



[2020] IEHC 19

THE HIGH COURT

[2019 No. 201 MCA]

IN THE MATTER OF SECTION 75 OF THE PROPERTY SERVICES (REGULATION) ACT  
2011

BETWEEN

THE PROPERTY SERVICES REGULATORY AUTHORITY

APPELLANT

AND

THADY KELLY

RESPONDENT

**JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 23rd day of January, 2020**

### **Introduction**

1. This is an appeal on a question of law brought by the Property Services Regulatory Authority (“the Authority”) against a decision of the Property Services Appeal Board (“the Appeal Board”) dated 26th March, 2019. The point of law identified for consideration in this appeal is stated to be as follows: -

Whether s.78 of the Property Services (Regulation) Act 2011 (the Act) confers a discretion on the Authority to make a payment from the Property Services Compensation Fund (the Fund) in respect of a loss suffered as a result of the dishonesty of a person or entity who was at the time of the alleged dishonesty a former licensee.

2. The Appeal Board concluded that the Authority had a discretion pursuant to s.78(3)(a) or s.78(4) of the Act to make a grant of €5,000 in favour of Mr. Thady Kelly, the respondent to these proceedings (“Mr. Kelly”). Mr. Kelly did not participate in this hearing although he did file an affidavit.
3. The following is the background to the matter.

### **The Authority**

4. The Authority was established pursuant to the provisions of the Act. Its function is to license and regulate auctioneers, estate agents, letting agents and property management agents who are collectively referred to as property service providers (“PSPs”). The Authority has implemented a comprehensive licensing system covering all PSPs. Different licences for different classes of property services are issued. It is responsible for the investigation and adjudication of complaints against PSPs, the audit and inspection of their operations and the establishment of minimum qualification standards.
5. Part 9 of the Act requires the Authority to establish, administer and maintain the Fund. The Fund may be used in certain circumstances to provide compensation to a client of a licensee who has sustained loss. Mr. Kelly alleged that he was entitled to be compensated from the Fund in respect of loss sustained by him when he paid a booking

deposit of €5,000 to a firm called Edward Paul Nugent Ltd. (Nugent). That money was repayable to Mr. Kelly but was never returned to him. Nugent went into liquidation in March 2018.

#### **Nugent**

6. Nugent was a licensee of the Authority between 11th February, 2013 and 30th June, 2015. It again became a licensee between 20th February, 2016 and 19th February, 2017.
7. On 21st February, 2017 the Authority wrote to the principal of Nugent to inform him that its licence had expired, that the public register would be amended to show that the licence had expired and that therefore Nugent could not any longer provide property services. The letter pointed out that if it was desired to provide property services a new application would have to be made to the Authority for a licence. Nugent was told to refrain from engaging in the provision of property services pending the determination of the new licence application. The letter also pointed out that a person providing a property service without such a licence was guilty of an offence under s.28 of the Act and liable to an unlimited fine or imprisonment for up to five years or both.
8. Notwithstanding the terms of that letter no licence was obtained by Nugent but it continued to provide property services. Indeed Mr. Kelly's affidavit suggests that Nugent simply continued to transact business as usual and that 85 persons other than Mr. Kelly have suffered as he has. Their cases are awaiting this decision before proceeding further.
9. On 6th February, 2018 almost a year after Nugent's licence expired Mr. Kelly paid the booking deposit of €5,000 in respect of the purchase of lands in Castleblayney, Co. Monaghan. The following month a liquidator was appointed to Nugent.

#### **The claim**

10. On 3rd October, 2018 solicitors acting on behalf of Mr. Kelly submitted an application for compensation from the Fund to the Authority. Compensation in the sum of €5,000 was sought in respect of the booking deposit which had not been repaid to Mr. Kelly. Mr. Kelly in the course of the application confirmed that he had suffered that financial loss which he believed was due to the dishonesty of Nugent. At the time of the alleged act of dishonesty, *i.e.*, 6th February, 2018 or any relevant time thereafter Nugent was not a licensee of the Authority.

