Michaelmas Term
[2021] UKPC 28
Privy Council Appeal No 0061 of 2019

JUDGMENT

Hosein (Appellant) v Ramnarine-Hill (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Lloyd-Jones
Lord Briggs
Lady Arden
Lord Sales
Lord Stephens

JUDGMENT GIVEN ON
25 October 2021

Heard on 9 February 2021

Appellant
Robert Strang
(Instructed by BDB Pitmans LLP (London))

Respondent
(Not participating in the appeal)

LADY ARDEN:

1.
This appeal concerns the issue whether the report of a professional disciplinary committee into the conduct of the appellant, Mr Shaheed Hosein, an attorney-at-law with an office in Port of Spain, was procedurally irregular and should be set aside.

2.
Allegations of forgery were made against Mr Hosein in the circumstances described in the next section of this judgment. The allegations therefore were of very serious professional misconduct. A Disciplinary Committee, First Division was appointed pursuant to section 37(1) of the Legal Profession Act ("The Act"), Ch 90:03 of Trinidad and Tobago ("the Disciplinary Committee"). Its members were Deborah Peake SC (Vice Chair), Bijili Lalla and Nadia Kangaloo. In its Report dated 5 March 2013 the Disciplinary Committee found the allegations of forgery proved against Mr Hosein and in consequence

a series of related breaches of the statutory rules applying to attorneys. The Disciplinary Committee remitted the case to the Chief Justice and the Attorney General of Trinidad and Tobago as it considered that the case justified suspension from practice or removal from the Roll of Attorneys-at-Law, which were beyond its powers.

The professional misconduct of Mr Hosein

3.
In 2009, Mr Nigel Ali, the husband of Mrs Nazreen Ali was tragically killed in a road accident involving another vehicle. Mrs Ali instructed Mr Hosein to pursue a claim on her behalf and that of their infant child for damages from the driver and his insurer. By a private arrangement not before the Board, she had agreed to pay a Mr Lord some 20% of the damages and Mr Lord had introduced her to Mr Hosein. Mr Hosein accepted Mrs Ali's instructions.

4.
Mr Hosein contacted the driver's insurer, Guardian General Insurance Co Ltd ("the insurer"). The insurer made an offer of (TT) $460,748.08 by letter dated 3 December 2010 to Mr Hosein ("the insurer's first offer letter"). The offer was supported by full calculations and used a multiplier of 16 years. On 6 January 2011 Mr Hosein wrote to the insurer stating that the offer should have been $657,400. By a further letter dated 24 January 2011 to Mr Hosein ("the insurer's second offer letter") the insurer increased its offer to $529,900. On 31 January 2011, the insurer in fact wrote to Mr Hosein confirming settlement of the claim in the amount of $535,000 and an agreed further amount for Mr Hosein's costs.

5.
Mr Hosein then took Mrs Ali's instructions. The case against Mr Hosein is that when he did so he misrepresented the offers and said they were lower than they actually were. On 28 January 2011, Mr Hosein had a meeting with Mrs Ali at which, according to Mrs Ali, Mr Hosein explained that the insurer had made significantly lower offers of $406,598.32 and $439,275 respectively and asked her to sign a letter dated 28 January 2011 approving the settlement in the sum of $439,275. Mrs Ali did not sign that letter, which she took away from the meeting. Mrs Ali and her sister-in-law had a further meeting with Mr Hosein on 3 February 2011, at which, according to Mrs Ali, she asked for copies of the insurer's first and second offer letters with the insurer's official stamp, which Mr Hosein provided. The incorrect versions of the letters used a lower multiplier of 14 years and showed offers in the sums of $406,598.32 and $439,275 respectively. Mrs Ali contacted the insurer herself and she then discovered that the offers were understated. She discharged Mr Hosein and came to a settlement with the insurer on the basis of the correct information as to the insurer's offers.

