

LEGAL PROFESSION BOARD OF TASMANIA

No. 35 / 2016

COMPLAINANT

Complainant

-AND-

A PRACTITIONER

Legal Practitioner

DECISION AND REASONS FOR DECISION

Decision

That pursuant to Section 433 (1) (a) of the *Legal Profession Act 2007* (the "Act") the complaint is dismissed, the Board having found that the complaint is in the opinion of the Board vexatious, misconceived, frivolous or lacking in substance.

Background

1. The complaint concerns legal costs and costs disclosure.
2. On 19 April 2016, the Complainant advised the Practitioner by letter that she had potential buyers for her Restaurant ("the restaurant") and her vacant block of land over the road from the restaurant ("the land"). The Complainant was willing to provide vendor finance to the prospective purchaser. The Complainant advised the Practitioner that Mr P would be in contact with her.
3. The Complainant says that the Practitioner had acted for the Complainant and her husband in relation to a number of sales and purchases over a number of years.
4. On 20 April 2016, the Practitioner advised the Complainant by email that she had spoken to Mr P and the purchaser's solicitor, and that she would draft an agreement as soon as possible.
5. On 20 April 2016, the Complainant replied by thanking the Practitioner.
6. On 26 April 2016, the Complainant advised the Practitioner by email that she had been speaking with the purchaser and attached a list of plant and equipment.
7. On 26 April 2016, the Practitioner emailed the Complainant for instructions as to whether there were any employees and who held a liquor licence. The Practitioner also sought instructions about the vendor finance arrangement and recommended that a loan agreement be annexed.

8. On 26 April 2016, the Complainant replied to the Practitioner by email and provided the instructions sought.
9. On 26 April 2016, the Practitioner emailed a draft agreement for sale of business and a draft loan agreement (“the agreements”) to the Complainant and sought instructions from her.
10. On 27 April 2016, the Complainant emailed the Practitioner to ask her to make changes to the agreements.
11. On 27 April 2016, the Practitioner sent amended agreements to the Complainant by email and advised that she would email them to the other practitioner.
12. On 28 April 2016, the Practitioner sent the Complainant a costs agreement together with a tax invoice for costs and disbursements to that date in the sum of \$2,488.75. The costs agreement included an estimate of costs to complete the sale of the restaurant and the block of land of between \$4,400.00 and \$6,600.00 (including GST) plus disbursements.
13. On 10 May 2016, the Complainant emailed the Practitioner to advise she had paid her bill and requested advice as to how much of the bill related to the vendor finance agreement and whether the Complainant had been charged for the amendments made to the agreements due to the Practitioner’s errors. The Complainant also advised she would be engaging another lawyer to complete the sale.
14. On 10 May 2016, the Practitioner emailed to advise that the Complainant had been charged an hour for preparation of the loan agreement and that she had not been charged for the amendments to the two agreements.
15. The Complainant says two other legal practitioners 'quoted' amounts that were significantly less than the Practitioner's cost estimate to undertake the work to complete the sales. The practitioner whom she eventually instructed charged the Complainant \$1,500.00 plus GST in accordance with his 'quote'.

The Complaint:

16. The allegations of complaint confirmed by the Complainant are as follows:
17. That the Practitioner failed to achieve a standard of competence and diligence that the Complainant was entitled to expect by:
 1. overcharging for preparation of the agreements;
 2. not providing a cost estimate before undertaking the work in preparing the agreements as required, pursuant to section 291 of the *Legal Profession Act 2007*; and
 3. acting dishonestly to 'quote' between \$4,400.00 to \$6,600.00 (including GST) to complete the sale of the restaurant and block of land.

Consideration of the Complaint:

Allegation 1 – overcharging

18. It is a well-established principal at common law that lawyers should charge no more than reasonable costs. Section 422 (1) (b) of the Act provides that the charging of excessive legal costs may amount to unsatisfactory professional conduct.
19. Here, the Practitioner charged \$2,212.50 exclusive of GST and disbursements to draft the agreements together with associated attendances, which at \$385.00 per hour amounts to 5.74 hours of work. On the face of the account, neither the time spent nor the amount charged are excessive. For that reason, this aspect of the complaint is lacking in substance.

Allegation 2 – failing to make costs disclosure

20. Section 291 of the Act requires a law practice to make certain disclosures to clients relating to costs. By Section 294, such costs disclosure “must be made in writing before, or as soon as practicable after, the law practice is retained in the matter”. Section 295 provides that costs disclosure is not required if the total legal costs in the matter, excluding disbursements and GST are not likely to exceed \$1,500.00.
21. Here the matter was limited to drafting the agreements. Total costs exceeded \$1,500.00 but only did so by a small margin, such that it would have been reasonable for the Practitioner to conclude before she began drafting the agreements that costs would not likely exceed \$1,500.00 – even if she foresaw that as a possibility – but when she came to draw the account for that work, to find that \$1,500.00 was exceeded by a small margin. There could be no evidence that the Practitioner ought to have known that relevant costs were likely to exceed \$1,500.00 at the time she was first retained. For that reason, the Practitioner's failure to make costs disclosure as soon as practicable after she was retained could not amount to a professional conduct matter. Accordingly, this aspect of the complaint is lacking in substance.

Allegation 3 – dishonest 'quote'

22. The Practitioner gave a cost estimate to undertake certain work. She did so properly. The fact the Complainant obtained lower estimates for the same work and that another practitioner undertook the work for less than the Practitioner estimated does not mean the Practitioner's estimate was dishonest. This aspect of the complaint is lacking in substance.

Decision dated the 28th day of September 2016.

Legal Profession Board of Tasmania

Per:

Board Member

Please note that within 21 days after the date of this determination the complainant or the legal practitioner, the subject of the complaint may apply to the Disciplinary Tribunal or Supreme Court to have this matter heard by the Disciplinary Tribunal or Supreme Court and may make an application to the Disciplinary Tribunal or Supreme Court to stay the determination pending the finalisation of such an application.

Please be aware that an application made to either the Disciplinary Tribunal or Supreme Court may, in the event that application is unsuccessful, result in a costs order against you. Accordingly, it is recommended that independent legal advice is sought prior to making such an application.

Any application to the Disciplinary Tribunal must be in accordance with the form prescribed under the Legal Profession (Disciplinary Tribunal) Rules 2010 (see <http://www.lpbt.com.au/policy-and-guidelines/>).

The contact details of the relevant bodies are as follows:

Disciplinary Tribunal Secretary Mrs Maria Dwyer, Ogilvie Jennings: 6272 6860

Supreme Court, General Enquiries: 1300 664 608