

NOTICE OF DETERMINATION (REVISED)

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

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

Orders

This Determination Instrument substitutes the earlier Instrument signed by me in this matter and dated 1 June 2016, which is withdrawn for error.

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

Section 292(1)

The Complainant is to pay \$1,103.90 to the Law Practice as legal costs.

Statement of Reasons

Background

1. The Complainant retained the Respondent Lawyer to undertake some conveyancing work in relation to his purchase of a property in Carnegie, Victoria. The Complainant resided in Western Australia.
2. On 15 May 2015, the Complainant's buyer's agent, [REDACTED] ("[REDACTED]"), emailed a contract to the Respondent Lawyer for him to check on behalf of the Complainant.
3. On 15 May 2015, the Respondent Lawyer emailed [REDACTED] (cc the Complainant) providing advice on the contract, and opened a file in the Complainant's name (and closed it on the same day). The Complainant signed the contract as sole purchaser in his name on the same day.
4. On 9 June 2015, the vendor signed the contract. [REDACTED] emailed an executed contract to the Complainant and Respondent Lawyer.
5. On 10 June 2015, the Complainant instructed the Respondent Lawyer (by email) to add his wife to the transfer of land as co-purchaser. The Respondent Lawyer advised that as the Complainant did not sign the contract "and/or nominee", unless the vendor consented, he would need to purchase the property in his name alone and transfer half to his wife after settlement, at an added expense.
6. On 11 June 2015, the Respondent Lawyer sent a letter to the Complainant which included a Disclosure Statement and Costs Agreement ("Agreement"), and invoice(s).

7. On 11 June 2015, the Respondent Lawyer sent a letter to the Complainant in relation to the nomination of his wife as co-purchaser.
8. On 16 June 2015, the Complainant sent emails to the Respondent Lawyer complaining about the amounts charged and the service he had been provided.
9. On 18 June 2015, the Respondent Lawyer's services were terminated. Settlement of the sale had not yet occurred by this stage.
10. On 3 July 2015, the Complainant made a complaint about the Respondent Lawyer to my office. The Complainant's complaint alleged the following:
 - (a) The three (3) invoices rendered by the Respondent Lawyer (the first two dated 11 June 2015 and the third dated 26 June 2015) totalled \$1,464.90, whereas the Complainant states that he was initially quoted \$800.00.
 - (b) The Respondent Lawyer completed work without instructions to proceed and before the Complainant had received the Agreement.
 - (c) The Respondent Lawyer gave incorrect advice relating to the Complainant's desire to add his wife to the transaction.
11. The Complainant (in his complaint form) claims that he attempted to resolve the matter prior to making his complaint by email, but he received no response. The Complainant subsequently advised that he was prepared to pay 50% of the invoiced amounts, being \$732.45.
12. Informal resolution was attempted by ██████████ of my office. However, the Respondent Lawyer preferred his file to be costed.

Issue in Dispute

The issues outlined in paragraph 10 above remain in dispute.

Complainant's Case

The Complainant said the following in relation to his complaint –

1. His buyer's agent, ██████, originally recommended the Law Practice to do the conveyancing work in relation to the purchase.
2. ██████ originally advised they thought the cost would be \$1,200.00-\$1,500.00.
3. On 23 May 2015, he rang the Respondent Lawyer to ask some questions regarding the price. The Respondent Lawyer advised that "it would cost around \$800.00 plus additional cost for adding his wife to the title". The Respondent Lawyer stated that it may only be possible to add his wife to the title after settlement.
4. On 11 June 2015, he spoke with ██████ from the Law Practice. ██████ advised it was not possible to add his wife's name to the title after settlement.

5. He obtained advice elsewhere (from outside the Law Practice) that it was possible to add his wife's name to the title *before* settlement, if his wife completed a sub declarations act form.
6. On 16 June 2015, he again spoke with ██████ who conceded it was possible to add his wife's name to the title before settlement, if his wife completed a sub declarations act form. No apology was given for the "error".
7. While speaking with ██████, he also queried the likely cost of the conveyance. ██████ did not respond to this query over the phone.
8. When correspondence arrived from the Law Practice (including the Transfer of Land), the cost of the settlement was advised to be closer to \$3,000.00.
9. After some discussion on 18 June 2015, he emailed the Law Practice to advise that he would not be proceeding with engaging them. He subsequently retained ██████ who quoted \$1,200.00 for the transaction and ultimately charged him \$900.00.