The charges of professional misconduct

6.
An officer of the insurer, Uthra Ramnarine-Hill (to whom the Board refers as Mrs Ramnarine-Hill) made a complaint of professional misconduct against Mr Hosein. This came before the Disciplinary Committee already mentioned. There were five charges of professional misconduct against Mr Hosein. In summary, the complaints made were that he had forged, or procured someone else to forge, the insurer's first and second offer letters and presented the forged documents to Mrs Ali as if they were genuine.

Evidence given to the Disciplinary Committee and its Report

7.
Mrs Ali gave evidence about the incorrect versions of the letters dated 3 December 2010, and 24 and 28 January 2011, described above. She therefore confirmed that Mr Hosein had given her the letters showing that insurer had offered first $406,598.32 and then $439,275.

8.
Mr Hosein sought to cross-examine Mrs Ali on the basis of another version of the letter dated 28 January 2011 ("the excluded letter"). Significantly this showed the correct amount of the insurer's second offer. His case was that that was the letter of 28 January 2011 which he had given to Mrs Ali at a meeting on 3 February 2011 and therefore the letters containing the incorrect amounts must been made by her or her sister-in-law, Ms Ria Solomon. The excluded letter was on Mr Hosein's professional headed note paper, dated 28 January 2011, addressed to Mrs Ali and signed by Mr Hosein. It states:

"We refer to the above, and your recent instructions and discussions with our Mr Hosein. We set out hereunder details of the terms of settlement of this matter, as well as details of the disbursement of funds for your confirmation and approval.

Settlement of claim … $535,000.00."

9.
The Disciplinary Committee did not allow Mrs Ali to be cross-examined on the excluded letter or to admit it in evidence in the proceedings because Mr Hosein had not complied with the Disciplinary Committee's directions on disclosure of documents (see para 17 below).

10.
The Disciplinary Committee found that Mrs Ali was not shaken in cross-examination. She explained that she had thought about going to the police but did not do so because she was afraid. However, she agreed to give evidence in support of the professional complaint against Mr Hosein because she had trusted Mr Hosein to act on her behalf and he had tried to rob her and her son of what was due to them.

11.
Mrs Ramnarine-Hill gave evidence. The Disciplinary Committee found that the officer gave evidence in a straightforward and forthright manner. She explained the history of her dealings with Mr Hosein and identified the letters which she had written. In cross-examination it was suggested to her that the letters produced by Mrs Ali could have been created by Mrs Ali. The Disciplinary Committee accepted her response, which was that she could not think what benefit Mrs Ali would derive from so doing.

12.
Mr Hosein's case was that he did not give Mrs Ali versions of the insurer's first and second offers showing the sums of $406,598.32 and $439,275 or the incorrect version of the letter of 28 January 2011. His case was that he gave her the excluded letter, giving the correct higher figure and correct versions of the insurer's offer letters. He denied either receiving from the insurer or creating the false copies. His evidence was that they had been created by Mrs Ali and her sister-in-law, Ms Solomon, to avoid paying Mr Lord his 20% of the damages and to get her hands on her son's money.

13.

The Disciplinary Committee concluded, having heard the witnesses and read the documentary evidence, that Mr Hosein's case should be rejected, and the evidence led by the complainant accepted.

14.
The Disciplinary Committee found that Mr Hosein did deliver to his client Mrs Ali the false letters. It was also satisfied that Mr Hosein prepared or caused to be prepared the false letters. In so doing, the Disciplinary Committee further found that Mr Hosein had deliberately and with intent to deceive misrepresented to Mrs Ali that a settlement offer had been made by letters dated 3 December 2010 and 24 January 2011 in the sums of $406,598.32 instead of $460,748.08, and $439,275 instead of $529,900. The Disciplinary Committee was satisfied that the false letters were forged with Mr Hosein's consent or concurrence with intent to deceive Mrs Ali.

