

Findings

These are the Findings of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [the architect] to practise as an architect and into his professional conduct. The Inquiry was conducted on 18 July and 9 August 2000.

The Tribunal reserved its decision.

The Tribunal having conducted an Inquiry into the particular conduct or acts or omissions raised in the Notice issued pursuant to s27 of the *Architects Act 1991*, and having considered the evidence presented to, and the submissions made at that Inquiry, makes the following findings in respect of each of the allegations.

- (a)(i) The architect failed to deal with his clients in a competent manner and to a professional standard

Finding

The Tribunal finds this allegation proved

- (a)(ii) The architect failed to set out in writing the description, terms and conditions of his engagement as an architect and supply a copy of that document to the clients before accepting the engagement to provide architectural services to them;

Finding

This allegation is conceded by the architect and therefore the Tribunal finds it proved

- (a)(iii) The architect failed to advise the clients of the likely increase in costs (beyond the original budget) arising from the site, the design and some of the features incorporated (including at the clients' request)

Finding

The Tribunal finds this allegation proved

- (b) The architect did not keep the clients informed of the extent to which the design of the project and variations to the design were exceeding the clients' communicated instructions or budget limit;

Finding

The Tribunal finds this allegation proved

- (c) By reason of the above the architect also breached Regulations 5 and 18 of the Regulations and by virtue of Regulation 22 the architect's conduct constituted unprofessional conduct irrespective of whether it otherwise was;

Finding

The Tribunal finds this allegation proved

- (d) The architect was a director of, and thus a person concerned in or taking part in the management of a body corporate, namely that variously known as [] which, contrary to section 6(1)(a) of the Act, not being an approved architectural company, held itself out as being an architect or as engaging in architectural practice (and thus the architect attracted the operation of section 68 of the Act);

Finding

This allegation is conceded by the architect and the Tribunal therefore finds it proved

- (e) Despite section 8(1) of the Act, the architect made or published a document which stated or implied that a body corporate, namely that variously known as [], was an architect or practised as an architect or undertook or was willing to undertake work as an architect.

Finding

This allegation is conceded by the architect and the Tribunal therefore finds it proved

FINDING

In view of the above findings the Tribunal finds:

- (a) The architect was careless and incompetent in his practice
- (b) The architect's professional standards are demonstrably lower than the standards which a competent architect should meet
- (c) The architect is guilty of unprofessional conduct (by virtue of Regulation 22 and otherwise).
- (d) The architect has breached sections s8(1) and attracted the operation of s68 of the **Architects Act 1991**, and breached Regulations 5 and 18 of the **Architects Regulations 1993**.

28 September 2000

REASONS FOR FINDINGS

1. This Tribunal was constituted pursuant to the provisions of s27 of the **Architects Act 1991** to enquire into certain conduct, acts or omissions of [the architect], as set out in the Notice of Hearing dated 18 May 2000. At the hearing which was conducted over two days, [Counsel] appeared on behalf of the Architects Registration Board ("the Board") and [] Counsel appeared on behalf of [the architect]. [The architect] and [Ms S.] from his office gave evidence, as did the complainants, [M. D.] and his wife [C.D.]

2. At the commencement of the hearing, [Counsel for the architect] indicated that matters set out in paragraphs 4(a)(ii), (d) and (e) of the Notice of Inquiry were conceded. The matters set out in paragraphs 4(a)(i)(iii), (b) and (c) were contested.

Background

3. [The architect] was engaged by Mr and Mrs [D.] (“the [complainants]”) to provide architectural services in relation to a new home to be built in an environmentally sensitive area. The services were provided during 1998 and 1999, and were terminated by letter dated 19 May 1999 from [M.D.] to [the architect]. A complaint was lodged with the Board on 30 September 1999. Although a number of concerns were set out in the complaint it is apparent that the primary area of contention is whether [the complainants] made it clear to [the architect] from the outset that they had a budget with an absolute upper limit of \$200,000. Further, whether [the architect] had an obligation, as the size of the dwelling increased, to draw their attention to the fact that this increase in size would result in additional cost and whether he had any responsibility for the ultimate blowout in the cost, as evidenced by the quotations obtained as a result of the first and second tender processes.
4. Although [C.D.] gave evidence that she had wanted to complain to the Board for some time, the catalyst for the complaint seems to have been the claim by [], the structural engineer, for payment – [the complainants] were both clear that they always thought consultants’ fees were included in the architect’s fees (although it is noted that they have paid other consultants’ fees which appeared on [the architect’s] invoices without demur; their explanation being that such other consultants were site specific e.g. required because of the environmentally sensitive location of the site) – they have since paid 50% of the engineer’s fee to enable certain necessary amendments to be made so that the drawings could be submitted to Council for approval. As indicated to [the complainants] at the commencement of the inquiry, it is not within this Tribunal’s jurisdiction to make any determination about payment of this account.
5. [The complainants] having been given [the architect’s] name by a bridge associate of [M.D.], met with [the architect] in April 1998 to discuss the design of their proposed new home. [C.D.] gave evidence that she interviewed a number of architects before deciding upon [the architect] because she and her husband were keen to engage an

architect who was sympathetic to the requirements of an environmentally sensitive area.

