

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2022] NZLCRO 098

Ref: LCRO 81/2021

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of [Area] Standards Committee [X]

BETWEEN

PD

Applicant

AND

BN

Respondent

The names and identifying details of the parties in this decision have been changed.

Introduction

[1] PD has applied for a review of the determination by [Area] Standards Committee [X] to take no further action on her complaints about BN.

The letter of engagement

[2] In December 2019, PD consulted BN about a possible purchase of the business next to hers. That did not proceed.

[3] PD proceeded with an alternative option which was to sell shares in her existing business. This required [Law Firm A] to prepare an agreement for sale and purchase of shares, and a shareholders' agreement between PD and the new shareholder.

[4] BN says a letter of engagement was sent by post to PD, and has provided a letter dated 13 December 2019, which had been sent under the name of XD, a solicitor in the firm to whom BN had delegated the work for PD.

[5] PD says that she did not receive that letter. She says that the letter of engagement produced by BN was prepared after the date shown.

[6] The evidence is inconclusive. It would also seem that if a letter of engagement had not been sent, then this would have been a default on the part of XD, and not BN.

[7] There is no basis for an adverse finding to be made against BN.

Fees

[8] At the conclusion of the transactions in February 2020, an invoice had been prepared by [Law Firm A]¹ based on the time recorded.² PD says that she only became aware that an invoice had been prepared when she received a statement in April showing that payment was outstanding.

[9] At the time of her complaint in June 2020, PD had paid one half of the invoice and had advised that she would pay the balance in the following month.

[10] The remaining half remains outstanding.

[11] PD's primary complaint is about the amount of the fees. She says that she thought the initial attendance with BN was free of charge and that the estimated fee (\$1,500) related to all matters about which she had consulted BN.

[12] BN disagrees. He says the invoice related to three transactions and that the estimate was \$1,500 for each transaction, resulting in an estimated fee of \$4,500.

[13] BN notes that the fee charged was less than that.

Discussion

[14] The Standards Committee formed the view that it was more likely than not that the letter of engagement had been posted to PD.³ It needs to be added here that the version of the letter of engagement was the version that includes an estimate of \$1,500 for each transaction.

¹ Dated 29 February 2020.

² The fee was \$3,620 plus GST and disbursements, a total of \$4,412.78.

³ Standards Committee determination (2 May 2021) at [22].

[15] BN argues that the fee rendered is less than the estimated amount for three transactions, namely \$4,500. However, the invoiced fee of \$3,620 is based on time records produced by BN and a close examination of these produces some anomalies in that the time recorded for the proposed purchase of the neighbouring business is less than \$1,500. This results in the time recorded for the sale of shares and the shareholders' agreement being more than \$3,000.

[16] In this regard, I am only able to identify entries on 17 December 2019 and part of the initial attendances on 11 December, which relate to the proposed purchase. If this is correct, it would result in a significant excess over the estimated fee of \$1,500 for each of the other two transactions.

[17] Rule 9.4 of the Conduct and Client Care Rules⁴ provides that a lawyer must inform a client if it becomes apparent that an estimate is likely to be exceeded. BN did not do this.

[18] On this scenario, BN has breached r 9.4 and is exposed to a finding of unsatisfactory conduct pursuant to s 12(c) of the Lawyers and Conveyancers Act 2006. However, I acknowledge that the reasoning leading to this position is speculative and would need to be put to BN for comment before making a finding against him.

[19] The circumstances relating to this complaint do not warrant this review being prolonged. In addition, not every breach of the Conduct and Client Care Rules necessarily results in an adverse finding against a lawyer.⁵

[20] In these circumstances, there is no basis on which BN can be ordered to reduce his fees.

[21] However, I invite BN to consider a voluntary reduction of his fee as a gesture of goodwill towards PD, and in turn, this would be an acknowledgement that the information provided to PD about fees could have been clearer, being one of the obligations of a lawyer referred to in the preface to the Conduct and Client Care Rules.

Decision

[22] Subject to the comments above, the determination of the Standards Committee is confirmed, pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006.

⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

⁵ *Perera v Medical Practitioners Disciplinary Tribunal* District Court, Whangarei, MA 94/02 at [42].

Publication

[23] Pursuant to s 206(4) of the Act, I direct that this decision be published in an anonymised format on the website of this Office.

DATED this 31ST day of AUGUST 2022

O Vaughan
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

PD as the Applicant
BN as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society