

**THE HIGH COURT**

**Record No. 2014/126/SA**

**IN THE MATTER OF:**

**WILLIAM JAMES MURPHY**

**A Solicitor**

**ON THE APPLICATION OF:**

**OLIVER SHEERIN**

**The appellant**

**Judgment of Kearns P. delivered on 26th day of January, 2015**

By notice of motion dated 17th September 2014 the appellant, Mr. Oliver Sheerin, appeals against the decision of the Solicitors Disciplinary Tribunal ('the Tribunal') of 21st July 2014 and which issued on 19th August 2014. The Tribunal found the respondent solicitor guilty of six counts of professional misconduct and not guilty in relation to another six complaints.

**Background**

By application to the Tribunal dated 21st June 2012 the appellant sought an inquiry into the conduct of the respondent solicitor. On 17th January, 2013 the Tribunal found that there was a *prima facie* case of misconduct on the part of the respondent solicitor in respect of certain allegations of misconduct while it was held that there was no *prima facie* case of misconduct in relation to other aspects of the complaint. The parties were notified of this decision by letter dated 23rd January 2013. The appellant appealed those aspects of this decision which were not in his favour to the High Court and a decision dismissing his appeal was issued on 29th April 2013.

In relation to the present complaint, an inquiry was held by the Tribunal over two days, commencing on 7th May 2014 and concluding on 21st July 2014. The appellant appeared on his own behalf while the respondent, who was in attendance, was represented by counsel. From the outset, the Tribunal hearing was a fractious one and the parties refused to accept books of evidence and exhibits prepared by one another. The Tribunal decided that, having regard to the complexity and contradictory nature of the contents of the affidavits furnished by the parties, the hearing should proceed by way of examining individually each of the 12 transactions in respect of which a *prima facie* case had been made out. These were as follows -

- (i) €2.3m purchase of 4.1 acres of land at Kilcairn, Navan
- (ii) The Athlumney Transaction
- (iii) Barrack Street Transaction
- (iv) Leesbrook Restaurant Transaction
- (v) Three Tuam Units [N17]
- (vi) Purchase of cottage on one acre, Boyne Road, Navan
- (vii) Sale of one acre, Boyne Road, Navan
- (viii) Sale of cottage, Boyne Road, Navan
- (ix) Remortgage of seven properties with Bank of Ireland
- (x) Draw down from Ulster Bank, Dundalk
- (xi) Gavin Lease and Settlement
- (xii) High Court proceedings against Joseph Gavin

The Tribunal also considered the following complaints against the respondent solicitor -

- Mr. Murphy would not answer letters which set out Mr. Sheerin's complaints
- Mr. Murphy would not surrender Mr. Sheerin's files until finally he had his solicitors intervene on his behalf and which files proved incomplete and inaccurate when finally released to Mr. Sheerin in March 2008.

After adjourning to consider all of the evidence the Tribunal sat again on 21st July 2014 to issue its decision and the respondent solicitor was found guilty of misconduct in relation to the allegations at (ii), (iii), (iv), (vii), (viii), and (x) above. After hearing submissions from both parties, the Tribunal made the following order in respect of sanction -

- a) the respondent solicitor do stand censured.

b) the respondent solicitor must pay a sum of €4,800 as restitution to Mr. Oliver Sheerin, applicant herein without prejudice to any of his legal rights.

c) the respondent pay the whole of the costs of the applicant to be taxed by the taxing master of the High Court in default of agreement

It is this decision which the appellant now appeals.

### **Submissions of the appellant**

The appellant states that for the past 40 years he has operated several businesses successfully and has never previously had any difficulties with any solicitor. He states that from 2002 to 2007 he became involved in property investments and he instructed the respondent solicitor in relation to twelve transactions. He asserts that the respondent solicitor consistently failed to provide him with copies of his accounts and that between €50,000 and €60,000 is now unaccounted for. Eventually, his concerns resulted in a complaint to the Law Society and the Tribunal which culminated in the decision presently under appeal.

The appellant asserts that during the Tribunal hearing he felt the respondent solicitor was being untruthful in giving evidence and it is contended that the Tribunal failed to challenge the respondent or ask him to produce any evidence to substantiate his submissions. As a result, the appellant states that he *"threw in the towel"* at the 7th May hearing before the Tribunal. He acknowledges that the Tribunal did offer a 'continuation' on this date which he declined.

However, the appellant states that he subsequently discovered evidence which proved the respondent solicitor had been untruthful before the Tribunal and which showed he had been denied a fair hearing by the Tribunal. It is submitted that the Tribunal erred in law and in fact and refused to allow him to admit any of this evidence at the hearing on 21st July 2014. The appellant submits that it would be *"repugnant to our Constitution were this Tribunal to exonerate a Solicitor who had told untruths throughout his testimony"*.

