

THE HIGH COURT

2010 1 SA

**IN THE MATTER OF JOHN HUSSEY SOLICITOR PRACTISING AS PRINCIPAL IN JOHN HUSSEY & COMPANY SOLICITORS, 3
O'RAHILLY ROW, FERMOY, COUNTY CORK**

AND

IN THE MATTER OF THE SOLICITORS ACTS 1954-2002

MICHAEL WHITE

APPELLANT

AND

THE LAW SOCIETY OF IRELAND

RESPONDENT

JUDGMENT of Kearns P. delivered the 10th day of May, 2010

These proceedings concern an appeal on the part of the appellant, Mr. White, to this Court pursuant to s.7 of the Solicitors Amendment Act 1960, as substituted by s.17 of the Solicitors (Amendment) Act 1994 and as amended by s.9 of the Solicitors Amendment Act 2002 against a decision of the Solicitors Disciplinary Tribunal ("the Tribunal") of the 11th December, 2009 that there was no prima facie case for inquiry in respect of the complaint Mr. White had made against his former solicitor, Mr. John Hussey to the Tribunal on the 22nd July, 2009.

FACTUAL BACKGROUND

Mr. White was a member of the defence forces of the State from the late seventies until 1990. He retained Mr. Hussey to act for him in respect of a hearing loss claim or what is colloquially referred to as an army deafness claim. High Court proceedings were instituted by Mr. Hussey on behalf of Mr. White in 1995. Those proceedings were settled on the 15th December, 1998. A settlement cheque in the sum of IR£17,500 plus costs was issued by the Department of Defence to the Chief State Solicitor's Office on the 19th January, 1999, for onward posting to Mr. Hussey.

Mr. White took issue with a number of the costs deducted from the settlement monies by Mr. Hussey and he made a complaint to the Law Society in 1999. That complaint was withdrawn, however, on the 4th December, 2000. Some years later, by letter dated the 22nd April, 2006, Mr. White complained again to the Law Society. He claimed that he had been underpaid in the sum of IR£2,548.75. Mr. Hussey had failed, according to him, to reimburse all the expenses he had incurred, had made an error in respect of the witness expenses and had deducted an additional 5% of the award in respect of his fees in error. In a letter of response from the Complaints and Client Relations Section of the Law Society dated the 5th May, 2006 it was indicated to Mr. White that as the matters complained of occurred more than six years prior to his letter that it would be unreasonable to expect a solicitor to answer such a complaint. However, it was also outlined to Mr. White that he was entitled to make a direct application to the Tribunal regarding the matters he raised. Later that month, on the 18th May, 2006, Mr. White did submit a complaint to the Tribunal. The basis of his complaint was set out by him in the following terms in his grounding affidavit of the same date:-

"1. Submitted costs for travel for me Michael White under Emerald Cabs which I never received. Amounts on bill of costs received from the Department of Defence.

2. Submitted costs for witnesses's [sic] of £110 and only paid them £100 each by cheque he gave me to give to them by hand.

3. When all the amounts are added there is a discrepancy [sic.] of £1000.

4. Deducted 5% of my award.

Which he got me to sign at the High Court settlement as he had no contract with me I did not understand as he said everyone had to give this 5%."

The Tribunal, having considered the affidavit evidence, determined on the 27th September, 2007 that an inquiry should be held in respect of the allegations made by Mr. White. This took place on the 1st May, 2008. In a decision dated the 29th May, 2008 the Tribunal found that there had been no misconduct on the part of Mr. Hussey. The second matter raised was withdrawn. As to the first and third matters raised the Tribunal found that there was insufficient evidence to prove the allegations. With regard to the fourth matter the Tribunal accepted the evidence of Mr. Hussey. That evidence was to the effect that the solicitor and client fee was never, in fact, deducted by Mr. Hussey due to a change in the legislation.

On the 22nd July, 2009 Mr. White submitted another complaint to the Tribunal. It related to the evidence Mr. Hussey had given to the Tribunal on the 1st May, 2008. He alleged that Mr. Hussey made a misleading or false statement to the Tribunal, in that, he had denied any knowledge of having sent a private investigator, Mr. Jim Healy, to Mr. White's house with a financial offer to withdraw the complaint that had been made to the Tribunal. Mr. White exhibited a copy of a letter he alleged was prepared by Mr. Hussey and presented to him by Mr. Healy on the evening of the 21st December, 2007 to be signed by him acknowledging receipt of €3,000 and withdrawing the complaint to the Tribunal together with a copy statement to the Tribunal withdrawing the complaint also to be signed by him. In addition, he exhibited statements made by him to the gardaí on the 12th June, 2009 and on the 12th August, 2008 in respect of the same subject matter.

