

NOTICE OF DETERMINATION

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

Complainant: [REDACTED]
Respondent Lawyer / Law Practice: [REDACTED] / [REDACTED]
Case reference: [REDACTED]

Orders

1) Pursuant to section 290(2)(d)(i) of the Uniform Law, I make the following order –

That the Respondent Lawyer undertakes a professional development course focused on practice management to be approved by me **within 6 months** of this date.

Statement of Reasons

Background

1. On 8 October 2015, [REDACTED] ("the Complainant") approached [REDACTED] (Law Clerk) of [REDACTED] ("Law Practice") to manage the conveyancing of the Complainant's property located at [REDACTED], Pascoe Vale, Victoria ("the property"). [REDACTED] ("the Respondent Lawyer") supervised [REDACTED].
2. On 6 November 2015, the Complainant was provided with a Standard Costs Disclosure.
3. The Complainant was also provided with a questionnaire dated 30 October 2015 which he was asked to complete. The Complainant's answers to the questionnaire would be used to prepare the section 32 statement.
4. On 6 November 2015, the Complainant returned the completed questionnaire. In response to Question 8 headed "*Please indicate the following goods which are to be sold with the property*":
 - "*dishwasher*" was crossed out, with a cross also placed next to the word; and
 - Near the sentences "*If there are other additional goods, please indicate*" and "*If any goods are to be excluded from the sale, please indicate*", the Complainant wrote N/A.

These matters are collectively referred to "the Question 8 response".

5. Concurrently, the Complainant gave instructions to have the deposit released as soon as practicable after the sale of the property.
6. On 27 November 2015, the property was sold at auction.
7. After the property was sold, the Complainant was provided with the Contract of Sale. At this time, the Complainant says he noticed the dishwasher was included in the sale.

8. On 4 December 2015, the Complainant contacted the Law Practice querying why the dishwasher was included in the sale. The Complainant was told over the telephone that the Question 8 response, particularly the location of the N/A, was understood to mean that the dishwasher was not to be excluded from the sale.
9. On 18 February 2016, the deposit was released to the Complainant.
10. On 19 February 2016, the Complainant wrote to the Law Practice querying why:
 - The dishwasher was included in the sale of the property; and
 - Why the deposit was not released until February 2016.
11. By letter dated 19 February 2016, the Respondent Lawyer wrote to the Complainant stating:
 - He understood the Question 8 response to mean that the dishwasher was not to be excluded from the sale, specifically, he believed that the Complainant wrote N/A next to the sentence *“if any goods are to be excluded from the sale, please indicate”*; and
 - The release of the deposit could not have occurred any sooner than it did because he was waiting for the purchaser to return the signed section 27 statement.
12. On 23 February 2016, settlement of the property took place.
13. On or around 24 February 2016, the Complainant was provided with invoice number B89785 dated 24 February 2016 in the amount of \$1,607.06 (“the bill”). The bill remains unpaid.
14. On 6 June 2016, my office received the Complainant’s complaint about the Respondent Lawyer.
15. The Complainant and Respondent Lawyer attempted to resolve the dispute informally. Both made offers to one another. However, these offers did not result in a satisfactory resolution of the matter for each other.

ISSUES IN DISPUTE

The issues that remain in dispute are whether –

(a) Release of the deposit

Whether the Law Practice acted on instructions in a timely manner in relation to the release of the deposit;

(b) The dishwasher

Whether the Law Practice followed instructions regarding the exclusion of a dishwasher in the contract of sale; and

(c) The bill

Whether the Law Practice's bill is fair and reasonable.

Complainant's Case

The Complainant raised the following concerns in his complaint –

a. Release of the deposit

The Law Practice did not act on instructions in a timely manner in relation to the release of the deposit, resulting in a loss of approximately \$500.00 in interest;

b. The dishwasher

The Law Practice did not follow instructions (both written and verbal) regarding the exclusion of a \$1,200.00 dishwasher in the contract of sale, subsequently causing the loss of that dishwasher; and

c. The bill

The Complainant disputes the bill and is seeking compensation of \$1,200.00 for the dishwasher and \$500.00 for the loss of interest. No specific issues with the bill have been raised.