#### **The Authority's decision**

11. On 11th December, 2018 the Authority refused Mr. Kelly's application in full. The decision of the Authority is set forth in a two-page document which is signed by Ms. Geraldine Clarke, the Chairperson of the Authority. The decision sets out the history of the matter as already recounted in this judgment and then expressed its conclusion as follows: -

*"The Authority is not satisfied, that the Compensation Fund operated by the Authority is the appropriate source for this monetary recourse. Edward Paul Nugent Ltd. was not a licensee when the company allegedly withheld the sum of the €5,000.*

*The Authority, having considered this application in detail, is of the view that s.78(3) of the 2011 Act should not be invoked in respect of this application. In assessing the claim on the Authority's Compensation Fund, the advisory committee took into account;*

- The procedures of the Authority in relation to the investigation and adjudication of the claim;*
- The provisions of Part 9 of the 2011 Act (as amended);*
- The evidence presented by the client in support of the claim;*
- That the licensee was afforded an opportunity to comment on the claim.*

*In the opinion of the Authority, it is satisfied that the level of grant recommended be refused."*

12. The Chairperson of the Authority, Ms. Clarke swore the grounding affidavit for this application and in the course of it confirmed that the basis for the refusal by the Authority was that Nugent was not a licensee when it allegedly withheld the €5,000 from Mr. Kelly.

#### **An appeal**

13. On 10th January, 2019 the solicitors acting on behalf of Mr. Kelly served a notice of appeal from the Authority's decision. The grounds of his appeal were stated as follows:

*"The Property Services Regulatory Authority state in their decision of 11th December, 2018 that 'Edward Paul Nugent Ltd was not a licensee when the company allegedly withheld the sum of €5,000' and 'that s.78(3) should not be invoked in respect of this application'. The Property Services Regulatory Authority were aware that Edward Paul Nugent Ltd had not applied to renew its licence by 19th February, 2017 but continued to trade and therefore, had the Property Services Regulatory Authority imposed the sanctions on Edward Paul Nugent Ltd. per the Property Services (Regulation) Act 2011, the appellant would not have suffered the loss of €5,000."*

14. Those grounds of appeal were supported by what were described as "reasons, considerations and arguments". They can be summarised as follows. The Authority, it was argued, was aware that Nugent had not renewed its licence by 19th February, 2017. However, Nugent was allowed to continue to operate its business up until March 2018 without renewing its licence. Nugent's business was open every day and advertisements were placed in the local newspapers and on property websites. Various newspaper extracts showing advertisements for the sale of properties during that period were enclosed.
15. It was said that Nugent dishonestly held itself out as having complied with all the requirements necessary to provide a property service and failed to disclose to Mr. Kelly that it did not have a valid licence in place to provide a property service.

16. It was alleged that the Authority failed to impose the requisite sanctions or to initiate appropriate proceedings against Nugent in respect of the carrying on of its unlicensed activity. No notification was published nor was the general public in the locality notified that Nugent had failed to renew its licence. It was said that the Authority failed in its duty of care to protect Mr. Kelly by allowing Nugent to continue to trade without the benefit of a licence.
17. It was also argued that Nugent requested and obtained a deposit in excess of 10% of the purchase price from Mr. Kelly and failed to disclose to him that that was not the usual deposit paid to the provider of a property service at the time of negotiating the purchase. Nugent failed to retain the deposit of €5,000 in a separate client account in accordance with the relevant legislation.
18. Finally, it was argued that had the Authority invoked the powers granted to it pursuant to the legislation against Nugent Mr. Kelly would not have suffered the loss of €5,000. He only became aware that Nugent did not have a licence and that his deposit was not protected when Nugent ceased trading and when a liquidator was appointed to it. Thus, it was argued, the failure of the Authority to take appropriate steps resulted in Mr. Kelly losing his €5,000.
19. Many of the aforesaid matters have nothing to do with the scheme of compensation established under the Act. It is focused on the dishonesty of the licensee and not on the alleged deficits of the Authority.
20. In response to Mr. Kelly's appeal the Authority made detailed legal submissions as to the scope of s.78 of the legislation. It argued that the section did not provide the Authority with any jurisdiction to make a grant from the Fund to a claimant in circumstances where the claim is made in respect of losses arising from alleged dishonesty on the part of a person or company that (a) did not hold a licence at the time the claim was made; and (b) did not hold a licence at the time the alleged dishonesty the subject of the claim occurred. In due course I will turn to these detailed legal submissions which were made by the Authority to the Appeal Board but before doing so it is necessary to say something about that Board.

