

NOTICE OF DETERMINATION

A notice made under section 318 of the *Legal Profession Uniform Law (Victoria)* ("Uniform Law").

Complainant: [REDACTED]

Respondent / Law Practice: [REDACTED]

[REDACTED]

Case reference: [REDACTED]

Orders

Pursuant to section 292 of the Uniform Law, I have decided to make a binding determination about costs as follows –

1. The Complainant must pay the Respondent Lawyer \$1,315.00 for legal fees and disbursements pursuant to the Respondent Lawyer's 12 February 2016 bill.

Statement of Reasons

Background

1. The Complainant lodged a complaint with my office disputing the following bills, believing she had been charged excessively –
 - Invoice for \$2,500.00, received on 25 August 2015;
 - Invoice for \$764.93, received on 7 October 2015;
 - Invoice for \$8,556.00, received on 12 February 2016.
2. The Complainant said that she found the Respondent Lawyer unprofessional from the start of the retainer. She said that she did things she would never have expected to do, such as –
 - Write her own legal letters; and
 - Correct spelling and grammar in legal letters from the Respondent Lawyer.

The Complainant provided a number of letters she claimed to have written herself and letters that she said contained spelling and grammatical mistakes from the Respondent Lawyer.

The Complainant, therefore, does not believe she should have to pay any remaining amount owing to the Respondent Lawyer.

3. In her complaint, the Complainant said she wanted a form of compensation from the Respondent Lawyer to enable her to appeal her case relating to an unsuccessful application for an Australian working VISA.

Issues in Dispute

The issues in dispute are whether –

- (a) the Respondent Lawyer's legal fees were excessive; and
- (b) the Respondent Lawyer's fees are not fair and reasonable given the service-related concerns raised by the Complainant.

Complainant's Case

The Complainant's case is set out above under the heading 'Background'.

Respondent Lawyer's Case

The Respondent Lawyer said the following in relation to the complaint –

(a) Excessive fees

Her Disclosure Statement & Costs Agreement document, which was signed by the Complainant on 20 August 2015, was compliant. A further letter was also sent to the Complainant on 26 October 2015.

(b) Service-related issues

The Complainant writing letters herself

The Respondent Lawyer provided extensive material evidencing the work she completed on the file. She said that in relation to documents such as statutory declarations, she asked respective parties to draft these at first instance to articulate the writer's intention. The Respondent Lawyer said she finalised these documents after they were drafted.

Spelling and grammatical issues

The Respondent Lawyer acknowledged there were some situations where wording could have been clearer, but said that she believed her work was of an acceptable standard.

Relevant Law

N/A

Findings on Issues in Dispute

(a) Excessive fees

1. The Complainant's concern about excessive charging appears to have arisen from confusion over legal costs and disbursements, and amounts held on trust.

2. The Complainant signed a Disclosure Statement & Costs Agreement document on 20 August 2015. In the Disclosure Statement & Costs Agreement, the following costs were disclosed to the Complainant –
 - Legal Costs = \$5,500.00 + GST
 - Disbursement - DIAC sponsorship application fee = \$420.00 (+ 1.99% credit card surcharge)
 - Disbursement - DIAC nomination application fee = \$330.00 (+ 1.99% credit card surcharge)
 - Disbursement - DIAC application fee = \$1,060.00 (+ 1.99% credit card surcharge)
 - Disbursement - Photocopying and office sundries = \$110.00 (+ 1.99% credit card surcharge)
3. The Respondent Lawyer provided a letter sent to the Complainant on 26 October 2015 saying that the Complainant would be incurring further legal fees of \$500.00 + GST. This charge has not been disputed by the Complainant.
4. The invoice disputed by the Complainant for \$2,500.00 on 25 August 2015 was not a charge, but rather an amount the Respondent Lawyer requested to be held on trust. This amount was deducted from the final amount owing.
5. The Complainant received a final bill on 12 February 2016 of \$8,556.00, which included disbursements (DIAC application forms). \$1,315.00 remains outstanding for the Respondent Lawyer's legal fees and disbursements.
6. What has been charged by the Respondent Lawyer is almost identical to what was quoted. [REDACTED] actual legal fees were \$6,000.00 + GST, taking into consideration the Disclosure Statement & Costs Agreement and her 26 October 2015 letter. Given that the Disclosure Statement & Costs Agreement is compliant, and the work was done the fees charged are fair and reasonable.

(b) Service-related issues

The Complainant writing letters herself

7. I accept the Respondent Lawyer's explanation here.

Spelling and grammatical issues

8. Based on my review of the examples highlighted to me by the Complainant, I do not agree with her concern with many of the examples. I accept that wording could have been clearer in some situations. The work was of an acceptable and competent standard.
9. I am not in a position to say that the Respondent Lawyer's legal fees were not fair and reasonable simply because of some situations where documents could have been worded differently.

10. There is no basis to the Complainant's request for a form of compensation from the Respondent Lawyer to enable her to appeal her case relating to an unsuccessful application for an Australian working VISA. No demonstrated loss has been suffered by the Complainant. There is no indication that the Respondent Lawyer caused the Complainant's application for an Australian working VISA to fail.

Determinations & Reasons

Having considered all of the evidence and relevant law, and having made the above findings on the issues in dispute, I determine that it is fair and reasonable in all the circumstances to make the orders detailed above.



Michael McGarvie
Victorian Legal Services Commissioner
Date: 2 June 2016