b>Respondent</b>

**Panel:**     **Mr. Christopher Kelman**  
              **Mrs. Tana'ania Small Davis, QC**  
              **Mr. Dane Marsh**

**Hearing Dates:**

1. On December 3, 2021, we delivered our decision that the Respondent, Tanya Walters-Powell, had breached the provisions of Canons iv(r), vii (b)(ii) and 1(b) of *the Legal Profession (Canons of Professional Ethics) Rules* and was therefore guilty of professional misconduct. As is required, we gave the Respondent an opportunity to be heard in mitigation prior to our decision on sanction.
2. On February 4, 2022, we reconvened for a Sanction hearing. No written submissions were filed prior to the hearing. At that hearing, the Respondent instead sought permission to call two witnesses to give character evidence on her behalf. Permission to do so was granted by the panel. The Respondent sought also to give evidence in her own behalf and permission for her to do so, was granted as well.

3. Two Attorneys were called, namely Christopher Townsend and Georgia Hamilton. We intend no disrespect by not detailing their respective evidence, but for brevity's sake, will instead summarize it. Mr. Townsend testified, under oath, that apart from the Respondent being a tenant of his at her Duke Street chambers, he has also been a part of transactions in which she was involved as Attorney. Based on these associations, he formed the view that the Respondent was knowledgeable, professional and quite honest. In turn, Ms Hamilton affirmed that over the course of a decade, she and the Respondent had been on different sides of transactions and based on these, she formed the impression that the Respondent was attentive to her matters, careful in her deliberations and she was unaware of there being any issue of any of the Respondent's client's complaining that they haven't been paid. She consequently concluded that the Respondent was of good character. Neither witness was cross examined.
4. The Respondent testified of feeling very bad about the loss and that she remains remorseful about the situation. She further testified that, recognizing the Complainant was out of pocket, she made an offer to him of 50% of the sale proceeds, but her offer was rejected. She was unable to secure loan financing, despite applying to 2 banks. She was briefly cross examined and maintained that her Attorney had communicated the offer in writing, but she was unable to recall the actual contents of that letter.
5. Again, we intend no disrespect for the respective submissions of both Counsel after the evidence was completed and though we do not set them out in full, we have considered them in their entirety in arriving at our

decision. In summary, on behalf of the Respondent, it was submitted that she was not found guilty of any dishonesty, is remorseful and was also taken advantage of by an online fraudster. The panel was asked to consider her efforts to raise funds to repay, her personal financial means (which did not allow her to repay in full) and the character evidence given by her colleagues. Based on all the evidence, it was finally submitted that an appropriate sanction would be a reprimand.

6. On behalf of the Complainant, it was submitted, in sum, that an order for full restitution of \$9,307,982.77 (being the Respondent's actual loss) was appropriate, along with interest and legal costs.
7. The panel finds it impossible to agree with the Respondent's mitigation plea, that in all the circumstances a Reprimand is the appropriate sanction. It is clear that both parties were defrauded and became the victims of a cybercrime. Though this is not a case involving any dishonesty on the part of the Respondent, the evidence is equally clear that the Respondent was not as diligent as she ought to have been in protecting herself and her clients against potential cybercrime. Neither was she as proactive or as prompt as the circumstances required her to be to retrieve the funds, or to have the scam properly investigated. Despite her expression of remorse for the Complainant's loss and her efforts to settle with him, as a fiduciary she is fixed with responsibility for the Complainant's total loss. As stated in **Santander UK plc [2014] EWCA Civ 183**, a trustee of client funds is liable to the client for funds paid away to effect a sham and in **St. Lawrence Testing & Inspection Co. Ltd. V Lanark Leeds Distribution Ltd and**

**Mark Schokking 2019 CanLII 69697 (ON SCSM)** where both parties are innocent victim of cybercrime, one of them must bear the loss, that one being the party best able to prevent the harm. The Complainant has been out of the use of his funds for some three and a half years.

8. Accordingly, we make the following orders:

- i. By way of Restitution, the Respondent, Tanya Walters-Powell, shall pay to the Complainant, the sum of \$9,307,982.77 with interest at a rate of 3% per annum for the period 24<sup>th</sup> July 2018 to the date of payment.
- ii. The Respondent, Tanya Walters-Powell, shall pay to the Complainant costs in the sum of \$250,000.00, of which \$150,000.00 is to be paid to the Complainant and \$100,000.00 to the General Legal Council.
- iii. All amounts referred to in paragraphs i and ii above shall be paid within 6 months of the date hereof.

Dated the 9<sup>th</sup> day of March 2022



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**Mr. Christopher Kelman**



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**Mrs. Tana'ania Small Davis, QC**



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**Mr. Dane Marsh**