

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

Under section 308(3) of the Uniform Law, the Respondent Lawyer must **repay \$623.70 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 following bill –

- Invoice Number 18431, dated 7 March 2016, for an amount of \$2,123.70.

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 \$1,500.00 (including disbursements and GST). The Complainant has previously paid the sum of **\$2,123.70** to the Respondent Lawyer.

Statement of Reasons

Background

1. On 11 November 2015, the Complainant engaged the Respondent Lawyer to act on his behalf in relation to the sale of his property. Under the terms of the contract of sale, the property was due to settle on 7 March 2016.
2. On 11 November 2015, the Respondent Lawyer provided costs disclosure for a fixed price fee of \$1,340.00, plus \$134.00 GST and disbursements.
3. On 4 March 2016, the Respondent Lawyer advised the purchaser's lawyer that the Complainant's bank would not be ready to settle on 7 March 2016, due to a delay in receiving the mortgage discharge documents from the Complainant on 3 March 2016.
4. On 4 March 2015, the Respondent Lawyer sent an email to the Complainant warning him of "the additional legal costs incurred as a result of this delay, in addition to the extra costs already incurred as a result of the insufficient funds being made available for settlement".

Additional legal costs were estimated to be \$550.00, plus disbursements and inclusive of GST. The Complainant disputed these costs with the Respondent Lawyer on same date.

5. On 7 March 2016, settlement of the property was booked to take place on 8 March 2016.
6. On 7 March 2016, the Respondent Lawyer issued a further bill for \$2,123.70 ("Respondent Lawyer's bill"), comprising \$1,852.00 for professional fees, plus GST and disbursements, for additional costs arising from the delay in settlement.
7. On 8 March 2016, settlement occurred. The Respondent Lawyer retained funds from settlement to remedy the invoice dated 7 March 2016.
8. On 31 March 2016, the Complainant lodged a complaint with my office to dispute the actions of the Respondent Lawyer and the invoice dated 7 March 2016.

ISSUES IN DISPUTE

The issues that remain in dispute are whether –

- (a) The Respondent Lawyer's bill dated 7 March 2016 is fair and reasonable;
- (b) The Respondent Lawyer acted outside the scope of the retainer.

Complainant's Case

The Complainant said the following in his complaint –

a. Legal costs

The Respondent Lawyer's fees pursuant to his bill dated 7 March 2016 were not fair and reasonable. In particular, the Respondent Lawyer's additional charges for delay in settlement were excessive.

b. Acting outside the scope of the retainer

The work for which the Respondent Lawyer has charged additional costs falls outside the scope of the retainer.

Respondent Lawyer's case

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

a. Legal costs

The additional charges were fair and reasonable and within the scope of the costs agreement, and were incurred as a result of the delays caused by the Complainant.

b. Acting outside the scope of the retainer

The Scoping of Legal Work and Disclosure documents noted fixed legal costs at \$1,340.00, but also provided additional costs would be incurred for work outside of the scope of the retainer.

Immediately it became apparent that additional work would be required, the Complainant was notified that such work was outside the Scoping of Legal Work.

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 \$1,500.00 (including GST) represents fair and reasonable legal costs for the Respondent Lawyer's bill. This amounts to a reduction of \$623.70 from the Respondent Lawyer's bill. I accept the findings of the costs review.

In the costs disclosure, the Complainant was provided with a detailed scope of works, including a number of exclusions, with a notification that additional charges may be incurred from any "work from a delay in settlement, or change in the settlement date." The Respondent Lawyer's file in relation to the additional work was assessed in accordance with the Professional Remuneration Order ("PRO") relevant at the time the bill was issued.

This meant that any delay in settlement or change in settlement date would incur additional costs, above the fixed price. The disclosure was explicit in identifying that any work required from any unforeseeable delay or additional requirements made by the bank would incur additional legal costs.

I have reduced the amount that the Respondent Lawyer is able to charge for the following reasons –

- The bill included some attendances where there was no evidence on the Respondent Lawyer's file of the attendance occurring.

Attendance Date	Attendance Description
3 March 2016	Strategising
4 March 2016	Strategising

- The bill included some attendances which should have been included in the original scope of work.

Attendance Date	Attendance Description
4 March 2016	Letter to other side with cheque directions
4 March 2016	Drafting settlement instructions
4 March 2016	Attending to completing SAI Settlement Room Invitation

- The Costs Agreement noted that work outside scope would be charged at either a fixed fee or as per the PRO. No fixed fee was provided for work outside scope. The bill contained a number of attendances where fees were charged at a rate higher than the PRO, and these were reduced accordingly.

Attendance Date	Attendance Description
4 March 2016	Letter, email
7 March 2016	Email

b. Acting outside of the scope of the retainer

The Respondent Lawyer did not act outside the scope of the retainer.

Provision was made in the Costs Agreement for the possibility of extra work needing to be carried out as a result of a delay or change in settlement. This extra work would fall outside the original scope of work and the fixed price cost. Any extra work would attract additional costs.

The Respondent Lawyer was required to do extra work that fell outside the original scope of work and he was entitled to charge for that extra work. The delay in settlement was caused by insufficient funds being available for settlement and the discharge documents not being provided by the Complainant until 3 March 2016.

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.

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
23 December 2016