

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD2270/2009
MN2108/2009

Against

EMPLOYER *-respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S. C.

Members: Mr. F. Cunneen
Ms E. Brezina

heard this claim at Dublin on 27th January 2011
and 30th June 2011
and 1st July 2011
and 15th September 2011
and 12th December 2011
and 6th February 2012

Representation:

Claimant: Ms M.P. Guinness B.L. instructed by
O'Mara, Geraghty, McCourt, Solicitors, 51 Northumberland Road, Dublin 4

Respondent: Mr. Ercus Stewart S.C. instructed by
Ms Suzanne Neale, Solicitor, EMPLOYER.

Background

The respondent is a Financial Institution. It is the respondent's case that the claimant, a Branch Manager, did not pay back a mortgage taken out on properties after those properties had been sold. It is the claimant's case that a culture and practice existed within the respondent, which allowed him to secure the mortgages and that in this instance got permission from the C.E.O. not to pay back the mortgage when the properties sold.

Respondent's Case

The Chief Executive Officer (GG) for the respondent in his sworn evidence stated that on 29th July he met with the claimant to establish the facts. The claimant was advised he could have representation but decided to proceed without same. It was established that the claimant had sold a property and used the funds in another way, rather than paying back the mortgage on the property. The claimant accepted that this was the case and conceded that his behaviour was unacceptable. GG asked the claimant if there were any mitigating

circumstances to explain his behaviour. In response the claimant expressed a fear of the previous Chief Executive Officer (MF) but had nothing further to add to the discussion. The claimant did not state that he had informed anybody in the respondent about the sale of the property. The meeting was brief and lasted approximately 30mins.

The respondent understood that the property in question was being rented and when the truth was discovered, that the property had actually been sold, all trust in the claimant was lost. His actions were determined to be '*Falsification, concealment or distortion of Information*' under the respondent's examples of offences that can lead to summary dismissal, which forms part of the Disciplinary Procedure. The claimant was summarily dismissed. A letter of dismissal issued on 16th July 2009 outlining the reasons for the dismissal. The claimant did not seem surprised at the decision. GG advised the claimant he would revert to him 3 or 4 days after the meeting. On foot of an appeal the decision to dismiss the claimant was upheld.

Claimant's Case

The claimant became a branch manager in 1996. As branch manager the claimant was involved in lending for commercial and residential properties. The claimant stated that he was a close associate of the former Chief Executive MF; he respected MF but was actually terrified of him.

The claimant had numerous loans from the respondent; it was the culture at the time and a way of supplementing income. He was told loans were 'no problem' and just signed application forms; he had 13 mortgage applications and repayments were in excess of his monthly salary. The claimant gave extensive evidence of his loans and the land the loans were used to purchase. It transpired that one of the properties was sold but the mortgage had not been paid, as the debt was not registered. This was done without the claimant's knowledge or instruction. At a meeting with his solicitor in 2005, the claimant was informed that 'there is nothing (money) left,' and the property in question was sold in 2004 but had not been registered.

The morning following the meeting with his solicitor, the claimant went to Head Office to meet the former Chief Executive MF and told him he was down €200,000. MF told him 'not to worry, to go and do his work.' MF was aware that the claimant was building another large house that would be worth €695,000, prior to the recession. It was suggested by the claimant that the mortgage be repaid by raising funds from his private dwelling but MF said there was no need. He said to sell the large house that is in progress and forward all the proceeds to the respondent and in the meantime continue paying the mortgage through salary deduction. The claimant did not detail this conversation to the investigator but did tell GG at the disciplinary meeting.

The claimant had advised GG during the meeting regarding the mortgage that MF was fully aware of the properties he had bought and he told GG of the nature of his relationship with MF. The claimant does not accept he misled the (respondent) and disputes telling the respondent that the property was rented when in fact it was sold. The property had been sold in 2004 but the claimant was only informed it had been sold by his solicitor in 2005.

In regard to the disciplinary process the claimant was aware of the seriousness of the situation but not that it was a matter of Gross Misconduct. He does not accept he withheld information during the process. He is aware that the respondent requires a high level of trust and confidence in its staff but does not accept that his actions equal a breach of trust. The claimant disputes saying his dismissal was fair or that he knew the appeal would fail.

MF had asked for an investigation into the claimant's accounts in 2007 but it was because his partner OG was testifying against MF at the time and the relationship with MF had started to deteriorate.

A lending Officer (OG) gave evidence of the lending 'culture' within the respondent. OG stated that different 'rules' applied to staff in the lending and repaying of mortgages. OG believes that the arrangement that the claimant and MF had, in regard to the repayment of mortgages would have been 'normal.'

The Chief Executive Officer (MF) at the material time gave evidence. MF does not accept that different rules applied to different people in regards to lending and repayment criteria and capacity. Loans were not approved at his discretion. Some leeway might have been afforded to the claimant as he was a manager, if an exception was to be made in the lending process it would have to be referred to a third party; either MF or someone else. MF was not aware that the mortgage was not registered to the property in question or that a mortgage was issued for development of that property. MF was not aware that when the property was sold the mortgage was not repaid. The claimant never approached MF regarding this mortgage; therefore the witness gave no instructions regarding the repayment of this mortgage. A number of loan applications for the claimant were approved and signed by MF on advice/recommendation from the loan manager, as was standard practice. There was no 'special' relationship between MF and the claimant.

Determination

We regret that we are unable to accept the claimant's evidence, and find that the claimant failed to inform any authority in the respondent about the nature of his property dealings and his failure to have the charge registered and the allocation of funds when the properties were sold. This amounts to a serious breach of trust as a Branch Manager.

The Tribunal finds that the respondent has shown "substantial grounds for justifying dismissal" under Section 6 of the Act of 1977.

The claims under the Unfair Dismissals Acts, 1977 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)