Respondent Lawyer's Case

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

1. The Complainant was referred by a property developer.
2. The Complainant wanted work done urgently prior to the end of the financial year, for taxation purposes.
3. When the Complainant received the written estimate, he said it was too much, but that he still retained him.

When asked by my office to provide copies of the bills rendered, the Respondent Lawyer replied that he would rather just send in a copy of the file.

Relevant Law

Sections 200, 172, 292 of the Uniform Law.

Part 3.4 of the *Legal Profession Act 2004* ("LPA").

Findings on Issues in Dispute

Issue (a) – Invoices rendered higher than estimate

The Agreement, drafted under the LPA, does not provide an estimate, although the covering letter dated 11 June 2015 provides a breakdown of services offered and a pricing, e.g. "Domestic property acquisition settling on original settlement date \$990; caveat \$517.30" etc.

The Agreement also notes that “experience in matters of this nature suggests legal costs may exceed \$1000” and “it is not reasonably practicable at this early stage to give an estimate of the total legal costs”. This is not compliant with section 3.4.9(c) of the LPA, which requires, in the absence of an estimate, “(i) a range of estimates ... and (ii) an explanation of the major variables that will affect the calculation of those costs.” The Agreement does not contain either of those requirements.

I did not find any evidence in the file in relation to the Complainant initially being verbally quoted \$800.00, as he has alleged. I do, however, find that the Respondent Lawyer did not comply with the Costs Disclosure requirements set out in 3.4.9(c) of the LPA.

Issue (b) – Work done without instructions and prior to receipt of Costs Agreement

The Agreement provides for various hourly rates depending on the position of the person. It also lists a number of individual items for which it charges (e.g. business name searches, delivery attendances, photocopying etc.). However, the Agreement also provides a separate rate for “letters and emails” and “other documents”. Those charges do not appear to relate to the position or level of experience of the author, i.e.:

- Letters and emails: drafting and preparation from \$51; examining and reading \$26 for each 100 words or figures.
- Other documents: drafting and preparation \$51 for each 100 words or figures; examining and reading \$26 for each 100 words or figures.

Accordingly, until the Complainant received the first invoice, the wording of the Agreement would not necessarily have made it clear to the Complainant how he was being charged: - an hourly rate by the Respondent Lawyer and/or a different rate when the attendance involved the examination/reading or drafting/preparation of letters, emails and other documents. In this case, however, it appears that at least one and possibly all 3 invoices were sent to the Complainant under the same covering letter as the Agreement. It is clear from the first invoice that the reading and drafting of letters/emails was being charged at the “per 100 word” rate and the phone attendance on an hourly rate.

I did not find any evidence that the Respondent Lawyer had acted without instructions.

Issue (c) – Incorrect legal advice given

The day after the Complainant signed the contract as purchaser, he emailed the Respondent Lawyer to advise that he wanted to add his wife to the purchase. He was advised that as he did not sign the contract “and/or nominee”, unless the vendor consented, he would need to purchase the property in his name alone and transfer half to his wife after settlement, at added expense. The Complainant then obtained advice elsewhere that all that was required was for his wife to complete a sub declarations act form. This step was later confirmed by another employee at the Law Practice to be correct. It therefore does appear that insufficient legal advice was given to the Complainant in relation to this aspect of the transaction, however no loss was suffered by him as the firm corrected the advice. Further it was not ultimately done by the Respondent, it was done by another service provider, [REDACTED].

Determination & 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 order detailed above.

Further, in making a determination as to costs, I have determined that the amount is fair and reasonable in all the circumstances having regard to section 200 of the Uniform Law, and, in particular, sections 200(2)(a) and (b). I have also considered the principles in section 172 and, in particular, sections 172(2)(d)(i)(ii) and 172(2)(f).

The amount of \$1,103.90 has been assessed by an independent costs reviewer as being the fair and reasonable value of the work undertaken, taking into account the above factors.

Michael McGarvie
Victorian Legal Services Commissioner
Date: 8 June 2016