

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 –

That the Respondent Lawyer undertakes a professional development course with 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 sections 290(2)(e) of the Uniform Law, I make the following orders –

(a) Under section 308(3) of the Uniform Law, the Respondent Lawyer must **repay \$400.00 to the Complainant within 45 days.**

I have made this order in relation to legal costs charged by the Respondent Lawyer to the Complainant regarding the bill dated 24 November 2015, for an amount of \$3,960.00. 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 **\$1,100.00** (GST inclusive). The Complainant has already paid a sum of \$1,500.00 to the Respondent Lawyer and a further \$2,460.00 was sought by the Respondent Lawyer.

(b) That **within 45 days**, the Respondent Lawyer is to provide to the Complainant certain documents to which he is entitled from his file, relating to the Complainant's legal matter which is the subject of the complaint. This order is made under section 308(4) of the Uniform Law.

Statement of Reasons

Background

1. On or around 22 October 2015, the Complainant approached the Respondent Lawyer in relation to a request to draft a letter of demand for an outstanding debt owed to the Complainant's company.
2. On 29 October 2015, costs disclosure was provided to the Complainant under the Uniform Law.
3. On 18 November 2015, the Respondent Lawyer emailed the Complainant, advising that they were unable to send the letter of demand to the Complainant's former business associate, due to the decision in the Complainant's previous related court case.
4. On 24 November 2015, the Respondent Lawyer issued a bill to the Complainant for \$3,960.00 ("the bill").

5. On 22 December 2015, my office received the Complainant's complaint about the Respondent Lawyer.
6. The Complainant and Respondent Lawyer attempted to resolve the dispute informally however this did not result in a satisfactory resolution of the matter.
7. The Respondent Lawyer's bill remains outstanding.

Issue in dispute

The issues that remain in dispute are whether –

- the Respondent Lawyer's bill is fair and reasonable; and
- the Respondent Lawyer abided by the terms of the retainer.

Complainant's case

The Complainant alleged the following about the Respondent Lawyer in his complaint –

- a. he only engaged the Respondent Lawyer to write a letter of demand/compromise to recover an outstanding debt owed to him;
- b. he was told by the Respondent Lawyer that the cost of drafting this letter and any subsequent communication would be \$1,000.00 - \$1,500.00;
- c. on 17 November 2015, he paid a \$1,500.00 deposit to the Respondent Lawyer to write and send the letter of demand;
- d. on 18 November 2015, the Respondent Lawyer advised that he would not send the letter of demand following an assessment he conducted of a previous related court case, which the Respondent Lawyer claims he was previously unaware of. He says that the Respondent Lawyer was aware of this, as he provided this material to the Respondent Lawyer on 22 October 2015;
- e. at no time did he request the Respondent Lawyer to carry out an assessment of his previous court case;
- f. he should not be liable for any costs over the amount estimated to him; and
- g. he should be refunded his deposit of \$1,500.00.

To resolve the dispute, the Complainant offered to pay \$500.00 in costs and have \$1,000.00 refunded to him. This offer was rejected by the Respondent Lawyer.

Respondent Lawyer's case

The Respondent Lawyer –

- a. agrees that the Complainant instructed him to prepare a letter of demand at a cost of \$1,500.00;

- b. disagrees he was aware of the findings in the Complainant's previous court case. If he had been made aware of this, the Complainant would not have incurred additional legal costs;
- c. says he was instructed to do all things necessary to recover monies owed; and
- d. claims that the Complainant accepted the terms and conditions of the retainer by making payment.

In response to the Complainant's request to have the costs reduced to \$500.00, the Respondent Lawyer offered to reduce his legal costs to \$3,500.00. The Complainant rejected this offer.

Findings on Issues in Dispute

1. Fair and reasonable amount of costs

A costs review has been undertaken of the Respondent Lawyer's file, which concluded that \$1,100.00 (including GST) represents fair and reasonable legal costs for the Respondent Lawyer's bill. I accept the findings of the costs review. The Respondent Lawyer's file was assessed in accordance with the Practitioner Remuneration Order relevant at the time the bill was issued.

a. *The Respondent Lawyer did not comply with the required disclosure documents*

The Law Practice did not comply with the required disclosure obligations under section 174(1) of the Uniform Law. It did not provide the Complainant with an estimate of the total legal costs in the matter when or as soon as practicable after his instructions were initially given or after any significant changes that become apparent during the retainer. An estimate of costs should have been provided, based on the limited instructions provided by the Complainant at the time. The Law Practice should have provided an updated or new agreement if it became aware that more work would be required.

b. *The legal costs are unreasonable*

Where there is a failure to comply with disclosure obligations under Part 4.3 of the Uniform Law, the Costs Agreement of the Law Practice is void (section 178(1)). Taking into consideration this position, the legal costs have been assessed on a fair and reasonable basis in accordance with section 292(5) of the Uniform Law.

2. The terms of the retainer

The Respondent Lawyer undertook work which, while to the benefit of the client, was not agreed to under the retainer.

On becoming aware of information that indicated that the Complainant may not have been entitled to seek recovery on the debt owed, the Respondent Lawyer conducted an assessment of the previous related court case. He advised the Complainant the outcome of the case review and that no proper basis existed for the Complainant's claim.

The Complainant says at no time did he request an assessment of his previous court case or that such an assessment would be required for the production of his requested letter.

Any ambiguities in relation to the terms of a retainer, in my view, must be construed in favour of 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, 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 the following matters. I have also considered the principles in section 172.

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
25 September 2016