

**THE HIGH COURT**

**[2012 No: 32SA]**

**IN THE MATTER OF THE SOLICITORS ACTS 1954- 2008**

**BETWEEN**

**THE LAW SOCIETY OF IRELAND**

**APPELLANT**

**AND**

**MICHAEL CURNEEN**

**SOLICITOR/RESPONDENT**

**JUDGMENT of Kearns P. delivered on the 30th day of July, 2012**

This is an appeal by the Law Society of Ireland ("the appellant") against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") dated 29th March, 2012 that no prima facie case of misconduct has been established to warrant an inquiry into the conduct of Michael Curneen, practising as Michael Curneen Solicitor, A Curneen & Son Solicitors, 3 Deansgrange Road, Blackrock, Co. Dublin ("the respondent").

This matter was first returned before this Court on 14th May, 2012 when it was adjourned on consent to 11th June and 18th June, 2012. By notice of motion the appellant seeks the following reliefs:

1. an order pursuant to section 7 of the Solicitors (Amendment) Act, 1960 (as substituted by section 17 of the Solicitors (Amendment) Act, 1994 and amended by section 9 of the Solicitors (Amendment) Act, 2002) setting aside the decision of the Solicitors Disciplinary Tribunal dated 29th March, 2012 that there is no prima facie case of misconduct on the part of the respondent solicitor for inquiry in respect of allegations set out in the affidavit of Mary Devereux, sworn on 10th November, 2011;
2. an order pursuant to section 7 of the Solicitors (Amendment) Act, 1960 (as substituted by section 17 of the Solicitors (Amendment) Act, 1994 and amended by section 9 of the Solicitors (Amendment) Act, 2002) directing the Solicitors Disciplinary Tribunal to hold an inquiry on foot of the appellant's application in this matter;
3. such further or other order as to this Honourable Court seems fit
4. an order for the costs of and incidental to this application.

**BACKGROUND**

**Affidavit of Seamus McGrath**

The appellant's notice of motion is grounded on the affidavit of Seamus McGrath, sworn on 18th April, 2012 which sets out the background to the matter as follows:

An investigating accountant, Mary Devereux ("the investigating accountant"), was appointed by the Society to carry out an investigation into whether there had been compliance by the respondent with the Solicitors Accounts Regulations 2001 to 2006 (as amended) and section 66 of the Solicitor's Act 1954 (as substituted by section 76 of the Solicitors (Amendment) Act 1994). Further to this investigation and report filed by the investigating accountant, further enquiries into practices at the respondent's firm were made. A meeting of the Regulation of Practice Committee ("the Committee") was held on 23rd June, 2011, when it was decided to refer the matter to the Tribunal. On 17th November, 2011, based on the affidavit of the investigating accountant sworn on 10th May, 2011, the Society applied to the Tribunal for an inquiry into the conduct of the respondent on the following grounds:

- (a) that the respondent caused a deficit of €35,031.57 to arise on the client account on or around 30th November, 2010;
- (b) that the respondent created 1 or more debit balances;
- (c) that the respondent recorded as a debit on the office side of one or more clients ledger accounts the amount of professional fees due to the respondent without first furnishing the bill of costs to such clients;
- (d) that the respondent recovered barrister's fees of €4,249.60 m a party and party bill of costs which were not paid by the respondent solicitor to that barrister;
- (e) that the respondent failed on one or more occasions to furnish a bill of costs to one or more clients as soon as was practicable after the conclusion of contentious business carried out by the respondent on behalf of such clients; and
- (f) that the respondent failed to maintain proper books of account which showed the true financial position in relation to the respondent's transactions.

On 9th February, 2012 the respondent solicitor swore an affidavit in response to the affidavit of the investigating accountant. On 29th March, 2012 the Tribunal determined that there was no prima facie case of misconduct on the part of the respondent for inquiry in respect of each of the allegations set out at (a) to (f) above.