6. [The complainants] both gave evidence that at the initial meeting with [the architect] they made it clear that their budgetary constraints had an upper limit of \$200,000 but that they would be delighted if their house could be built for less than this. The proposed house was to be built on a significantly sloping block of land leading to a water course.
7. At the time of the initial meeting, [the architect] had not seen the site but in discussions with [the complainants] indicated his fee would be 10% of the eventual contract price – all agree this was subsequently amended to 10% of \$200,000, even if, according to [C.D.], the final contract price was less than \$200,000. Neither [of the complainants has] any recollection of any discussion about who would be responsible for the payment of consultants' fees and gave evidence that it was always their expectation that these would be included in the architect's fee and would not be an additional cost to them.
8. At the initial meeting an indicative cost of \$800 to \$1,000 per square was given to [the complainants] by [the architect] apparently as a "rule of thumb" for a house with standard fittings and fixtures. The only written references to "cost" (other than on the invoices where the basis of the fee calculation being 10% of \$2000,000 is noted) appear on Sketches 1 and 2. Sketch 1 refers to a costing of \$184,000 and Sketch 2 , after some amendments had been made, to a costing of \$198,000.
9. Over many months, during which time there were a number of amendments and refinements to the plans, the extent of both the enclosed and unenclosed areas increased. [The architect] said that he had numerous consultations with [the complainants] during this time, and especially with [C.D.] over the telephone, although when he produced his diary at the adjourned hearing there were very few entries recording any meetings, or other contact. During this time [the architect] and [C.D.] visited Alan Patricks to select fittings that [C.D.] subsequently realised were of a quality and cost far beyond the budget. [C.D.] claims that despite the many discussions there were still agreed items or changes that were never incorporated into the documentation.

10. The documents were finally put out for tender in December 1998. [the architect] gave evidence that he told [the complainants] this was not an ideal time of year in which to call for tenders. [The complainants] acknowledge this but say they were concerned to avoid any further delays. The tenders came in variously in the range of \$325,000 to \$495,000, well in excess of the [complainant's] \$200,000 budget.
11. [The architect] said and [the complainants] acknowledge that he was shocked by the tender prices and suggested a number of amendments to the plans to reduce the cost – some of which were not acceptable to [the complainants] although [M.D.] gave evidence that some of them have subsequently been adopted in an attempt to build the house for an affordable figure. [The architect] gave evidence he had made an estimate of the probable cost of construction based on reference to Rawlinson's cost control book for 1998 (which he said were obviously too low), and that he had a meeting with the [C.D.] in mid November 1998 at which time he discussed his preliminary estimate with her as set out in his workbook. These show a costing of \$233,000 which [*the architect*] acknowledged excluded some fixtures. [C.D.] gave evidence that she had never seen these calculations, or been made aware of an estimate over \$200,000.
12. [The complainants] are both quite clear that they have no argument with the design and that their concerns arise out of [the architect's] failure to design a house which could be built within their budget of \$200,000.

Conclusions

13. This case clearly demonstrates the need for an architect to advise his/her clients in writing **before** work is commenced of the terms and conditions of his/her engagement, the fee, the basis of calculation of such fee and the responsibility for any additional fees. It seems that in this instance, if the terms of [the architect's] engagement had been clearly defined there would be no dispute as to the budget, or the payment of the engineer's fee – consultants' fees would have been clearly noted as additional to the architect's fees.
14. It seems that [the architect] has made many assumptions during the period of his engagement about [the complainants'] understanding and appreciation of the likely

effect on their budget of the many revisions to the plans and the consequent increase in size, yet on his own evidence he never specifically drew their attention to such impact. Clients are entitled to rely on their architect, who they have engaged to provide an expert service, to provide them with any and all relevant information about their project and, in particular, to ensure they actually understand the impact/effect of the any changes they request. It is reasonable for clients who have made their budget known to an architect to expect him/her to ensure any resultant design is achievable within that budget.