### **The Appeal Board**

21. The Appeal Board is established by s.74 of the Act. It is set up to hear and determine appeals against certain decisions of the Authority.
22. Section 74(2) provides that the Appeal Board shall be independent in the performance of its functions. Detailed provisions concerning the Appeal Board are set out in the Fifth Schedule to the Act.
23. The membership of the Appeal Board consists of a Chairperson and such and so many other members as the Minister for Justice and Equality (the Minister) with the consent of the Minister for Public Expenditure and Reform considers necessary from time to time for the effective discharge of its functions.

24. The Chairperson and other members of the Appeal Board are appointed by the Government and, subject to the Fifth Schedule of the Act, hold office on such terms as the Government may determine.
25. The Chairperson is required to be a practising barrister, or a practising solicitor, of not less than seven years standing.
26. Section 3(1)(b) of the Fifth Schedule provides:-

*“A Chairperson who ceases to be such a barrister or solicitor during his or her term of office as chairperson shall thereupon cease to be chairperson and a member of the Appeal Board.”*

This particular provision is of some significance in the light of information placed before the court during the hearing of this appeal.

27. The Chairperson is, pursuant to s.3(2) of the Fifth Schedule, responsible for ensuring the effective performance by the Appeal Board of its functions. The Chairperson, if of the opinion that the conduct of a member of the Appeal Board has been such as to bring it into disrepute or has been otherwise prejudicial to the effective performance of the functions of that Board may require the member to attend for interview or otherwise investigate the matter and report to the Minister the outcome of the interview or investigation if the Chairperson thinks fit to do so.
28. The Chairperson holds office for a period of four years from the date of his or her appointment.
29. Thus, it can be seen that the Chairperson has statutory responsibility for ensuring the effective performance by the Appeal Board of its functions and also has a certain supervisory jurisdiction over the other members of the Board.
30. There are a number of curious features concerning the Appeal Board.
31. Section 74 of the Act requires it to be independent in the performance of its functions. The only piece of headed paper from the Board which is exhibited in this case is a letter dated 2nd May, 2019 enclosing the decision of the Board. That headed paper contains no printed address of the Appeal Board. The address is only to be found in a typed form below the signature of the Board’s secretary. The address is 51, St. Stephen’s Green, Dublin 2 which is the address of the Department of Justice and Equality. At the bottom of the page there is printed an email address which is shown as *“psabsecretary@justice.ie”*. So it appears that this independent Appeal Board operates from the address of the Department of Justice and the email address of its secretary is within the Department of Justice.
32. The actual decision of the Appeal Board which is impugned in this appeal consists of two sheets of plain paper recording its decision of 26th March, 2019. The decision itself is not

authenticated by a signature of the Chairperson or any member of the Board nor is it sealed.