On 5th April, 2012 at a meeting of the Committee, it was decided to seek to set aside the decision of the Tribunal. Factors taken into account by the Committee were the admissions made by the respondent in an affidavit in respect of his lack of awareness of the Solicitors Accounts Regulations and breaches of same, and that the contents of the respondent's affidavit did not amount to a rebuttal of the Society's evidence but a plea in mitigation.

#### **Affidavit of Michael Curneen, the respondent**

In the affidavit of the respondent sworn on 9th February, 2012 he responds to the allegations of misconduct set out in the report of the investigating accountant as follows:

##### **Client account deficit**

In relation to the respondent's client, Laurette O'Neill, the respondent states that an overdrawn balance was not created, and regarding Colum Doyle Estate, the respondent states that there was no deficit of client funds. Regarding the 6 debit balances on ledger cards, these amounted to €159.82 in total and were rectified immediately.

##### **Debit balances created in breach of the Solicitor's Accounts Regulations**

The respondent states that these debit balances are referred to at (a) above, amounting to less than €160 and were rectified immediately once brought to the respondent's attention.

##### **Fees taken in advance**

The report of the investigating accountant alleges that fees were taken in advance in the following cases:

- i. in the case of Paulette O'Neill, the respondent says that consent from the client to transfer the monies was implicit and was transferred back to the client account 5 months later, when the respondent paid the client the remainder of the settlement monies due to her.
- ii. In the case of Colum Doyle Estate, the respondent avers that a significant retainer was agreed and ultimately refunded to the client following resolution of all matters in connection with the estate.
- iii. Regarding the respondent's administration of the McNamara estate, the respondent states that fees were settled amicably with the client on a very generous discount.
- iv. In the Counihan matter, fees were taken on account by the respondent. The respondent wrote to the client in advance and the client agreed to this payment on account. A full refund of the fee was made in August, 2011.

##### **Fees taken when not approved by clients**

The respondent states that the specific approval in writing may not have been obtained from the clients on all occasions but the clients were duly notified of the fees when the matter was completed and refunds were made if appropriate.

##### **Fee notes not given to clients**

The respondent states that he was not aware of the requirements of the Solicitors Accounts Regulations 2001 that a bill has to be delivered to the client before withdrawing funds.

##### **Non-compliance with the provisions of section 68**

In the respondent's section 68 letters to clients, the respondent states that he always notified them that he reserved the right to charge higher fees if there were additional or unusual circumstances.

The respondent makes the points that the investigating accountant confirmed that the books of account had been maintained up to date and balanced and reconciled regularly. The respondent provides a detailed account of the transaction in relation to Bruffstream Building Company Limited. The respondent also avers that there was no deficit on client funds (other than €159.82 which was corrected), the accounting records did show the true financial position and there were no misleading entries in the accounting records. Further to the recommendation of the Chairman of the Regulation of Practice Committee, the respondent had taken advice in relation to practice management and has put the recommendations received in this regard into practise.

#### **RULING**

Having carefully considered all of the papers in this matter, I am satisfied that the issues raised by the investigating accountant were not of a serious nature and have been satisfactorily clarified by the respondent in his comprehensive affidavit sworn on 9th February, 2012 and his letter to the Regulation Department of the appellant on 18th May, 2012. I am satisfied from all of the exhibited correspondence reviewed that there was and is no danger to the public posed by the respondent, that he operated within permissible margins in his dealings with client monies, and was not conspiring in any untoward financial practices.

The Court acknowledges the respondent's admissions that there were aspects of the Solicitor's Accounts regulations that he was not familiar with. Having regard to the affidavit of Charles Russell, of Russell & Company Management and Software Consultants to the Legal Profession sworn on 14th June, 2012 the Court notes that the deponent advised the respondent on best practice in this regard and the respondent has confirmed that he is implementing the advice received to prevent such errors occurring again. The respondent accepted and acted further the recommendation of the Tribunal Chairman in this regard.

The Court acknowledges the thorough investigation carried out by the Society into solicitor's practices however in this instance, for

the above reasons and in light of the respondent's attitude and co-operation, an inquiry by the Tribunal is not warranted.

I therefore affirm the finding of the Tribunal and dismiss the Society's motion with costs in favour of the respondent.