15.
In the light of those findings, the Disciplinary Committee found that Mr Hosein had derogated from the high standards of conduct expected of him and as an attorney-at-law breached rules 1, 12 and 21 of Part A of the Third Schedule to the Act, and that he had committed acts of professional misconduct in breach of rule 29 of Part B of the Third Schedule to the Act. Those Rules provide:

"Rule 1: 'An Attorney-at-law shall observe the rules of this Code, maintain his integrity and the honour and dignity of the legal profession […].'

Rule 12: '…he can only maintain the high traditions of his profession by being a person of high integrity and dignity.'

Rule 21: '(1) An Attorney-at-law shall always act in the best interests of his client, represent him honestly […]. (2) The interests of his client and the exigencies of the administration of justice should always be the first concern of an Attorney-at-law and rank before his right to compensation for his services.'

Rule 29: 'An Attorney-at-law shall not knowingly make a false statement of law or fact.'"

16.
The Disciplinary Committee was of the opinion that the complainant had made out a case justifying more severe sanction than could be imposed by it. The Disciplinary Committee was of the view that either suspension from practice or removal from the Roll was warranted. The committee therefore forwarded the case to the Chief Justice and Attorney General. However, the Board was informed that Mr Hosein has continued in practice without interruption.

The procedure adopted by the Disciplinary Committee

17.
In advance of the hearings, the Disciplinary Committee informed Mr Hosein of the receipt of the complaint filed by Mrs Ramnarine-Hill and gave him a written notice dated 17 May 2011 to attend the first hearing on 11 July 2011, informing him in that notice that he was required by the Rules to furnish Mrs Ramnarine-Hill and the Disciplinary Committee with a list of the documents on which he proposed to rely not less than 14 days before the hearing. At the start of the hearings, the Disciplinary Committee held a conference attended by Mr Hosein at which it gave directions for the conduct of the hearing including directions for the preparation of bundles of agreed documents. Mr Hosein did not, however, file a bundle as directed.

18.
The proceedings before the Disciplinary Committee were heard over six days ranging over a period of some 18 months.

19.
After the complainant gave her evidence, Mr Hosein made an application, which failed, to stop the proceedings on the basis that there was no case to answer.

20.
After failing on his submission that there was no case to answer, Mr Hosein announced that he did not wish to give evidence. The Disciplinary Committee suggested that he take legal advice and agreed to provide to the parties the notes of evidence and adjourned the matter to enable Mr Hosein to take legal advice and if necessary to be represented by counsel on the next occasion. However, at the next adjourned date Mr Hosein again appeared without counsel. The Disciplinary Committee warned him of the risk of proceeding without counsel but nevertheless he elected to proceed, and to give evidence, without counsel.

Mr Hosein's appeal to the Court of Appeal of Trinidad and Tobago

21.
Mr Hosein appealed to the Court of Appeal on various grounds. The Board is only concerned with that part of the judgment of the Court of Appeal (Bereaux, Jones and Rajkumar JJA) rejecting his ground of appeal that the Disciplinary Committee's treatment of the evidence was in error or unfair.

22.
Jones JA gave the judgment of the Court of Appeal.

23.
She held that the Disciplinary Committee had made findings of primary fact having had the benefit of seeing and hearing the witnesses and that the Disciplinary Committee drew certain conclusions from those primary facts. In those circumstances an appellate court would not easily disturb the conclusions unless it could be shown that there was no evidence to support the conclusions, or that they were based on a misunderstanding of the evidence or that no reasonable judge could have reached the conclusions. Jones JA drew these propositions from the speech of Lord Neuberger in In re B (A Child) (Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911, para 53. Jones JA explained that that position had been adopted in Trinidad and Tobago in Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2014] UKPC 21; [2014] 4 All ER 418 and that it had been applied in many subsequent cases. The principle applied to tribunals as well as to trial judges. An appellate court could only rarely reverse findings of primary fact made by the judge or tribunal who had had the benefit of seeing and assessing the witnesses in the witness box.

