

BEFORE THE GENERAL LEGAL COUNCIL

COMPLAINT NO:1 of 2022

IN THE MATTER OF THE LEGAL PROFESSION ACT

RAPHAEL BAPTISTE

ATTORNEY-AT-LAW

AND

JEMMA MARK  
EARLYN PAUL

APPLICANTS

**Before:**

Honourable Justice Rosalyn E. Wilkinson (Retired) – Chairman  
Honourable Attorney-General Ms. Claudette Joseph  
Ms. Leslie-Ann Seon  
Ms. Skeeta Chitan  
Mr. Michael Archibald O.B.E  
Mrs. Xiomara Forsyth, Registrar (Ag) - Secretary

**Present:** Mr. Earlyn Paul and Ms. Jemma Mark and appearing in person.

**Absent:** Mr. Raphael Baptiste without excuse

Heard on the 9<sup>th</sup> November 2022

Decision delivered the \_\_\_\_\_ day of April 2023

1. The matter was fixed for hearing at 2:00 p.m. At 1:48 p.m. the Council was informed by the Deputy Registrar, Ms. Melissa Garraway, that the Attorney-at-Law had attended the Registry and stated that he had motor vehicle problems and so was asking the Council to push back the start of the Hearing by 45 minutes to 1 hour. The Council, so as to avoid delay of the start of the Hearing, proposed that the Attorney-at-Law appear at the Hearing via Zoom and same was to be organized by the Deputy Registrar at the High Court Registry. The Council, on stating its position to the Deputy Registrar, was informed by her that the Attorney-at-Law had departed the Registry to collect his papers. Thereafter the Attorney-at-Law did not appear via Zoom from the Registry or his Chambers, nor did he appear in person at the Hearing. No further communication was received from the Attorney-at-Law. The Council commenced the Hearing at 2:12 p.m. pursuant to section 35 (7) of the **Legal Profession Act 2011**.

2. The facts of this complaint are uncontested. The Attorney-at-Law was, according to the record, served the complaint on 9<sup>th</sup> February 2022. The Attorney-at-Law did not file an answer to the complaint. The record reflects that the Attorney-at-Law was served the notice of hearing on 29<sup>th</sup> August 2022.
3. Evidence was received from the First Applicant on behalf of the Applicants. Receipts issued by the Attorney-at-Law and referred to later herein, show that the Attorney-at-Law was aware that he was dealing with the two Applicants.
4. The Applicants reside on a lot of land owned by them in the district of Black Bay, Concord in the parish of Saint John. The land adjoining their land is owned by an elderly gentleman, Mr. Lawrence Augustine Thomas ("the Vendor"). The Applicants do not have a relationship of any kind with the Vendor but simply knew of his ownership of the land adjoining their own.
5. In or around October 2019, the First Applicant saw the Attorney-at-Law on the Vendor's land giving instructions for a survey. The Applicants, with a view to protecting their land, were immediately interested in purchasing the lot of land adjoining their land. The First Applicant approached the Attorney-at-Law and asked him to purchase the lot of land adjoining the Applicants' land.
6. According to the First Applicant, the Attorney-at-Law represented himself as the lawful agent of the Vendor for the purpose of selling to the Applicants 5200 square feet of the Vendor's land. The Applicants were requested to pay \$28,600.00 and this price included the cost of the survey. The Applicants paid the price and disclosed receipts for \$6,000.00 dated 21<sup>st</sup> October 2019, \$3,000.00 dated 11<sup>th</sup> December 2019, \$15,000.00 dated 10<sup>th</sup> January 2020, and \$4,600.00 dated 9<sup>th</sup> July 2020. All receipts were issued by the Attorney-at-Law.
7. Following payment for the land, the First Applicant visited the Attorney-at-Law's chambers on several occasions requesting the Conveyance for the land. On each occasion the Attorney-at-Law promised to provide the Conveyance in short order and stated that he had already received his "cut" from the transaction and therefore the Applicants would get their Conveyance.
8. Up to date of the Hearing, which was now in excess of 2 years after the final payment, the Applicants have not received their Conveyance, or an excuse for the delay in the issuance of their Conveyance.
9. At the Hearing, Council Members sought clarity on a number of matters from the First Applicant. In response to their questions, the First Applicant responded: (i) the Applicants were not asked for any additional money; (ii) the Applicants were promised the Conveyance at the end of the payment of the total sum requested; (iii) the Applicants were told that the \$28,600.00 included all fees and no additional fees were ever demanded; (iv) the Applicants were not provided with a breakdown of legal fees, cost of land and cost of survey; (v) it was not suggested to the

