

## **Findings and Determination**

*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 13 December 2000*

*The Tribunal reserved its decision.*

### **FINDINGS**

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, finds each of the allegations hereinafter set out proved.

In view of these 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 Regulations 5, 8, 9 and 18 of the **Architects Regulations 1993**.

### **Allegations**

The allegations are numbered as set out in the Amended Notice of Inquiry provided to the Tribunal and the Architect by Counsel appearing on behalf of the Board at the commencement of the Inquiry. For convenience, and as the Amended Notice of Inquiry had not been signed by the Chairperson of the Tribunal, each of these allegations, which are in identical terms to those contained in the Original Notice of Inquiry signed by the Chairperson and dated 22 September 1999, has been cross referenced.

#### **Allegation No. 1 (Original Notice of Inquiry Allegations No: 1, 6, 12, 14)**

That:

- (i) on or about 10 March 1999 you failed to ensure that your clients, Mr N. & Mrs V. ("your clients"), understood the nature of the architect/client agreement in relation to the design of a dwelling at [address], prior to requesting them to sign that agreement; and
- (ii) on or about 3 June 1999 you failed to ensure that your clients, Mr N. & Mrs H. ("your clients"), understood the nature of the architect/client agreement in relation to the application for a planning permit for a proposed development at [address] prior to requesting them to sign that document; and
- (iii) on or about 23 September 1999 you failed to ensure that your client, Mr L. ("your client"), understood the nature of the architect/client agreement in relation to the obtaining of a planning and building permit concerning the proposed development at [address] prior to requesting your client to sign that agreement; and

(iv) on or about 2 April 1998 you failed to ensure that your clients, Mr L. and Mrs N. ("your clients"), understood the nature of the architect/client agreement in relation to the proposed development at [address] prior to requesting your client to sign that agreement and you are therefore guilty of unprofessional conduct.

**Allegation No.2 (Original Notice of Inquiry Allegations No: 2, 7, 13, 15)**

That :

- (i) on or about 10 March 1999 and before accepting an engagement from your clients, Mr N. & Mrs V. ("your clients") in relation to the design of a dwelling at [address], you failed to provide a copy of a document in writing setting out the description, terms and conditions of the engagement to your clients in contravention of regulation 18(b) of the *Architects Regulations 1993*; and
  - (ii) on or about 3 June 1999 and before accepting an engagement from your Mr N. & Mrs H. ("your clients") in relation to the application for a planning permit for a proposed development at [address], you failed to provide a copy of a document in writing setting out the description, terms and conditions of the engagement to your clients in contravention of regulation 18(b) of the *Architects Regulations 1993*; and
  - (iii) in or about September 1999 and before accepting an engagement from your client, Mr L. ("your client") in relation to the obtaining of a planning and building permit concerning a proposed development at [address], you failed to provide a copy of a document in writing setting out the description, terms and conditions of the engagement to your client in contravention of regulation 18(b) of the *Architects Regulations 1993*; and
  - (iv) on or about 2 April 1998 and before accepting an engagement from your clients, Mr L. & Mrs N. in relation to a proposed development [address], you failed to provide a copy of a document in writing setting out the description, terms and conditions of the engagement to your clients in contravention of regulation 18(b) of the *Architects Regulations 1993*
- and you are therefore guilty of unprofessional conduct.

**Allegation No. 3 (Original Notice of Inquiry Allegation No: 3)**

That between 10 March 1999 and 25 March 1999 you acted in both the capacity of an architect and that of a developer on the same project at the same time, namely the design and construction of a dwelling at [address] in contravention of regulation 8(1) of the *Architects Regulations 1993* and you are therefore guilty of unprofessional conduct.

**Allegation No. 4 (Original Notice of Inquiry Allegation No: 4)**

That on or about 10 March 1999 you carried on a business as a developer and used the title of architect in documents of that business, namely the issuing of an invoice in contravention of regulation 9 of the *Architects Regulations 1993* and are therefore guilty of unprofessional conduct.