24.
Jones JA held the Disciplinary Committee was entitled to come to the conclusions to which it had come on the evidence before it. She was not persuaded that the conclusions of the Disciplinary Committee were based on any misunderstanding of the evidence or that there were conclusions which were perverse. The Disciplinary Committee's conclusions were not conclusions which no reasonable tribunal could have made.

25.

Moreover, the Disciplinary Committee had not as Mr Hosein argued failed to consider or comment on his case as put to the respondent witnesses in cross-examination. Mr Hosein's only defence had been that Mrs Ali and her sister-in-law decided to avoid paying Mr Lord the money agreed to be paid to him so that Mrs Ali could get her hands on money which ultimately belonged to her infant son.

26.
Jones JA held that the issue was one of the credibility of the witnesses. The Disciplinary Committee had found Mrs Ali to be a credible witness. The Disciplinary Committee preferred the evidence led by the complainant to that of Mr Hosein. The fact that Mrs Ali had told Mr Hosein that she would appoint another attorney when she had not done so did not necessarily lead to the conclusion that she or her sister-in-law had produced the forgeries. The Disciplinary Committee's findings of fact were findings that they were entitled to make.

27.
Mr Hosein submitted to the Court of Appeal that the Disciplinary Committee failed to give weight to two documents admitted into evidence. These were Mrs Ali's original letter of instruction, which gave him authority to make the agreed payment to Mr Lord, and Mrs Ali's letter of 3 February 2011 terminating Mr Hosein's instructions to act on her behalf. Jones JA held that the Disciplinary Committee had considered both these documents since it referred to them in its recitation of the facts. The reasons given by the Disciplinary Committee were sufficient in law.

28.
Mr Hosein also submitted that there was a contradiction between the evidence of Mrs Ramnarine-Hill and Mrs Ali as to when they first met, and the Disciplinary Committee had failed to take this into consideration when assessing Mrs Ali's credibility but he was unable to point to any notes of evidence showing that there were such contradictions. In any event, any such contradiction was immaterial.

29.
The Court of Appeal dismissed Mr Hosein's appeal.

Discussion and dismissal of Mr Hosein's grounds of appeal and submissions to the Board

30.
Mr Robert Strang appeared on Mr Hosein's behalf on this appeal. Mrs Ramnarine-Hill was not represented and does not appear. Mr Strang asks the Board to allow Mr Hosein's appeal against the decision of the Court of Appeal and set aside the findings of the Disciplinary Committee, because:

(i)
The Disciplinary Committee wrongly excluded the excluded letter. This letter was highly material and had the potential to exculpate him.

(ii)
The Disciplinary Committee gave inadequate reasons for rejecting his defence to the charges, demonstrating that they had not considered material evidence which tended to substantiate his defence and (among other matters) tended to show he could not have believed that he would have been able to deceive Mrs Ali about the insurer's offer.

31.
At the hearing Mr Strang made a preliminary application for the admission in evidence before the Board of the excluded letter. However, when the Disciplinary Committee had refused to allow Mr Hosein to put the excluded letter to Mrs Ali in cross-examination, Mr Hosein did not appeal against

that decision and in later submissions before the Disciplinary Committee Mr Hosein appeared to accept that the decision to exclude the excluded letter was rightly made by the Disciplinary Committee. Mr Strang invites the Board to read this letter without reference to its admissibility on a provisional basis (ie de bene esse). He submits that the excluded letter formed a very important element in Mr Hosein's case and was highly material to the question of which witness was telling the truth. He submits that the Disciplinary Committee was wrong to refuse to permit the excluded letter to be deployed.