15. It is clear on the evidence before the Tribunal that [the complainants] made their budget constraints quite clear to [the architect] from the outset. Irrespective of his protestations to the contrary all the available material is clear evidence that he was aware of and understood these constraints. All invoices have been calculated as a percentage of \$200,000; the only drawings which contain calculations contain indications of a budget estimate are below \$200,000. [The architect] acknowledges that [the complainants] told him it would be good if the project cost less than \$200,000 but said the he did not interpret this as a maximum figure – again a matter which may have been clarified had he set out the terms and conditions of his engagement at the outset.
16. In any event, if [the architect] had any uncertainty as to the [complainants'] budget, it would have been prudent for him to enquire. It is the rare client indeed who does not have an upper budgetary limit, and it is reasonable to expect that [the architect] would have been aware of this and that good practice required him to confirm any budgetary limitations.
17. It is apparent that [the architect], in providing his original estimate of a construction cost of \$800 to \$1,000 per square did so without making any allowance for the difficulties and, therefore, likely increased costs of construction because of the significantly sloping block, and the environmental considerations. This demonstrates the danger of providing even a “rough” estimate without at least first visiting the block so that one is appraised of potential difficulties.
18. It seems that [the architect] has been somewhat lax in his dealing with [the complainants]. He appears to be generally disorganised. It also seems that his

attention to detail is somewhat lacking. These conclusions are reinforced by the experience before this Tribunal when the first hearing had to be adjourned to enable [the architect] the opportunity of presenting material which he had either left in the car, or had failed to bring with him at all, or provide to the Board when the complaint was forwarded to him initially. The hearing did not proceed on the first adjourned hearing because [the architect] relied on the advice of his barrister that it was to take place on the day following. Although the Tribunal accepts [Counsel for the architect's] apology and notes that he sought to accept total responsibility for this oversight, the Tribunal also notes that the adjourned hearing date was fixed in consultation with the legal representatives, [the complainants] and [the architect], and as such [the architect] cannot be totally absolved of responsibility.

19. [The architect's] total reliance on Rawlinson's in calculating the probable cost of construction is not what one could expect of a reasonably competent architect. It is reasonable to expect that a competent architect would also be aware of, and take into account, such factors as the market volatility at the time (which was well known to participants in the building industry), and that he would also make adequate allowance for the special requirements of the site – the sloping block, and the environmental factors.
20. Surprisingly, the original sketch plans were not produced by [the architect], and many of the copies of sketch plans tabled did not carry job titles or dates. This is most unusual and suggests that there was ample opportunity for misunderstandings to arise because the design responses to client comments were not being clearly monitored.
21. However, notwithstanding the above conclusions, it is clear that [the architect] did design a house that was in keeping with the environmentally sensitive nature of the site and the [complainants'] general requirements, as evidenced by the fact the house they are having built for them is substantially that designed for them by [the architect]. It is unfortunate that a lack of communication and attention to detail during the design phase, and in particular, the failure to design a house that could be built within their budgetary constraints soured this relationship. The Tribunal accepts that [the architect] was surprised and devastated at the exceedingly high prices following the first tender process and that he worked with [M.D.] to try to make amendments to his plan which would make the house more affordable, but by then the damage had been

done. [The complainants'] expectations of the size and style of house they could hope to build on their difficult site had been inflated through [the architect's] failure to adequately and fully appreciate their budgetary constraints and advise them of the cost implications of the various changes made to the design throughout the design phase.

22. The Tribunal therefore finds the allegations made in the Notice of Inquiry proved.

28 September 2000

*Architects Act 1991
Section 32*

Determination

This is the Determination of the Tribunal constituted by the Architects Registration Board of Victoria to hold an inquiry into the fitness of [the architect] to practise as an architect and into his professional conduct. The Inquiry was conducted on 18 July and 9 August 2000 and the Tribunal's Findings delivered its Findings and Reasons for Findings on 28 September 2000. A further date for the hearing of submissions on Determination and costs was set for 3 November 2000.

[]

The Tribunal having considered the submissions made to it at the further hearing held on 3 November 2000 made the following Determination and order as to costs, which come into effect as and from 3 November 2000.

The Tribunal determines:

1. To reprimand and caution the architect.
2. To require the architect to undertake further education in the form of a mentoring program (as follows) to address any possible shortcomings in the architect's communication and attendance on clients, both written and oral, and to ensure that appropriate procedures are in place to avoid a repeat of the matters before the Tribunal in this Inquiry:
 - (i) The mentor shall be a registered architect, and his or her appointment is subject to approval by the Board.
 - (ii) The Architect shall provide the Board with the names of three proposed mentors by 13 November 2000 for consideration by the Board at its meeting on 14 November 2000.

- (iii) The Architect shall meet with the mentor within one month of receiving notification of the Board's approval of a mentor, and thereafter twice more at six monthly intervals.
 - (iv) The Architect shall forward to the Board a copy of brief Minutes identifying the issues identified and discussed at each meeting, signed by the Architect and the Mentor, within 14 days of each such meeting.
 - (v) Any costs associated with the mentoring program are the sole responsibility of the Architect.
3. The Architect shall pay the party/party costs of the Board which the Tribunal fixes at \$4000. Stay of 60 days.

3 November 2000