In his replying affidavit sworn on the 28th July, 2009 Mr. Hussey rejected any suggestion that he gave misleading or false statement to the Tribunal. He noted that Mr. White had failed to identify any precise statement which he alleged was false or misleading. Mr. Hussey exhibited the transcript of the hearing of the 1st May, 2008 and the decision of the Tribunal of the 29th May, 2008. He identified the relevant passage of which Mr. White complained as appearing on pp.109-110 of the transcript:-

"Mr. White: Mr. Hussey, did you send me anybody to approach me?"

A. Nobody at all.

Q. You didn't?

A. Nobody at all.

Q. Did you send a man on 21st December this year to my mother's house?

A. Nobody has approached you and I don't know what you are referring to, Mr. White.

Q. With €3,000 in an envelope?

A. Chairman, I don't know what he is referring to.

Q. I can bring the witness and the paperwork. After that did the offer go up to €5,000?

A. Mr. Chairman, I don't know what he is talking about.

Q. Sir, the only way I look at it is if you want to adjourn for me to produce that evidence, a live witness...

(INTERJECTION)

Chairman: It is not relevant. Mr. White, with the greatest of respect, it is not relevant to items one to four. ..."

Mr. Hussey, in his affidavit, did acknowledge that there was contact between Mr. Healy and Mr. White at that time of the previous complaint and he referred to a statement he made to the gardaí in this regard on the 23rd February, 2009 which was also exhibited by him. The relevant passage of this statement reads as follows:-"

"30. It took almost two years for the matter to come on for hearing and over that period of two years, contact was made between Jim Healy and Michael White and Jim Healy had complete authority on my behalf to speak to Michael White and find out exactly what was behind the complaint.

31. Such contact was made strictly without prejudice and it was explained to Michael White that if terms were agreed between the parties for the complaint to be withdrawn, then the matter would have to go before the Solicitors Disciplinary Tribunal for them to be informed of the terms of any settlement and to give their consent to Michael White withdrawing the complaint.

32. Under the Solicitors Disciplinary Rules 2003, a complaint against a solicitor cannot be withdrawn until the Tribunal gives its approval.

33. I understand that Michael White requested a meeting with Jim Healy and there were at least two meetings at which Michael White's request for money was presented to Jim Healy.

34. The figures mentioned by Mr. White were outrageous and he was informed that no moneys would be paid to him. However, as the matter had a nuisance value and was consuming a large amount of my time, a nominal figure could be paid, subject to agreement by the Solicitors Disciplinary Tribunal and withdrawal of the complaint.

35. No such agreement was reached with Michael White, as he wanted money paid to him up front and was not prepared to travel to Dublin to withdraw the complaint. Obviously, dealing with a person like Michael White, there was no guarantee that he would withdraw the complaint.

36. I can therefore confirm that no moneys whatsoever were paid to Michael White, but there certainly was contact between Jim Healy and Michael White."

The statement also made reference to witness statements that had been exhibited by Mr. White in his affidavit sworn on the 19th September, 2006 which came before the Tribunal. Mr. Hussey alleged that Mr. White had forged by Mr. White or by some person on his behalf.

A complaint had been made by Mr. White to the gardaí alleging perjury on the part of Mr. Hussey to the Tribunal following the decision of the Tribunal. This complaint was, according to Mr. Hussey, sent to the Office of the Director of Public Prosecutions but no action was taken as there was no evidence of criminality. Mr. Hussey also averred that that complaint was actually withdrawn by Mr. White and once withdrawn Mr. White then approached Mr. Healy for money. When Mr. White was refused the money, according to Mr. Hussey, Mr. White went on to make another complaint in the same terms to the gardaí. Mr. Hussey further noted that Mr. White had not appealed the decision of the Tribunal.

In his further affidavit sworn on the 28th August, 2009 Mr. White referred inter alia to new information which had come to light in the form of a letter to another claimant, a Mr. Arnold Devine, from Mr. Hussey stating that in all army cases that he was entitled to recover an additional 5% of the award. This statement, in Mr. White's view, contradicted the evidence Mr. Hussey gave to the Tribunal on the 1st May, 2008. The letter to Mr. Devine dated the 7th December, 1998, stated inter alia:-

"As with all Army cases I am entitled to recover an additional sum based upon the amount of damages which have been awarded and at present solicitors are working on a basis of 5% of the damage awarded therefore I recover from you the sum of £968.75."

Mr. Hussey in a further replying affidavit sworn on the 29th September, 2009 stated that the matter was now res judicata and that Mr. White had not appealed the decision of the Tribunal of the 29th May, 2009.