32.
When Mr Strang concluded his submissions on this application at the hearing, the Board deliberated in private and then announced its ruling dismissing the preliminary application for reasons to be given in this judgment. This paragraph sets out the Board's reasons for dismissing the preliminary application. The Board takes the view that Mr Hosein had ample opportunity to deploy the letter and took the tactical decision not to do so. The Disciplinary Committee gave a direction before the hearings and at the start of the hearing for the disclosure of documents with which he did not comply (see para 17 above). He did not appeal the decision to exclude the letter. He had since the hearing before the Court of Appeal now filed an affidavit seeking to explain the provenance of the excluded letter. His explanation is that the letter was created by a former employee on a laptop which is no longer available. There appears to be no digital version or original of the excluded letter. Mr Hosein's explanation has not been tested by cross-examination. Finally, at a subsequent hearing of the Disciplinary Committee in May 2012, Mr Hosein (who was then acting in person) appeared to accept that this direction was correct.

33.
Mr Strang then moved to the first ground of appeal which was that the Disciplinary Committee should have taken the excluded letter into account. Mr Strang submits that the Disciplinary Committee erred in not taking the excluded letter into consideration as it had the potential to exonerate Mr Hosein. Mr Strang accepts that the Disciplinary Committee had under rule 9(6) of its rules under the Fourth Schedule to the Act broad power to regulate its proceedings and thus to refuse evidence to be admitted. It also had wide power to lay down directions as to how documents were to be produced. He submits, however, that it would have caused no disruption to the proceedings if there had been an adjournment to allow investigations to be made into the excluded letter, and although Mrs Ali could not have continued giving her evidence she could have been summonsed to give evidence on a later date.

34.
On this first ground, the Board takes the view that there were ample grounds for the Disciplinary Committee to reject the excluded letter. It had not been disclosed at the appropriate time. There was no explanation as to where it came from. It appeared that Mr Hosein had made a tactical decision to produce it so as to surprise the witness in order to gauge her reaction. This was not the correct way in which to proceed as he should well have known. In all the circumstances there is no basis for saying that the decision of the Disciplinary Committee to exclude the excluded letter was perverse. It is, moreover, not the practice of the Board to allow a new point to be taken before the Board where it involves questions of fact (see Baker v R [1975] AC 774, 787-788).

35.
The Board turns to the second ground of appeal, in which Mr Strang essentially attacks the Court of Appeal's assessment of the factual findings of the Disciplinary Committee. Mr Strang relies on a passage from the decision of the Court of Appeal of England and Wales (Sir Anthony Clarke MR, Auld

and Thorpe LJJ) in Meadow v General Medical Council [2007] QB 462, para 33 which holds that there is a crucial distinction between an ordinary civil proceeding and a fitness to practise proceeding. The latter is concerned with the protection of the public:

“The crucial distinction is that to which I have just referred. In FTP [fitness to practise] proceedings the FPP [Fitness to Practise Panel] is concerned to protect the public for the future and not to determine the rights and obligations of the parties in the same way as in a civil action.”

36.
Therefore, Mr Strang submits, it is in the public interest to have an accurate determination of the facts so that the person who is charged with professional misconduct may be judged on a true basis. Mr Strang submits that it is a question of fairness to Mr Hosein. He submits that in Soni v General Pharmaceutical Council [2020] EWHC 348 (Admin), para 26, Freedman J refers to the judgment of Swift J on an application in that matter to admit on appeal evidence which had not been before the professional disciplinary panel. He held that the evidence on appeal should be admitted as a matter of fairness. The Board notes that Swift J also held that the rules for the admission of evidence on appeal in England and Wales were also met, so that the judge did not hold that fairness could displace those rules.

37.
The Board accepts that disciplinary systems that adjudicate on complaints of misconduct by professionals must observe high standards of fairness and adhere to procedural safeguards. These include the hearing of evidence, the methods by which they determine which evidence to hear and the opportunities which they give to persons accused of misconduct to put their case. The focal point of procedures is the hearing at which the person accused of misconduct may present evidence and argument concerning the allegations made against him or her.

