

THE HIGH COURT

[2013 No: 13SA]

IN THE MATTER OF THE SOLICITORS ACTS 1954 - 2008

BETWEEN

OLIVER SHEERIN

APPELLANT

AND

SOLICITORS DISCIPLINARY TRIBUNAL

RESPONDENT

JUDGMENT of Kearns P. delivered on the 29th day of April, 2013

By notice of motion returnable on 11th March, 2013 Oliver Sheerin ('the appellant') appeals against the finding of the Solicitors Disciplinary Tribunal (the 'Tribunal') that there was no *prima facie* evidence of misconduct on the part of Mr. William Murphy, a solicitor of Murphy and Coady Solicitors, Navan, Co. Meath, in relation to certain matters. Mr. Sheerin also appeals the decision of the Tribunal not to comment, in its letter dated 23rd January, 2013, on many other incidents where the appellant, in his complaint to the Tribunal, had alleged misconduct on the part of Mr. Murphy.

By letter dated 23rd January, 2013 the Tribunal found that there was *prima facie* evidence of misconduct concerning Mr. William Murphy in relation to, *inter alia*, failure to furnish cash accounts and files entrusted to him by the appellant or show where monies went, failure to answer letters and account for specific sums of money. However, it found no such evidence in relation to other matters. The appellant asks for his complaints to be looked at and for the decision of the Tribunal be reversed.

There is no replying affidavit on file on behalf of the Solicitors Disciplinary Tribunal.

Affidavit of the appellant

In the affidavit of the appellant which was filed on 18th February, 2013, Mr. Sheerin avers that he had instructed Mr. Murphy from 2003 until 2006 in relation to twelve matters. The appellant says that he had become concerned about unaccounted monies and over charging; he wanted Mr. Murphy to account for all monies entrusted to him and where he could not make a refund to furnish a cash account on each of the twelve files to enable him to identify any missing monies or overcharging. He avers that Mr. Murphy refused to issue a cash account on each matter in breach of s.68(1)(a) of the Solicitors (Amendment) Act, 1994 (the '1994 Act') and that Mr. Murphy denied him a copy of his files until his solicitors, Malone and Martin Solicitors of Trim, had intervened. He continues that when he received copies of the files in 2008 they were incomplete. Upon Mr. Murphy's refusal to respond to the appellant's letters, Mr. Sheerin complained to the Law Society on 10th September, 2009 which requested that the solicitor furnish one of the eleven cash accounts. Dissatisfied with the result the appellant then complained to the Tribunal which found *prima facie* evidence of misconduct as detailed in its letter of 23rd January, 2013 regarding certain matters, however, no such evidence was found in relation to other matters.

The appellant, as per his affidavit, is appealing the following seven issues:

1. The Tribunal stated that there is *prima facie* evidence of misconduct on the part of Mr. Murphy concerning five specific sums of unaccounted monies. The appellant seeks a direction from the Court that all unaccounted monies, as evidenced in his complaint document, will be considered and not just those five examples.
2. The Tribunal stated, in relation to an allegation that the solicitor caused investors to lose €20,700, that "the evidence adduced does not support this complaint". The appellant asks the Court to re-examine the evidence in relation to this.
3. The Tribunal found that the appellant's complaint that two sums of money had been taken was a repetition of another complaint. The appellant submits that this other complaint was in relation to a refusal to supply paperwork and account for the sums in the first appeal item which did not include these two sums. Consequently, the appellant claims that the Tribunal's response was incorrect and asks the Court to consider the evidence in relation to this complaint.
4. The Tribunal found that the appellant's complaint, that by refusing to comply with s.68(1)(a) of the 1994 Act he had been prevented from querying several overcharges, was a repetition of another complaint. The appellant states that his earlier complaint was regarding the solicitor's refusal to supply paperwork to include a cash account on any of the 12 files and that this is a different manifestation of misconduct than that set out in the earlier complaint and asks the Court to consider this as another matter of overcharging.
5. The Tribunal stated, in relation to the appellant's complaint that the solicitor had prevented investors from finding out until 2011 that money had been stolen, that there was insufficient evidence. Mr. Sheerin says that he had never intended to claim that there was sufficient information that the solicitor had stolen money but rather there was a plethora of circumstantial evidence and asks the Court to consider the evidence.
6. The Tribunal has not commented on other cases of misconduct raised by Mr. Sheerin such as unaccounted sums of money, invoicing irregularities and writing insulting and acrimonious letters. He asks the Court to examine these other cases of possible misconduct.
7. The appellant asks the Court to admonish the Law Society and the Independent Adjudicator of the Society for permitting Mr. Murphy to disrespect the law and to continue to refuse to comply with s.68 of the 1994 Act. He avers that