33. The most curious feature concerning the functioning of the Appeal Board is a fact which was quite properly drawn to the court's attention at an early stage in the hearing. It is a fact which apparently only became known to the Appeal Board itself about a week before the hearing and was disclosed to the Authority just the day before the hearing.
34. The Chairperson of the Board ceased to be a practising solicitor in 2018. Upon such event occurring the legal position is clear. Under s.3(1)(b) of the Fifth Schedule to the Act he or she ceased to be Chairperson and a member of the Appeal Board. Despite that he or she continued to purport to act as Chairperson and member of the Appeal Board up to November 2019. Apparently the other members of the Appeal Board were not aware of this situation. The disqualified Chairperson participated in up to 40 appeals during the time when he or she was disqualified from acting as either Chairperson or a member of that Board. Indeed, it was the purported Chairperson who chaired the five member board that sat to decide the appeal in suit.
35. Notwithstanding this serious situation the Authority does not seek to quash the determination of the Appeal Board. Rather it argues that under the statutory procedures prescribed for the conduct of business by the Board the meeting at which the decision took place was a valid one. The argument runs that under s.6(2) of the Fifth Schedule to the Act the quorum necessary for a valid meeting of the Appeal Board is fixed at a minimum of three. The Chairperson, if present, must be the Chairperson of the relevant meeting. However, under s.6(2)(c) it is provided that so long as the Chairperson is not present or the office of the Chairperson is vacant the members of the Appeal Board who are present shall choose one of their number to act as the Chairperson of the meeting. Legally, the office of Chairperson was vacant but nonetheless the purported Chairperson presided over the hearing. Another member of the Board ought to have chaired the hearing but that did not in fact happen. However, the decision of the Board which is impugned in these proceedings was a unanimous one. Thus, I am asked to proceed and to deal with the appeal on the point of law which is before me notwithstanding these manifest defects.
36. I propose to accede to the Authority's request in this regard albeit with some misgivings. I do so because nobody has sought to quash the determination of the Appeal Board. I am informed by the Authority that the issue of law identified in this case arises in approximately 70 other cases (Mr. Kelly says 85) which at present stand adjourned pending the determination of this issue. In these circumstances I will deal with the substantive point of law which has arisen but it has to be said that there must be a considerable legal doubt over the many decisions in which the disqualified Chairperson participated.

**Section 75 of the Act**

37. This appeal is brought pursuant to the provisions of s.75 of the Act. It provides that within three months from the date on which an appeal is determined by the Appeal Board

any party to the appeal may appeal to this court on any question of law arising from the determination.

38. On such an appeal this court may (a) affirm the determination, (b) set it aside, (c) make any other determination which the Appeal Board could have made, or (d) remit the matter to the Appeal Board for further consideration.
39. No appeal is possible from a decision of this court except by leave of this court.

### **Section 78**

40. Section 78(1) of the Act states: -

*“Where the Authority is satisfied that a client of a licensee has sustained a loss as a result of dishonesty on the part of that licensee, or as a result of dishonesty on the part of any principal officer, employee or agent or former principal officer, employee or agent of that licensee, arising from the provision of property services by or on behalf of the licensee, then, subject to the provisions of this section, the authority shall make a grant to that client out of the Fund.”*

41. Subsection 2 specifies that the amount of a grant shall be such as represents, in the opinion of the Authority, the reimbursement of the amount or value of the loss sustained by the client concerned and the reasonable costs incurred by the client in seeking to recover it.

42. Subsection 3 provides as follows: -

*“The Authority shall have a discretion to make or refuse to make a grant to a client in respect of a loss in any case in which it considers that -*

- (a) The licensee concerned did not, at the time when the loss was sustained, have a licence in force in respect of the property service to which the loss relates,*
- (b) There has been dishonesty or negligence on the part of the client or of any person for whom that client is responsible which has contributed to the loss, or*
- (c) The client has contributed (including by omission) to improper conduct by the licensee which falls within para (a) or (b) of the definition of ‘improper conduct’ in section 2(1),*

*and, where the Authority decides to make a grant in any such case, it shall have a discretion to make it only to a limited extent.”*

43. Subsection 4 provides that a grant may be made notwithstanding that the licensee concerned has, after the act of dishonesty, died or ceased to be a licensee.

44. The term "licensee" is defined in the interpretation section of the Act (s.2) as meaning in relation to a licence, the holder of the licence. The Act does not contain any definition of the term "former licensee" although that term is used in certain places throughout the Act.