38.
Mr Strang submits that the Disciplinary Committee had made scant reference in its decision to what Mr Hosein had said in his defence. The Disciplinary Committee had omitted important evidence which he had given in his own defence when giving his evidence in chief. He had asserted that Mrs Ali and her sister-in-law had ample reason or motive to create the documents and to avoid making payments to Mr Lord. Moreover, Ms Solomon had been in touch with the insurer and she knew the amount of the offer before Mr Hosein received it. Therefore, they could not have been misled by the forged documents. Mr Hosein said in evidence that for him to concoct the documents would have lacked common sense, and he denied that any such thing happened. Mr Strang refers to the evidence of Ms Solomon which provides some support for Mr Hosein’s belief that Mrs Ali and Ms Solomon had another source of knowledge.

39.
In the judgment of the Board, it is hard to see that knowledge on Mrs Ali’s part from other sources, which in any event she denied, could excuse Mr Hosein’s conduct. Moreover, as regards findings of fact generally, the practice of the Board is well-settled (see Privy Council Practice, by Lord Mance and Jacob Turner, Oxford, 2017, paras 5.46 - 5.50). The relevant element of the practice was recently summarised in this jurisdiction in the judgment given by Lord Briggs of the Board (Lord Kerr, Lord Wilson, Lord Lloyd-Jones, Lord Briggs and Lady Arden) in Philomen Dean v Chanka Bhim [2019] UKPC 10:

“Para 6 It is the settled practice of the Board not to interfere with concurrent findings of primary fact by the courts below. This is the practice regardless whether an appeal lies to

the Board as of right, as in this case, or only with leave: see Juman v Attorney General of Trinidad and Tobago [2017] UKPC 3, per Lord Toulson at paras14-15, following Devi v Roy [1946] AC 508 at 521 and Central Bank of Ecuador v Conticorp SA [2015] UKPC 11 at paras 4-8. In Al Sadik v Investcorp Bank BSC [2018] UKPC 15 the advice of the Board included this passage, at para 44:

'The Board's settled practice is not just to treat the scales as loaded against an appellant in the circumstances described above, but altogether to decline to interfere with concurrent findings of pure fact. This means, ..., that an appellant seeking to mount such an appeal must first persuade the Board that the case comes within that very limited special category which justifies a departure from that practice.'

Para 7 This appeal has been mounted upon four grounds. Although thinly veiled as errors of law or principle, the first three grounds were, in substance, straight-forward attacks upon the fact-finding process undertaken by the judge, and upon the analysis of them by the Court of Appeal ..."

40.
In the judgment of the Board, those observations apply here with regard to Mr Hosein's version of events and explanation for the offers communicated to Mrs Ali. Neither the Disciplinary Committee nor the Court of Appeal accepted Mr Hosein's case. The Board considers that the Disciplinary Committee was entitled to accept the evidence of Mrs Ali and Ms Solomon in preference to that of Mr Hosein, and the Court of Appeal had found that these findings were correctly made. Therefore there is no basis on which the Board under its settled practice could come to a different conclusion. The issues were all questions of fact, which have to be viewed in this kind of case as a seamless web, which cannot be taken apart by counsel's skilful submissions attacking certain parts.

41.
The second ground of appeal therefore fails.

Conclusion

42.
In those circumstances the Board determines that this appeal should be dismissed.

43.
The Board wishes to add one point about the Disciplinary Committee's powers. Some eight years have passed since the Disciplinary Committee issued its Report. In the meantime, Mr Hosein has been able to continue in practice. The Disciplinary Committee in this case considered that suspension or removal was warranted but it has or, at least at the time of its Report into Mr Hosein's case, had no power to suspend Mr Hosein from practice pending appeal. The Board considers that the absence of a power to impose an immediate sanction pending the final determination of the case, if it persists, should be reviewed at the earliest opportunity so that the Disciplinary Committee could impose an interim suspension from practice in appropriate cases.