

THE HIGH COURT

IN THE MATTER OF THE SOLICITORS ACTS, 1995-2011; AND

IN THE MATTER OF

SHEENAGH MacCARTHY

Solicitor

ON THE APPLICATION OF /

PATRICK O'BRIEN

Appellant

Judgment of KEARNS P. delivered on 23rd day of June, 2014

By notice of motion dated 26th May 2014 Mr. Patrick O'Brien ("the appellant") appeals against a decision of the Solicitor's Disciplinary Tribunal ("the Tribunal") dated 25th April 2014 that there is no prima facie case of misconduct on the part of Ms. Sheenagh MacCarthy, Messrs. F.G. MacCarthy Solicitors, Dunkellin Street, Loughrea, Co. Galway ("the respondent solicitor").

Background

The appellant engaged the services of Messrs F.G. MacCarthy Solicitors following an accident which, according to the appellant, occurred on 28th February 2001 during the course of his employment on a project which was being jointly executed by FÁS and Galway County Council. The appellant contends that he sustained an injury to his back while throwing large stones over a fence. Over the next number of years a number of solicitors in the above named firm, including the respondent solicitor, handled the appellant's file in relation to his application to what was then the Department of Social Welfare for an Occupational Injuries Benefit Payment as well as in relation to a personal injuries claim.

By letter dated 19th May 2004 the appellant's application for Occupational Injury Benefit was refused on the grounds that he had failed to establish that he suffered an injury arising out of and in the course of his insurable employment. This decision was upheld on 17th August 2004 following a review by the Department of Social Welfare. The appellant appealed this decision through his solicitors and following lengthy correspondence the appeals officer decided to hold an oral hearing. On 18th March 2005 the appellant was notified that the oral hearing would take place on 7th April 2005. At the hearing, the appellant was accompanied by Ms. Paula Rohan, solicitor in Messrs F.G. MacCarthy Solicitors, and evidence was heard from a number of witnesses including the appellant's employer and co-workers. The determining officer Mr. O'Lideadha ultimately refused the appeal on the grounds that he was not satisfied that the accident took place.

In 2009 the appellant made a complaint to the Law Society regarding the respondent solicitor's conduct in relation to the oral hearing. This complaint was investigated and on 9th July 2009 the Society determined that the appellant had produced insufficient grounds to warrant further investigation. The Independent Adjudicator of the Law Society subsequently found on 9th June 2010 that the Society's response was "well considered, fair and reasoned". On 25th June 2012 the Society replied to a letter from the appellant dated 7th June 2012 and stated that "the position remains unchanged and consequently the Society cannot accede to your request to reopen the matter." By letter dated 2nd August 2012 the Independent Adjudicator again informed the appellant that "the Law Society conducted a fair and reasoned investigation of your matter and it has left no unanswered questions for me to pose to them."

Following this, on 11th November 2013 the appellant made an application to the Tribunal for an inquiry into the conduct of the respondent solicitor on the ground of alleged misconduct. The appellant alleged that the respondent solicitor "withheld medical evidence" at the oral hearing on 7th April 2005. Affidavits were filed by both parties. On 25th April 2014 the Tribunal issued its decision that "there is no prima facie case of misconduct on the part of the respondent solicitor" for inquiry in respect of the allegations made by the appellant.

The appellant's submissions

The appellant contends that the respondent solicitor failed to provide up to date medical reports to the determining officer at the oral hearing held on 7th April 2005. It is also alleged that some time in March 2005 the respondent solicitor wrongfully advised the appellant to bring no documentation with him to the oral hearing. In particular, the appellant states in his affidavit of 28th April 2014 that a report from Dr. Mangan was available but the respondent solicitor failed to provide it at the hearing.

The appellant exhibits a medical report of Dr. John Mangan dated 16th March 2005 which he states the respondent solicitor failed to make available to the Department of Social Welfare on a number of occasions including for the oral hearing on 7th April 2005. In his affidavit to the Tribunal the appellant states that the respondent solicitor wrongfully told him that the report was not available for the hearing. This medical report states that the appellant "sustained a soft tissue injury at his lumbar spine" and that he has symptoms of lumbar spondylosis which Dr. Mangan believes was present prior to the accident and will cause some degree of back pain in the long term. Dr. Mangan also observes that the appellant walked briskly into the consultation room carrying a walking stick which was not used as a weight relieving device. Dr. Mangan also outlines his opinion that the appellant is fit for some form of light manual work.

The only medical evidence made available at the oral hearing was a medical certificate dated 3rd March 2001 which indicates that the

appellant was unable to attend work due to muscle pain. The appellant expresses his firm belief that had all available medical evidence been furnished to the official who conducted the oral hearing he would have been entitled to receive an occupational injury benefit payment.

The respondent solicitor's submissions

The respondent solicitor states that various solicitors in the firm of Messrs F.G. MacCarthy Solicitors handled the appellant's file between 2001 and 2006. It is submitted that the appellant's primary focus was initially related to obtaining an appropriate disability payment and that he subsequently decided to pursue a personal injuries claim which was eventually compromised in May 2006.

The respondent solicitor states that following the decision of the Department in May 2004 to refuse the appellant a disablement benefit under the Occupational Injuries Scheme, Mr. F.G. MacCarthy, solicitor (now deceased) wrote to the Department seeking a more thorough explanation of the decision and outlining the appellant's intention to appeal. A considerable amount of correspondence between the appellant's solicitors and the Department followed before a date for oral hearing was confirmed. The respondent solicitor states that on 1st April 2005 she wrote to the appellant advising him that the purpose of the hearing was simply to investigate whether the accident happened at all. In the same letter the respondent expressed her belief that the appellant would not succeed in the appeal as he had no strong witnesses while a number of his co-workers would say that he had not reported the accident on the day. It is the respondent solicitor's position that the purpose of the hearing was not as to the nature and extent of the applicant's injury and that medical evidence was not relevant.

The respondent solicitor refers the Court to the note of the oral hearing made by the determining officer Mr. O'Lideadha and points out that no reference is made to medical reports and no query or observation is made in respect of the lack of medical reports. Mr O'Lideadha concluded that no work place accident occurred at all and the respondent solicitor contends that medical evidence was therefore not relevant to the hearing. The respondent further submits that she did not attend the hearing on the day.

It is submitted that at all material times the respondent solicitor acted in the best interests of the appellant and discharged her duty in accordance with the Solicitors Acts and all guidelines and recommendations of the Law Society.

Decision

The appellant has filed a lengthy affidavit which sets out the history of these proceedings and his interactions with the respondent solicitor and other solicitors in the firm. In it he describes a number of instances where he feels he was poorly treated by his previous employer and was denied access to training courses. The appellant also raises a number of concerns in relation to the evidence proffered by various witnesses at the oral hearing in April 2005. Additional medical evidence which post dates the oral hearing is also included. However, the only matters which fall to be considered by this Court are the complaints against the respondent solicitor, namely that she wrongfully withheld or failed to make available medical reports in respect of the appellant's claim for an occupational injury benefit payment and that she advised him to bring no documentation to the oral hearing.

I have carefully considered all of the submissions, correspondence and documentation in this matter and am satisfied that the finding of the Tribunal of no prima facie case of misconduct on the part of the respondent solicitor was entirely appropriate.

I therefore dismiss the appeal.