Applicants that they get an independent lawyer, but rather the Attorney-at-Law asked that he be given the opportunity to do the Conveyance and furthermore, that for them to get the land, he would have to prepare the Conveyance; (vi) the Applicants understood that the Attorney-at-Law was acting on their behalf in the transaction; (vii) the Vendor was still alive; (viii) the Applicants do not know the Vendor, nor did they hold any discussions with him pertaining to the land, but know that he is old; (ix) the Attorney-at-Law has never reached out to the Applicants; (x) the Applicants did not know whether the Vendor had received any payment from the Attorney-at-Law; (xi) the Applicants understood that the Attorney-at-Law was also working for the Vendor because he told them so; and (xii) the Applicants were allowed to clear a portion of the land for which they had paid.

### The Law

10. On the evidence before it, the Council considered several provisions of **the Legal Profession Act, 2011** (as amended). They were:

#### SCHEDULE III

#### LEGAL PROFESSION CODE OF ETHICS

"1. (1) An attorney-at-law shall in pursuit of the practise of his profession, comply with, and be subject to, this Code of Ethics.

...

12. Every attorney-at-law should also bear in mind that he can only maintain the supreme traditions of his profession, by being a person of integrity and dignity.

...

20(1) An attorney-at-law shall provide competent representation to his client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(2) An attorney-at-law shall always act in the best interest of his client, represent him honestly, competently and zealously, and endeavour, by all fair and honourable means, to obtain for him the benefit of any and every remedy and defence which is authorized by law, steadfastly bearing in mind that the duties and responsibilities of the attorney-at-law are to be carried out within the bounds of the law.

(3) ...

26.(1) An attorney-at-law may represent multiple clients only if he can adequately represent the interest of each, and if each consents to such representation, after full disclosure of the possible effects of multiple representation.

(2) In all situations where a possible conflict of interest arises, an attorney-at-law shall resolve all conflicts by leaning against multiple representation.

(3) Notwithstanding any other paragraph of this Part, no attorney-at-law shall represent both the

- (a) mortgagor and mortgagee; or
- (b) vendor and vendee

except where both parties seek independent legal advice and present evidence of the written consent of both parties to such joint representation.

27. (1) An attorney-at-law shall deal with his client's business with all due expedition and shall, whenever reasonably so required by the client, provide him with full information as to progress of the client's business.

(2) It is improper for an attorney-at-law to accept instructions in a matter unless he can handle it without undue delay.

...

54. An attorney-at-law shall not solicit business or consent to become involved in a matter, unless at the request of a party thereto, but it is proper for an attorney-at-law to become involved in a matters referred to him by the Bar Association, or by another attorney-at-law for which he is engaged, in any other manner not inconsistent with these Rules.

59. (1) ...

(2) An attorney-at-law shall not enter into an agreement, or charge or collect a fee, in contravention of these Rules, The Act, or any other law.

...

68. In the performance of his duties, an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect." (Emphasis is the Council's)

### Decision

11. On examination of the evidence, the Council found that the Attorney-at-Law was in breach of several of the rules of the Code of Ethics. The first and most serious of which was the breach of rule 26(3) which provides that in order for the Attorney-at-Law to represent both the Vendor and the Applicants then 2 conditions **must** have been met:- (i) that each party had secured independent legal advice, and (ii) that each party had provided him with their written consent to act for them and each other.

