

NOTICE OF DETERMINATION

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

The Respondent Lawyer undertakes a professional development course with a focus on practice management, specifically appropriate billing and compliance with costs disclosure obligations, to be approved by me **within 6 months** of this date.

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

Under section 308(3) of the Uniform Law, the Law Practice must **repay \$1,105.10 to the Complainant within 45 days.**

I have made this order in relation to legal costs charged by the Law Practice to the Complainant regarding the following bill –

- Invoice Number 210737, dated 30 November 2015, for an amount of \$6,059.42.

I consider the amount of legal costs that are fair and reasonable in relation to this bill, pursuant to section 292 of the Uniform Law, to be **\$4,954.32** (GST inclusive). The Complainant has already paid this bill in full.

Statement of Reasons

Background

1. On or about 2 November 2015, the Complainant instructed the Respondent Lawyer to act on his behalf in relation to the following –
 - Family law matters;
 - Potential criminal charges; and
 - A remote application for a Family Violence Safety Notice.
2. In an attachment to an email dated 12 November 2015, the Respondent Lawyer sent the Complainant a Disclosure Statement and Costs Agreement.
3. On 17 November 2015, the Complainant paid \$2,500.00 to the Law Practice's trust account via an electronic funds transfer ("EFT").

4. On or about 18 November 2015, the Complainant signed and returned the Disclosure Statement and Costs Agreement to the Law Practice.
5. On 30 November 2015, the Respondent Lawyer appeared on the Complainant's behalf at a Mention Hearing at the Neighbourhood Justice Centre in Collingwood. An Interim Parenting Plan was negotiated on this date.
6. On 30 November 2015, Invoice Number 210737 was rendered by the Law Practice to the Complainant in the amount of \$6,059.42.
7. On 18 December 2015, an amended bill was emailed to the Complainant in the amount of \$3,559.42. This amended bill recognised the previous payment of \$2,500.00 made by the Complainant to the Law Practice.
8. On 7 January 2016, the Complainant sent an email to the Respondent Lawyer requesting a "breakdown of the cost of billing".
9. On 8 January 2016, the Complainant paid \$3,559.40 to the Law Practice's office account via EFT.
10. On 5 February 2016, my office received a complaint from the Complainant.

ISSUES IN DISPUTE

The issues that remain in dispute are whether –

- (a) The Respondent Lawyer's fees are fair and reasonable;
- (b) The Respondent Lawyer failed to provide an itemised bill; and
- (c) The Respondent Lawyer's lump sum bill dated 30 November 2015 accounted for the \$2,500.00 already paid by the Complainant to the Law Practice.

Complainant's Case

The Complainant said the following in his complaint –

a. Legal costs

The Respondent Lawyer's fees were excessive.

b. Failure to provide an itemised bill

The Respondent Lawyer failed to provide him with an itemised bill when requested.

c. Failure to account for \$2,500.00 already paid

The Law Practice's lump sum bill dated 30 November 2015 (Invoice Number 210737) did not account for the \$2,500.00 already paid by the Complainant to the Law Practice.

On 9 March 2016, the Complainant offered to resolve the matter by offering to accept a refund of half the money paid to the Law Practice (i.e. \$3,029.71). This offer was rejected by the Law Practice.

On 20 May 2016, the Complainant made a further offer to resolve the matter, to accept a refund of \$2,000.00 from the Law Practice. This offer was also rejected by the Law Practice.

Respondent Lawyer's Case

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

a. Legal costs

The bill which is the subject of the dispute is fair and reasonable for the amount of work that was undertaken to protect the Complainant's interests in a relatively short period of time.

b. Failure to provide an itemised bill

The request was not made within time.

c. Failure to account for \$2,500.00 already paid

The Law Practice reissued its bill to the Complainant on 18 December 2016, taking into account the \$2,500.00 already paid by the Complainant. The sum payable was accordingly amended.

On 26 August 2016, the Respondent Lawyer offered to refund \$717.49 to the Complainant. This offer was rejected by the Complainant.

Findings on Issues in Dispute

a. Fair and reasonable legal costs

A costs review has been undertaken of the Respondent Lawyer's file, which concluded that \$4,954.32 (including GST and disbursements) represents fair and reasonable legal costs for the Respondent Lawyer's bill. This amounts to a reduction of \$1,105.10 from the Respondent Lawyer's bill. I accept the findings of the costs review.

The Respondent Lawyer's file was assessed in accordance with the County Court civil scale up until the date that the Costs Disclosure Statement was provided to the Complainant, after which it was assessed in accordance with the Law Practice's Costs Agreement.

i. Costs Disclosure

The Law Practice did not comply with the required disclosure obligations under section 174(1)(a) of the Uniform Law. It did not provide the Complainant with a Costs Disclosure Statement "as soon as practicable"; it was provided 10 days after initial instructions were provided. Furthermore, Section 3 of the Respondent Law Practice's Costs Agreement states that "it is not reasonably practicable to estimate the total

legal costs". This is both inconsistent with the Law Practice's Costs Disclosure Statement and in breach of the Uniform Law.

b. Failure to provide an itemised bill

The Complainant's request for an itemised bill was made outside of the 30 day time limit prescribed by section 187(2) of the Uniform Law. As such, the Law Practice was not obliged to provide the Complainant with an itemised bill.

At my office's request, an itemised bill has since been provided to the Complainant by the Respondent Lawyer.

c. Failure to account for \$2,500.00 already paid

The original bill rendered on 30 November 2015 did not take into account the \$2,500.00 paid by the Complainant on 17 November 2015. However, the Law Practice subsequently issued the Complainant with an amended invoice on 18 December 2015, which acknowledged this payment and recalculated the amount due.

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 orders 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. I have also considered the principles in section 172.

Further, I am satisfied that the prerequisites for making a compensation order (pursuant to section 309 of the Uniform Law) have 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.



Michael McGarvie
Victorian Legal Services Commissioner
19 December 2016