

*Legal Profession Board of Tasmania*

<b>Medium Neutral Citation:</b>	<b>COMPLAINANT v A PRACTITIONER [2018] LPBT 41</b>
<b>Considered / Heard:</b>	<b>2018</b>
<b>Determination date:</b>	<b>2018</b>
<b>Jurisdiction:</b>	Legal Profession Board, Tasmania
<b>Before:</b>	Mr K Pitt QC (Chairman) Mr G Jones (Legal Member) Mr A Mihal (Legal Member) Mr D Lewis (Legal Member) Ms J Paxton (Lay Member) Mr P Dane (Lay Member)
<b>Determination:</b>	The complaint is dismissed pursuant to section 433(1)(a) of the <i>Legal Profession Act 2007</i> on the basis it is misconceived.
<b>Catchwords:</b>	<b>PROFESSIONS AND TRADES- Lawyers- Complaints and Discipline- Professional misconduct and unsatisfactory professional conduct- allegations of acting without instructions.</b>
<b>Legislation:</b>	<i>Legal Profession Act (Tas) 2007</i>
<b>Category:</b>	Determination
<b>Parties:</b>	(Complainant) (Practitioner)
<b>File Number:</b>	2018/41

## REASONS FOR DETERMINATION

### Background

1. This matter comes to the Board by way of a complaint received on 5 December 2017.
2. The Complainant contacted the Practitioner's practice with respect to the sale of his property.
3. In late March 2017 the Practitioner contacted the Complainant by phone. The Complainant advised that he wanted the Practitioner's assistance with respect to a transaction but that he had to make further enquiries about the purchase of another property prior to selling his own.
4. During April 2017 the Practitioner had further telephone conversations with the Complainant and a conversation with the real estate agent in relation to the property the Complainant wished to purchase and the sale of the Complainant's property.
5. In late May 2017, not having heard further from the Complainant for over a month, the Practitioner rang the Complainant. The Complainant advised that he was still progressing the potential purchase and sale.
6. Having not heard further from the Complainant by mid September 2017 the Practitioner sent a letter to the Complainant enquiring whether he wished to proceed or whether she should close her file.
7. Having not received a response from the Complainant the Practitioner forwarded her invoice a few months later.
8. The Complainant contacted the Practitioner a few days later and said that he had been told that he was not required to pay the invoice in the absence of written confirmation of engagement.
9. The Practitioner wrote to the Complainant in response to the call advising that written costs disclosure was only required if the costs were estimated to exceed \$1,500.00
10. In December 2017 the Complainant wrote to the principal of the Practitioner's law practice with his concerns.
11. As a result of the Complainant's letter, and a review of the file, the principal decided not to pursue the account and a credit note was issued.
12. The credit note was not sent to the Complainant until the Practitioner received notification of the complaint.

## The Complaint

13. The Complaint alleges that in or around April 2017 the Practitioner undertook work in respect to a conveyance matter in circumstances where she did not have the Complainant's instructions to do so and has therefore inappropriately charged the Complainant legal fees for the work the Practitioner undertook.
14. The Board has considered submissions from the parties and the relevant supporting documentation.

## Relevant legislation and the law

15. The Practitioner is an Australian legal practitioner within the meaning of s 6 of the *Legal Profession Act 2007* ('the Act').
16. Section 420 of the Act defines unsatisfactory professional conduct:  
*unsatisfactory professional conduct includes conduct of an Australian legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.*
17. It is not disputed that the Complainant sought advice from the Practitioner in connection with potential conveyancing transactions and that one of the phone calls was for at least seventeen (17) minutes. Even if the proposed sale and purchase did not proceed, at least some of the attendances by the Practitioner appeared to be valid attendances for which the Complainant could have been charged.
18. Although not specifically the subject of the complaint, the Board notes that a practitioner is not required to provide advice in writing about costs if the total legal costs excluding disbursements are unlikely to exceed \$1,500 (exclusive of GST): section 295 of the *Legal Profession Act 2007*.
19. Even if the Practitioner did undertake work for which she was not instructed, the fact that those fees have now been withdrawn, and will not be pursued, and that the work was of limited duration, it is the Board's opinion the conduct is not meritorious of disciplinary proceedings.
20. It follows that the complaint must be dismissed.

## DETERMINATION

The Complaint is summarily dismissed pursuant to section 433(1)(a) of the *Legal Profession Act* 2007 as it is misconceived.

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*