

GENERAL LEGAL COUNCIL

COMPLAINT NO. 11 OF 2014

IN THE MATTER OF ERNEST STAINE, Attorney-at-Law

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT, CHAPTER 320

REPORT OF GENERAL LEGAL COUNCIL

Composition of the Council:

1. Chief Justice Kenneth Benjamin - Chairman
2. Hon. Vanessa Retreage – Attorney General
3. Ms. Pricilla Banner – President of the Bar Association
4. Mr. Derek Courtenay, SC
5. Mrs. Melissa Balderamos-Mahler
6. Ms. Magali Perdomo

Secretary of the Council, Mr. Wayne Piper, in attendance.

Hearing date: April 7 and 21, 2016.

Appearances: Mrs. Liesje Chung for Attorney Mr. Ernest Staine.

Ms. Lissette Staine for the Complainant, Forward in Faith Ministries.

Representatives of the Complainant present: Pastors Truth Phiri and Roy Thompson.

Mr. Ernest Staine did not appear on the ground of illness.

COMPLAINT:

[1] The Application by Forward in Faith Ministries is dated September 29, 2014 and supported by affidavits sworn to by Pastor Roy Thompson and Pastor Truth Phiri on the

same date. The allegations that Ernest Staine has engaged in conduct unbecoming of the legal profession are as follows:

- (i) The Attorney acted for both vendor and purchaser in respect of the sale of property located at 128 Douglas Jones Street in Belize City beginning in 2013. The Complainant as the purchaser deposited the sum of \$250,000.00 (two hundred and fifty thousand dollars) with the Attorney to be held in escrow pending the completion of the sale. In addition, the requisite duly executed transfer instruments were lodged with the Attorney.
- (ii) The Attorney failed, neglected or refused to pay the vendor and lodge the transfer documents despite several requests by representatives of the vendor over several months.
- (iii) On September 3, 2014, the attorney visited Pastor Truth Phiri and informed him that he did not have the money and requested him to source a further \$250,000.00 for which he was prepared to make arrangements to repay. The Attorney also contacted Pastor Roy Thompson and informed him that he wished to borrow \$250,000.00.
- (iv) To date, transfer of the property has not been registered and the vendor is yet to receive the full purchase price.

[2] Prior to the hearing, by letter dated March 22, 2016 learned Counsel for the Attorney wrote to the Chairman of the Council stating the following:

"Our client has instructed us to write on his behalf to indicate that he does not deny any of the accusations made against him and has no intention of wasting the Council's time on the hearing date.

"He is sincerely remorseful for his actions and as you may be aware, he had taken it upon himself to surrender his practising certificate as a clear indication of his inability to continue to practice in the light of all that he has done.

Please be informed that our client has made several payments to Messrs. Barrow & Williams LLP amounting to approximately \$98,000.00 in an effort to settle his debt.

Please be further advised that he is in the process of selling other properties, all with a view to returning the monies owed to the aggrieved parties."

[3] At the hearing, no defence was offered against the allegations. Accordingly, the Council must inevitably arrive at a finding that the Attorney has misappropriated the sum of \$250,000.00 entrusted to him by the Complainant as his client for payment to the vendor of the property. The attorney is therefore culpable for conduct unbecoming of a practising member of the legal profession. Further, the Attorney is in breach of the mandatory provision and specific prohibition of Rule 65 of the Code of Conduct which states:

"65. An attorney shall not retain money he receives from his client longer than absolutely necessary."

Also of oblique application is Rule 82 which provides:

"82. In pecuniary matters an attorney shall be most punctilious and diligent; he shall never mingle funds of others with his own and he shall at all times be able to refund money he holds for others."

[4] The Complainant has commenced suit in the Supreme Court against the Attorney, and judgment has been entered in its favour with orders for interest and costs. Enforcement proceedings have ensued for failure to honour orders for payment by instalments as well as by way of garnishee action and for the sale of assets. The Council was informed that a property jointly owned by the Attorney with another had been appraised and is being offered for sale.

[5] Learned Counsel for the Complainant made representation to the Council for the recovery of air fares for the representative who resides abroad and for outstanding costs and legal expenses incurred. Permission was granted by the Council to present evidence of legal expenses incurred by the Complainant and of the cost of air fares.

[6] The Council was informed that with effect from July 14, 2015, the Attorney surrendered his Practising Certificate by letter and he has not since practiced. The Council observed that the reason stated for the surrender was that of ill health.

CONCLUSIONS

[7] The Council concluded that the Complaint has been made out and substantiated by the evidence which was not controverted. However, upon a perusal of the documents with respect to the air fares, attached to a letter of April 19, 2016 from learned Counsel for the Complainant, it was gleaned that only the trip between April 4 and April 11, 2016 by Pastor Roy Thompson was referable to the hearing before the Council. However, it was revealed that such trip had been previously planned as the Council had been requested to set the hearing to coincide with such trip. Therefore the Council entertain the recouping of the travel expense.

[8] Having regard to the Orders for costs made by the Court and likely to be made by the Court in ongoing enforcement proceedings, the Council ruled that the Complainant is only entitled to legal expenses incurred for the purposes of the hearing

before this tribunal as charged in the sum of \$2,000.00 (see: Fees Sheet with charges dated April 13, 2016).

[9] By way of penalty, the Council deplores the conduct of the Attorney who has brought the legal profession into acute disrepute. The financial impropriety is deserving of the strictest of sanctions. Inasmuch as the Attorney has surrendered his Practising Certificate, this unilateral act can be voluntarily reversed at his own discretion. The Council has not been presented with any medical evidence as to the nature and extent of the illness of the Attorney, which illness was given as the rationale for the surrender of the said Certificate.

DECISION

[10] The Attorney is ordered to pay the sum of \$2,000.00 plus GST as refund for legal expenses, incurred for the proceedings before the Council, the said sum to be paid within 30 days of the date of the decision herein.

[11] The name of the Attorney shall be removed from the Roll forthwith.

Dated this 30th day of June, 2016.



RA. Bay
Chairman
General Legal Council