**Allegation No. 5 (Original Notice of Inquiry Allegation No: 5)**

That on or about 6 July 1999 you caused a caveat to be lodged on the title of the property of your clients Mr N. & Mrs V. ("your clients"), being certificate of title volume [number] folio [number], pursuant to clause 11 of an architect/client agreement between you and your clients dated 10 March 1999 in circumstances where:

- (i) you had not explained the terms of the architect/client agreement to your clients; and

- (ii) you did not provide a copy of the architect/client agreement including the term relied upon to your clients prior to your engagement or at all;  
and you are therefore guilty of unprofessional conduct.

**Allegation No. 6 (Original Notice of Inquiry Allegation No: 10)**

That in or about April 2000 you carried on a business as a developer and used the title of architect in documents of that business, namely a sign displayed at a property under construction in [address] ("the sign") in contravention of regulation 9 of the *Architects Regulations* 1993 and you are therefore guilty of unprofessional conduct.

**Allegation No. 7 (Original Notice of Inquiry Allegation No: 11)**

That in or about April 2000 you carried on a business as a developer and used the title of architect in documents of that business, namely a sign displayed at a property under construction in [address] ("the sign") in contravention of regulation 9 of the *Architects Regulations* 1993 and you are therefore guilty of unprofessional conduct.

**DETERMINATION**

**The Tribunal makes the following Determination and order as to costs which come into effect on 2 March 2001**

The Tribunal determines

1. To reprimand and caution the architect.
2. To require the architect to undertake further education by undertaking, paying for and satisfactorily completing the BPA-1 within 3 years. The architect shall provide the Board with proof of enrolment in such a course, and a copy of his results
3. To arrange for an architect, appointed by the Board, to inspect the architect's office records and in particular client and architect agreements, letterheads and work undertaken as a builder/developer - the inspection to take place during July 2001. The architect appointed by the Board will report to the Board and should any concerns be raised further inspection/s may be required at the Board's discretion. Any fees charged by the architect appointed by the Board for such inspection and reporting to the Board shall be paid for by the architect.
4. The Architect shall pay the costs of the Board which the Tribunal fixes at \$15,000. Stay of 60 days.

2 March 2001

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**REASONS FOR FINDINGS AND DETERMINATION**

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 Inquiry dated 22 September 2000. At the inquiry, [Mr A] of Counsel, appeared on behalf of the Architects Registration Board ("the Board") and [Mr B] of Counsel appeared on behalf of [the architect].

2. At the commencement of the Inquiry, [], Counsel appearing on behalf of the Board, or as he put it, to assist the Tribunal, indicated that following certain negotiations between the Board and the Architect the Board had determined not to proceed with a number of allegations set out in the original Notice of Inquiry. In the absence of any objection from the architect, and on being satisfied the Board had approved the substance of the amended Notice of Inquiry, and further on being satisfied that it was effectively a re-organisation of those allegations to be proceeded with the Inquiry continued. The Tribunal remains unclear as to why an amended Notice of Inquiry was required, and in case there is any uncertainty as to its validity as it has not been signed by the Chairperson of the Tribunal, its findings and determinations are cross referenced to the numbering as set out in the original Notice of Inquiry.
3. [Mr A] presented a Summary of the evidence which he indicated for the purposes of the Inquiry should be given the weight of sworn evidence, and it would stand as the evidence to be presented on behalf of the Board in relation to the complaints which arise out of the architect's involvement with four couples. It is recorded that the members of the Tribunal also had the benefit of considering the contents of a common folder of documents made available to them and the parties prior to the Inquiry.
4. Counsel appearing on behalf of the architect, [Mr B], confirmed the architect would not contest the matters set out in the Summary. It was indicated by [Mr A] that a "no contest" should be viewed as a "not guilty" plea.
5. Unfortunately, [Mr A] had to be continually prompted by the Tribunal to indicate the synergy between the Summary of Evidence and the allegations. Notwithstanding the lack of assistance provided to the Tribunal by [Mr A], the Tribunal finds, on the material before it, and on the balance of probabilities, the allegations proved.