The Complainant offered to accept a reduction of the bill by \$1,200.00. This offer was rejected by the Respondent Lawyer.

Respondent Lawyer's case

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

a. Release of the deposit

He rejected any suggestion that the Law Practice did not act expeditiously in obtaining an early release of the deposit monies and provided the following timeline:

- 27 November 2015 – contract of sale was executed.
- 2 December 2015 – discharge authority was sent to the Complainant for signing.
- 21 December 2015 – the Complainant returned the signed discharge authority. This was then forwarded to the bank on that same day.
- 12 January 2016 – the bank provided the necessary information to prepare the section 27 notice which was then sent to the Complainant for signing on that same day.
- 13 January 2016 – the Complainant returned the signed section 27 notice. It was served on the purchaser's lawyer that same day.

- It was approximately 3 weeks before the purchaser's solicitor responded to the section 27 notice and enabled the release of the deposit.

b. The dishwasher

He understood the Question 8 response to mean that there was no dishwasher. The Respondent Lawyer denies that he failed to follow the Complainant's instructions in this regard.

c. The bill

No comment was made in relation to the bill.

The Respondent Lawyer offered to reduce the bill firstly by \$200.00, then \$300.00. Both offers were rejected by the Complainant.

Findings on Issues in Dispute

(a) Release of the deposit

The Complainant has accepted the Respondent Lawyer's response in relation to the deposit. I therefore make no findings in relation to this aspect.

(b) The dishwasher

Section 306(1) of the Uniform Law enables me to make a compensation order against the Respondent Lawyer or the Law Practice for the purpose of determining the complainant.

Section 309 sets out the prerequisites for making a compensation order – unless the Complainant and Respondent Lawyer agree, a compensation order is not to be made unless I am satisfied that:

- The Complainant suffered loss because of the conduct concerned (section 309(1)(a)); and
- It is in the interests of justice that the order be made (section 309(1)(b)).

The Complainant sought compensation in relation to the loss of the dishwasher. The Complainant says that the Respondent Lawyer's failure to follow instructions led to the loss. For the reasons expressed below, in my view, compensation is not warranted.

There is no evidence to support the Complainant's allegation that she provided verbal instructions to the Law Practice that the dishwasher was not to be included in the sale of the property.

In my view, the Respondent Lawyer ought to have sought further instructions from the Complainant in relation to the dishwasher given the written instructions in relation to the dishwasher appear to have been ambiguous. The failure to do so caused the dishwasher to be sold together with the Complainant's house. However, I cannot establish that this resulted in any financial loss to the Complainant.

Whilst a new dishwasher may cost the Complainant \$1,200.00, in my view, this does not truly represent the value of the Complainant's loss; given that it does not take into account that:

- The dishwasher was not new;
- The Complainant may have already been compensated in other ways (for instance, an increased sale price of the property); and
- The Complainant failed to mitigate his loss by checking the contract of sale and section 32 statement prior to the sale of the property, only raising it after the property had been sold.

Given the above, I am not satisfied that the Complainant suffered a loss as a consequence of the Law Practice's conduct.

Given that I am not satisfied a loss was suffered because of the conduct concerned, it is not necessary for me to consider whether it is in the interest of justice that the order be made.

(c) The bill

The Complainant has not raised any issues with the bill. Rather, the Complainant has sought to offset the amount of the bill with the cost of a new dishwasher.

In the circumstances, I find the fees were fair and reasonable and were in accordance with the costs disclosure provided to the Complainant.

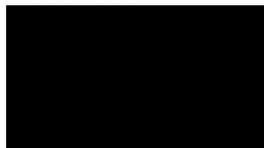
Determinations & Reasons

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.

Further, I am satisfied that the prerequisites for making a compensation order (pursuant to section 309 of the Uniform Law) have not been met.

Non-compliance

Please be aware that a failure to comply with a determination in a consumer matter may amount to conduct capable of constituting unsatisfactory professional conduct or professional misconduct.



Russell Daily
Acting Victorian Legal Services Commissioner
6 January 2017