45. Section 2(1)(5) is of considerable importance in this regard. It provides that: -

*"References in Part 7 (including ss. 69, 70 and 71) to a licensee include a former licensee and the other provisions of this Act (including the definitions of 'investigation report', 'major sanction' and 'minor sanction' in s.2(1), s.11(2)(h), (i), and (j), Part 8 and Schedule 5) shall, with all necessary modification, be construed accordingly".*

46. It follows from s.2(1)(5) that the legislature intended that specified sections of the Act would apply to former licensees. It thus gave to the term 'licensee' in such specified sections a special meaning which includes a former licensee.

47. No such special meaning is applicable in respect of Part 9 of the Act which deals with compensation and within which s.78 is contained. It follows that any reference to a licensee in Part 9 cannot be construed as referring also to a former licensee since that special definition or meaning is expressly limited by s.2(1)(5) to those parts of the Act mentioned in that subsection. Part 9 of the Act (or any of its sections including s.78) is not so mentioned. It is in the context of this statutory position that one has to approach the decision of the Appeal Board which is impugned in these proceedings.

#### **The Appeal Boards decision**

48. As I have already mentioned, the decision is a two-page affair more than half of which is utilised in setting out the background facts and some of the relevant provisions of section 78. Prior to giving its decision the Appeal Board was in receipt of detailed written submissions from the Authority and Mr. Kelly. Its decision recites that, having considered the evidence and submissions, the Appeal Board decided to allow the appeal. It then purports to set out the reasons for its decision. In fact, there are no reasons stated by the Appeal Board. It merely stated that it was satisfied that the circumstances which were the subject of the complaint and the appeal fell within s.78 of the Act and it then cited in full only s.78(1) of the Act. Later on the same page of its decision it indicated that it was exercising its discretion pursuant to subs. 3(a) and subs. 4 of s.78 and directed the sum of €5,000 be paid to Mr. Kelly. It concluded that the Authority had the discretion pursuant to subs. 78(3)(a) to make the grant to him.

49. This approach on the part of the Appeal Board did little justice to the detailed legal submissions which it had received in advance of its decision. A mere expression of satisfaction by the Appeal Board that it should or should not do something without giving the basis for such satisfaction can hardly be regarded as a satisfactory discharge of its obligation to give reasons. That there is such a legal obligation is beyond argument. The obligation is not discharged by merely heading a paragraph with the title "reasons for decision" when such reasons cannot be gleaned from a reading of what follows. As I said



in *Deerland Construction Ltd. v. Aquaculture Licences Appeals Board* [2009] 1 IR673 where I quoted with approval from Brown L.J. in *South Bucks County Council v. Porter* [2004] 1 WLR 1953:-

*"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues, disclosing how any issue of law or fact was resolved."*

The purported reasons in the instant case fall far short of those requirements.

50. Whilst this deficit in the Appeal Boards decision would provide another ground for seeking to quash it, the Authority does not seek to do so. Rather it argues that whatever process of reasoning was used by the Appeal Board to satisfy itself as to the decision made, it simply could not be correct in law. It is to that issue that I now turn.

#### **The error of the Appeal Board**

51. The Authority submits that the Appeal Board has erred in law in finding as it did that s.78(3)(a) confers a discretion on the Authority to make a payment from the Fund in respect of a loss suffered as a result of the dishonesty of a person or entity who was, at the time of the alleged dishonesty, a former licensee. It is argued that no such discretion exists and that the Authority could not lawfully make a payment from the Fund or be directed to do so in favour of Mr. Kelly.

#### **Mr. Kelly's affidavit**

52. As already stated Mr. Kelly did not participate in this appeal but he did file an affidavit the contents of which I have considered. It has little to contribute to the arguments save that it expresses disagreement with the arguments of the Authority and is supportive of the decision in suit.