The Tribunal, in a letter to Mr. White on the 16th December, 2009, communicated the decision reached by it at a meeting on the 11th December, 2009. Having considered the affidavit evidence, as listed in the letter, it stated as follows:-

"The Tribunal was of the opinion that there is no prima facie case of misconduct on the part of the respondent solicitor for inquiry in respect of the allegation set out in paragraph [A] of the said affidavit of Michael White sworn on the 23rd July 2009, as follows:-

[A] '[The applicant's complaint against [the respondent solicitor] has to do with [the respondent's solicitor's] misleading and false statement given to the Tribunal when he denied any knowledge of having sent Mr. Healy to [the applicant] with a financial offer to withdraw [his] complaint. [The applicant now knows] that the aforementioned Mr Healy is a retired Garda Detective who on his own admission works between solicitors and their clients. [The applicant is] firmly convinced that a full and proper investigation into the matter of Mr. Healy's calling to [his] house to offer money, will vindicate [his] complaint'.

Reason: This allegation does not disclose conduct which could be construed as misconduct."

It is this decision that Mr. White appeals in these proceedings. In paragraph 2 of his grounding affidavit sworn on the 4th January, 2010, he set out the following matters as constituting the basis for his appeal:-

"(a) Mr. Hussey (Solicitor) stated the following to the Tribunal at Page Number 95 of the Hearing transcript dated 1st May, 2008 'I was not deducting any percentage whatsoever as that was now unlawful and the only deductions were the cash advances.'

(b) A copy letter is attached from Mr Hussey (Solicitor) to Mr Arnold Devine (a former soldier and client) which indicates that Mr Hussey was deducting an additional 5% of compensation awarded to army clients in addition to his professional fees – Refer to my Affidavit dated the 25th August 2009.

(c) Mr Hussey stated to the Tribunal that he did not send anyone to contact me with a view to achieving a settlement with me – Refer to Page Number 109 of the Hearing Transcript referred to at (a) above.

(d) Mr Hussey (Solicitor) made false statements to the Fermoy Gardai in relation to the bona fide of the signatures of Mr Patrick Boyce and Mr Sean Murphy in that the signatures were forced – Refer to Page Number 10 of Exhibit JH3 of Mr Hussey's Replying Affidavit dated the 28th July 2009."

In his replying affidavit sworn on the 8th March, 2010 Mr. Hussey stated that Mr. White was seeking to appeal two decisions of the Tribunal, that is the decision of the 16th December, 2009 and also the 1st May, 2008 and he was of the view this constituted an abuse of process in circumstances where Mr. White did not appeal the decision of the 1st May, 2008 within the twenty one day statutory time limit. As to the first issue raised in paragraph 2(a) of the notice of motion, Mr. Hussey argued that as Mr. White was referring to evidence given by him at the hearing of the 1st May, 2008 that this could not constitute a matter which could now be appealed by Mr. White. As to the second and third issues at paragraph 2(b) and (c) Mr. Hussey made the same point i.e. that it was an attempt on the part of Mr. White to reopen the complaint determined by the Tribunal on the 1st May, 2008, thus constituting an abuse of process. The matter raised in paragraph 2 (d) was described by Mr. Hussey as a false allegation which had also been determined by the Tribunal on the 1st May, 2008. Mr. Hussey noted that the complaint in relation to the full amount of money not having been paid to the witnesses, Mr. Boyce and Mr. Murphy, was withdrawn at the hearing as the cheques which had been paid to them were retained and shown to the Tribunal. In such circumstances there could be no dispute as to incorrect payment. Mr. Hussey alluded to the fact that he had raised with the gardai the seemingly different signatures on the witnesses' cheques (Mr. Boyce and Mr. Murphy having endorsed them) and their purported signatures on a statement exhibited to an affidavit of Mr. White before the Tribunal. Mr. Hussey's evidence was also that Mr. White must be incorrect in his affidavit sworn on the 25th August, 2009 that he did not know Mr. Healy in 2007. In this regard Mr. Hussey referred to a signed statement of Mr. Healy dated the 10th January, 2001 confirming that he had given Mr. White the sum of IR£550 to withdraw the complaint made to the Law Society (in 1999) and to Mr. White's letter to the Law Society withdrawing that complaint.

In his affidavit sworn on the 15th March, 2010 Mr. White sought to introduce a further ground of appeal, that is, that Mr. Hussey failed to retain his accounts for the requisite statutory period of ten years, as per the Solicitors Accounts Regulations 1955 (S.I. No. 218 of 1955).

DECISION

I have set out the background in considerable detail for the purpose of underlining how fully Mr White's various complaints have been dealt with over the years.

I cannot find anything in the documentation or in the affidavit sworn by Mr White in support of his appeal which would justify allowing an appeal.

I therefore dismiss the appeal