The appellant has submitted a large amount of documentation, totalling ten booklets running to hundreds of pages. One document of particular relevance is that which sets out the evidence the appellant sought to present to the Tribunal at the 21st July hearing and a list of monies which he claims remain unaccounted for. The appellant submits that there is evidence of perjury on the part of the respondent solicitor before the Tribunal. He quotes numerous sections of the transcript of evidence in detail and makes a number of submissions in relation to each of the disputed transactions which he claims supports his contention that he was denied a fair hearing and that monies remain unaccounted for.

### **Submissions of the respondent**

The respondent solicitor has filed a lengthy affidavit wherein he contends that far from being denied a fair hearing, the appellant was in reality overindulged by the Tribunal, who allowed him to introduce a range of matters at the hearing which were not part of his original complaint. He submits that many of the difficulties arose from "irreconcilable instruction" from the appellant and that he has made numerous efforts to resolve the various disputes over the years.

The respondent also submits that while he was "not entirely in agreement" with the findings of the Tribunal, in the interests of cost and expediency he decided not to enter an appeal. Nevertheless, his affidavit contains various submissions and extensive explanations in relation to the disputed transactions. The Court has thoroughly examined all of the relevant documentation and it is not necessary to reiterate these submissions herein.

The respondent solicitor accepts that there is "hostility and bitterness" between the parties. He denies that there has been any loss caused to the appellant and submits that he carried out a large amount of work for professional fees which represent good value for money. The respondent contends that he has already received a punishment from the Tribunal, albeit one he disagrees with, and that it is unfair and unjust that he continue to be forced to engage with the appellant as a result of what he describes as "false and malicious allegations" made by the appellant in the hope of gaining financial reward.

### **Discussion**

This dispute has been ongoing for many years and it is clear from the transcript of the Tribunal hearing and the voluminous documentation exhibited and various statements made therein that, regrettably, there is considerable bad feeling between the parties. The first formal complaints date back to June 2012 and the matter has since occupied a great deal of Court time and time of the Tribunal.

The Court has given careful consideration to the many documents exhibited. This includes the various transcripts, innumerable letters and communiqués back and forth between the parties and numerous other persons, cash accounts, financial statements, copies of financial documentation and instruments, lease agreements, correspondence with the Law Society and the Tribunal, etc.

The Tribunal has given a detailed and reasoned decision and the evidence as presented before it on 7th May 2014 is available in the transcript of the hearing. Both parties were afforded the opportunity to provide lengthy submissions at the hearing in relation to each of the transactions in dispute. Nevertheless, both parties have filed lengthy affidavits in this appeal which are replete with innuendo, allegations and counter-allegations, many of which were not ventilated before the Tribunal at all. Allegations however are one thing, evidence is quite another. From a careful and exhaustive analysis of the documentation I am satisfied that the Tribunal did not err in its decision and did not fail to consider any material evidence which would have been determinative of any aspect of the appellant's complaint.

The appellant claims that he *"threw in the towel"* at the 7th May hearing and effectively disengaged with the process. However, he asserts that subsequent to this, after discussing the matter with his family, he sought to present fresh evidence to the Tribunal which he asserts proves that the respondent solicitor lied to the Tribunal and that he was denied a fair hearing. The appellant has gone to great lengths to highlight individual sections of the transcript which he asserts highlight this untruthfulness and unfairness. However, a more comprehensive reading of the transcript shows that the transactions which form the basis of the appellant's complaints were very complex and dated back many years. Both parties were invited to give evidence in relation to each of them. It is not unusual in adversarial proceedings for matters to become clearer as an examination-in-chief or cross-examination progresses. Evidence tendered can be corrected, clarified, or put into context. The same of course can be said where persons deliberately mislead the Court and their evidence is tested by cross-examination. However, in my view the appellant has submitted no persuasive evidence that the respondent solicitor deliberately lied to the Tribunal or that the Tribunal failed to rigorously assess the credibility of his evidence.

I am satisfied that the Tribunal carried out an extensive assessment of the evidence and made no error of law in arriving at its decision. In addition, rather than denying the appellant a fair hearing, the Tribunal chairperson indicated that the Tribunal *"did not*

*wish to cut [the appellant] short*" or to "curtail" is evidence in any way.

**Decision**

In light of the foregoing I would dismiss the appeal. Having regard to the lengthy and fractious history of the proceedings, and as it is clear that both parties must share the responsibility for the manner in which this matter has come before the Court, I would make no order as to costs.