#### **Discussion**

53. Section 78(1) requires the Authority to make a payment from the Fund to a client of a licensee where it -

*"... is satisfied that a client of a licensee has sustained a loss as a result of dishonesty on the part of that licensee, or as a result of dishonesty on the part of any principal officer, employee or agent or former principal officer, employee or agent of that licensee, arising from the provision of property services ..."*

54. It is to be noted that in such circumstances the Authority is obliged to make such a payment in that the final clause of s.78(1) is that "*the authority shall make a grant to that client out of the Fund*".
55. Section 78(1) allows for claims to be made in respect of losses as a result of dishonesty "on the part of a licensee". Nothing in the wording of s.78(1) suggests that it was intended that that provision could be read as capturing dishonesty on the part of a former licensee. As I have already pointed out earlier the provisions of s.2(1)(5) of the Act which

confer a special and wider meaning on the term "licensee" so as to include a former licensee have no application to Part 9 of the Act which contains section 78.

56. It follows that the Authority cannot make a payment to Mr. Kelly or anyone in his position under section 78(1). This is so because when the act of dishonesty took place (on 6th February, 2018 or sometime thereafter), Mr. Kelly was not a client of a licensee. Neither did he sustain a loss as a result of dishonesty on the part of a licensee because Nugent was not such a licensee at the relevant time. Given that situation, I turn to the provisions of s.78(3) of the Act and a consideration of whether any of its provisions could create a basis for the making of a payment to Mr. Kelly from the Fund.
57. I have already reproduced s.78(3) earlier in this judgment.
58. I can immediately dismiss s.78(3)(b) or s.78(3)(c) as having any relevance. They deal with a situation where the Authority might refuse to make a grant or reduce its amount where the loss suffered by a claimant has been contributed to by the claimants own negligence or dishonesty. The only possible statutory provision that could justify the decision of the Appeal Board is therefore s.78(3)(a) which is the section cited by the Board in purportedly exercising its discretion.
59. The argument made by the Authority is that that section does not seek to capture a situation such as has arisen here namely a licence was once held by a licensee but was no longer held at the time of the alleged act of dishonesty.
60. The Authority's reasoning for this approach is that s.78(3)(a) refers only to a licensee and not a former licensee. Thus, it is argued, that the subsection is directed at a situation where a loss has been suffered as a result of dishonesty on the part of a licensee but in circumstances where the licensee in question was not licensed to provide the property service to which the loss relates. Different forms of licence are issued by the Authority. So the Authority has discretion to make or refuse a grant from the Fund where, for example, the dishonesty to which the loss relates concerns the sale of land and the licensee in question was only licensed to provide property management services at the relevant time. This approach is strongly supported by the use of the words "in respect of the property service to which the licence relates".
61. The claim on the Fund brought by Mr. Kelly deals with a very different situation to that allegedly captured by section 78(3)(a). Mr. Kelly suffered his loss as a result of the dishonesty of Nugent which was once a licensee but had ceased to be so at the time of the act of dishonesty. Thus, it is argued, there was no statutory basis upon which the Appeal Board could direct the Authority to make a payment from the Fund because Mr. Kelly did not qualify for an obligatory payment under s.78(1) and s.78(3) did not allow the authority to make a discretionary payment having regard to Nugent's status at the time of the act of dishonesty.
62. I should also mention that the Appeal Board also referred to subs.4 of s.78 as a possible basis for justifying the direction which it gave. It is difficult to see how that could

constitute a basis for the decision in suit since it envisages the party guilty of dishonesty being a licensee at the time of the act of dishonesty and then either dying or ceasing to be a licensee thereafter. That has no relevance to the facts of this case.

63. During the course of argument reference was made to the well-known principles of statutory interpretation. The primary rule is that, in construing a statutory text, the words should, if possible be given their literal meaning. Section 5 of the Interpretation Act 2005 only becomes applicable where a provision is obscure or ambiguous or, on a literal interpretation, would be absurd or would fail to reflect the plain intention of the legislature. In such event a provision is to be given a construction that reflects the plain intention of the legislature where that intention can be ascertained from the Act as a whole.
64. In my view a literal interpretation of s.78 is not obscure or ambiguous nor does it produce an absurd result nor does it fail to reflect the intention of the legislature.