### **Penalty**

6. Somewhat surprisingly the Board declined to make any submissions on the question of penalty. [Mr A] referred the Tribunal to s32 of the Architects Act. The Tribunal does not know why the Board took this position but it carries with it the clear inference that the Board does not view the allegations to be of a serious nature. Fortunately the Tribunal is an expert Tribunal able to assess the seriousness of the allegations before it, but this is a generally unsatisfactory approach.
7. [Mr B] made extensive submissions in mitigation of penalty and submitted that in essence the allegations were not of a serious nature and could be summarised as:

- (1) Failure to explain
  - (2) Failure to give copies of signed documents to the complainants
  - (3) Acting as a builder and architect at the same time
8. He suggested that a caution was all that would be appropriate in the circumstances.
9. The Tribunal does view the allegations seriously being concerned that they demonstrate a lack of understanding and appreciation of an architect's obligations under the Architects Act. However, the Tribunal has also taken into account that Ms V., the sister of one of the complainants, apparently assisted the complainants in preparing their complaints to the Board.
10. The Tribunal is particularly concerned that the architect had clients sign blank piece of paper. It is apparent, from the Summary of Evidence, that none of the complainants were aware that they were signing a Client/Architect Agreement and the Tribunal unreservedly accepts this evidence.
11. The Tribunal notes the references provided and accepts that [the architect] is a hardworking member of the [] community. However, it does not consider a caution to be sufficient in the circumstances. One of the responsibilities the Tribunal is charged with is to ensure the public interest is protected and in such circumstances it seems appropriate and necessary that the architect's apparent lack of understanding and appreciation of his statutory obligations be remedied. The Tribunal therefore determines to
- (1) Caution and reprimand the architect
  - (2) To require the architect to pay for and satisfactorily complete and pass the BPA-1 within 3 years
  - (3) To arrange for an architect, appointed by the Board, to inspect the architect's office records and in particular client and architect agreements, letterheads and work undertaken as a builder/developer - the inspection to take place during July 2001. The architect appointed by the Board will report to the Board and should any concerns be raised further inspection/s may be required at the Board's discretion. Any fees charged by the architect appointed by the Board for such inspection and reporting to the Board shall be paid for by the architect.

## Costs

12. {Counsel for the Board] sought an order for indemnity costs. He submitted that as the Tribunal provided a quasi-criminal function, where the Board was successful in its prosecution of an architect it was appropriate that the architect be required to pay all the costs incurred by the Board. He indicated that the Board's costs up to and including the hearing were in the order of \$37,000. He suggested an alternative would be for the architect to be required to pay the Board's costs assessed on a party/party basis on County Court Scale D which he submitted would be the scale applied by VCAT, the Tribunal's appellate jurisdiction, in matters of similar complexity. He indicated the Board's costs as costed by [], costs consultants, on this basis, were \$26,550 - \$18991 costs plus \$7559.20 disbursements.
13. [Counsel for the Architect] submitted the Tribunal should take into account that the most serious of the allegations had been withdrawn, and that given the failure of the Board to make any submissions on penalty, and further that \$5000 was in any event the maximum fine that could be imposed, any order for costs should be in accordance with the appropriate Magistrates Court Scale. He submitted that the Tribunal's power to make an order for costs is discretionary in accordance with the provisions of s32 of the Architects Act where it is inherently linked to the Tribunal's powers to impose a penalty on an architect. In such circumstances, he submitted that the Board should restrict any order to those costs it considered "fair and reasonable".
14. The Tribunal is of the view that this was a potentially complex Inquiry arising as it did out of four different complaints. It is not privy to the discussions between the Board and the architect, or the reasons why certain of the allegations were not proceeded with, and nor should it be. However, those discussions certainly served to reduce what would have been a lengthy Inquiry to one of short duration. It understands that the agreement with the architect was reached very close to the commencement of the Inquiry, and in such circumstances rejects the submission that the architect should only be required to pay those costs directly related to those allegations.
15. The power of the Tribunal to make an order for costs is discretionary. The Tribunal accepts the submission made on behalf of the architect that in exercising its discretion it should have regard to what is "fair and reasonable". The Tribunal does not consider an order for indemnity costs to be appropriate, and is somewhat surprised at the high level at which the costs have been assessed on a party/party basis.

16. After careful consideration, and being mindful of the architect's financial position, the Tribunal considers that it is fair and reasonable to require the architect to pay the sum of \$15,000 towards the costs of the Board, with a stay of 60 days. Should the architect require further time to pay such sum, he should discuss payment arrangements with the Registrar of the Board.

2 March 2001