

Findings and Determination

These are the Findings and Determination of a Tribunal, constituted by the Architects Registration Board of Victoria, to inquire into the fitness of [the architect] to practice as an architect.

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The Inquiry was held on 23 October 2002.

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FINDINGS

The Tribunal having conducted an Inquiry into the particular conduct, acts and/or omissions raised in the Notice issued pursuant to s27 of the Architects Act 1991 and, having considered the evidence presented and submissions made at the Inquiry, finds that none of the allegations hereinafter set out are proven.

Allegations

The allegations are numbered as set out in the Notice of Inquiry.

6.1 you failed to deal with your client in a competent manner and to a professional standard in that you failed to carry out the work for which you were engaged (including the lodging of a town planning application) in an adequate, speedy and timely manner or within a reasonable time.

The Tribunal noted that this allegation relates to a project at [. . .] . [The complainant] testified that he engaged [the architect] for this work during May 2000. The evidence indicated that, subsequently, [the architect] was also engaged to undertake renovations to the dwelling at the front of the property for other members of the [the complainant's] family. This family project took precedence over the rear project until the commission was terminated prior to [the complainant] travelling to India.

The complainant testified that he considered that time was of the essence in the contract, but the Tribunal did not hear evidence that this matter was raised with the architect during the course of the work. He stated that he had orally indicated concerns about progress, but the first piece of correspondence which mentions this issue is his letter of 29 July 2002 (Exhibit P73), written well after the matter had come into dispute.

The evidence indicated that [the architect] and [the complainant] had had a number of discussions about the project and had also met with Council officers. There is no evidence to show that [the architect] had stopped working on the project, although [the architect] acknowledged that the family project was given priority.

The evidence called into question the timing for the lodgement of the application with Council. [The complainant] contends that there was an agreement that it should be lodged with Council by 26 May 2001 and [the architect] states that he did not consider it appropriate to do so without final agreement from [the complainant]. The evidence does not enable the Tribunal to come to a

clear conclusion about which version is correct. The effective delay in the process was only a few weeks, until [the complainant] had returned from India. There was no evidence of concern about progress by [the complainant] on his return or that he tried to contact [the architect] to verify that lodgement had taken place. It was, in fact, [the architect] who contacted [the complainant] some time later.

[The architect] was working on [the complainant's] project at the rear of the site concurrently with work on the family project at the front of the site. [The complainant] and the family were aware when they engaged [the architect] that he was a part-time sole practitioner.

The Tribunal finds allegation 6.1 not proven.

6.2 *you failed to employ your skills in the interests of your client in that you failed to carry out the work for which you were engaged (including the lodgement of a town planning application) in an adequate, speedy and timely manner or within a reasonable time.*

The Tribunal finds that the progress of the work was consistent with the reasonable expectations that [the complainant] would have had at the time for the reasons set out in 6.1 above. No evidence was led that [the architect] otherwise failed to act in the interests of his client.

The Tribunal finds allegation 6.2 not proven.

6.3 *despite Regulation 18 Architects Regulations 1993 (The Regulations), you failed to set out in writing the description, terms and conditions of your engagement as an architect and supply a copy of that document to the client before accepting the engagement to provide architectural services to him.*

[The architect], under affirmation, claimed to have handed a letter of engagement (Exhibit P69), to [the complainant] in early June 2000. This was shortly after the initial meeting on the project in May of that year. The Tribunal heard that this document was not signed by the parties until 8 October 2000 and noted a submission by [the Board] that there is a requirement that such a document be signed.

[The complainant's] sworn evidence contradicts that of [the architect], with [the complainant] initially claiming that he did not receive the document. The Tribunal noted that [the complainant] later conceded that he had signed this document (original tendered as exhibit K15) on 8 October 2000.

The Tribunal find that [the complainant's] evidence concerning the letter of engagement is unreliable and accepts that Exhibit P69 was provided to him by [the architect] in June 2000. The Tribunal does not accept the submission by [the Board] that this letter must be signed.

The Tribunal finds that the presentation of Exhibit P69 (unsigned) by [the architect] to [the complainant] in June 2000 complies with the requirements of Regulation 18.

The Tribunal finds allegation 6.3 not proven.

6.4 *alternatively to Clause 6.3, you backdated the document required to be provided to the client pursuant to Regulation 18 of the Regulations.*

[The Board] indicated that [it] would not lead any evidence on this matter and, in effect, withdrew the allegation.

Although no evidence was produced to substantiate the hypothesis that the conditions of engagement document was backdated the Tribunal noted that the Complainant did not allege that this occurred in his letter of complaint or later.

It is a serious allegation that [the architect] expressly denied. It was placed before the Tribunal on the basis of conjecture. The Tribunal is concerned that the allegation was raised.

The Tribunal finds allegation 6.4 not proven.

6.5 *by reason of the above, you breached Regulation 5 and 6 of the Regulations and by virtue of Regulation 22 your conduct constituted unprofessional conduct irrespective of whether it otherwise was.*

Regulation 5 relates to Standard of Practice and Regulation 6 to the Interest of the Client.

In his statement [the architect] acknowledged that his performance on this project did not meet the standards he set himself. The Tribunal welcomed this capacity for self-assessment, early in his architectural career. It should ensure that he never faces a Tribunal of this nature again. Having said that, the Tribunal is clear from the evidence before it that [the architect] performed his work in a competent manner and to an adequate professional standard further, it found that this was done in the interests of his client.

The Tribunal finds allegation 6.5 not proven.

DETERMINATION

Pursuant to the provisions of s32 of the Architects Act 1991 the Tribunal makes the following Determination and order as to costs which come into effect on 7 November 2002

1. The Tribunal determines that [the architect]:
 - (a) was not careless or incompetent in his professional practice;
 - (b) that his standards were not demonstrably lower than the standards which a competent architect should meet;
 - (c) that he was not guilty of unprofessional conduct; and
 - (d) has not breached or failed to comply with a provision of the Regulations (the definition of “Act” in the Act including the Regulations).

14 November 2002