### **Decision**

65. Section 78(1) refers only to licensees. It does not refer to former licensees. Section 2(1)(5) has no application by its terms and therefore does not allow for a reference to a "licensee" in s.78 to be construed as including a former licensee. Had the legislature intended clients of former licensees to fall within the ambit of s.78 and thus be compensatable it could have done so. It did not. I do not regard the fact that s.78 permits payments to be made to clients of licensees but not to clients of former licensees to be an absurd or ambiguous or obscure result. Thus I am satisfied that there is no basis for departing from the literal interpretation of the section.
66. I am also satisfied that the Appeal Board in coming to the conclusion which it did must not have considered how the principles of statutory interpretation ought to be applied to s.78 in general and in particular to s.78(3)(a) and s.78(4) both of which were relied upon by it in coming to its decision.
67. The Appeal Board considered that s.78(3)(a) conferred a discretion to make a grant to Mr. Kelly. But it does not appear to have addressed its mind at all to the meaning to be given to s.78(3)(a) and in particular the words "in respect of the property service to which the loss relates". The Appeal Board considered that s.78(3)(a) conferred a discretion to award a grant apparently on the basis that "licensee" when used in s.78(3)(a) encompassed a former licensee and the words "in respect of the property service to which the loss relates" were unnecessary surplusage. There was no basis upon which it could have concluded that these words constituted surplusage. Such an approach departed from the normal principle that every word should be given a meaning. These words support the interpretation contended for by the Authority which I find to be correct.
68. Section 78(4) relied upon by the Appeal Board could have no application. No effort was made by the Appeal Board to analyse or interpret that provision. It appeared to conclude that that subsection conferred a discrete discretion which was capable of providing a basis

for its decision. Its conclusion in my view is wrong. Indeed, if s.78(3) bore the meaning which the Appeal Board apparently considered it to have then s.78(4) would be entirely unnecessary. Such an approach is contrary to a correct application of the canons of construction of legislation. In fact, the meaning of s.78(4) is clear. It is to the effect that nothing prevents a grant from being made merely because a licensee dies or ceases to be a licensee after the act of dishonesty has occurred. This is in the nature of a particular exception designed to avoid hardship for claimants but does not depart from the underlying approach of the legislation namely that compensation can only be paid out of the Fund where the licensee was in fact the holder of a licence at the time when the act of dishonesty was committed. Thus, s.78(4) provides no support for the Appeal Board's interpretation.

69. I am thus satisfied that the Appeal Board was wrong in law in the decision recorded in the two-page document dated 26th March, 2019. It misdirected itself in the interpretation which it gave to s.78(3)(a) by not applying the appropriate canons of construction. The term licensee as used in s.78 does not have any expanded meaning to include former licensee. The Appeal Board ignored the words "have a licence in force in respect of the property service to which the loss relates". Those words support the argument of the Authority to the effect that the situation which is sought to be addressed by s.78(3)(a) is one where an act of dishonesty takes place on the part of a licensee whose licence did not at the relevant time extend to the particular property service to which the loss relates.
70. The Appeal Board was also wrong in the conclusion which it reached to the effect that s.78(4) could have any relevance to the facts of this case. It could not have construed that provision correctly and concluded as it did.
71. For these reasons I am satisfied that the Authority succeeds on this appeal.

**Determination**

72. I hold that s.78 of the Act did not confer a discretion on the Authority to make a payment from the Fund in respect of the loss suffered by Mr. Kelly since his loss was sustained as a result of alleged dishonesty by Nugent which was not at the time of the alleged dishonesty a licensee. Nugent was a former licensee and thus the compensation provisions in part 9 of the Act did not apply.
73. In accordance with s.75(2)(b) of the Act I set aside the decision of the Appeal Board.