12. There was no evidence before the Council that the Applicants were even made aware of rule 26, and no evidence of compliance with rule 26(3). Indeed, rather, in open contradiction of the rule, the Applicants were told that if they wished to purchase the land then they had to give the Attorney-at-Law "**the opportunity to do the deed**" and further, that in order for the Applicants to get the land, he (the Attorney-at-Law) would have to do the Conveyance. Applying the plain and literal meaning of those words, the Council found that what the Attorney-at-Law

conveyed to the Applicants was that their ability to purchase the land was contingent upon them selecting him to be their legal representative in the transaction. The Council further found that this amounted to an ultimatum given to the Applicants by the Attorney-at-Law which was intended to, and did, apply pressure and undue influence on the Applicants to retain the Attorney-at-Law for the transaction.

13. It is the Council's view that the Attorney-at-Law, being the professional who is deemed to have knowledge of the rules guiding his conduct and interactions with the public, must bear full responsibility for ensuring compliance with rule 26. There being no evidence that the Attorney-at-Law ensured compliance with rule 26, but in fact flouted it, the Council finds that the Attorney-at-Law is guilty of serious professional misconduct.
14. As to the matter of the pressure applied to the Applicants to retain the Attorney-at-Law if they wished to purchase the land, this is a breach of rule 12. The Attorney-at-Law is duty-bound to uphold the integrity and dignity of the profession. His behavior of pressuring the Applicants to retain his services was a serious strike at the integrity and dignity of the profession that he was called upon to protect. The Council again finds that this amounts to serious professional misconduct.
16. The Attorney-at-Law, having received all of the Applicants' money which included legal fees, it now being in excess of 2 years since the final payment was made, and in the absence of any, or any valid, excuse provided to the Applicants as to the reason for the delay in receiving their Conveyance, then the Attorney-at-Law must be deemed to have failed to comply with rule 20. This too is professional misconduct.
17. Having flagrantly breached Rules 20 and 26, the Council finds that the Attorney-at-Law acted contrary to Rule 59(1) which states that fees ought not to be charged or collected where there is a breach of the rules. The Attorney-at-Law was therefore not entitled to collect any fees from the Applicants.
18. The Council, having found that several breaches of the Rules, namely 12, 20, 26(3), 54 and 59(1), have occurred, and consequently a case of serious professional misconduct has been made out, must now consider what disciplinary powers it can exercise.
19. The Applicants were clear that they do not wish a refund of their money. They seek only the production of their Conveyance, having paid in full the sum charged to cover the cost of the land, legal fees and cost of the survey in excess of 2 years ago. That notwithstanding, the Council having found that the Attorney-at-Law ought not to have charged or collected fees from the Applicants pursuant to Rule 59(1), it is empowered to, and does, pursuant to Rule 37(2), order the refund of all legal fees paid to the Attorney-at-Law by the Applicants, which fees total \$28,600.00.

20. Unfortunately, the Council does not have the power to order the Attorney-at-Law to produce the Conveyance, which is the redress the Applicants seek; only the High Court can make an order for production of a Conveyance, or order, in certain circumstances, that the Registrar sign a Conveyance. The Council's role on receiving a complaint is to look at whether a case of misconduct by an Attorney-at-Law has been proved and then, on finding a case of professional misconduct, to administer a punishment and/or make an order for reimbursement of money paid pursuant to section 37(2).
21. The Council, in looking at the several serious breaches of the Rules, is of the view that the Attorney-at-Law is deserving of a punishment greater than that which the Council can administer at this time. The Council will therefore forward this matter to the Supreme Court pursuant to section 37(2)(a) of the **Legal Profession Act, 2011** and section 82 of the **West Indies Associated States Supreme Court (Grenada) Act**.

#### Order

1. The Attorney-at-Law shall refund the Applicants the sum paid to the Attorney-at-Law being \$28,600.00 for cost of the land, survey and legal fees within 21 days of the date of this Order.
2. Pursuant to section 37(2)(a) of the **Legal Profession Act, 2011** and section 82 of the **West Indies Associated States Supreme Court (Grenada) Act**, this complaint is forwarded to Supreme Court for consideration and determination of an appropriate punishment for the Attorney-at-Law.



Rosalyn E. Wilkinson  
Chairman