Mr. Murphy would not have continued to refuse to furnish the appellant with cash accounts if Mr. Murphy felt that there was an adequate disciplinary body in operation. He particularly takes issue with the Society for stating that "[i]t is not reasonable to expect a Solicitor to devote substantial time to preparing Cash Accounts for transactions that were completed some years ago".

The appellant asks the Court to consider these matters.

Decision

In relation to the first issue the appellant asserts that the Tribunal had intended to use the five sums of money as examples of unaccounted monies. However, he has not put forward an adequate case as to why the Court should consider all of the monies as evidenced in his complaint document. The appellant has not attempted to explain to the Court why these other sums merit consideration.

On the second issue the appellant simply states that he disagrees with the decision of the Tribunal and does not put before the Court any argument as to why the evidence should be re-examined.

The appellant is of the opinion, regarding appeal item number three, that the Tribunal's decision was not correct and the appellant's complaint was not a repetition of an earlier complaint. However, the appellant does not explain why this complaint is different from an earlier one where the Tribunal made a finding of misconduct. Instead, the appellant merely states that it is "a different complaint as that [Mr. Murphy] didn't explain as to how he'd clairvoyantly taken this €881.53 in 2006 as belatedly admitted".

The Tribunal found that the fourth issue was a repetition of an earlier issue where it made a finding of misconduct. Again the appellant does not adduce sufficient evidence to substantiate why this is not a repetition of an earlier complaint and so the Court cannot find in favour of the appellant.

Regarding the appellant's contention (appeal item number five) that €11,300 had been stolen from Kilcaire Investors, the Court is not satisfied that an order directing the Tribunal to investigate the matter is warranted. The appellant states that there was a plethora of circumstantial evidence and directs the Court to the complaint document dated 12th September, 2012. The Court did not find that this evidence, already viewed by the Tribunal, necessitated further investigation. Furthermore, instead of elaborating on this issue in his affidavit, the appellant suggests four routes that the Tribunal could have chosen in relation to the evidence and states what, in his view, the Society had the responsibility to conclude in relation to the evidence.

The appellant, in the sixth appeal issue, lists five complaints regarding misconduct. The first complaint is a repetition of appeal item number one and the second complaint regarding invoicing irregularities refers to his complaint document dated 12th September, 2012 which does not adequately detail such irregularities. Regarding the third complaint, the appellant claims that Mr. Murphy alleges that the appellant was a tax evader, however, the appellant has not shown in his complaint document at part 6 that these claims warrant comment. The last two allegations, accepting cash payments without issuing invoices and writing insulting letters, also fall due to lack of sufficient detail. From the foregoing the Court cannot find reason to examine these issues.

In relation to the seventh appeal item the applicant alleges that the Society admits, *inter alia*, that it "had no intention of asking a fellow solicitor and Law Society Member to respect the law", however, he does not support this with any evidence. Having examined the allegations made by the appellant, the Court does not find that the Society or the Independent Adjudicator warrant admonishment.

Having carefully reviewed all of the papers before me I am of the opinion that the appellant has not made out a sufficient preliminary case as to why the Court should reverse the findings of the Tribunal and that the appellant has demonstrated no grounds whatsoever as to why it should consider the other complaints set out in his affidavit. Consequently, I am satisfied that the finding of the Tribunal, of no *prima facie* case of misconduct on the part of Mr. Murphy in relation to certain matters, was entirely appropriate and that the within appeal is without any merit.

I therefore dismiss the appeal with no order as to costs.